LAWS AND RESOLUTIONS OF THE STATE OF MONTANA

Enacted or Passed by the

SIXTIETH LEGISLATURE IN REGULAR SESSION

Held at Helena, the Seat of Government
January 3, 2007, through April 27, 2007

and the

SIXTIETH LEGISLATURE IN SPECIAL SESSION

Held at Helena, the Seat of Government
May 10, 2007, through May 15, 2007

and the

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LAWS AND RESOLUTIONS

Enacted or Passed by the

SIXTIETH LEGISLATURE
IN REGULAR SESSION

Held at Helena, the Seat of Government
January 3, 2007, through April 27, 2007

Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

OFFICERS AND MEMBERS OF THE MONTANA SENATE

2007

50 Members

26 Democrats 24 Republicans

OFFICERS

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President Pro Tempore .....Dan Harrington
Majority Leader .....Carol Williams
Majority Whips .....Lane Larson, Lynda Moss
Minority Leader .....Corey Stapleton
Minority Whips .....Greg Barkus, Dan McGee
Secretary of the Senate .....John Mudd

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2007

100 Members

50 Republicans 49 Democrats 1 Constitutionalist

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Speaker Pro Tempore ..... Debby Barrett
Majority Leader ..... Michael Lange
Majority Whips ..... Tom McGillvray, Gary MacLaren
Minority Leader ..... John Parker
Deputy Minority Leader ..... Bob Bergren
Minority Floor Leader ..... Art Noonan
Minority Whips ..... Margarett Campbell, Dave McAlpin
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26 *(House Bill No. 46; Gallik)* ADOPTING THE MOST RECENT VERSION OF FEDERAL LAWS AND REGULATIONS, FORMS, PRECEDENTS, AND USAGES, INCLUDING THE UNIFORM CODE OF MILITARY

JUSTICE, FOR USE BY THE STATE MILITARY FORCES; AND AMENDING SECTION 10-1-104, MCA. 63

27 *(House Bill No. 48; Jacobson)* AUTHORIZING THE DEPARTMENT OF MILITARY AFFAIRS TO ESTABLISH THE NATIONAL GUARD EDUCATION BENEFIT PROGRAM; EXTENDING THE TERMINATION DATE FOR TUITION WAIVERS FOR A QUALIFIED MEMBER OF THE MONTANA NATIONAL GUARD; AMENDING SECTION 20-25-421, MCA, AND SECTION 5, CHAPTER 577, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 64

28 *(House Bill No. 76; McNutt)* REVISING AND CLARIFYING PROCEDURES FOR PROCESSING OF HUMAN RIGHTS COMPLAINTS; ADDING THE DEPARTMENT OF LABOR AND INDUSTRY AS A PARTY OF INTEREST IN TEMPORARY INJUNCTION PROVISIONS AND IN PROVISIONS FOR ENFORCEMENT PETITIONS FOR ORDERS AND CONCILIATION AGREEMENTS; CLARIFYING THE FUNCTION OF INFORMAL INVESTIGATION PROCESS; CLARIFYING PROCEDURES INCLUDING PROCEDURES FOR FILING COMPLAINTS, DEPARTMENT PROCESSES FOLLOWING INFORMAL INVESTIGATIONS BY THE DEPARTMENT, FILING OF OBJECTIONS, AND HEARING PROCEDURES AND RESPONSIBILITIES; CLARIFYING PROCEDURES UPON A FINDING OF DISCRIMINATION AND IN APPEALS; REVISING AND CLARIFYING PROCEDURES FOR THE REVIEW OF DEPARTMENT ACTION BY THE HUMAN RIGHTS COMMISSION; REVISING AND CLARIFYING PROCEDURES FOR CONCLUSION OF A COMPLAINT; REVISING AND CLARIFYING PROCEDURES AND REMEDIES IN HOUSING DISCRIMINATION COMPLAINTS; AMENDING SECTIONS 49-2-501, 49-2-503, 49-2-504, 49-2-505, 49-2-506, 49-2-508, AND 49-2-510, MCA; REPEALING SECTIONS 49-2-507 AND 49-2-509, MCA; AND PROVIDING AN EFFECTIVE DATE 66

29 *(House Bill No. 82; Parker)* REVISING THE ELEMENTS OF THE CRIME OF POSSESSION OF CHILD PORNOGRAPHY; PROVIDING DEFINITIONS; AMENDING SECTIONS 45-5-625 AND 50-19-501, MCA; AND REPEALING SECTION 45-5-620, MCA 74

30 *(House Bill No. 106; Cordier)* ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF COMMERCE ACT AS AN OMBUDSMAN FOR THE TOURISM INDUSTRY AND RECREATIONISTS IN ALL MATTERS CONCERNING THE MANAGEMENT AND REGULATION OF THE LEVEL OF FLATHEAD LAKE; AMENDING SECTION 90-1-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 76

31 *(House Bill No. 137; Villa)* REVISING CONDITIONS UNDER THE MICROBUSINESS DEVELOPMENT ACT TO INCREASE ACCESS TO DEVELOPMENT LOANS; REVISING THE DEFINITION OF "QUALIFIED MICROBUSINESS"; AMENDING SECTIONS 17-6-402, 17-6-403, AND 17-6-407, MCA; AND PROVIDING AN EFFECTIVE DATE 77

32 *(House Bill No. 156; Franklin)* GENERALLY REVISING LONG-TERM CARE INSURANCE LAWS; REVISING DEFINITIONS; REVISING PROVISIONS RELATING TO NONFORFEITURE BENEFITS; EXPANDING RULEMAKING AUTHORITY FOR THE COMMISSIONER OF INSURANCE; REVISING PROVISIONS RELATING TO DELIVERY OF POLICY SUMMARIES; REVISING PROVISIONS RELATING TO BENEFIT TRIGGERS; PROVIDING ADDITIONAL STANDARDS FOR LONG-TERM CARE INSURANCE CONTRACTS; REQUIRING TRAINING FOR INSURANCE PRODUCERS IN THE LONG-TERM CARE FIELD; PROVIDING PENALTIES; AMENDING SECTIONS 33-20-127, 33-20-128, 33-22-1107, 33-22-1111, 33-22-1115, 33-22-1116,

33-22-1119, 33-22-1121, 33-22-1123, 33-22-1124, AND 33-22-1125, MCA; AND PROVIDING AN EFFECTIVE DATE. 80

33 *(House Bill No. 158; L. Jones)* GENERALLY REVISING FILING REQUIREMENTS FOR CORPORATIONS AND LIMITED LIABILITY COMPANIES; DEFINING "AUTHORIZED AGENT"; ALLOWING THE SECRETARY OF STATE TO CORRECT CERTAIN ERRORS ON DOCUMENTS CAUSED BY A FILING OFFICER; EXPANDING THE TYPE OF INSTRUMENTS THAT MAY BE FILED WITH THE SECRETARY OF STATE AS SURETY FOR SEISMIC EXPLORATION ACTIVITY; AND AMENDING SECTIONS 32-1-422, 35-1-113, 35-1-217, 35-1-1104, 35-1-1309, 35-2-119, 35-2-1109, 35-8-102, 35-8-208, 82-1-104, AND 82-1-107, MCA 93

34 *(House Bill No. 162; Hiner)* REVISING THE REQUIREMENT FOR APPOINTMENT OF COUNSEL FOR A PERSON WITH A DEVELOPMENTAL DISABILITY IN A PROCEEDING FOR COMMITMENT TO A RESIDENTIAL FACILITY; AND AMENDING SECTION 53-20-125, MCA 103

35 *(House Bill No. 226; Cohenour)* PROHIBITING THE HOLDER OF A REPLACEMENT LICENSE, PERMIT, OR TAG FROM MAKING THE REPLACEMENT LICENSE, PERMIT, OR TAG AVAILABLE FOR USE BY ANOTHER PERSON; AMENDING SECTION 87-2-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 105

36 *(House Bill No. 255; Clark)* CLARIFYING THE TYPES OF RESIDENCES IN WHICH DISABLED OR HOMEBOUND CUSTOMERS MAY RECEIVE COSMETOLOGY AND BARBERING SERVICES OUTSIDE OF A SALON OR A SHOP; PROVIDING EXCLUSIONS FROM THE DEFINITION OF "SALON OR SHOP"; AND AMENDING SECTION 37-31-101, MCA . . . 106

37 *(House Bill No. 274; Mendenhall)* ALLOWING SPECIAL MILITARY OR VETERAN LICENSE PLATES TO BE ISSUED FOR TRAVEL TRAILERS OR TRAILERS; AMENDING SECTION 61-3-458, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 108

38 *(House Bill No. 290; Bergren)* ALLOWING THE FIRE SERVICES TRAINING SCHOOL TO MAKE ITS RESOURCES AVAILABLE TO LOCAL FIRE PROTECTION ENTITIES IN AN EMERGENCY; AND AMENDING SECTION 20-31-104, MCA 110

39 *(House Bill No. 402; Noonan)* REVISING FEES COLLECTED BY THE SUPREME COURT; REQUIRING CROSS-APPELLANTS TO PAY A FILING FEE; INCREASING CERTAIN FEES AND ADDING FEES; AMENDING SECTION 3-2-403, MCA; AND PROVIDING AN EFFECTIVE DATE 110

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45 *(House Bill No. 20; McNutt)* PROVIDING THAT INJUNCTIVE RELIEF IS AVAILABLE FOR ENFORCEMENT OF ALL WATER RIGHTS; PROVIDING THAT A PERSON TRYING TO ENFORCE A WATER RIGHT MUST BE AWARDED REASONABLE COSTS AND ATTORNEY FEES; AMENDING SECTION 85-2-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 190

46 *(House Bill No. 43; McChesney)* REVISING LAWS GOVERNING CANCELED AND DUPLICATE STATE WARRANTS; REVISING TERMS; ELIMINATING EXCEPTIONS FOR INDEMNIFICATION FOR REPLACEMENT WARRANTS; AND AMENDING SECTIONS 2-18-411, 17-8-303, 17-8-306, AND 39-3-213, MCA 191

47 *(House Bill No. 62; Jacobson)* PROVIDING THAT VACATION LEAVE MAY BE DONATED TO A NONREFUNDABLE SICK LEAVE FUND; PROVIDING THAT DONATED VACATION LEAVE IS NOT ELIGIBLE FOR CASH COMPENSATION UPON TERMINATION; AMENDING SECTIONS 2-18-617 AND 2-18-618, MCA; AND PROVIDING AN EFFECTIVE DATE 193

48 *(House Bill No. 65; Villa)* GENERALLY REVISING WORKERS' COMPENSATION LAW; CLARIFYING THE POWER OF THE DEPARTMENT TO ENTER ONTO CONSTRUCTION SITES FOR THE PURPOSE OF ENFORCING WORKERS' COMPENSATION LAWS; PROHIBITING INSURERS FROM INCLUDING CERTAIN REIMBURSED COSTS AS PART OF THE CALCULATION OF AN EMPLOYER'S EXPERIENCE MODIFICATION FACTOR; PROVIDING THAT CERTAIN INFORMATION REGARDING SUBSEQUENT INJURY CERTIFICATION IS PART OF THE WORKERS' COMPENSATION DATABASE SYSTEM AND MAY BE RELEASED UNDER SPECIFIED CONDITIONS TO AN INSURER; LIMITING LIABILITY OF INJURED EMPLOYEES TO THIRD-PARTY PROVIDERS AND PROVIDING FOR ACTIONS BY THIRD-PARTY PROVIDERS AGAINST UNINSURED EMPLOYERS FOR SERVICES TO AN EMPLOYEE THAT ARE NOT REIMBURSED BY THE UNINSURED EMPLOYERS' FUND; PROVIDING THAT THE UNINSURED EMPLOYERS' FUND MAY NOT PAY MEDICAL BENEFITS CLAIMS IN EXCESS OF $100,000 FOR EACH CLAIM; INCREASING THE MONETARY THRESHOLD FOR DEFERRAL OF THE SUBSEQUENT INJURY FUND ASSESSMENT;

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49 *(House Bill No. 84; McAlpin)* CLARIFYING THE JURISDICTION OF COURTS CONCERNING MISDEMEANOR CRIMINAL ACTIONS PROSECUTED UNDER THE MONTANA ALCOHOLIC BEVERAGE CODE; AND AMENDING SECTION 16-6-201, MCA 201

50 *(House Bill No. 90; MacLaren)* INCREASING THE DEBT LIMIT UNDER THE MUNICIPAL FINANCE CONSOLIDATION ACT; INCREASING THE LOAN TO THE DEPARTMENT OF JUSTICE FOR THE MOTOR VEHICLE INFORMATION TECHNOLOGY SYSTEM; EXTENDING BY 5 YEARS THE TERM OF THE LOAN AND THE TEMPORARY INCREASE IN FEES FOR SECURITY INTEREST FILINGS AND CERTIFICATES OF TITLE TO REPAY THE LOAN; APPROPRIATING AN ADDITIONAL $6 MILLION FROM THE CAPITAL PROJECTS FUND TO THE DEPARTMENT OF JUSTICE FOR THE INFORMATION TECHNOLOGY SYSTEM; AUTHORIZING THE CREATION OF STATE DEBT; AMENDING SECTIONS 17-5-1608, 17-5-2001, 61-3-103, 61-3-203, 61-3-204, AND 61-3-550, MCA; REPEALING SECTION 15, CHAPTER 562, LAWS OF 2003, MCA; AND PROVIDING AN EFFECTIVE DATE . 202

51 *(House Bill No. 94; Van Dyk)* REVISING THE UNDERGROUND STORAGE TANK ADMINISTRATIVE PENALTY LAWS; ELIMINATING DEPARTMENT OF ENVIRONMENTAL QUALITY RULEMAKING AUTHORITY FOR A PENALTY SCHEDULE; MODIFYING THE ADMINISTRATIVE PENALTY NOTICE REQUIREMENTS; ALLOWING A PERSON ASSESSED A PENALTY TO REQUEST A HEARING BEFORE THE BOARD OF ENVIRONMENTAL REVIEW INSTEAD OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY ESTABLISH A FIXED SCHEDULE OF MAXIMUM AND MINIMUM PENALTIES FOR SPECIFIC VIOLATIONS; AMENDING SECTIONS 75-11-505, 75-11-512, AND 75-11-525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 209

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54 *(House Bill No. 167; Hands)* REVISING THE INTEGRATED WASTE MANAGEMENT AND SOLID WASTE MANAGEMENT LAWS; REVISING THE PROCESS FOR ADOPTING THE STATE SOLID WASTE MANAGEMENT AND RESOURCE RECOVERY PLAN; TRANSFERRING THE AUTHORITY TO ADOPT THE PLAN FROM THE BOARD OF ENVIRONMENTAL REVIEW TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AND AMENDING SECTIONS 75-10-104, 75-10-106, 75-10-111, 75-10-807, AND 75-10-920, MCA 233

55 *(House Bill No. 264; Heinert)* ALLOWING A LICENSED ANGLER FISHING FROM A BOAT OR THE SHORE IN A LAKE OR RESERVOIR TO FISH BY HOOK AND TWO LINES OR TWO RODS; AMENDING SECTION 87-2-120, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 237

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57 *(Senate Bill No. 19; Shockley)* REVISING LAWS GOVERNING OIL AND GAS OPERATIONS; REQUIRING A SEISMIC ACTIVITY PERMITHOLDER TO FURNISH INFORMATION TO A SURFACE OWNER; REQUIRING AN OIL OR GAS DEVELOPER OR OPERATOR TO PROVIDE INFORMATION TO A SURFACE OWNER; REQUIRING THE SURFACE OWNER TO PROVIDE INFORMATION; INCREASING THE TIME PERIODS FOR NOTICE OF DRILLING OPERATIONS; CLARIFYING THAT A SURFACE OWNER AND OIL AND GAS DEVELOPER OR OPERATOR MAY USE DISPUTE RESOLUTION PROCESSES; CLARIFYING THE PENALTY FOR VIOLATING NOTICE REQUIREMENTS; AMENDING SECTIONS 82-1-107, 82-10-503, 82-10-504, AND 82-10-505, MCA; AND PROVIDING AN APPLICABILITY DATE 241

58 *(Senate Bill No. 29; Smith)* ESTABLISHING THE ROBERT E. EWING JR. MEMORIAL HIGHWAY ON INTERSTATE 90 BETWEEN COLUMBUS AND PARK CITY; DIRECTING THE DEPARTMENT OF TRANSPORTATION TO ERECT SIGNS; REQUIRING THAT MAPS BE UPDATED WITH THE DESIGNATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 244

59 *(Senate Bill No. 30; Smith)* ALLOWING A QUALIFIED VETERAN TO BE ISSUED SPECIAL COMBINATION DISABLED VETERAN AND PURPLE HEART LICENSE PLATES; AND AMENDING SECTIONS 49-4-302, 49-4-304, AND 61-3-458, MCA 245

60 *(Senate Bill No. 32; Schmidt)* ALLOWING THE LOCAL OMBUDSMAN ACCESS TO A LONG-TERM CARE FACILITY AFTER NORMAL VISITING HOURS WITH THE APPROVAL OF THE LONG-TERM CARE OMBUDSMAN TO PERFORM THE OMBUDSMAN'S DUTIES; AND AMENDING SECTION 52-3-604, MCA. 248

61 *(Senate Bill No. 40; Cocchiarella)* GENDER NEUTRALIZING AND CONFORMING TITLES 1 THROUGH 7 OF THE MONTANA CODE ANNOTATED TO CURRENT BILL DRAFTING STANDARDS; AND AMENDING SECTIONS 1-1-107, 1-1-201, 1-1-202, 1-1-203, 1-1-204, 1-1-217, 1-1-219, 1-1-224, 1-1-226, 1-1-512, 1-1-515, 1-1-516, 1-3-203, 1-3-204, 1-3-205, 1-3-206, 1-3-208, 1-3-209, 1-3-210, 1-3-212, 1-3-217, 1-3-220, 1-3-234, 1-4-102, 1-5-302, 1-5-303, 1-5-305, 1-5-406, 1-5-407, 1-5-419, 1-5-420, 1-6-102, 1-6-104, 2-1-302, 2-2-205, 2-2-207, 2-2-304,

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62 *(Senate Bill No. 43; M. Tropila)* MODIFYING LICENSING PROVISIONS FOR PETROLEUM MEASURING DEVICES WHEN OWNERSHIP OF THE DEVICES CHANGES; AND AMENDING SECTION 82-15-105, MCA 467

63 *(Senate Bill No. 44; Larson)* IMPLEMENTING A 2006 RECOMMENDATION OF THE PRIVATE LAND/PUBLIC WILDLIFE ADVISORY COUNCIL BY ADDING WILD BUFFALO OR BISON, ANTELOPE, AND MOUNTAIN LION TO THE LIST OF BIG GAME LICENSES THAT THE FISH, WILDLIFE, AND PARKS COMMISSION MAY ISSUE THROUGH AN ANNUAL LOTTERY; AMENDING SECTION 87-1-271, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 468

64 *(Senate Bill No. 53; Cocchiarella)* PROVIDING A PROCEDURE FOR CREATING A NEW PROFESSIONAL OR OCCUPATIONAL LICENSING BOARD OR PROGRAM; REQUIRING A LETTER OF INTENT TO ACCOMPANY A BILL DRAFT REQUEST FOR A NEW PROFESSIONAL

OR OCCUPATIONAL LICENSING BOARD OR PROGRAM; PROVIDING CONDITIONS FOR A LETTER OF INTENT WHEN ADDING PROFESSIONS OR OCCUPATIONS TO EXISTING LICENSING BOARDS; ADDRESSING PROSPECTIVE FEES IN THE LETTER OF INTENT; AND PROVIDING A PROCEDURE FOR REVIEWING EXISTING BOARDS, CONSOLIDATING BOARDS, AND RESOLVING FINANCIAL CONSIDERATIONS FOR REPEALED BOARDS 469

65 *(Senate Bill No. 59; Hansen)* APPLYING THE REGULATIONS OF THE FEDERAL HUMANE METHODS OF SLAUGHTER ACT OF 1978 TO THE PROVISIONS OF THE MONTANA MEAT AND POULTRY INSPECTION ACT; AMENDING SECTION 81-9-219, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 472

66 *(Senate Bill No. 62; Cobb)* REVISING THE DAILY PAY RATE FOR ADVISORY COUNCIL MEMBERS; AMENDING SECTION 2-15-122, MCA; AND PROVIDING AN EFFECTIVE DATE 472

67 *(Senate Bill No. 70; J. Tropila)* REVISING THE MEMBERSHIP OF THE STATE EMERGENCY RESPONSE COMMISSION; AND AMENDING SECTION 10-3-1204, MCA 474

68 *(Senate Bill No. 72; Squires)* REQUIRING THAT MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD APPOINTED BY THE GOVERNOR BE CONFIRMED BY THE SENATE; AMENDING SECTION 2-15-1009, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 476

69 *(Senate Bill No. 73; McGee)* REQUIRING A FILING OFFICER TO GIVE NOTICE TO THE DEBTOR PRIOR TO REJECTING THE FILING OF OR REMOVING THE FILING OF A LIEN THAT THE FILING OFFICER HAS REASON TO BELIEVE IS IMPROPER OR FRAUDULENT; AND AMENDING SECTION 30-9A-420, MCA 477

70 *(Senate Bill No. 76; Gillan)* AMENDING THE LAWS GOVERNING ACCESS TO TAX INFORMATION; PROVIDING FOR ACCESS TO CERTAIN TAX INFORMATION BY THE LEGISLATIVE FISCAL DIVISION AND THE OFFICE OF BUDGET AND PROGRAM PLANNING; REQUIRING CONFIDENTIALITY OF FEDERAL RETURN INFORMATION; REQUIRING THAT CONFIDENTIAL INFORMATION DISCLOSED TO THE LEGISLATIVE FISCAL DIVISION AND THE OFFICE OF BUDGET AND PROGRAM PLANNING BE SUBJECT TO RESTRICTIONS ON DISCLOSURE; CLARIFYING THE AUTHORIZED DISCLOSURE OF CERTAIN CORPORATION TAX INFORMATION; CLARIFYING PENALTIES FOR UNAUTHORIZED DISCLOSURE; AMENDING SECTIONS 5-12-303, 15-30-303, 15-31-511, 17-1-132, AND 17-7-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 477

71 *(Senate Bill No. 81; Schmidt)* DEFINING "PROFESSIONAL PERSON" TO INCLUDE LICENSED PSYCHOLOGISTS; AND AMENDING SECTION 53-21-102, MCA 485

72 *(Senate Bill No. 82; Brueggeman)* PROVIDING THAT THE RULES FOR USE OF INFORMATION TECHNOLOGY RESOURCES FOR THE LEGISLATIVE BRANCH BE INCLUDED IN THE LEGISLATIVE BRANCH COMPUTER SYSTEM PLAN; AND AMENDING SECTION 2-17-518, MCA 488

73 *(Senate Bill No. 83; Schmidt)* CLARIFYING THE ROLE OF THE CHILD AND FAMILY SERVICES DIVISION WHEN A NONCUSTODIAL PARENT MAY BE CONSIDERED FOR CUSTODY OF A YOUTH IN NEED OF CARE; AND AMENDING SECTIONS 41-3-438, 41-3-442, AND 41-3-445, MCA 489

74 *(Senate Bill No. 84; Elliott)* TRANSFERRING ADMINISTRATION OF CERTAIN FOREST RESERVE AND OTHER FEDERAL FUNDS FROM THE STATE AUDITOR TO THE DEPARTMENT OF ADMINISTRATION FOR ALLOCATION TO ENTITLED COUNTIES; AMENDING SECTIONS 17-3-211 AND 17-3-212, MCA; AND PROVIDING AN EFFECTIVE DATE 495

75 *(Senate Bill No. 85; Schmidt)* REVISING THE CRIME OF ENDANGERING THE WELFARE OF CHILDREN BY INCLUDING METHAMPHETAMINE-RELATED CHILD ENDANGERMENT; PROVIDING A PENALTY FOR METHAMPHETAMINE-RELATED CHILD ENDANGERMENT; AND AMENDING SECTION 45-5-622, MCA 495

76 *(Senate Bill No. 90; Laslovich)* AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADJUST THE PER DIEM CHARGE FOR AN INSTITUTION MORE THAN ONCE A YEAR; AMENDING SECTION 53-1-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 497

77 *(Senate Bill No. 126; Gallus)* REPEALING THE TERMINATION OF THE FUTURE FISHERIES IMPROVEMENT PROGRAM AND THE BULL TROUT AND CUTTHROAT TROUT ENHANCEMENT PROGRAM, WHICH WILL AUTHORIZE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CONTINUE TO FUND AND IMPLEMENT PROJECTS TO RESTORE AND ENHANCE FISHERIES HABITAT AND ENSURE THAT FUNDING FROM THE RESOURCE INDEMNITY TRUST FUND IS MAINTAINED; REPEALING SECTION 5, CHAPTER 463, LAWS OF 1995, AND SECTIONS 6 AND 9, CHAPTER 529, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 497

78 *(Senate Bill No. 136; J. Tropila)* REVISING THE MEETING FREQUENCY OF THE BOARD OF VETERANS' AFFAIRS; AND AMENDING SECTION 2-15-1205, MCA 498

79 *(Senate Bill No. 187; Bales)* RATIFYING THE UNITED STATES OF AMERICA, DEPARTMENT OF AGRICULTURE, AGRICULTURAL RESEARCH SERVICE, FORT KEOGH LIVESTOCK AND RANGE RESEARCH LABORATORY-MONTANA COMPACT 500

80 *(Senate Bill No. 188; Tash)* RATIFYING THE UNITED STATES OF AMERICA, DEPARTMENT OF AGRICULTURE, AGRICULTURAL RESEARCH SERVICE, SHEEP EXPERIMENT STATION-MONTANA COMPACT 509

81 *(House Bill No. 13; Sesso)* GENERALLY REVISING LAWS GOVERNING STATE EMPLOYEE CLASSIFICATION AND COMPENSATION; REQUIRING THAT EMPLOYEES BE PLACED ON THE NEW BROADBAND PAY PLAN; PROVIDING FOR IMPLEMENTATION OF THE BROADBAND PAY PLAN BY STATE AGENCIES; REPLACING STATUTORY SALARIES FOR LEGISLATORS AND CERTAIN PUBLIC OFFICIALS WITH SALARIES BASED UPON THE BROADBAND PAY PLAN; INCREASING THE EMPLOYER CONTRIBUTION FOR GROUP BENEFITS; APPROPRIATING FUNDS TO IMPLEMENT PAY AND BENEFIT REVISIONS, FOR PERSONAL SERVICES CONTINGENCIES, AND FOR A LABOR-MANAGEMENT TRAINING INITIATIVE; AMENDING SECTIONS 2-6-110, 2-15-131, 2-18-101, 2-18-201, 2-18-202, 2-18-203, 2-18-204, 2-18-206, 2-18-207, 2-18-301, 2-18-303, 2-18-304, 2-18-703, 2-18-1011, 2-18-1204, 5-2-301, 5-2-302, 13-37-106, 15-2-102, 39-51-301, AND 44-1-504, MCA; REPEALING SECTIONS 2-18-205 AND 2-18-312, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE 516

82 *(Senate Bill No. 16; Hawks)* SUBMITTING A 6-MILL LEVY FOR SUPPORT OF THE MONTANA UNIVERSITY SYSTEM TO THE

ELECTORATE; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. 533

83 *(House Bill No. 28; Hilbert)* REVISING LAWS GOVERNING SUSPENSION AND REVOCATION OF A DRIVER'S LICENSE; SUBJECTING UNLICENSED DRIVERS TO SUSPENSION OR REVOCATION OF THE PRIVILEGE TO APPLY FOR A DRIVER'S LICENSE; REVISING THE OFFENSE OF DRIVING WHILE A LICENSE IS SUSPENDED OR REVOKED; AMENDING SECTIONS 61-1-101, 61-5-203, AND 61-5-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . 533

84 *(House Bill No. 31; Kottel)* REVISING NEW VEHICLE WARRANTY LAWS BY INCREASING THE WEIGHT LIMIT FOR TRUCKS EXEMPT FROM THE DEFINITION OF "MOTOR VEHICLE" FROM 10,000 POUNDS TO 15,000 POUNDS; INCREASING CONSUMER AND MANUFACTURER ARBITRATION FILING FEES; AMENDING SECTIONS 61-4-501 AND 61-4-517, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 544

85 *(House Bill No. 51; Pomnichowski)* FORMALLY ELIMINATING STATE ADMINISTRATION OF THE MONTANA CONSERVATION CORPS BY REPEALING OBSOLETE STATUTES THAT PLACE THE MONTANA CONSERVATION CORPS WITHIN THE PARKS DIVISION OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS, SUBJECT TO THE OVERSIGHT OF THE OFFICE OF COMMUNITY SERVICE; AMENDING SECTION 90-14-103, MCA; REPEALING SECTIONS 23-1-301, 23-1-302, 23-1-303, 23-1-311, 23-1-312, 23-1-313, AND 23-1-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 546

86 *(House Bill No. 58; Keane)* INCREASING THE MAXIMUM UNEMPLOYMENT WEEKLY BENEFIT AMOUNT AND INCREASING THE MINIMUM UNEMPLOYMENT WEEKLY BENEFIT IF THE UNEMPLOYMENT INSURANCE CONTRIBUTIONS SCHEDULE IS SCHEDULE I; PROVIDING THAT AN INDIVIDUAL IS NOT DISQUALIFIED FROM RECEIVING UNEMPLOYMENT BENEFITS IF THE INDIVIDUAL LEAVES EMPLOYMENT AS A RESULT OF THE MANDATORY MILITARY TRANSFER OF THE INDIVIDUAL'S SPOUSE; AND AMENDING SECTIONS 39-51-2201 AND 39-51-2302, MCA. 547

87 *(House Bill No. 67; Heinert)* AMENDING PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT TO CLARIFY STATUTES REGARDING A POLL OF THE LEGISLATURE CONCERNING ADMINISTRATIVE RULES; AMENDING SECTIONS 2-4-306, 2-4-403, AND 2-4-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 549

88 *(House Bill No. 70; Clark)* REVISING REQUIREMENTS RELATING TO THE PREPARATION OF MODEL ADMINISTRATIVE RULES AND THE PUBLICATION AND DISTRIBUTION OF ADMINISTRATIVE RULES; AND AMENDING SECTIONS 2-4-202, 2-4-302, 2-4-312, AND 2-4-313, MCA. 551

89 *(House Bill No. 75; McChesney)* STATUTORILY APPROPRIATING BENTONITE TAXES FOR DISTRIBUTION AS PROVIDED BY LAW; PROVIDING FOR A REMITTANCE AND DISTRIBUTION OF TAXES ON BENTONITE PRODUCTION OCCURRING BEFORE JANUARY 1, 2007; AMENDING SECTIONS 15-39-110 AND 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 554

90 *(House Bill No. 81; Hamilton)* GENERALLY REVISING TEACHERS' RETIREMENT SYSTEM LAWS; CLARIFYING THAT

PARAPROFESSIONALS MUST BE MEMBERS OF THE TEACHERS' RETIREMENT SYSTEM; REQUIRING ELECTED COUNTY SUPERINTENDENTS TO FILE A MEMBERSHIP ELECTION FORM UNDER CERTAIN CIRCUMSTANCES; CLARIFYING THAT MEMBERS CANNOT CONCURRENTLY PARTICIPATE IN BOTH THE TEACHERS' RETIREMENT SYSTEM AND THE OPTIONAL RETIREMENT SYSTEM; REVISING THE REQUIREMENTS OF FAMILY LAW ORDERS TO PROVIDE FOR THE PAYMENT OF BENEFITS FOR THE LIFE OF THE ALTERNATE PAYEE; CLARIFYING THAT ONLY ACTIVE MEMBERS OR INACTIVE VESTED MEMBERS MAY PURCHASE SERVICE CREDIT; REQUIRING THAT ACCOUNTS REINSTATED FROM DORMANT STATUS INCLUDE INTEREST; PROVIDING FOR THE PAYMENT OF INTEREST ON CORRECTED ERRORS; CLARIFYING THE DATE OF TERMINATION FOR THE PURPOSE OF TERMINATION PAY; CLARIFYING THAT LUMP-SUM AMOUNTS DUE AN ESTATE MAY BE PAID TO THE PERSONAL REPRESENTATIVE OR EXECUTOR; REQUIRING EMPLOYERS TO USE THE SYSTEM'S ONLINE REPORTING SYSTEM FOR AUTHORIZING VOLUNTARY INSURANCE PREMIUM DEDUCTIONS; AMENDING SECTIONS 19-20-101, 19-20-104, 19-20-202, 19-20-302, 19-20-305, 19-20-414, 19-20-427, 19-20-501, 19-20-503, 19-20-602, 19-20-603, 19-20-605, 19-20-705, 19-20-716, 19-20-717, 19-20-731, 19-20-805, AND 19-20-1101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 558

91 *(House Bill No. 86; Musgrove)* GENERALLY REVISING THE LEGISLATIVE AUDIT ACT TO REFLECT CURRENT PROFESSIONAL STANDARDS AND AUDITING PRACTICES; PROVIDING FOR REPORTING OF APPARENT VIOLATIONS OF THE STATE CODE OF ETHICS TO THE COMMISSIONER OF POLITICAL PRACTICES; PROVIDING FOR AUDIT SELECTION BASED ON RISK; REQUESTING THE GOVERNOR, BOARD OF REGENTS, AND JUDICIARY TO FURNISH RECOMMENDATIONS FOR AUDITS; PROVIDING EMPLOYMENT PROTECTION TO EMPLOYEES WHO PROVIDE INFORMATION TO THE LEGISLATIVE AUDIT COMMITTEE; AND AMENDING SECTIONS 5-13-101, 5-13-304, 5-13-308, 5-13-309, AND 5-13-321, MCA 574

92 *(House Bill No. 87; Cordier)* PROVIDING FOR WATER COMMISSIONER DISTRIBUTION OF WATER BASED ON A CHANGE IN APPROPRIATION RIGHT; AMENDING SECTIONS 85-5-101, 85-5-201, AND 85-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 577

93 *(House Bill No. 102; Jacobson)* REVISING SPECIAL PURPOSE DISTRICT LAWS; MODIFYING THE PROTEST PROVISIONS FOR CITY PROPERTIES INCLUDED IN A PROPOSED RURAL SPECIAL IMPROVEMENT DISTRICT; MODIFYING THE PROTEST PROVISIONS FOR PROPERTIES OUTSIDE A CITY THAT ARE INCLUDED IN A PROPOSED SPECIAL IMPROVEMENT DISTRICT; CREATING AN EXCEPTION TO THE NOTICE REQUIREMENTS FOR A RESOLUTION OF INTENTION TO CREATE A SPECIAL IMPROVEMENT DISTRICT; CREATING AN EXCEPTION TO THE PROTEST AGAINST PROPOSED WORK OR AGAINST THE EXTENT OR CREATION OF A SPECIAL IMPROVEMENT DISTRICT; MODIFYING A CITY COUNCIL'S AUTHORITY TO ORDER IMPROVEMENTS; MODIFYING VOTER QUALIFICATIONS TO VOTE ON THE CREATION OF A COUNTY WATER OR SEWER DISTRICT; ELIMINATING THE PROPERTY TAX LIMITATIONS FOR IRRIGATION DISTRICT BONDING; PROHIBITING THE BOARD OF COMMISSIONERS OF AN IRRIGATION DISTRICT OR BOARD OF COUNTY COMMISSIONERS ON BEHALF OF AN

IRRIGATION DISTRICT FROM LEVYING PROPERTY TAXES AS PROVIDED IN TITLE 15, CHAPTER 6, FOR IRRIGATION DISTRICT PURPOSES; AMENDING SECTIONS 7-12-2102, 7-12-4102, 7-12-4106, 7-12-4110, 7-12-4114, 7-13-2212, 7-13-2328, 85-7-206, 85-7-1953, 85-7-1973, 85-7-2104, 85-7-2117, 85-7-2134, AND 85-7-2136, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 579

94 *(House Bill No. 128; Becker)* ELIMINATING OUTMODED REQUIREMENTS FOR PRIOR REVIEW OR APPROVAL BY THE ATTORNEY GENERAL OF LOCAL GOVERNMENT AND SCHOOL BOND ACTIONS, LAW ENFORCEMENT MUTUAL AID AGREEMENTS, SPECIAL EDUCATION COOPERATIVE CONTRACTS, AND TEXTBOOK SURETY BONDS; AMENDING SECTIONS 7-7-104, 7-7-2213, 7-7-4212, 20-7-454, 20-7-455, 20-7-457, 20-7-604, 20-9-327, 20-9-461, 20-9-464, 20-9-466, 20-15-404, AND 44-11-310, MCA; AND REPEALING SECTIONS 7-7-101, 7-7-102, 7-7-103, 20-7-453, 20-9-462, 20-9-463, AND 44-11-309, MCA 588

95 *(House Bill No. 132; Sesso)* RELATING TO STATE PUBLICATIONS; MODIFYING THE DEFINITIONS OF "STATE AGENCY" AND "STATE PUBLICATION"; DEFINING "DEPOSITORY LIBRARY"; PROVIDING FOR THE ADMINISTRATION OF THE STATE PUBLICATIONS DEPOSITORY LIBRARY PROGRAM; MODIFYING THE NOTIFICATION AND AVAILABILITY REQUIREMENTS FOR STATE PUBLICATIONS; MAINTAINING PERMANENT PUBLIC ACCESS TO STATE PUBLICATIONS; ADDING THE MONTANA UNIVERSITY SYSTEM TO THE LIST OF PUBLICATION EXEMPTIONS; AMENDING SECTIONS 1-11-301, 22-1-211, 22-1-212, 22-1-213, AND 22-1-218, MCA; AND REPEALING SECTIONS 22-1-214, 22-1-215, 22-1-216, AND 22-1-217, MCA 594

96 *(House Bill No. 140; Ingraham)* PROVIDING THAT IF A DECLARATION FOR NOMINATION IS FILED ELECTRONICALLY WITH THE SECRETARY OF STATE, THE DECLARATION DOES NOT HAVE TO BE ACKNOWLEDGED; AND AMENDING SECTION 13-10-201, MCA . . . 597

97 *(House Bill No. 144; Becker)* REVISING THE WASTE MANAGEMENT LAWS; AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ENJOIN THE TRANSPORTATION OF SOLID WASTE IF THERE IS A VIOLATION; REVISING CERTAIN DEFINITIONS AND DEFINING CERTAIN TERMS UNDER THE INFECTIOUS WASTE MANAGEMENT ACT; MAKING A VIOLATION OF THE INFECTIOUS WASTE MANAGEMENT ACT A MISDEMEANOR; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES GOVERNING THE INSPECTION AND REGULATION OF THE TRANSPORTATION AND MANAGEMENT OF INFECTIOUS WASTE; AND AMENDING SECTIONS 75-10-231, 75-10-1003, 75-10-1004, AND 75-10-1006, MCA 598

98 *(House Bill No. 145; Sonju)* GENERALLY REVISING BUILDING CODE ENFORCEMENT PROVISIONS FOR COUNTIES, CITIES, AND TOWNS CERTIFIED TO ENFORCE BUILDING CODES; REVISING PROVISIONS GOVERNING INSPECTIONS BY CERTIFIED COUNTIES, CITIES, AND TOWNS OF BUILDINGS OUTSIDE THEIR JURISDICTION; AMENDING SECTION 50-60-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 601

99 *(House Bill No. 149; Jopek)* INCREASING THE AMOUNT OF HOMESTEAD EXEMPT FROM EXECUTION OR FORCED SALE FROM $100,000 TO $250,000; AMENDING SECTION 70-32-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 603

100 *(House Bill No. 176; Wilmer)* SUBSTITUTING THE TERM "ETHANOL-BLENDED GASOLINE" FOR "GASOHOL"; AMENDING AND MAKING UNIFORM DEFINITIONS OF AND REFERENCES TO ETHANOL AND RELATED TERMS; REMOVING THE PERCENTAGE OF ETHANOL IN GASOLINE THAT STATE EMPLOYEES ARE REQUESTED TO USE WHEN FUELING STATE VEHICLES; AMENDING SECTIONS 2-17-414, 15-6-135, 15-70-201, 15-70-202, 15-70-204, 15-70-221, 15-70-501, 15-70-502, 15-70-503, 15-70-511, 15-70-512, 15-70-513, 15-70-514, 15-70-521, 15-70-522, 15-70-523, 15-70-527, 17-6-317, 75-11-302, AND 75-11-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 604

101 *(House Bill No. 190; Thomas)* GENERALLY REVISING THE LAWS RELATING TO CARD GAMES; AMENDING SECTIONS 23-5-112, 23-5-306, 23-5-308, 23-5-313, 23-5-317, AND 23-5-710, MCA; REPEALING SECTION 23-5-319, MCA; AND PROVIDING AN EFFECTIVE DATE. . . 619

102 *(House Bill No. 193; Nooney)* AUTHORIZING A PERSON WHO IS CERTIFIED AS DISABLED AND CARRIES A PERMIT TO HUNT FROM A VEHICLE THAT IS ISSUED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO HUNT FROM AN OFF-HIGHWAY VEHICLE OR SNOWMOBILE IN AREAS WHERE HUNTING AND MOTORIZED USE ARE PERMITTED, AS LONG AS THE OFF-HIGHWAY VEHICLE OR SNOWMOBILE IS PROPERLY MARKED; AMENDING SECTIONS 87-2-803 AND 87-3-125, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 627

103 *(House Bill No. 244; Wiseman)* EXPANDING THE PROMOTIONAL ACTIVITIES THAT MAY BE CONDUCTED BY A REGULATED TELECOMMUNICATIONS SERVICE PROVIDER WITHOUT ADVANCE APPROVAL OF THE PUBLIC SERVICE COMMISSION; AMENDING SECTION 69-3-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 630

104 *(House Bill No. 286; Augare)* REVISING INCENTIVES UNDER THE BIG SKY ECONOMIC DEVELOPMENT PROGRAM TO ASSIST HIGH-POVERTY COUNTIES IN WORKFORCE TRAINING AND OTHER ECONOMIC DEVELOPMENT OPPORTUNITIES; AMENDING SECTIONS 90-1-201, 90-1-202, AND 90-1-204, MCA; AND PROVIDING AN EFFECTIVE DATE 632

105 *(House Bill No. 332; Thomas)* ADOPTING NATIONALLY ACCEPTED NOISE LIMITS FOR MOTORCYCLES AND QUADRICYCLES; REQUIRING MOTORCYCLES AND QUADRICYCLES TO BE EQUIPPED WITH SPARK ARRESTERS; AND AMENDING SECTION 61-9-418, MCA 634

106 *(House Bill No. 347; Boggio)* INCREASING THE AMOUNTS FOR WHICH A CONTRACT IS NOT REQUIRED FOR BUILDING, FURNISHING, REPAIRING, OR OTHER WORK FOR THE BENEFIT OF A SCHOOL DISTRICT OR PURCHASING OF SUPPLIES FOR A SCHOOL DISTRICT; AMENDING SECTION 20-9-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 635

107 *(House Bill No. 378; Windy Boy)* CLARIFYING AND REVISING THE MAKEUP OF THE BOARD OF NURSING HOME ADMINISTRATORS; ESTABLISHING LEGISLATIVE FINDINGS AND PURPOSE FOR THE BOARD; AND AMENDING SECTION 2-15-1735, MCA 637

108 *(House Bill No. 449; Pomnichowski)* TRANSFERRING BUPRENORPHINE FROM A SCHEDULE V DRUG TO A SCHEDULE III DRUG; AMENDING SECTIONS 50-32-226 AND 50-32-232, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 638

109 *(House Bill No. 531; Lambert)* ESTABLISHING THE WARRIOR TRAIL HIGHWAY ON U.S. HIGHWAY 212 FROM THE 510 EXIT AT INTERSTATE 90 TO THE U.S. HIGHWAY 212 INTERSECTION WITH THE WYOMING BORDER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 641

110 *(House Bill No. 623; Olson)* CLARIFYING THE NATURE OF PROPERTY TAX LIEN SALES; CORRECTING TERMINOLOGY TO ENSURE THAT SALES AND SALES CERTIFICATES REFLECT THAT WHAT IS SOLD UPON NONPAYMENT OF PROPERTY TAXES IS A LIEN UPON THE PROPERTY; PROVIDING THAT PROPERTY TAX LIEN SALES ARE CONDUCTED AT A COUNTY TREASURER'S OFFICE; AMENDING SECTIONS 7-2-2722, 7-6-4423, 15-16-101, 15-17-121, 15-17-122, 15-17-124, 15-17-131, 15-17-211, 15-17-212, 15-17-213, 15-17-214, 15-17-317, 15-17-321, 15-17-323, 15-17-324, 15-17-325, 15-17-326, 15-18-111, 15-18-113, 15-18-114, 15-18-211, 15-18-212, 15-18-213, 15-18-214, 15-18-215, 15-18-217, 15-18-218, 39-3-501, 85-7-2136, 85-7-2152, 85-7-2157, 85-7-2158, 85-7-2159, 85-7-2162, 85-7-2163, AND 85-8-601, MCA 642

111 *(House Bill No. 662; Villa)* CLARIFYING WHEN AN EXEMPTION FROM REVIEW UNDER LAWS GOVERNING SANITATION IN SUBDIVISIONS MAY APPLY TO A REMAINDER OF AN ORIGINAL TRACT; AMENDING SECTION 76-4-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 663

112 *(Senate Bill No. 21; Larson)* AUTHORIZING COUNTIES TO ESTABLISH AND FUND VETERANS' CEMETERIES. 665

113 *(Senate Bill No. 88; Hawks)* EXTENDING INDEFINITELY THE ALLOCATION OF LODGING FACILITY USE TAX TO THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT ACCOUNT; REPEALING SECTION 3, CHAPTER 469, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 665

114 *(Senate Bill No. 237; Brueggeman)* ALLOWING PNEUMATIC SNOW TIRES WITH RETRACTABLE STUDS TO BE USED YEAR ROUND; AND AMENDING SECTION 61-9-406, MCA. 665

115 *(House Bill No. 664; Keane)* ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONSIDER CONTROLLED BURNING AND LOGGING AS METHODS TO ADDRESS FOREST INSECT PEST INFESTATIONS OR TREE DISEASES; AMENDING SECTION 76-13-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 667

116 *(Senate Bill No. 45; Weinberg)* REVISING THE PROVISIONS FOR BEHAVIORAL HEALTH INPATIENT FACILITIES; PROVIDING FOR LICENSURE; PROVIDING FOR RULEMAKING AUTHORITY; AND AMENDING SECTIONS 53-21-102, 53-21-129, 53-21-193, AND 53-21-194, MCA. 668

117 *(Senate Bill No. 108; Cocchiarella)* GENERALLY REVISING WORKERS' COMPENSATION LAW; REQUIRING INSURERS TO NOTIFY THE DEPARTMENT OF LABOR AND INDUSTRY OF CHANGES IN THIRD-PARTY CLAIMS EXAMINERS; DEPOSITING PENALTY FEES FOR FAILURE TO NOTIFY IN THE WORKERS' COMPENSATION ADMINISTRATION FUND; MODIFYING DISPUTE RESOLUTION PROCEDURES PERTAINING TO INDEPENDENT CONTRACTOR STATUS AND CERTIFICATION; MODIFYING DEPARTMENT PROCEDURES FOR ESTABLISHING ANNUAL FEE SCHEDULES FOR MEDICAL SERVICES AND PRESCRIPTION DRUGS; PROVIDING FOR UTILIZATION AND TREATMENT GUIDELINES TO BE ESTABLISHED

BY RULE; REVISING REIMBURSEMENT AMOUNTS FOR DOMICILIARY CARE PROVIDED BY A FAMILY MEMBER; PROVIDING THAT INTEREST ACCRUES ON AMOUNTS NOT PAID FROM SECURITY DEPOSITS WHEN PAYMENT IS DEMANDED BY THE DEPARTMENT; CLARIFYING THAT THE PENALTY FOR FAILURE TO REPORT CERTAIN INFORMATION TO THE DEPARTMENT MAY BE ASSESSED FOR EACH INSTANCE OF FAILURE TO REPORT; PROVIDING GUIDELINES FOR DETERMINING WHEN AN INSURER IS IMPAIRED; REQUIRING SECURITY FROM PLAN NO. 2 INSURERS TO COVER POTENTIAL LIABILITY; AMENDING SECTIONS 39-71-107, 39-71-201, 39-71-415, 39-71-417, 39-71-418, 39-71-704, 39-71-727, 39-71-1107, 39-71-2106, 39-71-2201, 39-71-2204, 39-71-2205, AND 39-71-2337, MCA; REPEALING SECTION 39-71-2208, MCA; AND PROVIDING AN EFFECTIVE DATE 672

118 *(Senate Bill No. 319; Cocchiarella)* ESTABLISHING, WITH RESPECT TO REAL ESTATE TRANSACTIONS, WHEN A SELLER AGENT OR BUYER AGENT MAY REPRESENT MORE THAN ONE SELLER OR MORE THAN ONE BUYER; MODIFYING CONFIDENTIALITY REQUIREMENTS OWED TO A PRINCIPAL UPON TERMINATION OF THE AGENCY RELATIONSHIP; AMENDING SECTION 37-51-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 688

119 *(Senate Bill No. 323; Laslovich)* PROVIDING THAT A CERTIFICATE OF PUBLIC ADVANTAGE MAY NOT BE ISSUED FOR A TERM IN EXCESS OF 10 YEARS AND MUST TERMINATE NO LATER THAN 10 YEARS AFTER THE DATE OF ISSUANCE; REQUIRING A PRIOR CERTIFICATE HOLDER TO REPORT CERTAIN INFORMATION TO THE DEPARTMENT OF JUSTICE FOR 2 YEARS FOLLOWING THE TERMINATION OF A CERTIFICATE OF PUBLIC ADVANTAGE; AMENDING SECTION 50-4-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 691

120 *(House Bill No. 260; Reinhart)* REVISING THE LAWS RELATING TO THE STUDENT REGENT; LIMITING THE STUDENT REGENT TO A 1-YEAR TERM; ALLOWING THE STUDENT REGENT TO BE REAPPOINTED IN THE SAME MANNER AS AN INITIAL APPOINTMENT; AMENDING SECTION 2-15-1508, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 692

121 *(House Bill No. 22; McAlpin)* ELIMINATING A PROVISION FOR MAKING REIMBURSEMENTS TO LOCAL GOVERNMENTS FOR THE FEE IN LIEU OF TAX ON CERTAIN VEHICLES THAT ARE MADE UNDER ANOTHER SECTION OF LAW; AMENDING SECTION 17-7-502, MCA; REPEALING SECTION 15-1-113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 693

122 *(House Bill No. 64; Clark)* REVISING THE DEFINITION OF "SERIOUSLY DEVELOPMENTALLY DISABLED" TO REMOVE TOTAL CARE LANGUAGE FOR THE PURPOSES OF COMMITMENT TO RESIDENTIAL FACILITIES; AND AMENDING SECTION 53-20-102, MCA. 695

123 *(House Bill No. 98; Franklin)* ESTABLISHING A CHILDREN'S SYSTEM OF CARE ACCOUNT TO REDUCE OUT-OF-HOME PLACEMENTS OF HIGH-RISK CHILDREN WITH MULTIAGENCY SERVICE NEEDS; AUTHORIZING USE OF STATE FUNDS APPROPRIATED FOR MEDICAID SERVICES; REQUIRING A REPORT; AMENDING SECTIONS 52-2-301 AND 52-2-308, MCA; AND PROVIDING AN EFFECTIVE DATE 696

124 *(House Bill No. 105; Windy Boy)* REVISING LAWS ON TRAINING OF STATE AGENCY MANAGERS AND STATE EMPLOYEES ON TRIBAL ISSUES AND CONCERNS; REQUIRING TRAINING TO BE PROVIDED BY THE GOVERNOR'S OFFICE; AMENDING SECTION 2-15-143, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 698

125 *(House Bill No. 118; Henry)* ALLOWING THE DISPENSING OF CERTAIN CONTRACEPTIVES BY A REGISTERED NURSE EMPLOYED BY A FAMILY PLANNING CLINIC UNDER CONTRACT WITH THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AND AMENDING SECTIONS 37-2-104, 37-7-103, AND 50-31-307, MCA . . . 699

126 *(House Bill No. 120; Henry)* REVISING THE LAWS PERTAINING TO DAY-CARE PROVIDERS; EXEMPTING CERTAIN DAY-CARE PROVIDERS FROM MANDATORY ANNUAL UNANNOUNCED VISITS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; REVISING THE PAYMENT RATE FOR ELIGIBLE CHILDREN; AMENDING SECTIONS 52-2-713 AND 52-2-733, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 701

127 *(House Bill No. 124; French)* PROVIDING A TIME LIMIT ON CONTRACTS FOR STATE EMPLOYEE GROUP BENEFIT PLANS; AMENDING SECTIONS 2-18-811 AND 18-4-313, MCA; AND PROVIDING AN EFFECTIVE DATE 702

128 *(House Bill No. 129; Gallik)* GENERALLY REVISING PROVISIONS OF CERTAIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS; CLARIFYING BENEFITS; CLARIFYING GUARANTEED ANNUAL BENEFIT ADJUSTMENTS IN REGARD TO A DISABILITY RETIREMENT BENEFIT AND IN REGARD TO NONRETROACTIVE PAYMENT; CLARIFYING SERVICE CREDIT PURCHASE FOR CERTAIN EMPLOYEES IN HIGHER EDUCATION; CLARIFYING THE ELIGIBILITY OF INDIVIDUALS APPOINTED TO CERTAIN ELECTED OFFICES TO PARTICIPATE IN THE RETIREMENT SYSTEMS; CLARIFYING THAT SERVICE CREDIT FOR RETIREMENT MAY ACCRUE FOR VARIOUS EMPLOYER ARRANGEMENTS AND CONTRACTS; PROSPECTIVELY ASSIGNING MOTOR VEHICLE INSPECTORS TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM RATHER THAN TO THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM; REVISING DEFINITIONS IN REGARD TO RETIREMENT SYSTEMS; ELIMINATING THE AD HOC COST-OF-LIVING INCREASE FOR SOME RETIREES OR MEMBERS' BENEFICIARIES OF THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-2-602, 19-2-715, 19-2-907, 19-2-908, 19-2-909, 19-3-401, 19-3-412, 19-3-510, 19-3-1105, 19-3-1106, 19-3-1202, 19-3-1203, 19-3-1204, 19-3-2111, 19-3-2112, 19-3-2113, 19-6-707, 19-7-101, 19-7-312, 19-7-1101, 19-8-301, 19-8-302, 19-9-1202, 19-9-1205, 19-9-1206, 19-17-102, 19-17-108, 19-17-401, 19-17-402, AND 19-17-502, MCA; AND REPEALING SECTION 19-8-1110, MCA. 704

129 *(House Bill No. 157; Caferro)* REVISING EXCEPTIONS TO THE LIMIT ON THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM ADMINISTRATIVE EXPENSES; CLARIFYING THAT FUNDS DEPOSITED IN THE STATE SPECIAL REVENUE ACCOUNT TO THE CREDIT OF THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM MAY BE USED TO PAY HEALTH CARE CLAIMS; AMENDING SECTIONS 53-4-1007 AND 53-4-1012, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE 724

130 *(House Bill No. 177; Boggio)* REPEALING THE MONTANA ELECTRONIC TRANSACTIONS WITH STATE AGENCIES AND LOCAL GOVERNMENT UNITS ACT; AMENDING SECTIONS 30-18-102, 30-18-118, AND 61-11-503, MCA; AND REPEALING SECTIONS 2-20-101, 2-20-102, 2-20-103, 2-20-104, 2-20-105, 2-20-106, 2-20-107, 2-20-108, 2-20-109, 2-20-110, AND 2-20-111, MCA 726

131 *(House Bill No. 207; Ingraham)* REVISING WHEN COUNTY COMMISSIONERS AND OTHER COUNTY ELECTED OFFICIALS SHALL TAKE THE OATH OF OFFICE; AND AMENDING SECTIONS 7-4-2105 AND 7-4-2205, MCA 729

132 *(House Bill No. 284; Augare)* AUTHORIZING THE RENOVATION OF THE HISTORIC BUILDING AT THE MORONY TOWNSITE IN GIANT SPRINGS STATE PARK; GRANTING AUTHORITY FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ENTER AN AGREEMENT WITH THE LITTLE SHELL CHIPPEWA TRIBE FOR MAINTENANCE AND SECURITY AT THE PARK IN EXCHANGE FOR THE TRIBE'S USE OF THE PARK AND RENOVATION AND USE OF THE BUILDING; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE 729

133 *(House Bill No. 341; Gallik)* REVISING THE LAWS RELATING TO THE PREPARATION OF JUROR LISTS; AMENDING SECTIONS 3-15-402, 3-15-403, 3-15-404, 46-17-202, AND 61-5-127, MCA; REPEALING SECTION 3-15-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 730

134 *(House Bill No. 397; Ward)* PROVIDING THAT ANY PERSONAL PROPERTY THAT IS IN A MOTOR VEHICLE THAT IS SUBJECT TO A LIEN FOR SERVICES, TOWING, OR STORAGE IS ALSO SUBJECT TO THE LIEN, EXCEPT FOR CERTAIN ITEMS SPECIFICALLY EXEMPTED FROM THE LIEN; AND AMENDING SECTION 71-3-1201, MCA. 734

135 *(House Bill No. 412; Ebinger)* ALLOWING PUBLIC BENEFIT CORPORATIONS TO MAKE TRANSACTIONS WITH MEMBERS, DIRECTORS, OR OFFICERS IF IN CONFORMITY WITH ITS CHARITABLE PURPOSES UPON CERTAIN CONDITIONS; AND AMENDING SECTION 35-2-1401, MCA 735

136 *(House Bill No. 497; Pomnichowski)* PROVIDING THAT CERTIFICATION OF A PERSON AS DISABLED FOR PURPOSES OF OBTAINING A PERMIT TO HUNT FROM A VEHICLE MAY BE ENDORSED BY AN ADVANCED PRACTICE REGISTERED NURSE OR A LICENSED PHYSICIAN ASSISTANT AS WELL AS A LICENSED PHYSICIAN; AMENDING SECTION 87-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 736

137 *(House Bill No. 770; Pomnichowski)* REVISING PROVISIONS RELATING TO CERTIFICATION OF A PERSON AS DISABLED FOR PURPOSES OF HUNTING FROM A VEHICLE; PROVIDING THAT THE BOARD OF MEDICAL EXAMINERS RATHER THAN A VOLUNTARY BOARD REVIEW DISABILITY CERTIFICATION DISAGREEMENTS; PROVIDING THAT WHEN A PERSON OR THE DEPARTMENT DISAGREES WITH A DETERMINATION OF ELIGIBILITY, A REQUEST MAY BE MADE FOR A REVIEW BY THE BOARD OF MEDICAL EXAMINERS; AMENDING SECTIONS 37-3-203 AND 87-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 738

138 *(Senate Bill No. 116; Brueggeman)* PROVIDING IDENTITY THEFT PROTECTION; ALLOWING CONSUMERS TO LIMIT ACCESS TO THEIR OWN CREDIT REPORTS; REQUIRING IMPLEMENTATION

PROCEDURES FOR CONSUMER REPORTING AGENCIES; PROVIDING FOR TEMPORARY LIFTING OF SECURITY FREEZES; REQUIRING NOTICES TO CONSUMERS ABOUT THE OPTION FOR A SECURITY FREEZE; PROVIDING EXEMPTIONS AND EXCEPTIONS; SETTING FEES; PROVIDING PENALTIES; AND PROVIDING AN EFFECTIVE DATE 741

139 *(Senate Bill No. 119; Moss)* CLARIFYING THE EXCHANGE OF YOUTH COURT RECORD INFORMATION WITH CERTAIN FACILITIES IN WHICH A YOUTH IS PLACED; AND AMENDING SECTION 41-5-216, MCA. 748

140 *(Senate Bill No. 124; Harrington)* PROVIDING FOR THE COSTS OF THE MENTAL HEALTH EXAMINATION AND COMMITMENT OF A CRIMINAL DEFENDANT; PROVIDING THAT COSTS FOR THE EXAMINATION, CARE, CUSTODY, AND TREATMENT OF A CRIMINAL DEFENDANT FOR WHICH THE LEGISLATURE HAS MADE A GENERAL FUND APPROPRIATION MAY NOT BE CHARGED TO THE OFFICE OF COURT ADMINISTRATOR OR THE OFFICE OF STATE PUBLIC DEFENDER; AMENDING SECTIONS 3-5-901, 46-14-202, AND 46-14-221, MCA; AND PROVIDING AN EFFECTIVE DATE 750

141 *(Senate Bill No. 141; Laslovich)* CLARIFYING WHEN PHOTOGRAPHS AND FINGERPRINTS TAKEN IN CRIMINAL CASES MUST BE RETURNED TO THE INDIVIDUAL FROM WHOM THEY WERE TAKEN; AND AMENDING SECTION 44-5-202, MCA. 754

142 *(Senate Bill No. 178; Lewis)* REMOVING THE REFERENCE TO MILLTOWN DAM IN THE DEFINITION OF THE UPPER CLARK FORK RIVER BASIN 755

143 *(Senate Bill No. 208; M. Tropila)* INSTRUCTING MOTORISTS TO MAKE A COMPLETE STOP, AS IF AT A STOP SIGN, WHEN A TRAFFIC LIGHT IS INOPERATIVE 756

144 *(Senate Bill No. 239; Balyeat)* ALLOWING ACTIVE DUTY MEMBERS OF THE UNITED STATES ARMED FORCES TO RENEW THEIR DRIVER'S LICENSE AT ANY TIME TO REMAIN VALID UNTIL 30 DAYS AFTER DISCHARGE FROM THE SERVICE; ALLOWING FOR A MONTANA DRIVER'S LICENSE TO BE ISSUED TO A MEMBER OF THE UNITED STATES ARMED SERVICES TO REMAIN VALID UNTIL 30 DAYS AFTER DISCHARGE FROM THE SERVICE; AND AMENDING SECTION 61-5-104, MCA 756

145 *(Senate Bill No. 322; Brueggeman)* REVISING THE LAWS RELATING TO DRIVERS INVOLVED IN HIT-AND-RUN ACCIDENTS INVOLVING DEATH OR PERSONAL INJURIES; INCREASING THE PENALTY FROM A MISDEMEANOR TO A FELONY AND REQUIRING REVOCATION OF A LICENSE OR PERMIT TO DRIVE FOR A PERIOD OF 2 YEARS IN CERTAIN CASES; AND AMENDING SECTIONS 61-5-205 AND 61-7-103, MCA 758

146 *(Senate Bill No. 328; Steinbeisser)* ESTABLISHING AN OPTIONAL PROCUREMENT EXCEPTION APPLICABLE TO THE PURCHASE OF MONTANA-PRODUCED FOOD PRODUCTS BY GOVERNMENTAL BODIES; CLARIFYING TERMINOLOGY; AMENDING SECTION 18-4-132, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 759

147 *(Senate Bill No. 385; Cobb)* CRIMINALIZING SUBJECTING ANOTHER TO INVOLUNTARY SERVITUDE AND TRAFFICKING IN PERSONS

FOR INVOLUNTARY SERVITUDE; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 761

148 *(Senate Bill No. 479; Elliott)* REGULATING THE DESCRIPTION OF MONTANA HUCKLEBERRY PRODUCTS; PROVIDING PENALTIES FOR MISLABELING; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 764

149 *(Senate Bill No. 485; Brueggeman)* REVISING THE PROHIBITION ON THE DISTRIBUTION OF MAILING LISTS FOR CERTAIN OCCUPATIONS AND PROFESSIONS REQUIRING LICENSES; AND AMENDING SECTION 2-6-109, MCA 765

150 *(House Bill No. 92; Franklin)* MODERNIZING PUBLIC HEALTH STATUTES; PROVIDING A PUBLIC HEALTH POLICY STATEMENT; REVISING THE POWERS AND DUTIES OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, LOCAL BOARDS OF HEALTH, AND LOCAL HEALTH OFFICERS; ENCOURAGING GREATER COLLABORATION AMONG AND BETWEEN ENTITIES IN THE PUBLIC HEALTH SYSTEM; AMENDING SECTIONS 50-1-101, 50-1-202, 50-2-116, 50-2-118, 50-2-130, 50-48-102, 50-53-102, 75-5-305, 76-4-125, AND 76-4-133, MCA; AND REPEALING SECTION 50-2-101, MCA. 767

151 *(House Bill No. 400; Villa)* REQUIRING A BOARD OF SUPERVISORS OF A CONSERVATION DISTRICT TO APPOINT ONE OF ITS MEMBERS OR ASSOCIATE MEMBERS TO A CITY-COUNTY PLANNING BOARD; PROVIDING THAT THE APPOINTMENT IS SUBJECT TO APPROVAL OF THE CITY-COUNTY PLANNING BOARD; PROVIDING THAT AN ASSOCIATE MEMBER OF A CONSERVATION DISTRICT DESIGNATED BY THE GOVERNING BOARD MAY BE APPOINTED TO A COUNTY PLANNING BOARD; AMENDING SECTIONS 76-1-201 AND 76-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 780

152 *(House Bill No. 409; Sinrud)* PROHIBITING CERTAIN UNFAIR PRACTICES BY MOTORSPORTS VEHICLE MANUFACTURERS; DEFINING "MOTORSPORTS VEHICLE"; AND PROVIDING FOR INJUNCTIVE RELIEF AND DAMAGES 781

153 *(House Bill No. 503; Gallik)* MAKING PERMANENT THE PROVISIONS ALLOWING CERTAIN AGENCIES AND TECHNICIANS TO BE CERTIFIED TO PERFORM EUTHANASIA ON ANIMALS; AND REPEALING SECTION 11, CHAPTER 60, LAWS OF 2003. 785

154 *(House Bill No. 510; Stahl)* ALLOWING A CITY COUNCIL OR A BOARD OF COUNTY COMMISSIONERS TO ASSESS THE COST OF A SPECIAL IMPROVEMENT LIGHTING DISTRICT EQUALLY AGAINST EACH LOT OR PARCEL IN THE DISTRICT; AND AMENDING SECTIONS 7-12-2202 AND 7-12-4323, MCA. 785

155 *(House Bill No. 521; Arntzen)* REVISING THE DEFINITION OF "OCCUPIED STRUCTURE" IN THE CRIMINAL LAWS TO INCLUDE OUTBUILDINGS ADJACENT TO OR IN CLOSE PROXIMITY TO OCCUPIED STRUCTURES; AND AMENDING SECTION 45-2-101, MCA 787

156 *(House Bill No. 555; Grinde)* REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO PROVIDE INFORMATION IN THE HOUSEHOLD HAZARDOUS WASTE PUBLIC EDUCATION PROGRAM ABOUT RECYCLING OR THE SAFE DISPOSAL OF ELECTRONIC WASTE; AND AMENDING SECTION 75-10-215, MCA 795

157 *(House Bill No. 570; Cohenour)* EXPANDING THE MONTANA ABSENT UNIFORMED SERVICES AND OVERSEAS ELECTOR VOTING ACT; AUTHORIZING THE USE OF THE FEDERAL WRITE-IN ABSENTEE

BALLOT FOR ANY ELECTION; CLARIFYING REGULAR ABSENTEE BALLOT AND FEDERAL WRITE-IN ABSENTEE BALLOT PROCEDURES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 13-21-103, 13-21-201, 13-21-202, 13-21-205, 13-21-206, AND 13-21-210, MCA; AND REPEALING SECTION 13-21-204, MCA. 795

158 *(House Bill No. 579; Olson)* CLARIFYING THE LAWS RELATING TO THE DISBURSEMENT OF SURPLUS FUNDS FROM A TRUSTEE'S SALE; AND AMENDING SECTION 71-1-316, MCA. 798

159 *(House Bill No. 596; Sands)* INCREASING THE REPAYMENT PERIOD FOR ASSESSMENTS IMPOSED AGAINST OWNERS OF LAND FOR THE CONSTRUCTION OF CERTAIN SIDEWALKS, CURBS, GUTTERS, OR ALLEY APPROACHES IN CITIES OR TOWNS; AMENDING SECTION 7-14-4110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . 798

160 *(House Bill No. 703; Ripley)* ESTABLISHING APPLICATION REQUIREMENTS FOR AN EASEMENT ON STATE LAND FOR A REGIONAL WATER AUTHORITY; AND AMENDING SECTION 77-2-102, MCA 799

161 *(House Bill No. 717; Stahl)* RATIFYING THE UNITED STATES OF AMERICA, FISH AND WILDLIFE SERVICE, BOWDOIN NATIONAL WILDLIFE REFUGE COMPACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 800

162 *(House Bill No. 724; Furey)* PROVIDING REQUIREMENTS FOR SERVICE CONTRACTS AS PART OF CERTAIN BUSINESS ARRANGEMENTS; REQUIRING INSURANCE OF SERVICE CONTRACTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 811

163 *(House Bill No. 795; Hands)* ALLOWING SPECIAL IMPROVEMENT DISTRICTS AND RURAL IMPROVEMENT DISTRICTS TO BE CREATED FOR ACQUISITION, CONSTRUCTION, OR RECONSTRUCTION OF LAND AND STRUCTURES FOR FIRE PROTECTION; AND AMENDING SECTION 7-12-4102, MCA 815

164 *(House Bill No. 37; Reinhart)* DEFINING THE TERM "NOXIOUS WEEDS"; PROVIDING A NOTIFICATION PROCESS FOR NONCOMPLIANT WEED CONTROL ON STATE LANDS; ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONTROL WEEDS ON STATE LANDS AND BILL FOR COSTS INCURRED; PROVIDING AN ADMINISTRATIVE HEARING PROCESS; GRANTING RULEMAKING AUTHORITY; AND AMENDING SECTION 77-1-101, MCA. 817

165 *(House Bill No. 57; Franklin)* REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PURCHASE LIABILITY INSURANCE FOR FOSTER PARENTS PROVIDING FOSTER CARE OR THERAPEUTIC FOSTER CARE FOR A YOUTH UNDER 18 YEARS OF AGE PLACED BY A STATE AGENCY; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE 820

166 *(House Bill No. 91; Clark)* REVISING LAWS CONCERNING CHILD ABUSE AND NEGLECT TO COMPLY WITH FEDERAL LAW ALLOWING AUDIO AND VIDEO TESTIMONY; CLARIFYING REQUIREMENTS CONCERNING NOTICE BY CERTAIN PROFESSIONALS OF DRUG-AFFECTED INFANTS; AMENDING SECTIONS 41-3-115, 41-3-201, 41-3-205, 41-3-422, 41-3-423, 41-3-432, AND 41-3-445, MCA; AND PROVIDING AN EFFECTIVE DATE. 821

167 *(House Bill No. 112; Arntzen)* PRESCRIBING THE AUTHORITY AND DUTIES OF CERTAIN GOVERNMENTAL FIRE AGENCY FIRE CHIEFS; AND REPEALING SECTION 7-33-2313, MCA 835

168 *(House Bill No. 166; Raser)* REVISING ALTERNATIVE FUELS TAX LAWS; MODIFYING THE TAX CREDITS FOR PROPERTY USED FOR THE PRODUCTION, BLENDING, AND STORAGE OF BIODIESEL OR BIOLUBRICANT; ALLOWING CREDITS TO BE CARRIED FORWARD FOR 7 YEARS; EXTENDING CREDITS TO COVER EXPENSES INCURRED IN CERTAIN TIME PERIODS; EXTENDING THE DURATION OF THE CREDITS; AMENDING SECTIONS 15-32-701, 15-32-702, AND 15-32-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . 837

169 *(House Bill No. 198; W. Jones)* EXPANDING THE DENTAL CARE BENEFITS OF THE CHILDREN'S HEALTH INSURANCE PROGRAM; AMENDING SECTION 53-4-1005, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 842

170 *(House Bill No. 206; Ingraham)* CLARIFYING THAT A MILL LEVY ELECTION PROPOSAL MUST SPECIFY EITHER THE DOLLAR AMOUNT TO BE RAISED OR THE NUMBER OF MILLS TO BE LEVIED AND WHETHER THE MILL LEVY IS PERMANENT; CLARIFYING THAT THE GOVERNING BODY MAY REDUCE THE LEVY WITHOUT LOSING THE AUTHORITY TO IMPOSE UP TO THE MAXIMUM APPROVED; AND AMENDING SECTION 15-10-425, MCA 843

171 *(House Bill No. 253; Ross)* REMOVING THE REQUIREMENT THAT A BOARD OF COUNTY COMMISSIONERS HOLD AN ELECTION IF THE COST OF CONSTRUCTION OF A BRIDGE IN A MUNICIPALITY EXCEEDS $10,000; AND REPEALING SECTION 7-14-2205, MCA . . . 844

172 *(House Bill No. 265; Ebinger)* CLARIFYING THAT AN ACTION OF A PLANNING BOARD IS NOT OFFICIAL UNLESS AUTHORIZED BY A MAJORITY OF THE QUORUM PRESENT AT THE MEETING; AMENDING SECTION 76-1-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 844

173 *(House Bill No. 363; Ward)* REVISING SCHOOL DISTRICT GENERAL FUND BUDGET LIMITATIONS; ALLOWING A SCHOOL DISTRICT TO ADOPT A GENERAL FUND BUDGET IN AN AMOUNT UP TO THE MAXIMUM GENERAL FUND BUDGET OR THE PREVIOUS YEAR'S GENERAL FUND BUDGET; ALLOWING THE ADDITION OF INCREASES IN STATE FUNDING TO A SCHOOL DISTRICT'S GENERAL FUND BUDGET FOR THE PRIOR YEAR; REVISING ELECTION PROVISIONS FOR FINANCING OF THE GENERAL FUND LEVY REQUIREMENT; AMENDING SECTIONS 20-9-141, 20-9-308, AND 20-9-353, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 844

174 *(House Bill No. 427; Bergren)* REVISING NATURAL GAS UNIVERSAL SYSTEM BENEFITS LAWS; CLARIFYING THE DEFINITION OF "UNIVERSAL SYSTEM BENEFITS PROGRAMS"; CLARIFYING THAT THE PUBLIC SERVICE COMMISSION HAS ONGOING OVERSIGHT FOR NATURAL GAS UTILITY UNIVERSAL SYSTEM BENEFIT PROGRAMS; PROVIDING THAT A UNIVERSAL SYSTEM BENEFITS CHARGE MAY BE ESTABLISHED AND REVISED THROUGH A TRACKING PROCEDURE; CLARIFYING THAT A NATURAL GAS UTILITY'S FUNDING REQUIREMENT IS A MINIMUM FUNDING REQUIREMENT; REQUIRING AN ANNUAL REPORT; AMENDING SECTIONS 69-3-1402 AND 69-3-1408, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 851

175 *(House Bill No. 437; Gallik)* REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO INCLUDE A DISPUTE RESOLUTION CLAUSE IN ITS CONTRACTS WITH THIRD-PARTY PROVIDERS OF HUMAN SERVICES; AND PROVIDING AN EFFECTIVE DATE 854

176 *(House Bill No. 532; Jacobson)* REVISING LAWS GOVERNING STATE DUTY FOR THE MONTANA NATIONAL GUARD; CLARIFYING THAT NATIONAL GUARD RESOURCES MAY BE USED TO PREPARE FOR STATE ACTIVE DUTY ORDERED BY THE GOVERNOR; PROVIDING A DEFINITION; AMENDING STATE PAY OF NATIONAL GUARD MEMBERS; AMENDING SECTIONS 10-1-501 AND 10-1-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 854

177 *(House Bill No. 756; L. Jones)* ELIMINATING THE REQUIREMENT THAT AN APPLICANT MUST CREATE 10 NEW JOBS IN ORDER TO BE ELIGIBLE FOR A GRANT UNDER THE PRIMARY SECTOR BUSINESS WORKFORCE TRAINING ACT; AMENDING SECTION 39-11-202, MCA; AND PROVIDING AN EFFECTIVE DATE. 855

178 *(House Bill No. 769; Lake)* REQUIRING MANDATORY REGISTRATION AND LICENSURE OF ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS; ALLOWING FOR PROVISIONAL LICENSING; PROVIDING FOR BACKGROUND INVESTIGATIONS OF CERTAIN EMPLOYEES AND MANAGERS AND ALLOWING FOR A WAIVER; DIRECTING THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT RULES REGARDING PROGRAM CRITERIA; REQUIRING DEPARTMENT INSPECTION OF THE PROGRAMS FOR LICENSURE AND EVERY 3 YEARS; ALLOWING INSPECTIONS IN RESPONSE TO COMPLAINTS; PROVIDING PENALTIES AND NOTIFICATION PROCEDURES; REVISING DEFINITIONS; ESTABLISHING CRITERIA FOR ENSURING PUBLIC HEALTH AND SAFETY FOR PROGRAM PARTICIPANTS; REQUIRING PROOF OF INSURANCE; AMENDING SECTIONS 37-48-101, 37-48-102, AND 37-48-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 860

179 *(House Bill No. 786; Blasdel)* EXEMPTING FROM THE WORKERS' COMPENSATION ACT THE EMPLOYMENT OF PERSONS PERFORMING THE SERVICES OF AN INTRASTATE OR INTERSTATE COMMON OR CONTRACT MOTOR CARRIER IF HIRED BY A BROKER; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN EFFECTIVE DATE 865

180 *(House Bill No. 789; Campbell)* TREATING A TRIBAL IDENTIFICATION CARD IN A MANNER SIMILAR TO A STATE IDENTIFICATION CARD FOR PURPOSES OF CERTAIN STATE LAWS; AND AMENDING SECTIONS 16-3-322, 16-6-305, 30-14-1704, 33-19-321, 45-6-332, 45-8-206, 45-8-322, 61-3-101, 61-3-216, 61-5-206, 61-5-302, 87-2-106, AND 87-2-202, MCA. 869

181 *(House Bill No. 803; Himmelberger)* PROVIDING THAT THE INFORMATION AND COMMUNICATION PROGRAM OF THE BOARD OF VETERANS' AFFAIRS MAY INCLUDE INFORMATION RELATED TO DEPLETED URANIUM EXPOSURE; AMENDING SECTION 10-2-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 884

182 *(Senate Bill No. 60; Cobb)* REVISING AND CLARIFYING THE GOVERNOR'S ENERGY EMERGENCY AUTHORITY RELATED TO A PRICE OF ENERGY; AND AMENDING SECTIONS 10-3-312 AND 90-4-302, MCA 885

183 *(Senate Bill No. 77; Laible)* REVISING LEGISLATIVE REPORTING REQUIREMENTS RELATED TO THE FUTURE FISHERIES

IMPROVEMENT PROGRAM; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO SUBMIT ITS DETAILED PROGRAM REPORT TO CERTAIN LEGISLATIVE COMMITTEES, TO INCLUDE SPECIFIC INFORMATION REGARDING PROGRESS AND PROJECTS RELATED TO THE RESTORATION OF NATIVE MONTANA FISH SPECIES, TO IDENTIFY ANY PROJECT THAT INVOLVES STREAM REMEDIATION FROM MINING ACTIVITIES, AND TO INCLUDE PARTICULAR FUNDING INFORMATION; AMENDING SECTION 87-1-272, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 887

184 *(Senate Bill No. 164; Gallus)* CLARIFYING THE DISTINCTION BETWEEN THE POWERS AND DUTIES OF ASSIGNED COUNSEL AND A GUARDIAN AD LITEM IN PROCEEDINGS TO ADJUDICATE INCAPACITY AND TO PROTECT PROPERTY OF MINORS AND PERSONS UNDER DISABILITY; AMENDING SECTIONS 72-5-315 AND 72-5-408, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 888

185 *(Senate Bill No. 170; Perry)* EXTENDING THE TERMINATION DATE OF THE DOMESTIC VIOLENCE FATALITY REVIEW COMMISSION BY 2 YEARS; AMENDING SECTION 4, CHAPTER 81, LAWS OF 2003, AND SECTION 1, CHAPTER 23, LAWS OF 2005 890

186 *(Senate Bill No. 203; Balyeat)* ALLOWING A COUNTY SHERIFF OR THE SHERIFF'S DESIGNEE TO AUTHORIZE THE PARTICIPATION OF CIVIL AIR PATROL CADETS IN SEARCH AND RESCUE OPERATIONS; AMENDING SECTION 7-32-235, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 891

187 *(Senate Bill No. 245; McGee)* INCREASING THE DEBT LIMITS FOR COUNTIES, CONSOLIDATED MUNICIPALITIES, AND CITIES OR TOWNS; AMENDING SECTIONS 7-3-1321, 7-7-2101, 7-7-4201, 7-14-2524, AND 7-14-2525, MCA; AND PROVIDING AN EFFECTIVE DATE 891

188 *(Senate Bill No. 341; Lewis)* REVISING GOVERNMENTAL PROCUREMENT PROCEDURES TO ALLOW FOR THE BIENNIAL SELECTION OF FIRMS FOR ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING SERVICES; AND AMENDING SECTION 18-8-204, MCA. 893

189 *(Senate Bill No. 466; Cocchiarella)* PROVIDING THAT ECONOMIC IMPACT STATEMENTS REQUESTED BY AN ADMINISTRATIVE RULE REVIEW COMMITTEE CONSIDER THE POTENTIAL IMPACT OF A RULE ON AFFECTED SMALL BUSINESSES; AND AMENDING SECTION 2-4-405, MCA 894

190 *(Senate Bill No. 467; Cocchiarella)* GENERALLY REVISING THE LAWS GOVERNING THE BOARD OF INVESTMENTS; ADDING LEGISLATIVE LIAISONS TO THE BOARD; AMENDING SECTION 2-15-1808, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 895

191 *(House Bill No. 242; Ripley)* CHANGING THE DEADLINE FOR A WRITE-IN CANDIDATE TO FILE A DECLARATION OF INTENT; AMENDING SECTION 13-10-211, MCA; AND PROVIDING AN APPLICABILITY DATE 897

192 *(Senate Bill No. 225; Moss)* ALLOWING SPECIAL SCHOOL ELECTIONS ON A DATE OTHER THAN THE REGULAR SCHOOL ELECTION DAY IN ORDER FOR THE ELECTORS TO CONSIDER A PROPOSITION REQUESTING ADDITIONAL FUNDING; AMENDING SECTION 20-20-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION 898

193 *(Senate Bill No. 536; Perry)* PROVIDING THAT LOCAL GOVERNMENT ENTITIES, MUNICIPAL UTILITIES, OR COMPETITIVE ELECTRICITY SUPPLIERS MAY NOT USE EMINENT DOMAIN TO ACQUIRE EXISTING TELEPHONE OR ELECTRICAL ENERGY LINES AND APPURTENANT FACILITIES OWNED BY A PUBLIC UTILITY OR COOPERATIVE FOR THE PURPOSE OF TRANSMITTING OR DISTRIBUTING ELECTRICITY OR PROVIDING TELECOMMUNICATIONS SERVICES; AMENDING SECTION 70-30-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 899

194 *(Senate Bill No. 291; Perry)* REVISING THE MORATORIUM ON NEW SCHOOL DISTRICTS TO ALLOW CREATION UNDER CERTAIN CIRCUMSTANCES OF A HIGH SCHOOL DISTRICT SOLELY FOR THE PURPOSE OF EXPANDING AN ELEMENTARY DISTRICT INTO A K-12 SCHOOL DISTRICT; PROVIDING FOR THE DISPOSITION OF DISTRICT BONDED INDEBTEDNESS UNDER CERTAIN CIRCUMSTANCES; ESTABLISHING PROCEDURES FOR CREATION OF A HIGH SCHOOL DISTRICT BY TRUSTEE RESOLUTION; AMENDING SECTIONS 20-6-104, 20-9-366, 20-9-439, AND 20-9-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 901

195 *(House Bill No. 35; Keane)* PROVIDING ASSISTANCE TO VICTIMS OF IDENTITY THEFT; CLARIFYING THE PROCESS FOR LAW ENFORCEMENT IN RELATION TO IDENTITY THEFT PASSPORTS; REQUIRING LAW ENFORCEMENT TO TAKE REPORTS IN IDENTITY THEFT CASES; EXPANDING THE APPLICATION OF THE IDENTITY THEFT PASSPORT PROGRAM TO ALL STATE RESIDENTS; PROVIDING THAT AN IDENTITY THEFT PASSPORT IS EQUIVALENT TO A POLICE REPORT OR INVESTIGATIVE REPORT; PROVIDING PENALTIES FOR FALSE REPORTS; REQUIRING CONSUMER REPORTING AGENCIES TO BLOCK INFORMATION RESULTING FROM IDENTITY THEFT; ALLOWING A VICTIM OF IDENTITY THEFT TO REQUEST THAT RECORDS OF ARREST OR CONVICTION BE EXPUNGED IN CERTAIN CIRCUMSTANCES; PROVIDING FOR INSURANCE PREMIUM REFUNDS UPON EXPUNGEMENT; AND AMENDING SECTION 46-24-220, MCA 907

196 *(House Bill No. 99; Olson)* INCREASING FEES FOR LICENSING OF WEIGHING DEVICES; AND AMENDING SECTION 30-12-203, MCA . 910

197 *(House Bill No. 113; McChesney)* REVISING LIQUOR LICENSING LAWS TO ELIMINATE THE RESIDENCE REQUIREMENT FOR LIQUOR LICENSES AND TO ALLOW ALL ENTITIES TO OBTAIN A LIQUOR LICENSE; REQUIRING SUITABLE FUNDING SOURCES FOR INDIVIDUAL APPLICANTS; CLARIFYING OTHER APPLICATION REQUIREMENTS FOR OWNERS, STOCKHOLDERS, PARTNERSHIPS, AND MEMBERS OF DIFFERENT BUSINESS ENTITIES; AND AMENDING SECTION 16-4-401, MCA. 911

198 *(House Bill No. 287; Wiseman)* OPPOSING THE IMPLEMENTATION OF THE FEDERAL REAL ID ACT AND DIRECTING THE MONTANA DEPARTMENT OF JUSTICE NOT TO IMPLEMENT THE PROVISIONS OF THE FEDERAL ACT. 916

199 *(House Bill No. 348; Keane)* INCREASING THE FEE FOR A NONRESIDENT TEMPORARY-SNOWMOBILE-USE PERMIT AND INCREASING THE PROPORTIONAL AMOUNTS OF THE FEE THAT ARE USED FOR CERTAIN SNOWMOBILE TRAIL GROOMING AND ENFORCEMENT COSTS; AMENDING SECTION 23-2-615, MCA; AND PROVIDING AN EFFECTIVE DATE 918

200 *(House Bill No. 372; Ingraham)* ALLOWING A COUNTY TREASURER TO RECEIVE UP TO $2,000 A YEAR IN ADDITION TO BASE SALARY; AMENDING SECTION 7-4-2503, MCA; AND PROVIDING AN EFFECTIVE DATE 919

201 *(House Bill No. 587; Himmelberger)* CLARIFYING THAT COVERAGES SPECIFIED UNDER ONE POLICY OR UNDER MORE THAN ONE POLICY ISSUED BY THE SAME COMPANY MAY NOT BE ADDED TOGETHER IF THE PREMIUMS CHARGED FOR THE COVERAGE ACTUARIALLY REFLECT THE LIMITING OF COVERAGE SEPARATELY TO THE VEHICLES COVERED BY THE POLICY; AMENDING SECTION 33-23-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . 921

202 *(House Bill No. 617; Sinrud)* REVISING THE FILING REQUIREMENTS FOR CHILD SUPPORT DEBTS; REQUIRING THAT NOTICE OF A SUPPORT DEBT BE FILED WITH THE CLERK OF THE DISTRICT COURT FOR THE JUDICIAL DISTRICT IN WHICH THE MOST RECENT SUPPORT ORDER WAS ISSUED; REQUIRING THE FILING OF A FINAL ADMINISTRATIVE ORDER FOR A SUPPORT DEBT WITH THE CLERK OF THE DISTRICT COURT; REQUIRING THE COMMENCEMENT OF CONTEMPT OF COURT PROCEEDINGS UPON THE FILING OF A FINAL ADMINISTRATIVE ORDER FOR A SUPPORT DEBT UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTIONS 40-5-222 AND 40-5-227, MCA 922

203 *(House Bill No. 629; Hamilton)* PROVIDING FOR MEDIATION OF CRIMINAL PROCEEDINGS 924

204 *(House Bill No. 657; Ebinger)* REVISING CONSTRUCTION LIEN LAW TO ALLOW THE CONTRACTING OWNER TO FILE A BOND WITHIN 30 DAYS OF AN ACTION BROUGHT TO FORECLOSE UPON A CONSTRUCTION LIEN; AND AMENDING SECTIONS 71-3-551 AND 71-3-553, MCA 926

205 *(House Bill No. 782; Caferro)* PROHIBITING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FROM REQUIRING REPAYMENT FROM FOOD STAMP RECIPIENTS FOR DEPARTMENT ERRORS; ESTABLISHING THE DEPARTMENT'S RESPONSIBILITY FOR REPAYING A FEDERAL CLAIM FOR OVERPAYMENT OF FOOD STAMPS IN CERTAIN CASES; AMENDING SECTIONS 39-51-2208 AND 53-2-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 927

206 *(Senate Bill No. 36; Cocchiarella)* REVISING AND CLARIFYING THE PAYMENT OF MOTOR VEHICLE REGISTRATION FEES; AMENDING SECTION 61-3-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 929

207 *(Senate Bill No. 47; Esp)* AMENDING THE MONTANA ADMINISTRATIVE PROCEDURE ACT TO CLARIFY THE EXISTING STATUTE REQUIRING AN AGENCY TO NOTIFY A BILL'S SPONSOR AT THE TIME THAT THE AGENCY BEGINS TO WRITE RULES IMPLEMENTING THE BILL AFTER IT IS ENACTED; AND AMENDING SECTION 2-4-302, MCA 934

208 *(Senate Bill No. 150; Gillan)* CLARIFYING THAT A FUND OF A TAX-EXEMPT ORGANIZATION FROM WHICH CONTRIBUTIONS ARE EXPENDED DIRECTLY FOR CONSTRUCTING, RENOVATING, OR PURCHASING OPERATIONAL ASSETS IS NOT A PERMANENT, IRREVOCABLE FUND FOR THE PURPOSES OF DETERMINING THE TAX CREDIT FOR CONTRIBUTIONS TO A QUALIFIED ENDOWMENT; EXTENDING THE TERMINATION DATE OF THE TAX CREDIT;

AMENDING SECTION 15-30-165, MCA, SECTION 9, CHAPTER 537, LAWS OF 1997, SECTION 5, CHAPTER 226, LAWS OF 2001, AND SECTION 7, CHAPTER 4, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE. 936

209 *(Senate Bill No. 160; Schmidt)* ALLOWING LOCAL GOVERNMENTS, TRANSPORTATION DISTRICTS, AND NONPROFIT ORGANIZATIONS TO USE MONEY FROM THE SENIOR CITIZEN AND PERSONS WITH DISABILITIES TRANSPORTATION SERVICES ACCOUNT AS MATCHING FUNDS FOR FEDERAL GRANTS; AND AMENDING SECTION 7-14-112, MCA 938

210 *(Senate Bill No. 169; Laslovich)* ADJUSTING THE REDUCTION IN THE BASE ENTITLEMENT SHARE, FOR FUNDING RESPONSIBILITIES FOR PUBLIC DEFENDER SERVICES, FOR CASCADE COUNTY, FLATHEAD COUNTY, GALLATIN COUNTY, LEWIS AND CLARK COUNTY, MISSOULA COUNTY, AND YELLOWSTONE COUNTY; AMENDING SECTION 15-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . 940

211 *(Senate Bill No. 177; Squires)* EXTENDING THE TIME IN WHICH A PETITION MAY BE FILED WITH A DISTRICT COURT TO SET ASIDE AN AGENCY DECISION MADE IN VIOLATION OF THE PUBLIC PARTICIPATION IN GOVERNMENT STATUTES IN TITLE 2, CHAPTER 3, PART 1 OR 2, MCA; AND AMENDING SECTIONS 2-3-114 AND 2-3-213, MCA. 950

212 *(Senate Bill No. 193; Laslovich)* REQUIRING A CHILD PROTECTIVE SOCIAL WORKER TO SUBMIT AN AFFIDAVIT TO THE COUNTY ATTORNEY WITHIN 2 WORKING DAYS OF A CHILD'S REMOVAL FROM A HOME; REQUIRING THE AFFIDAVIT TO BE PROVIDED TO THE PARENTS AT THE SAME TIME, IF POSSIBLE; INCREASING THE TIME TO FILE AN ABUSE AND NEGLECT PETITION FROM 2 DAYS TO 5 DAYS; AND AMENDING SECTION 41-3-301, MCA 951

213 *(Senate Bill No. 248; Story)* RATIFYING THE UNITED STATES OF AMERICA, DEPARTMENT OF AGRICULTURE, FOREST SERVICE-MONTANA COMPACT; PROVIDING FOR A CHANGE IN APPROPRIATION RIGHT TO INSTREAM FLOW IN CERTAIN INSTANCES; PROVIDING ADDITIONAL CRITERIA THAT MUST BE MET BY THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE TO BE ABLE TO CHANGE AN APPROPRIATION RIGHT TO INSTREAM FLOW; REQUIRING APPLICANTS TO SUBMIT PROOF OF ANY WRITTEN SPECIAL USE AUTHORIZATION REQUIRED BY FEDERAL LAW TO OCCUPY, USE, OR TRAVERSE NATIONAL FOREST SYSTEM LANDS FOR THE PURPOSE OF DIVERSION, IMPOUNDMENT, STORAGE, TRANSPORTATION, WITHDRAWAL, USE, OR DISTRIBUTION OF WATER IN CERTAIN INSTANCES; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES NECESSARY FOR STATE WATER RESERVATIONS; PROVIDING FOR PROCESSING OF STATE WATER RESERVATIONS FOR THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE IN ALL BASINS IN MONTANA; AMENDING SECTIONS 85-2-102, 85-2-302, 85-2-306, 85-2-308, 85-2-310, 85-2-311, 85-2-312, 85-2-316, 85-2-319, 85-2-331, 85-2-336, 85-2-341, 85-2-343, 85-2-344, 85-2-401, AND 85-2-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 952

214 *(Senate Bill No. 282; Lind)* CLARIFYING THAT IF A PERSON GIVES WARNING OF RECORDING A CONVERSATION, EITHER PARTY MAY

RECORD; AMENDING SECTION 45-8-213, MCA; AND PROVIDING AN EFFECTIVE DATE 1006

215 *(Senate Bill No. 285; Cooney)* REVISING THE CAPITOL COMPLEX MASTER PLAN BY EXCEPTING THE MONTANA WILDLIFE REHABILITATION AND EDUCATION CENTER FROM THE DEFINITION OF "CAPITOL COMPLEX" SO THAT THE STATE BUILDING NAMING PROVISIONS AND OTHER MASTER PLAN REQUIREMENTS DO NOT APPLY TO THE MONTANA WILDLIFE REHABILITATION AND EDUCATION CENTER; AMENDING SECTION 2-17-802, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1007

216 *(Senate Bill No. 286; Cooney)* REVISING THE RESTRICTIONS ON THE NAMING OF CERTAIN BUILDINGS, SPACES, AND ROOMS IN THE CAPITOL COMPLEX; PROVIDING THAT THE CAPITOL BUILDING MAY NOT BE NAMED AFTER ANY PERSON; AMENDING SECTION 2-17-807, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1007

217 *(Senate Bill No. 299; Moss)* REVISING LAWS RELATING TO HERITAGE PRESERVATION AND CULTURAL TOURISM; PROVIDING FOR THE LEASE OR EXCHANGE OF HISTORIC PROPERTY; PROVIDING FOR HERITAGE PRESERVATION AND CULTURAL TOURISM COMMISSIONS; PROVIDING FOR THE DESIGNATION, ADMINISTRATION, AND PROMOTION OF HERITAGE AND CULTURAL TOURISM RESOURCES; PROVIDING FUNDING; AMENDING SECTIONS 7-16-2201, 7-16-2205, AND 18-2-105, MCA; AND PROVIDING AN EFFECTIVE DATE 1008

218 *(Senate Bill No. 305; Laslovich)* ALLOWING OFF-PREMISES DISPLAY AND SALE OF NEW MOTOR VEHICLES IN COUNTIES OTHER THAN THE COUNTY IN WHICH THE DEALER'S ESTABLISHED PLACE OF BUSINESS IS LOCATED UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 61-4-123, MCA. 1013

219 *(Senate Bill No. 364; Story)* REVISING PROVISIONS GOVERNING VACANCIES ON BOARDS OF COUNTY COMMISSIONERS; PROVIDING PROCEDURES WHEN MULTIPLE VACANCIES OCCUR THAT PREVENT ESTABLISHMENT OF A QUORUM; REQUIRING THAT APPOINTMENTS BE MADE BY THE COUNTY COMPENSATION BOARD OR BY THE DISTRICT JUDGE IF NO COMPENSATION BOARD EXISTS; REQUIRING APPOINTMENTS TO BE MADE FROM LISTS PROVIDED BY PARTISAN COUNTY CENTRAL COMMITTEES UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 7-4-2106, MCA. 1015

220 *(Senate Bill No. 367; Lind)* INSTRUCTING THE CODE COMMISSIONER TO RENUMBER TITLE 69, CHAPTER 8, PART 10, MCA, AS AN INTEGRAL PART OF TITLE 69, CHAPTER 3, MCA 1017

221 *(Senate Bill No. 374; Cooney)* AUTHORIZING A PERSON WHO HOLDS A POWER OF ATTORNEY FROM A MEMBER OF THE UNITED STATES ARMED FORCES TO APPLY FOR AN ABSENTEE BALLOT ON BEHALF OF THE MEMBER OF THE ARMED FORCES; AMENDING SECTIONS 13-13-212 AND 13-21-210, MCA; AND PROVIDING AN EFFECTIVE DATE 1017

222 *(Senate Bill No. 378; Gillan)* PROVIDING THAT, FOR INDIVIDUAL INCOME TAXES AND CORPORATE LICENSE AND INCOME TAXES, IF A TERM IS NOT DEFINED, THEN THE DEFINITION IN THE INTERNAL REVENUE CODE APPLIES; AMENDING SECTIONS 15-30-305 AND 15-31-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . 1019

223 *(Senate Bill No. 414; Laslovich)* CLARIFYING THAT THE LAWS GOVERNING MOTOR CARRIERS DO NOT APPLY TO THE TRANSPORTATION OF HOUSEHOLD GOODS AND GARBAGE IN THE COMMERCIAL AREAS OF A CITY, TOWN, OR VILLAGE WITH A POPULATION OF LESS THAN 500 PERSONS; AND AMENDING SECTION 69-12-102, MCA 1019

224 *(Senate Bill No. 440; J. Tropila)* REQUIRING A MILITARY VETERAN IN THE MEMBERSHIP OF THE STATE WORKFORCE INVESTMENT BOARD; AMENDING SECTION 53-2-1203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1021

225 *(Senate Bill No. 453; Essmann)* CREATING A UNIFORM FRAMEWORK TO INFORM THE PUBLIC OF MATTERS BEFORE THE BOARDS AND PROGRAMS OF THE DEPARTMENT OF LABOR AND INDUSTRY WITH RESPECT TO DISCIPLINARY PROCEEDINGS; AMENDING SECTIONS 37-1-101, 37-1-131, 37-1-136, 37-1-311, AND 37-1-405, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1022

226 *(Senate Bill No. 459; Elliott)* GIVING PREFERENCE TO PRODUCTS MADE IN THE UNITED STATES WHEN EQUAL CHOICES EXIST; AND AMENDING SECTIONS 18-4-301 AND 18-4-303, MCA. 1026

227 *(Senate Bill No. 480; Lind)* REQUIRING DISCLOSURE OF THE COLLECTION AND USE OF CERTAIN DATA GATHERED BY RENTAL VEHICLE ENTITIES 1028

228 *(Senate Bill No. 502; Cooney)* CLARIFYING CURRENT EXEMPTIONS TO THE ACCESSIBILITY STANDARDS FOR POLLING PLACES; AMENDING SECTIONS 13-3-202, 13-3-205, 13-3-206, 13-3-207, 13-3-212, AND 13-3-213, MCA; AND REPEALING SECTIONS 13-3-203 AND 13-3-204, MCA 1028

229 *(Senate Bill No. 527; Gillan)* REVISING WHEN CONDOMINIUM CONSTRUCTION IS EXEMPT FROM REVIEW UNDER CERTAIN PROVISIONS OF THE MONTANA SUBDIVISION AND PLATTING ACT; AMENDING SECTION 76-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1031

230 *(House Bill No. 12; Callahan)* GENERALLY REVISING LAWS RELATED TO PROSECUTION SERVICES; PROVIDING LEGISLATIVE FINDINGS; REVISING THE FUNDING OF AND BUDGETING FOR COUNTY ATTORNEY SALARIES; CLARIFYING CERTAIN PROVISIONS ON COUNTY POPULATION AND FULL-TIME OR PART-TIME COUNTY ATTORNEY POSITIONS; PROVIDING FOR THE STATUTORY APPROPRIATION OF STATE CONTRIBUTIONS FOR COUNTY ATTORNEY SALARIES; AMENDING SECTIONS 7-4-2502, 7-4-2503, 7-4-2704, 7-4-2706, 17-7-112, AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE. 1032

231 *(House Bill No. 526; Groesbeck)* REVISING THE TERRITORIAL INTEGRITY ACT LAWS TO AVOID WASTEFUL DUPLICATION OF FACILITIES; CLARIFYING AND DEFINING CERTAIN TERMS; ELIMINATING THE REBUTTABLE PRESUMPTION THAT THE NEAREST LINE IS THE LEAST-COST ELECTRIC SERVICE FACILITY FOR A NEW CUSTOMER; CLARIFYING ELECTRIC SERVICE FACILITIES PROVIDED TO LARGE CUSTOMERS; PROVIDING A PROCESS FOR SERVICING NEW SUBDIVISIONS; PROVIDING A DISPUTE RESOLUTION PROCESS; AMENDING SECTIONS 69-5-102, 69-5-105, 69-5-106, AND 69-5-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . 1038

232 *(House Bill No. 540; Groesbeck)* REVISING SILICOSIS BENEFITS; APPROPRIATING FUNDS TO THE DEPARTMENT OF LABOR AND INDUSTRY TO INCREASE SILICOSIS BENEFITS BY $50 A MONTH FOR EACH INDIVIDUAL RECEIVING BENEFITS; AMENDING SECTIONS 39-73-101, 39-73-103, 39-73-104, 39-73-107, AND 39-73-109, MCA; AND PROVIDING AN EFFECTIVE DATE 1041

233 *(Senate Bill No. 185; Hawks)* PROVIDING FOR THE OPERATION OF ELECTRIC VEHICLES; DEFINING "MEDIUM-SPEED ELECTRIC VEHICLE"; PROHIBITING OPERATION OF A MEDIUM-SPEED ELECTRIC VEHICLE ON CERTAIN HIGHWAYS; REQUIRING CERTAIN EQUIPMENT ON A MEDIUM-SPEED ELECTRIC VEHICLE; ALLOWING FOR THE OPERATION OF A VEHICLE EQUIPPED A CERTAIN WAY WITHOUT A MOTORCYCLE ENDORSEMENT; AMENDING SECTIONS 61-1-101 AND 61-5-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1043

234 *(Senate Bill No. 369; Smith)* ELIMINATING THE REQUIREMENT THAT RURAL COOPERATIVES USE THE FORMULAS PROVIDED IN POLE ATTACHMENT RULES OF THE FEDERAL COMMUNICATIONS COMMISSION OR SUCCESSOR FORMULAS RELATED TO RATES, TERM, OR CONDITIONS OF POLE ATTACHMENT AGREEMENTS; AMENDING SECTION 35-18-104, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1054

235 *(House Bill No. 361; Kottel)* REVISING REQUIREMENTS FOR A PROXY MARRIAGE; REQUIRING ONE PARTY TO A PROXY MARRIAGE TO BE A MEMBER OF THE ARMED FORCES OF THE UNITED STATES ON FEDERAL ACTIVE DUTY OR A RESIDENT OF MONTANA; AMENDING SECTIONS 40-1-202 AND 40-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1055

236 *(House Bill No. 369; Pomnichowski)* INCREASING THE AMOUNTS THAT A COUNTY MAY BORROW WITHOUT A VOTE OF THE ELECTORATE; AMENDING SECTION 7-7-2402, MCA; AND PROVIDING AN EFFECTIVE DATE 1056

237 *(House Bill No. 450; Pomnichowski)* ALLOWING THE USE OF A PARTIAL RATHER THAN A FULL SOCIAL SECURITY NUMBER ON AN APPLICATION FOR A RECREATIONAL LICENSE, CONTINGENT UPON THE GRANT OF AN EXEMPTION FROM THE FEDERAL GOVERNMENT ALLOWING THE USE OF THE LAST FOUR DIGITS OF A SOCIAL SECURITY NUMBER AND UPON WRITTEN CERTIFICATION THAT THE CONTINGENCY HAS OCCURRED; AMENDING SECTIONS 87-2-106 AND 87-2-202, MCA, AND SECTION 3, CHAPTER 321, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A CONTINGENT TERMINATION DATE . . . 1057

238 *(House Bill No. 452; Kottel)* PROVIDING FOR THE ACKNOWLEDGMENT OF EDUCATIONAL AND EMPLOYMENT ACHIEVEMENT CREDIT BY THE DEPARTMENT OF CORRECTIONS TO A PAROLEE THAT MAY REDUCE SUPERVISED TIME SPENT ON PAROLE; AND AMENDING SECTION 46-23-1021, MCA 1061

239 *(House Bill No. 36; Musgrove)* REPEALING THE TERMINATION DATE FOR INCREASING THE LIMIT TO $3 MILLION FOR A LOAN TO A WATER USERS' ASSOCIATION OR DITCH COMPANY FROM THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM STATE SPECIAL REVENUE ACCOUNT OR THE RENEWABLE RESOURCE LOAN PROCEEDS ACCOUNT; REPEALING SECTION 2, CHAPTER 418, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1062

240 *(House Bill No. 153; Jacobson)* ADOPTING THE MODEL REGISTERED AGENTS ACT; PROVIDING FOR FILING OF REGISTRATION FOR AGENTS FOR SERVICE OF PROCESS WITH THE SECRETARY OF STATE; PROVIDING THAT A REGISTERED AGENT'S ADDRESS IS NOT THE MEANS OF DETERMINING WHERE PUBLICATION IS APPROPRIATE; ELIMINATING THE REQUIREMENT FOR A REGISTERED OFFICE; PROVIDING FOR JURISDICTION IF A PRINCIPAL OFFICE IS NOT LOCATED IN MONTANA; AMENDING SECTIONS 15-31-103, 35-1-116, 35-1-216, 35-1-226, 35-1-425, 35-1-518, 35-1-523, 35-1-838, 35-1-940, 35-1-1028, 35-1-1029, 35-1-1037, 35-1-1038, 35-1-1040, 35-1-1104, 35-1-1109, 35-1-1309, 35-2-115, 35-2-130, 35-2-213, 35-2-222, 35-2-423, 35-2-528, 35-2-535, 35-2-609, 35-2-613, 35-2-729, 35-2-822, 35-2-823, 35-2-832, 35-2-904, 35-2-909, 35-2-1109, 35-3-202, 35-3-209, 35-3-210, 35-4-311, 35-4-411, 35-6-102, 35-8-202, 35-8-208, 35-8-209, 35-8-1003, 35-8-1011, 35-8-1014, 35-8-1203, 35-9-207, 35-9-501, 35-12-508, AND 35-12-601, MCA; REPEALING SECTIONS 35-1-313, 35-1-314, 35-1-315, 35-1-316, 35-1-317, 35-1-1032, 35-1-1033, 35-1-1034, 35-1-1036, 35-2-309, 35-2-310, 35-2-311, 35-2-314, 35-2-315, 35-2-827, 35-2-828, 35-2-829, 35-8-105, 35-8-911, 35-8-1004, 35-8-1005, 35-8-1006, 35-8-1103, AND 35-12-507, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1062

241 *(House Bill No. 433; Wiseman)* REQUIRING STATE AGENCIES AND LOCAL GOVERNMENTS TO MAKE READILY AVAILABLE FOR PUBLIC INSPECTION A SUMMARY REPORT ITEMIZING EXPENDITURES FOR LOBBYING AN ELECTED OR APPOINTED FEDERAL OFFICIAL; REQUIRING STATE AGENCIES AND LOCAL GOVERNMENTS TO DESIGNATE AN OFFICE FROM WHICH THE SUMMARY REPORT MAY BE OBTAINED; AND REQUIRING STATE AGENCIES AND LOCAL GOVERNMENTS TO POST THE SUMMARY REPORT TO THE INTERNET 1100

242 *(House Bill No. 496; French)* ALLOWING ADVANCED PRACTICE REGISTERED NURSES OR LICENSED PHYSICIAN ASSISTANTS TO COMPLETE MEDICAL EXAMS REQUIRED BY TRAFFIC LAWS; AND AMENDING SECTIONS 61-5-105, 61-5-111, 61-5-120, 61-5-207, 61-9-428, AND 61-13-103, MCA 1100

243 *(House Bill No. 594; Stahl)* DESIGNATING AN OFFICIAL LULLABY FOR MONTANA 1106

244 *(House Bill No. 636; Bixby)* PROHIBITING QUOTAS FOR STOPS, CITATIONS, AND ARRESTS BY LAW ENFORCEMENT OFFICERS; PROHIBITING THE USE OF QUOTAS IN EVALUATING LAW ENFORCEMENT OFFICERS; AMENDING SECTIONS 7-32-103, 7-32-2107, 7-32-4105, 44-1-302, AND 46-6-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1106

245 *(House Bill No. 641; Musgrove)* PROVIDING THAT A PERSON UNDER 21 YEARS OF AGE MAY NOT BE ARRESTED FOR OR CHARGED WITH THE OFFENSE OF POSSESSION OR CONSUMPTION OF AN ALCOHOLIC BEVERAGE SOLELY BECAUSE THE PERSON WAS AT A PLACE WHERE OTHER PERSONS WERE POSSESSING OR CONSUMING ALCOHOLIC BEVERAGES; AND AMENDING SECTION 45-5-624, MCA 1108

246 *(House Bill No. 681; Driscoll)* REVISING PROVISIONS OF THE MONTANA RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT; DEFINING TERMS; APPLYING CERTAIN PROVISIONS OF THE MONTANA RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT TO COMPETITIVE ELECTRICITY SUPPLIERS; AMENDING SECTIONS

69-8-1003, 69-8-1004, 69-8-1005, AND 69-8-1007, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1111

247 *(House Bill No. 19; McNutt)* REVISING LAWS GOVERNING STATE LAND ADMINISTRATION TO CLARIFY THAT LAND GRANTED PURSUANT TO THE MORRILL ACT IS NOT SUBJECT TO DEDUCTIONS OF INTEREST OR INCOME FOR PURPOSES OF FUNDING THE ADMINISTRATION OF MORRILL ACT LAND OR FUNDS DERIVED FROM MORRILL ACT LAND; PROVIDING A STATUTORY APPROPRIATION FOR THE ADMINISTRATION OF MORRILL ACT LAND; PROVIDING FOR THE CARRYOVER OF THE UNEXPENDED PORTION OF THE STATUTORY APPROPRIATION; PROVIDING FOR REIMBURSEMENT FROM THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO THE MORRILL ACT TRUST FOR THE ADMINISTRATIVE COSTS OF INVESTING THE MORRILL ACT FUNDS; AMENDING SECTIONS 17-1-508, 17-6-201, 17-7-502, 77-1-108, 77-1-109, 77-1-602, 77-1-606, 77-1-613, 77-1-905, 77-2-328, AND 77-5-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1117

248 *(House Bill No. 26; McGillvray)* TRANSFERRING THE RAIL SERVICE COMPETITION COUNCIL FROM THE OFFICE OF THE GOVERNOR TO THE DEPARTMENT OF TRANSPORTATION FOR ADMINISTRATIVE PURPOSES; DECREASING, MODIFYING, AND STAGGERING THE MEMBERSHIP OF THE COUNCIL; EXPANDING THE DUTIES OF THE COUNCIL TO INCLUDE PROMOTING THE EXPANSION OF EXISTING RAIL LINES AND THE CONSTRUCTION OF NEW RAIL LINES IN MONTANA; PROVIDING AN APPROPRIATION; AND AMENDING SECTION 2-15-246, MCA 1124

249 *(House Bill No. 77; Clark)* IMPLEMENTING MEDICAID PROVISIONS OF THE FEDERAL DEFICIT REDUCTION ACT OF 2005 BY ALLOWING RECOVERY OF PAYMENTS OWED TO MEDICAID RECIPIENTS AND REQUIRING COORDINATION OF ELIGIBILITY INFORMATION ABOUT MEDICAID RECIPIENTS; AMENDING SECTION 33-35-306, MCA; AND PROVIDING AN EFFECTIVE DATE 1126

250 *(House Bill No. 83; Hiner)* REVISING THE LAWS RELATING TO MEDICAL PAROLE OF PRISON INMATES; PROVIDING THAT THE BOARD OF PARDONS AND PAROLE SHALL HOLD A HEARING ON APPLICATIONS FOR MEDICAL PAROLE; REVISING PROCEDURES AND STANDARDS FOR APPLICATION FOR AND ELIGIBILITY FOR MEDICAL PAROLE; AMENDING SECTION 46-23-210, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 1128

251 *(House Bill No. 117; Henry)* REQUIRING NEWBORN HEARING SCREENINGS AND EDUCATION; AMENDING SECTIONS 53-19-401, 53-19-402, AND 53-19-404, MCA; AND REPEALING SECTION 53-19-403, MCA. 1130

252 *(House Bill No. 154; Clark)* REVISING THE LAWS GOVERNING COMMITMENT PROCEEDINGS FOR THE DEVELOPMENTALLY DISABLED TO ALLOW A COURT TO ORDER COMMUNITY TREATMENT AS AN OPTION; DEFINING THE ELEMENTS OF A COMMUNITY TREATMENT PLAN; AND AMENDING SECTIONS 53-20-102, 53-20-112, 53-20-118, 53-20-121, 53-20-125, 53-20-126, 53-20-128, 53-20-129, 53-20-132, 53-20-133, AND 53-20-141, MCA 1132

253 *(House Bill No. 235; Dutton)* EXPANDING BUSINESS IMPROVEMENT DISTRICT PURPOSES TO INCLUDE TOURISM, PROMOTION, AND MARKETING; REVISING OPTIONS FOR ASSESSMENT OF COSTS TO INCLUDE FLAT-FEE OPTIONS; PROVIDING FOR DISTRICTS

COMPOSED OF NONCONTINGUOUS AREAS IF PROPERTY IS RELATED BY PURPOSE; ALLOWING CLASSIFICATION CRITERIA TO BE USED IN ASSESSING COSTS; AND AMENDING SECTIONS 7-12-1102, 7-12-1111, 7-12-1121, 7-12-1132, AND 7-12-1133, MCA 1143

254 *(House Bill No. 272; L. Jones)* ALLOWING DISSEMINATION OF THE PHOTOGRAPH OF A LEVEL 2 OR 3 SEXUAL OFFENDER; REQUIRING A NEW PHOTOGRAPH OF A LEVEL 2 OR 3 SEXUAL OFFENDER EVERY YEAR DURING THE REGISTRATION PERIOD; AND AMENDING SECTIONS 46-23-504, 46-23-505, AND 46-23-508, MCA . . 1145

255 *(House Bill No. 283; Campbell)* ESTABLISHING THE FINANCIAL ASSISTANCE AMOUNT FOR RESIDENT NONBENEFICIARY STUDENTS; REVISING ELIGIBILITY CRITERIA; AMENDING SECTION 20-25-428, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1149

256 *(House Bill No. 291; Ross)* CLARIFYING THE POWERS OF THE BOARD OF ENVIRONMENTAL REVIEW RELATED TO AIR QUALITY PERMITTING AND RULEMAKING FOR AGRICULTURAL OPERATIONS; AMENDING SECTION 75-2-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1151

257 *(House Bill No. 300; Milburn)* CLARIFYING THE FALSE STATEMENT PROVISIONS BASED ON STATEMENTS MADE BY GOVERNMENTAL SOURCES RELATING TO AN APPLICATION FOR AN ALCOHOLIC BEVERAGE LICENSE; AMENDING SECTION 16-4-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1151

258 *(House Bill No. 310; Dutton)* PROVIDING FOR THE TRANSFER OF REAL PROPERTY BY A BENEFICIARY DEED; PROVIDING A FORM FOR A BENEFICIARY DEED; PROVIDING FOR THE REVOCATION OF A BENEFICIARY DEED; PROVIDING FOR THE RIGHTS OF CREDITORS AND OTHERS; AMENDING SECTION 72-6-111, MCA; AND PROVIDING AN APPLICABILITY DATE 1153

259 *(House Bill No. 319; Glaser)* PROVIDING CONTRACT INDEMNIFICATION PROVISIONS FOR PUBLIC CONSTRUCTION CONTRACTS AND HIGHWAY CONSTRUCTION CONTRACTS; AND PROVIDING FOR THE PAYMENT OF CONTRACTORS AND SUBCONTRACTORS ON HIGHWAY CONSTRUCTION CONTRACTS . 1156

260 *(House Bill No. 328; Stahl)* CLARIFYING THE DEFINITION OF THE TERM "FACILITY" IN THE MONTANA MAJOR FACILITY SITING ACT; AND AMENDING SECTION 75-20-104, MCA 1158

261 *(House Bill No. 364; Malcolm)* CREATING THE LIVESTOCK LOSS REDUCTION AND MITIGATION BOARD TO ADMINISTER PROGRAMS FOR THE MITIGATION AND REIMBURSEMENT OF LIVESTOCK LOSSES BY WOLVES; ESTABLISHING BOARD MEMBERSHIP, POWERS, DUTIES, AND REPORTING REQUIREMENTS; ESTABLISHING ACCOUNTS AND A TRUST FUND TO FUND THE MITIGATION OF LIVESTOCK LOSSES BECAUSE OF WOLF PREDATION AND TO REIMBURSE LIVESTOCK OWNERS FOR LOSSES RELATED TO PREDATION BY WOLVES; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES. 1160

262 *(House Bill No. 389; Barrett)* REVISING THE POWERS AND DUTIES OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE FISH, WILDLIFE, AND PARKS COMMISSION REGARDING DEVELOPMENT OR IMPLEMENTATION OF THE STATE ELK MANAGEMENT PLAN; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

TO REQUEST, AS PART OF AN ELK MANAGEMENT PLAN, THAT PUBLIC LANDS AND PUBLIC ROADS REMAIN OPEN TO PUBLIC ACCESS DURING THE BIG GAME HUNTING SEASON; REQUIRING THE FISH, WILDLIFE, AND PARKS COMMISSION TO CONSIDER LANDOWNER TOLERANCE WHEN DECIDING WHETHER TO RESTRICT ELK HUNTING IN A HUNTING DISTRICT; AMENDING SECTIONS 87-1-201 AND 87-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1166

263 *(House Bill No. 414; Reinhart)* PROVIDING THAT RECORDS OF PERSONS WITH DEVELOPMENTAL DISABILITIES WHO ARE COMMITTED TO A RESIDENTIAL FACILITY BE MAINTAINED SEPARATELY 1169

264 *(House Bill No. 415; Reinhart)* REMOVING THE PROVISION THAT A PARK DEDICATION MAY NOT BE REQUIRED FOR A MINOR SUBDIVISION; MAKING PARK DEDICATION FOR A MINOR SUBDIVISION DISCRETIONARY; AND AMENDING SECTION 76-3-621, MCA 1170

265 *(House Bill No. 428; Gallik)* ALLOWING A VEHICLE THAT IS PERMANENTLY REGISTERED TO BE DETERMINED TO BE A JUNK VEHICLE IF IT MEETS ALL OTHER CRITERIA FOR DETERMINING JUNK VEHICLE STATUS; AND AMENDING SECTION 75-10-501, MCA 1172

266 *(House Bill No. 435; Parker)* AMENDING STATUTES REGARDING THE ABILITY OF A VICTIM OR DEPENDENT OF A DECEASED VICTIM TO RECOVER MONEY GAINED AS A DIRECT RESULT OF A HOMICIDE OR CERTAIN OTHER CRIMINAL OFFENSES; PROHIBITING CERTAIN PERSONS FROM SELLING CONFIDENTIAL CRIMINAL JUSTICE INFORMATION AND PROVIDING A PENALTY; REVISING THE STATUTE OF LIMITATIONS FOR CERTAIN WRONGFUL DEATH ACTIONS; AMENDING SECTIONS 27-2-204 AND 53-9-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1173

267 *(House Bill No. 456; McNutt)* REMOVING REFERENCES TO MOBILE HOMES, MOBILE HOME OWNERS, AND MOBILE HOME PARKS FROM THE MONTANA RESIDENTIAL LANDLORD AND TENANT ACT OF 1977; CREATING THE MONTANA RESIDENTIAL MOBILE HOME LOT RENTAL ACT; PROVIDING REQUIREMENTS FOR MOBILE HOME LOT RENTAL AGREEMENTS; ESTABLISHING RIGHTS, OBLIGATIONS, AND REMEDIES FOR MOBILE HOME LOT TENANTS AND LANDLORDS; AMENDING SECTIONS 70-24-103, 70-24-305, 70-24-314, 70-24-422, 70-24-431, AND 70-24-441, MCA; AND REPEALING SECTIONS 70-24-313, 70-24-315, 70-24-432, AND 70-24-436, MCA . . . 1175

268 *(House Bill No. 459; Heinert)* REQUIRING THE RESPECTFUL TRANSPORTATION AND DELIVERY OF A FETUS WHEN AN AUTOPSY IS REQUIRED; AND AMENDING SECTION 46-4-123, MCA 1196

269 *(House Bill No. 460; Keane)* REVISING THE METAL MINE RECLAMATION LAWS; CLARIFYING RECLAMATION PLAN REQUIREMENTS; REQUIRING A TEMPORARY RECLAMATION BOND FOR CERTAIN UNANTICIPATED CIRCUMSTANCES; PROVIDING A PROCESS FOR DETERMINING THE TEMPORARY BOND AMOUNT; AMENDING SECTION 82-4-338, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1197

270 *(House Bill No. 467; K. Peterson)* REVISING THE MONTANA MEDICAL LEGAL PANEL ACT; CLARIFYING THAT CLAIMS AGAINST HEALTH CARE PROVIDERS IN CERTAIN GOVERNMENTAL INFIRMARIES

ARE NOT SUBJECT TO THE PROVISIONS OF THE ACT; INCLUDING TELEMEDICINE PHYSICIANS UNDER THE PROVISIONS OF THE ACT; AMENDING SECTION 27-6-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1201

271 *(House Bill No. 468; McGillvray)* PROVIDING THAT THE PROCEEDINGS AND RECORDS OF THE MONTANA STATE BOARD OF MEDICAL EXAMINERS' PROGRAM TO ASSIST PHYSICIANS ARE CONFIDENTIAL. 1203

272 *(House Bill No. 487; Hiner)* INCREASING THE AMOUNT OF REVENUE OR FINANCIAL ASSISTANCE RECEIVED BY A LOCAL GOVERNING ENTITY THAT IS NECESSARY TO REQUIRE THAT AN AUDIT BE CONDUCTED; AND AMENDING SECTION 2-7-503, MCA 1204

273 *(House Bill No. 520; Arntzen)* GENERALLY REVISING ELECTION LAWS; REVISING TERMINOLOGY; AMENDING PROVISIONS RELATED TO PUBLIC NOTICE, OFFICE HOURS, WRITE-IN CANDIDATES, CANDIDATE VACANCIES, FILING PROCEDURES, BALLOTS, PRECINCT REGISTERS, THE ELIGIBILITY OF POLITICAL PARTIES TO HOLD PRIMARY ELECTIONS, AND VOTE-COUNTING SYSTEMS; AMENDING TIMELINES FOR NOMINATION OF PRESIDENTIAL AND VICE PRESIDENTIAL ELECTORS; REVISING WHEN BALLOTS ARE AVAILABLE FOR ABSENTEE VOTING; REVISING THE INFORMATION INCLUDED IN THE VOTER INFORMATION PAMPHLET; AMENDING SECTIONS 13-1-101, 13-1-108, 13-1-111, 13-1-202, 13-2-304, 13-10-204, 13-10-209, 13-10-211, 13-10-301, 13-10-311, 13-10-326, 13-10-503, 13-10-601, 13-12-205, 13-12-207, 13-13-117, 13-13-201, 13-13-205, 13-13-213, 13-13-214, 13-13-241, 13-15-107, 13-15-201, 13-15-206, 13-15-209, 13-15-301, 13-17-103, 13-17-211, 13-17-212, 13-25-101, AND 13-27-401, MCA; AND REPEALING SECTIONS 13-13-203, 13-16-414, 13-17-206, AND 13-17-305, MCA 1205

274 *(House Bill No. 524; Hamilton)* REVISING THE REQUIREMENTS FOR INCORPORATING A CITY OR TOWN; PROVIDING THAT ANY WARD OF A PROPOSED CITY OR TOWN MUST HAVE AT LEAST 200 INHABITANTS PER SQUARE MILE OF LAND AREA; REQUIRING THE PROPOSED AREA TO HAVE A POST OFFICE; AND AMENDING SECTION 7-2-4101, MCA 1227

275 *(House Bill No. 537; Ripley)* REVISING STATE HAIL INSURANCE LAWS; CLARIFYING THAT HAIL INSURANCE MAY BE ISSUED FOR ANY CROP OR OTHER AGRICULTURAL OR HORTICULTURAL PRODUCT SUBJECT TO INJURY OR DESTRUCTION BY HAIL; CLARIFYING REFERENCES TO CROPS; INCREASING THE AMOUNT OF ACTUAL INSURANCE THAT MAY BE WRITTEN FOR CROPS ON IRRIGATED AND NONIRRIGATED LANDS; AMENDING SECTIONS 80-2-203, 80-2-207, 80-2-208, 80-2-209, 80-2-227, 80-2-231, AND 80-2-244, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1227

276 *(House Bill No. 630; Gallik)* PROVIDING THAT FRAUDULENT ELECTRONIC MISREPRESENTATION, "PHISHING", IS THE CRIME OF A THEFT OF IDENTITY; AND AMENDING SECTIONS 30-14-1701 AND 30-14-1702, MCA. 1230

277 *(House Bill No. 633; Dutton)* REVISING THE LAWS RELATING TO THE TRANSFER OF ALL-BEVERAGES LIQUOR LICENSES TO A QUOTA AREA PURSUANT TO A DEPARTMENT-CONDUCTED LOTTERY; PROVIDING THAT THE OWNER OF A LOTTERY-TRANSFERRED ALL-BEVERAGES LIQUOR LICENSE IS NOT ELIGIBLE TO OFFER GAMBLING; ALLOWING A PERSON TO APPLY FOR A LOTTERY

ALL-BEVERAGES LIQUOR LICENSE TRANSFER ONLY ONCE IN EVERY 12-MONTH PERIOD; REQUIRING A LETTER OF CREDIT TO ACCOMPANY AN ALL-BEVERAGE LIQUOR LICENSE LOTTERY TRANSFER APPLICATION; PROVIDING THAT AN APPLICANT OR A PERSON WITH AN OWNERSHIP INTEREST IN AN APPLICANT MAY NOT HAVE AN OWNERSHIP INTEREST IN AN ALL-BEVERAGES LIQUOR LICENSE; REQUIRING THAT A SUCCESSFUL APPLICANT FOR A LOTTERY-AWARDED ALL-BEVERAGES LIQUOR LICENSE COMMENCE BUSINESS WITHIN 1 YEAR; AMENDING SECTIONS 16-4-204 AND 23-5-119, MCA; AND PROVIDING AN EFFECTIVE DATE 1232

278 *(House Bill No. 634; Van Dyk)* INCREASING THE AMOUNT OF BONDS AND NOTES THAT THE FACILITY FINANCE AUTHORITY MAY ISSUE; AMENDING SECTION 90-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1235

279 *(House Bill No. 672; Glaser)* REVISING SCHOOL DISTRICT DEBT LIMITATIONS; CLARIFYING ANB CALCULATIONS FOR FACILITY-GUARANTEED MILL VALUE PURPOSES; AMENDING SECTIONS 20-9-406 AND 20-9-407, MCA; AND PROVIDING AN EFFECTIVE DATE 1236

280 *(House Bill No. 688; Olson)* CREATING A COAL AND URANIUM MINE PERMITTING AND RECLAMATION PROGRAM ACCOUNT; ALLOCATING COAL SEVERANCE TAXES TO THE COAL AND URANIUM MINE PERMITTING AND RECLAMATION PROGRAM ACCOUNT; PROVIDING THAT THE MONEY IN THE ACCOUNT BE USED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR THE ADMINISTRATION AND ENFORCEMENT OF COAL AND URANIUM MINE PERMITTING AND RECLAMATION; AMENDING SECTION 15-35-108, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 1239

281 *(House Bill No. 690; Bergren)* REVISING THE SUSPENSION PROCEDURE FOR MUNICIPAL FIREFIGHTERS TO PROVIDE FOR AN OPTIONAL HEARING BEFORE A CITY COUNCIL OR CITY COMMISSION; AND AMENDING SECTION 7-33-4124, MCA 1241

282 *(House Bill No. 742; Raser)* PROVIDING FOR THE ADMISSIBILITY OF HEARSAY STATEMENTS TO PROVE THE OCCURRENCE OF, OR THE IDENTITY OF THE ABUSER, IN CASES OF PHYSICAL OR SEXUAL ABUSE OF AN INDIVIDUAL WITH A DEVELOPMENTAL DISABILITY; AND PROVIDING AN APPLICABILITY DATE 1242

283 *(House Bill No. 743; Clark)* ADDING CHRONIC DISEASE PROGRAMS TO THE DEFINITION OF "PROGRAMS FOR TOBACCO DISEASE PREVENTION"; AMENDING SECTIONS 17-6-602 AND 17-6-606, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1245

284 *(House Bill No. 744; Rice)* REVISING CERTAIN SCHOOL LAWS; REVISING TERRITORY TRANSFER LAWS RELATED TO K-12 DISTRICTS; AMENDING SECTION 20-6-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1246

285 *(House Bill No. 771; W. Jones)* GENERALLY REVISING ACTUARIAL VALUATION AND REPORTING REQUIREMENTS RELATED TO THE INVESTMENTS AND BENEFITS OF THE STATEWIDE PUBLIC EMPLOYEES' RETIREMENT SYSTEMS; AMENDING SECTIONS 5-11-210, 19-2-405, 19-2-407, 19-2-408, 19-20-201, AND 19-20-719, MCA; AND PROVIDING AN EFFECTIVE DATE. 1249

286 *(House Bill No. 778; Stahl)* PROVIDING AN EXEMPTION FROM TAXATION FOR OIL AND GAS WELLS, WORKING INTERESTS, AND

NONWORKING INTERESTS OWNED BY THE STATE OR A LOCAL GOVERNMENT; AMENDING SECTION 15-36-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 1255

287 *(House Bill No. 781; Windy Boy)* REQUIRING EACH LAW ENFORCEMENT AGENCY TO ADOPT A POLICY ON RACE-BASED TRAFFIC STOPS, INCLUDING THE COLLECTION OF DATA ON RACIAL PROFILING IN TRAFFIC STOPS; AMENDING SECTION 44-2-117, MCA; AND PROVIDING AN EFFECTIVE DATE. 1257

288 *(House Bill No. 785; Lange)* EXEMPTING FROM THE WORKERS' COMPENSATION ACT AN ATHLETE EMPLOYED BY OR ON A TEAM OR A SPORTS CLUB ENGAGED IN CONTACT SPORTS; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1259

289 *(House Bill No. 811; Wells)* ESTABLISHING A TRADITIONAL ARTS AND CRAFTS ACCOUNT IN THE STATE SPECIAL REVENUE FUND; ALLOWING THE MONTANA ARTS COUNCIL TO PURCHASE AND SELL TRADITIONAL AMERICAN INDIAN ARTS AND CRAFTS; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO TRANSFER REVENUE GENERATED BY PAST SALES AND TO TRANSFER ACQUISITIONS TO THE MONTANA ARTS COUNCIL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1263

290 *(Senate Bill No. 89; Williams)* REQUIRING BREAK TIME AND PRIVACY FOR NEEDS OF BREASTFEEDING MOTHERS IN STATE AND COUNTY GOVERNMENTS, MUNICIPALITIES, SCHOOL DISTRICTS, AND THE UNIVERSITY SYSTEM; AND PROVIDING THAT IT IS DISCRIMINATION TO REFUSE TO HIRE OR EMPLOY, BAR, OR DISCHARGE FROM EMPLOYMENT AN EMPLOYEE WHO EXPRESSES BREAST MILK OR TO DISCRIMINATE IN TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT 1264

291 *(Senate Bill No. 95; Smith)* REMOVING THE REQUIREMENT FOR A PHYSICIAN DIRECTOR OF AN AUTOMATED EXTERNAL DEFIBRILLATOR PROGRAM; AMENDING SECTIONS 50-6-502, 50-6-503, AND 50-6-505, MCA; AND PROVIDING AN EFFECTIVE DATE 1265

292 *(Senate Bill No. 102; Lind)* REVISING LAWS GOVERNING MUTUAL AID AGREEMENTS FOR PROTECTION AGAINST DISASTERS, INCIDENTS, AND EMERGENCIES; INCLUDING GOVERNING BODIES OF FIRE PROTECTION SERVICES, EMERGENCY MEDICAL CARE PROVIDERS, AND LOCAL GOVERNMENT SUBDIVISIONS AS ENTITIES THAT MAY PARTICIPATE IN CERTAIN MUTUAL AID AGREEMENTS AND FROM WHICH ASSISTANCE MAY BE REQUESTED; AMENDING SECTIONS 7-33-2108, 7-33-2202, 7-33-2405, 7-33-4112, 10-3-202, 10-3-209, 10-3-1102, AND 10-3-1103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1267

293 *(Senate Bill No. 114; Larson)* REVISING CONSTRUCTION LIEN LAWS; DEFINING "ORIGINAL CONTRACTOR"; REVISING CONSTRUCTION LIEN NOTICE REQUIREMENTS; AND AMENDING SECTIONS 71-3-522 AND 71-3-531, MCA 1272

294 *(Senate Bill No. 132; Gallus)* PROVIDING FOR INFORMED CONSENT AND A WAIVER OF THE REQUIREMENT FOR A RUBELLA BLOOD TEST AS A CONDITION OF OBTAINING A MARRIAGE LICENSE; AND AMENDING SECTIONS 40-1-202, 40-1-203, 40-1-205, 40-1-206, AND 40-1-208, MCA 1275

295 *(Senate Bill No. 246; Gallus)* ADDING AMBULANCE SERVICES TO THOSE HEALTH CARE PROVIDERS ABLE TO ESTABLISH A LIEN FOR SERVICES RENDERED IN THE DIAGNOSIS OR TREATMENT OF A MEDICAL CONDITION; AND AMENDING SECTION 71-3-1114, MCA 1277

296 *(Senate Bill No. 339; Murphy)* REVISING ANNEXATION AND ZONING LAWS; PROHIBITING A MUNICIPALITY FROM ANNEXING TERRITORY LOCATED IN A COUNTY DIFFERENT FROM THE COUNTY IN WHICH THE MUNICIPALITY IS LOCATED UNLESS CERTAIN CONDITIONS ARE MET; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1278

297 *(Senate Bill No. 406; Bales)* CLARIFYING THE PROCESS OF PETITIONING FOR ESTABLISHMENT OF A COUNTY BOUNTY PROGRAM AND COUNTY PREDATORY ANIMAL CONTROL PROGRAMS BY PROVIDING THAT A SIGNATURE ON A PETITION MAY NOT BE WITHDRAWN BY THE SIGNER AFTER THE HOUR SET FOR HEARING THE PETITION; AMENDING SECTIONS 81-7-202, 81-7-305, AND 81-7-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1279

298 *(Senate Bill No. 422; Gebhardt)* ELIMINATING THE REQUIREMENT THAT POLE TRAILERS ENGAGED IN TRANSPORTING LOGS BE EQUIPPED WITH WRAPPERS MADE OF STEEL CHAIN, STEEL CABLE, OR A COMBINATION OF STEEL CHAIN AND STEEL CABLE; AMENDING SECTION 61-9-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1281

299 *(Senate Bill No. 532; Gallus)* AUTHORIZING PARTICIPATION IN THE FIREFIGHTERS' UNITED RETIREMENT SYSTEM BY CERTAIN FIRE DEPARTMENTS; AUTHORIZING A RETURN TO SERVICE FOR A LIMITED NUMBER OF HOURS WITHOUT LOSS OF BENEFITS; AMENDING SECTIONS 19-13-210 AND 19-13-301, MCA; AND PROVIDING AN EFFECTIVE DATE 1282

300 *(Senate Bill No. 544; Hansen)* CREATING A MONTANA-CERTIFIED NATURAL BEEF CATTLE MARKETING PROGRAM TO BE ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE AND THE DEPARTMENT OF LIVESTOCK; PROVIDING QUALIFICATIONS FOR THE CERTIFICATION OF MONTANA NATURAL BEEF CATTLE AND MONTANA-CERTIFIED NATURAL GRASS-FED BEEF CATTLE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1284

301 *(House Bill No. 3; Franklin)* APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1285

302 *(House Bill No. 4; Musgrove)* APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2007; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEARS 2008 AND 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1286

303 *(House Bill No. 9; Kasten)* ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECTS GRANT AWARDS; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE CULTURAL AND AESTHETIC PROJECTS TRUST FUND ACCOUNT; AND PROVIDING AN EFFECTIVE DATE 1295

304 *(House Bill No. 27; Driscoll)* AUTHORIZING A WIRELESS ENHANCED 9-1-1 EMERGENCY TELEPHONE SYSTEM AND PROVIDING FOR ITS ADMINISTRATION; PROVIDING FOR FUNDING OF THE SYSTEM BY LEVYING A WIRELESS ENHANCED 9-1-1 FEE; ESTABLISHING ACCOUNTS FOR THE DEPOSIT OF FEES COLLECTED; PROVIDING FOR DISTRIBUTION OF THE FEES COLLECTED; DEFINING ELIGIBILITY CRITERIA FOR WIRELESS COST RECOVERY; AMENDING SECTIONS 10-4-101, 10-4-102, 10-4-114, 10-4-201, AND 10-4-301, MCA; AND PROVIDING AN EFFECTIVE DATE. 1298

305 *(House Bill No. 63; Musgrove)* PROVIDING FOR THE ACTUARIAL FUNDING OF THE TEACHERS' RETIREMENT SYSTEM; PROVIDING A SUPPLEMENTAL CONTRIBUTION, PAYABLE BY THE STATE, TO THE TEACHERS' RETIREMENT SYSTEM FOR EMPLOYEES OF SCHOOL DISTRICTS AND COMMUNITY COLLEGES; PROVIDING FOR A STATUTORY APPROPRIATION; REVISING DEFINITIONS; ESTABLISHING STATE POLICY REGARDING TEACHERS' RETIREMENT; REVISING THE REQUIREMENTS FOR THE TEACHERS' RETIREMENT BOARD TO SET THE TEACHERS' RETIREMENT SYSTEM'S REGULAR INTEREST RATE; INCREASING THE EMPLOYER CONTRIBUTION RATE FOR TEACHERS' RETIREMENT; INCREASING THE SUPPLEMENTAL CONTRIBUTION TO THE OPTIONAL RETIREMENT PROGRAM; ELIMINATING THE AUTHORITY OF THE TEACHERS' RETIREMENT BOARD TO INCREASE THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT; REVISING AND CLARIFYING THE MAXIMUM AMOUNT OF COMPENSATION A RETIRED MEMBER OF THE TEACHERS' RETIREMENT SYSTEM MAY EARN UNDER CERTAIN CIRCUMSTANCES; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 17-7-502, 19-20-101, 19-20-102, 19-20-501, 19-20-605, 19-20-621, 19-20-716, 19-20-719, AND 19-20-731, MCA; AND PROVIDING EFFECTIVE DATES. 1305

306 *(House Bill No. 95; Olson)* PROVIDING A STATUTORY APPROPRIATION TO FUND A STATE CONTRIBUTION TO ACCOUNTS OF CERTAIN EMPLOYEES PARTICIPATING IN THE OPTIONAL RETIREMENT PROGRAM; REQUIRING A STATE CONTRIBUTION TO ACCOUNTS OF CERTAIN EMPLOYEES PARTICIPATING IN THE OPTIONAL RETIREMENT PROGRAM; AMENDING SECTIONS 17-7-502 AND 19-21-203, MCA; AND PROVIDING AN EFFECTIVE DATE 1315

307 *(House Bill No. 125; Kasten)* APPROPRIATING FUNDS TO REPAY IN FULL THE LOAN FOR THE STARTUP COSTS OF THE DEFINED CONTRIBUTION RETIREMENT PLAN IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1317

308 *(House Bill No. 136; Milburn)* PROVIDING FOR PAYMENT OF A STATE DEATH BENEFIT TO BENEFICIARIES OF MEMBERS OF THE MONTANA NATIONAL GUARD WHO DIE IN THE LINE OF DUTY WHILE ON STATE ACTIVE DUTY; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 15-30-116 AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE 1317

309 *(House Bill No. 139; Branae)* CREATING A LEGISLATIVE BRANCH RETIREMENT TERMINATION RESERVE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION AND A FUND TRANSFER; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE. . 1320

310 *(House Bill No. 148; Grinde)* EXPANDING THE DEFINITION OF "PUBLIC SWIMMING POOL"; DEFINING TERMS; IMPOSING FEES FOR THE REVIEW OF PLANS RELATING TO THE CONSTRUCTION

OR ALTERATION OF PUBLIC SWIMMING POOLS OR PUBLIC BATHING PLACES; CLARIFYING THE TERM "SEPARATE" WITH REGARD TO PUBLIC SWIMMING POOLS; INCREASING FEES FOR LICENSURE OF PUBLIC SWIMMING POOLS, PUBLIC BATHING PLACES, AND SPAS OR WADING POOLS; AUTHORIZING LOCAL BOARDS OF HEALTH TO ESTABLISH INSPECTION AND ENFORCEMENT ACTIVITIES OF PUBLIC SWIMMING POOLS AND PUBLIC BATHING PLACES; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO DEPOSIT ALL FEES COLLECTED BY LOCAL BOARDS OF HEALTH IN A STATE SPECIAL REVENUE FUND; CLARIFYING LICENSE VALIDATION REQUIREMENTS; AND AMENDING SECTIONS 50-53-102, 50-53-103, 50-53-201, 50-53-202, 50-53-203, AND 50-53-206, MCA 1321

311 *(House Bill No. 179; French)* ESTABLISHING THE MONTANA MILITARY FAMILY RELIEF FUND; CREATING AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND FOR USE BY THE FUND; AUTHORIZING THE AWARD OF STATUS-BASED, NEEDS-BASED, AND CASUALTY-BASED GRANTS; ESTABLISHING INELIGIBILITY CRITERIA FOR GRANTS; REQUIRING THE DEPARTMENT OF MILITARY AFFAIRS TO ADOPT RULES TO IMPLEMENT AND ADMINISTER THE FUND; PROVIDING FOR A VOLUNTARY INCOME TAX CHECKOFF FOR THE FUND; PROVIDING A STATUTORY APPROPRIATION; PROVIDING A TRANSFER OF FUNDS TO THE FUND; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1325

312 *(House Bill No. 259; Reinhart)* DEFINING TERMS; RESTRICTING THE USE AND LOCATION OF GRAY WATER REUSE SYSTEMS; DIRECTING THE BOARD OF ENVIRONMENTAL REVIEW TO CREATE RULES REGULATING RESIDENTIAL GRAY WATER REUSE SYSTEMS; AMENDING SECTION 75-5-305, MCA; AND PROVIDING AN APPLICABILITY CLAUSE 1329

313 *(House Bill No. 269; Rice)* REVISING LAWS RELATING TO WEEDS; REMOVING THE REQUIREMENT THAT AN OWNER SELLING PROPERTY PROVIDE NOTICE THAT THERE IS THE POTENTIAL EXISTENCE OF NOXIOUS WEEDS; PROVIDING THAT A COUNTY WEED BOARD MAY ESTABLISH EMBARGOES; CLARIFYING STATUTES REGARDING THE CREATION OF A NOXIOUS WEED FUND IN EACH COUNTY; REMOVING THE REQUIREMENT THAT AN INTEGRATED NOXIOUS WEED MANAGEMENT PLAN WITH STATE AGENCIES BE FOR 6 YEARS; REMOVING THE REDUNDANT STATUTE REGARDING RESPONSIBILITY FOR ASSESSMENTS AND TAXES FOR THE WEED DISTRICT; PROVIDING A TRANSFER OF FUNDS; AMENDING SECTIONS 7-22-2116, 7-22-2126, 7-22-2142, AND 7-22-2151, MCA; REPEALING SECTIONS 7-22-2149 AND 77-6-114, MCA; AND PROVIDING EFFECTIVE DATES 1330

314 *(House Bill No. 298; Hiner)* EXTENDING THE 2003 APPROPRIATION OF MONEY FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE DEPARTMENT OF JUSTICE FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA NATURAL RESOURCE DAMAGE ASSESSMENT AND LITIGATION; REQUIRING REPAYMENT OF THE EXPENDED AMOUNTS FROM ANY RECOVERY IN THE LITIGATION; AND PROVIDING EFFECTIVE DATES 1333

315 *(House Bill No. 299; Milburn)* REVISING PROVISIONS RELATED TO SKI AREAS AND PASSENGER ROPEWAYS; PROVIDING DEFINITIONS; REVISING THE DEFINITIONS OF "PASSENGER ROPEWAY" AND

"SKIER"; REQUIRING THE MARKING OF DESIGNATED FREESTYLE TERRAIN; AND AMENDING SECTIONS 23-2-702, 23-2-703, 23-2-704, 23-2-731, 23-2-733, 23-2-734, 23-2-735, AND 23-2-736, MCA 1334

316 *(House Bill No. 362; Olson)* ALLOWING A BOARD OF COUNTY COMMISSIONERS TO CANCEL CERTAIN DELINQUENT REAL PROPERTY TAXES; AMENDING SECTIONS 15-16-701 AND 15-16-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1338

317 *(House Bill No. 425; Sesso)* REVISING REQUIRED CONTENTS OF SUBDIVISION REGULATIONS; REQUIRING SUBDIVISION REGULATIONS TO REQUIRE A SUBDIVIDER TO MEET WITH AN AGENT OF THE GOVERNING BODY PRIOR TO SUBMITTAL OF A SUBDIVISION APPLICATION; AMENDING SECTION 76-3-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1340

318 *(House Bill No. 461; Ebinger)* ESTABLISHING REQUIREMENTS FOR CIGARETTES SOLD IN THE STATE; ESTABLISHING REDUCED IGNITION PROPENSITY STANDARDS AND TESTING AND CERTIFICATION REQUIREMENTS; PROVIDING DEFINITIONS; REQUIRING THAT RECORDS OF TESTING BE MAINTAINED AND MADE AVAILABLE UPON REQUEST; REQUIRING THE DEPARTMENT OF JUSTICE TO REPORT TO THE LEGISLATURE EVERY 4 YEARS; REQUIRING CERTAIN INFORMATION FOR CERTIFICATION OF CIGARETTES; REQUIRING A CIGARETTE MANUFACTURER TO PAY A FEE FOR CERTIFICATION AND REQUIRING REVENUE FROM THE FEE TO BE USED FOR CERTAIN PURPOSES; REQUIRING SPECIFIC MARKING ON CIGARETTE PACKAGING; PROVIDING PENALTIES FOR NONCOMPLIANCE; ALLOWING RULEMAKING BY THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF REVENUE; ALLOWING INSPECTION OF CIGARETTES AND OF RECORDS KEPT BY SELLERS OF CIGARETTES; CREATING A FIRE PREVENTION AND PUBLIC SAFETY FUND; AND PROVIDING A DELAYED EFFECTIVE DATE. . 1343

319 *(House Bill No. 473; Ross)* REPEALING THE WATER ADJUDICATION FEE; CLARIFYING CLAIMS EXAMINATION PRIORITIES; PROVIDING FOR COMPLETION OF EXAMINATION ON A BASIN-BY-BASIN BASIS; TRANSFERRING MONEY FROM THE GENERAL FUND TO THE WATER ADJUDICATION ACCOUNT; PROVIDING THAT AN APPROPRIATION FOR WATER ADJUDICATION MAY NOT BE PART OF THE BASE BUDGET IF THE CLAIMS EXAMINATION BENCHMARKS ARE NOT MET; PROVIDING FOR THE COLLECTION OF OUTSTANDING WATER ADJUDICATION FEES; AMENDING SECTIONS 15-1-216, 17-7-102, 85-2-270, 85-2-271, 85-2-280, AND 85-2-281, MCA; REPEALING SECTIONS 85-2-272, 85-2-273, 85-2-276, 85-2-279, 85-2-283, MCA, AND SECTION 15, CHAPTER 288, LAWS OF 2005; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 1350

320 *(House Bill No. 490; French)* ALLOWING AN INDIVIDUAL INCOME TAX CREDIT FOR THE ADOPTION OF AN ELIGIBLE CHILD; ESTABLISHING CERTAIN INFORMATION REQUIREMENTS TO CLAIM THE CREDIT; PROVIDING THAT THE CREDIT MAY BE CARRIED FORWARD; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1356

321 *(House Bill No. 514; Caferro)* REVISING THE SEXUAL ASSAULT AND SEXUAL INTERCOURSE WITHOUT CONSENT LAWS TO PROVIDE THAT CONSENT IS NOT EFFECTIVE IF THE VICTIM IS RECEIVING SERVICES FROM A YOUTH CARE FACILITY OR IS A PATIENT IN OR A RESIDENT OF A MENTAL HEALTH FACILITY, A RESIDENTIAL

FACILITY, OR A COMMUNITY-BASED FACILITY OR IS A RECIPIENT OF COMMUNITY-BASED SERVICES AND THE PERPETRATOR IS AN EMPLOYEE, CONTRACTOR, OR VOLUNTEER OF THE FACILITY OR COMMUNITY-BASED SERVICE; PROVIDING A LIMITED MARRIAGE EXCEPTION; AND AMENDING SECTIONS 45-5-501 AND 45-5-502, MCA. 1356

322 *(House Bill No. 556; McChesney)* ALLOWING A SPECIAL FUEL USER TO USE DYED SPECIAL FUEL FOR CERTAIN CONSTRUCTION PROJECTS; PROVIDING FOR THE ISSUANCE OF A TEMPORARY PERMIT; PROVIDING FOR THE SUSPENSION OR REVOCATION OF A TEMPORARY PERMIT; ALLOWING THE DEPARTMENT OF TRANSPORTATION TO REFUSE, UNDER CERTAIN CONDITIONS, TO ISSUE A TEMPORARY PERMIT OR A SPECIAL FUEL USER PERMIT TO A SPECIAL FUEL USER; IMPOSING PENALTIES FOR VIOLATIONS; AMENDING SECTIONS 15-70-302 AND 15-70-372, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1358

323 *(House Bill No. 574; Hiner)* APPROPRIATING $50,000 FROM THE GENERAL FUND TO THE DEPARTMENT OF COMMERCE TO BE USED FOR GRANTS TO ASSIST IN THE RESTORATION AND RENOVATION OF CULTURAL AND HISTORICAL ARTS CENTERS; AND PROVIDING AN EFFECTIVE DATE. 1361

324 *(House Bill No. 609; Hamilton)* REQUIRING A SCHOOL DISTRICT TO USE SELF-INSURED HEALTH BENEFIT PLAN RESERVE FUNDS TO PAY EMPLOYEE CLAIMS AND LIABILITIES OR TO PAY EMPLOYEE BENEFIT COSTS IF A DISTRICT'S SELF-INSURED HEALTH BENEFIT PLAN IS DISSOLVED; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1362

325 *(House Bill No. 611; Jacobson)* GENERALLY REVISING THE LAWS RELATING TO TELECOMMUNICATIONS ACCESS SERVICES FOR PERSONS WITH DISABILITIES; AUTHORIZING THE DEPARTMENT OF REVENUE TO COLLECT THE TELECOMMUNICATIONS ACCESS SERVICES AND SPECIALIZED TELECOMMUNICATIONS EQUIPMENT FEE, CONDUCT AUDITS, AND ENGAGE IN OTHER ENFORCEMENT ACTIVITIES; CLARIFYING THAT PROVIDERS OF PREPAID WIRELESS SERVICES ARE REQUIRED TO ASSESS AND COLLECT THE TELECOMMUNICATIONS ACCESS SERVICES AND SPECIALIZED TELECOMMUNICATIONS EQUIPMENT FEE; AMENDING SECTIONS 2-15-2212, 53-19-302, 53-19-306, 53-19-307, 53-19-308, 53-19-310, 53-19-311, AND 69-3-1302, MCA; REPEALING SECTION 53-19-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1362

326 *(House Bill No. 677; Arntzen)* PROVIDING AN APPROPRIATION TO THE BOARD OF CRIME CONTROL TO SUSTAIN FUNDING FOR EXISTING PREVENTION AND AFTER-SCHOOL PROGRAMS FOR AT-RISK YOUTH; AUTHORIZING GRANT FUNDS TO BE USED TO LEVERAGE MATCHING FUNDS; AUTHORIZING THE BOARD OF CRIME CONTROL TO USE UP TO 3 PERCENT OF THE FUNDING FOR ADMINISTRATION; AND PROVIDING AN EFFECTIVE DATE. 1370

327 *(House Bill No. 680; Cohenour)* AUTHORIZING THE DEPARTMENT OF REVENUE TO ENTER INTO CONTRACTS FOR OUT-OF-STATE COLLECTIONS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE 1370

328 *(House Bill No. 706; Caferro)* PROVIDING FOR THE PERIODIC INFLATION ADJUSTMENT OF CAMPAIGN CONTRIBUTION LIMITS; REQUIRING THE COMMISSIONER OF POLITICAL PRACTICES TO CALCULATE THE ADJUSTED LIMITS AND TO PUBLISH THE ADJUSTED LIMITS AS A RULE; AND AMENDING SECTION 13-37-216, MCA. 1372

329 *(House Bill No. 737; Hilbert)* GENERALLY REVISING MOTOR VEHICLE LAWS; GENERALLY REVISING LICENSING REQUIREMENTS FOR THE SALE OF MOTOR VEHICLES, TRAILERS, CAMPERS, MOTORBOATS, PERSONAL WATERCRAFT, SAILBOATS, SNOWMOBILES, AND OFF-HIGHWAY VEHICLES; CONSOLIDATING MOTORBOAT, PERSONAL WATERCRAFT, SNOWMOBILE, AND OFF-HIGHWAY DEALER LICENSING UNDER TITLE 61, MCA; AUTHORIZING A SEPARATE BROKER'S LICENSE FOR CERTAIN VEHICLE TRANSACTIONS; ESTABLISHING REQUIREMENTS FOR A BROKER'S LICENSE; REVISING REQUIREMENTS FOR LICENSING CERTAIN VEHICLE MANUFACTURERS; DEFINING CERTAIN TERMS AND REVISING OTHER DEFINITIONS; REVISING AND CLARIFYING THE TITLING AND REGISTRATION PROCESS FOR CERTAIN VEHICLES; CLARIFYING RESIDENCY REQUIREMENTS FOR VEHICLE REGISTRATION; REVISING THE LIMITATION FOR VEHICLE TRANSFERS FROM A SMALL ESTATE; CLARIFYING THE AUTHORITY TO ISSUE TEMPORARY REGISTRATION PERMITS; REVISING AND CLARIFYING CERTAIN PROVISIONS FOR THE ISSUANCE OF LICENSE PLATES; ELIMINATING LIENS FOR MOTOR VEHICLE REGISTRATION FEES; CLARIFYING FEES FOR PERMANENT REGISTRATION OF LIGHT VEHICLES; REVISING AND CLARIFYING PROCEDURES FOR SUSPENDING LICENSE PLATES AND REGISTRATION FOLLOWING CERTAIN CONVICTIONS; REVISING THE FEE FOR CERTAIN RECORD SEARCHES; PROHIBITING EXHAUST NOISE IN EXCESS OF A CERTAIN LEVEL; AMENDING SECTIONS 15-1-122, 23-2-502, 23-2-515, 23-2-601, 23-2-614, 23-2-631, 23-2-634, 23-2-641, 23-2-642, 23-2-644, 61-1-101, 61-3-101, 61-3-115, 61-3-116, 61-3-206, 61-3-216, 61-3-222, 61-3-224, 61-3-301, 61-3-303, 61-3-320, 61-3-321, 61-3-332, 61-3-448, 61-3-463, 61-3-468, 61-3-503, 61-3-562, 61-4-101, 61-4-102, 61-4-104, 61-4-105, 61-4-109, 61-4-111, 61-4-112, 61-4-120, 61-4-122, 61-4-123, 61-4-124, 61-4-125, 61-4-126, 61-4-129, 61-4-130, 61-4-131, 61-4-135, 61-4-136, 61-4-137, 61-4-202, 61-4-204, 61-5-112, 61-6-304, 61-8-102, AND 61-11-105, MCA; REPEALING SECTIONS 23-2-513, 23-2-540, 23-2-619, AND 23-2-818, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. 1373

330 *(House Bill No. 738; Mendenhall)* REVISING WORKERS' COMPENSATION LAWS; PROVIDING THAT THE DEPARTMENT OF LABOR AND INDUSTRY MAY NOT SET THE RATE FOR MEDICAL SERVICES AT A RATE GREATER THAN 10 PERCENT ABOVE THE AVERAGE OF THE CONVERSION FACTORS USED BY THE TOP FIVE INSURERS OR THIRD-PARTY ADMINISTRATORS PROVIDING DISABILITY INSURANCE WITHIN THIS STATE WHO USE THE RESOURCE-BASED RELATIVE VALUE SCALE TO DETERMINE FEES FOR COVERED SERVICES; MODIFYING DEPARTMENT PROCEDURES FOR ESTABLISHING FEE SCHEDULES FOR MEDICAL SERVICES AND PRESCRIPTION DRUGS; PROVIDING FOR UTILIZATION AND TREATMENT GUIDELINES TO BE ESTABLISHED BY RULE; AMENDING SECTIONS 39-71-704 AND 39-71-743, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES . . 1446

331 *(House Bill No. 755; Keane)* PROVIDING THAT THE UNIFORM UNCLAIMED PROPERTY ACT DOES NOT APPLY TO CERTAIN GIFT

CERTIFICATES; AMENDING SECTIONS 30-14-102, 70-9-802, AND 70-9-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 1453

332 *(House Bill No. 759; Hendrick)* REVISING SEARCH AND RESCUE LAWS; PROVIDING THAT MONEY IN THE SPECIAL REVENUE ACCOUNT ADMINISTERED BY THE DISASTER AND EMERGENCY SERVICES DIVISION FOR SEARCH AND RESCUE OPERATIONS BE REIMBURSED TO LOCAL SEARCH AND RESCUE UNITS TO DEFRAY COSTS OF SEARCH AND RESCUE MISSIONS; PROVIDING THAT MONEY IN THE FISH, WILDLIFE, AND PARKS SPECIAL REVENUE ACCOUNT FOR SEARCH AND RESCUE REMAIN AVAILABLE FOR REIMBURSEMENT OF SEARCH AND RESCUE MISSIONS AND TO PROVIDE MATCHING FUNDS TO REIMBURSE COUNTIES FOR SEARCH AND RESCUE TRAINING AND EQUIPMENT COSTS ON AN ONGOING BASIS; AMENDING SECTIONS 10-3-801 AND 87-1-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1459

333 *(House Bill No. 764; Milburn)* REQUIRING THE INSURANCE COMMISSIONER PURSUANT TO A DIRECTIVE FROM THE UNITED STATES CONGRESS TO WORK COLLECTIVELY WITH OTHER STATES TO DEVELOP AND IMPLEMENT APPROPRIATE STANDARDS TO PROTECT ACTIVE DUTY MEMBERS OF THE ARMED FORCES FROM DISHONEST AND PREDATORY INSURANCE SALES PRACTICES WHILE LOCATED IN THIS STATE; AUTHORIZING THE INSURANCE COMMISSIONER TO IMPLEMENT A SYSTEM FOR THE RECEIPT AND DISSEMINATION OF REPORTS FROM GOVERNMENTAL AGENCIES AND INSURERS OF DISCIPLINARY ACTIONS TAKEN BY FEDERAL OR STATE GOVERNMENT ENTITIES OR INSURERS AGAINST PERSONS THAT SELL OR SOLICIT THE SALE OF ANY LIFE INSURANCE PRODUCT TO ACTIVE DUTY MEMBERS OF THE ARMED FORCES; AUTHORIZING THE INSURANCE COMMISSIONER TO ADOPT RULES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1463

334 *(House Bill No. 765; Olson)* ALLOWING A LEGISLATOR TO CONTINUE ACTIVE MEMBERSHIP IN THE PUBLIC RETIREMENT SYSTEM OF WHICH THE LEGISLATOR IS A MEMBER; AMENDING SECTIONS 5-2-304 AND 19-3-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . 1464

335 *(Senate Bill No. 50; Gallus)* REVISING THE PROVISION IN THE SEXUAL ASSAULT AND SEXUAL INTERCOURSE WITHOUT CONSENT LAWS TO PROVIDE THAT CONSENT IS NOT EFFECTIVE IF THE VICTIM IS ON PROBATION OR PAROLE AND THE PERPETRATOR IS AN EMPLOYEE, CONTRACTOR, OR VOLUNTEER OF THE SUPERVISING AUTHORITY WITH AUTHORITY OVER THE VICTIM; PROVIDING A LIMITED MARRIAGE EXCEPTION; REMOVING THE SPECIFIC SENTENCE FOR SEXUAL INTERCOURSE WITHOUT CONSENT BY CORRECTIONAL FACILITY EMPLOYEES; AND AMENDING SECTIONS 45-5-501, 45-5-502, AND 45-5-503, MCA . 1468

336 *(Senate Bill No. 145; Shockley)* GENERALLY REVISING WILDFIRE PROTECTION LAWS; ESTABLISHING A STATE FIRE POLICY; PROVIDING DEFINITIONS; CONSOLIDATING AND CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; STANDARDIZING TERMINOLOGY; REQUIRING THE DEPARTMENT TO APPOINT FIREWARDENS AND TO PRESCRIBE DUTIES FOR FIREWARDENS; REMOVING PROVISIONS REQUIRING THE COUNTY TO LIST FOREST LANDS WITH THE DEPARTMENT; CLARIFYING THAT A PERMIT IS NOT

NEEDED TO IGNITE CERTAIN RECREATIONAL FIRES DURING WILDFIRE SEASON; REVISING PENALTIES FOR FAILURE TO COMPLY WITH BURNING PERMITS, FAILURE TO EXTINGUISH RECREATIONAL FIRES, AND THROWING LIGHTED MATERIAL; EXTENDING TO ALL WILDLANDS CERTAIN PROVISIONS THAT PREVIOUSLY APPLIED ONLY TO FOREST LANDS; IMPOSING UPON OWNERS OF ALL LANDS THE DUTY TO PROTECT THE LANDS FROM WILDFIRE; ESTABLISHING A FORMULA FOR DETERMINING ASSESSMENTS FOR FIRE PROTECTION; REVISING THE DATE BY WHICH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION SHALL CERTIFY TO THE DEPARTMENT OF REVENUE THE NAMES OF CERTAIN LANDOWNERS; AMENDING SECTIONS 45-6-203, 76-13-101, 76-13-102, 76-13-103, 76-13-104, 76-13-105, 76-13-110, 76-13-121, 76-13-122, 76-13-123, 76-13-124, 76-13-125, 76-13-126, 76-13-201, 76-13-202, 76-13-203, 76-13-204, 76-13-205, 76-13-206, 76-13-207, 76-13-208, 76-13-209, 76-13-210, 76-13-211, AND 77-5-103, MCA; REPEALING SECTIONS 76-11-101, 76-13-106, 76-13-109, 77-5-104, 77-5-105, AND 77-5-106, MCA; AND PROVIDING AN EFFECTIVE DATE 1470

337 *(Senate Bill No. 175; Squires)* EXPRESSLY PROVIDING THAT AN AGENCY MAY NOT ENFORCE, IMPLEMENT, OR OTHERWISE TREAT AN ADMINISTRATIVE RULE AS EFFECTIVE UNTIL THE EFFECTIVE DATE OF THE RULE; AMENDING SECTION 2-4-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1482

338 *(Senate Bill No. 181; Cobb)* CHANGING THE DEADLINE BY WHICH A WRITE-IN CANDIDATE IN A MAIL BALLOT ELECTION MUST FILE A DECLARATION OF INTENT; AND AMENDING SECTION 13-10-211, MCA. 1484

339 *(Senate Bill No. 204; Ryan)* PREVENTING AN INSURER FROM REQUIRING MOTOR VEHICLE REPAIR ESTIMATES OR REPAIRS FROM CERTAIN BUSINESSES BY CLAIMANTS; ALLOWING ACCESS FOR COMPETITIVE ESTIMATES; AND AMENDING SECTION 33-18-224, MCA 1485

340 *(Senate Bill No. 214; Lewis)* REVISING LAWS RELATING TO INDEPENDENT CONTRACTORS; CLARIFYING THAT CERTAIN INDEPENDENT CONTRACTORS ARE NOT EXEMPT FOR UNEMPLOYMENT INSURANCE PURPOSES; EXPANDING ELIGIBILITY FOR WORKERS' COMPENSATION PURPOSES; AMENDING SECTIONS 39-51-204 AND 39-71-417, MCA; AND PROVIDING AN EFFECTIVE DATE 1488

341 *(Senate Bill No. 219; Balyeat)* CLARIFYING THAT A STATE EMPLOYEE WHO TERMINATES EMPLOYMENT MAY NOT RECEIVE SEVERANCE PAY, A BONUS, OR ANY OTHER TYPE OF MONETARY PAYMENT EXCEPT AS AUTHORIZED BY LAW; AMENDING SECTION 2-18-621, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1493

342 *(Senate Bill No. 251; Larson)* ALLOWING THE STATE TO TRANSFER PUBLIC ROADWAYS TO LOCAL GOVERNMENTS IN EXCHANGE FOR THE LOCAL GOVERNMENT TAKING OVER FULL MAINTENANCE AUTHORITY; PROVIDING FOR THE PUBLIC ROADWAY TO BE KEPT IN OPERATION FOR PUBLIC PURPOSES; AND AMENDING SECTIONS 7-14-2101 AND 60-4-201, MCA 1494

343 *(Senate Bill No. 266; Shockley)* CLARIFYING THAT INDIVIDUAL SCHOOL DISTRICT TRUSTEE MEMBERS ACTING IN THEIR OFFICIAL CAPACITY ARE IMMUNE FROM SUIT FOR DAMAGES;

AMENDING SECTION 20-3-332, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1496

344 *(Senate Bill No. 269; Larson)* REVISING STANDARDS FOR RECORDED DOCUMENTS; AMENDING SECTION 7-4-2636, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1496

345 *(Senate Bill No. 287; Weinberg)* ADOPTING THE PROVISIONS OF THE REVISED UNIFORM ANATOMICAL GIFT ACT TO CLARIFY THE PROCEDURES FOR MAKING AN ANATOMICAL GIFT AND AMENDING OR REVOKING A DOCUMENT OF GIFT; ALLOWING CERTAIN MINORS TO MAKE ANATOMICAL GIFTS; CLARIFYING THE PURPOSE OF CERTAIN ANATOMICAL GIFTS; ESTABLISHING PROCEDURES FOR ANATOMICAL GIFTS WHEN A DEATH IS UNDER INVESTIGATION; AMENDING SECTIONS 46-4-103, 50-9-105, 50-10-103, 72-17-101, 72-17-102, 72-17-108, 72-17-201, 72-17-202, 72-17-207, 72-17-208, 72-17-213, 72-17-214, AND 72-17-301, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE. 1497

346 *(Senate Bill No. 289; Gallus)* ALLOWING PUPILS OF PUBLIC AND NONPUBLIC SCHOOLS TO CARRY AND SELF-ADMINISTER PRESCRIBED MEDICATION FOR ASTHMA, SEVERE ALLERGIES, OR ANAPHYLAXIS; AMENDING SECTION 20-5-420, MCA; AND PROVIDING AN EFFECTIVE DATE. 1512

347 *(Senate Bill No. 295; Tash)* STATUTORILY PROVIDING FOR THE MONTANA NATIONAL GUARD YOUTH CHALLENGE PROGRAM; SPECIFYING A DEFINITION, LEGISLATIVE INTENT, AND STAFFING; AMENDING SECTION 10-1-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1514

348 *(Senate Bill No. 296; Weinberg)* REVISING THE QUOTA SYSTEM FOR ISSUING RESTAURANT BEER AND WINE LICENSES; REVISING THE NUMBER OF QUOTA AREAS; INCREASING THE NUMBER OF RESTAURANT BEER AND WINE LICENSES THAT MAY BE ISSUED IN A QUOTA AREA; AMENDING SECTION 16-4-420, MCA; AND PROVIDING AN EFFECTIVE DATE. 1515

349 *(Senate Bill No. 302; Barkus)* REMOVING SPECIAL SPEED RESTRICTIONS FOR CERTAIN PORTIONS OF U.S. HIGHWAY 93; AND AMENDING SECTION 61-8-303, MCA. 1520

350 *(Senate Bill No. 308; J. Peterson)* ALLOWING CERTAIN PROPERTY OWNERS TO VOTE IN A ROAD LEVY ELECTION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1521

351 *(Senate Bill No. 312; Lind)* PROHIBITING ECONOMIC CREDENTIALING IN EXCHANGE FOR HOSPITAL OR MEDICAL STAFF PRIVILEGES; PROVIDING DEFINITIONS; AMENDING SECTIONS 50-5-105 AND 50-5-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 1521

352 *(Senate Bill No. 317; Lewis)* REVISING LAWS RELATED TO CONSERVATION EASEMENTS; REQUIRING THAT A CONSERVATION EASEMENT MAY NOT BE EXTINGUISHED BY TAKING FEE TITLE TO THE LAND TO WHICH THE CONSERVATION EASEMENT IS ATTACHED; CLARIFYING THAT A CONSERVATION EASEMENT RUNS WITH THE LAND; CLARIFYING THE REPORTING PROCESS OF CONSERVATION EASEMENT INFORMATION TO THE DEPARTMENT OF REVENUE; REQUIRING COORDINATION BETWEEN THE DEPARTMENT OF REVENUE AND DEPARTMENT OF ADMINISTRATION ON THE COLLECTION AND TRANSFER OF CONSERVATION EASEMENT INFORMATION; REQUIRING THE

DEPARTMENT OF ADMINISTRATION TO MAKE CONSERVATION EASEMENT INFORMATION ACCESSIBLE ON THE DEPARTMENT'S WEBSITE AND AVAILABLE TO THE NATURAL HERITAGE PROGRAM; AMENDING SECTIONS 70-17-111, 70-17-203, 76-6-207, AND 90-1-404, MCA; AND PROVIDING EFFECTIVE DATES 1524

353 *(Senate Bill No. 318; J. Peterson)* AMENDING MONTANA'S RECREATIONAL USE STATUTE TO PROVIDE LIMITED LIABILITY TO PRIVATE LANDOWNERS WHO PROVIDE AIRSTRIPS FOR THE PUBLIC WITHOUT VALUABLE CONSIDERATION; AMENDING SECTIONS 70-16-301 AND 70-16-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1527

354 *(Senate Bill No. 335; Tash)* PROVIDING A QUALITY EDUCATOR PAYMENT TO CERTIFIED TEACHERS EMPLOYED BY THE MONTANA YOUTH CHALLENGE PROGRAM; AMENDING SECTION 20-9-327, MCA; AND PROVIDING AN EFFECTIVE DATE. 1529

355 *(Senate Bill No. 370; Tash)* PROVIDING THAT AN APPROPRIATION RIGHT IS NOT ABANDONED IF AN APPROPRIATOR CEASES TO USE ALL OR PART OF AN APPROPRIATION RIGHT TO COMPLY WITH A CANDIDATE CONSERVATION AGREEMENT; AMENDING SECTION 85-2-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1530

356 *(Senate Bill No. 419; Lind)* PROVIDING FOR INSURANCE COVERAGE UNDER A PARENT'S POLICY FOR UNMARRIED CHILDREN UNDER 25 YEARS OF AGE; DEFINING "DEPENDENT"; AMENDING SECTIONS 2-18-701, 2-18-704, 33-22-101, 33-22-140, 33-22-1803, 33-31-102, 33-31-111, AND 33-35-306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1532

357 *(Senate Bill No. 442; Kaufmann)* CREATING AN ABANDONED MINE RECLAMATION ACCOUNT; REQUIRING USE OF THE ACCOUNT FOR RECLAMATION OF ABANDONED MINE LANDS; AND PROVIDING AN EFFECTIVE DATE 1546

358 *(Senate Bill No. 443; Squires)* REVISING THE TIMES AT WHICH THE ELECTION ADMINISTRATOR MUST MAIL ADDRESS CONFIRMATION FORMS TO ELECTORS WHO HAVE REQUESTED ABSENTEE BALLOTS FOR FUTURE ELECTIONS; AMENDING SECTION 13-13-212, MCA; AND PROVIDING AN APPLICABILITY DATE 1548

359 *(Senate Bill No. 444; Wanzenried)* REVISING ADVANCED PRACTICE REGISTERED NURSE TREATMENT OF INJURED WORKERS; AND AMENDING SECTION 39-71-116, MCA 1549

360 *(Senate Bill No. 517; Black)* REVISING THE TIME THAT CERTAIN POLLING PLACES MUST BE OPEN; AND AMENDING SECTION 13-1-106, MCA 1553

361 *(Senate Bill No. 553; Black)* REVISING INCENTIVES FOR RECRUITING PHYSICIANS TO PRACTICE IN CERTAIN AREAS; EXPANDING THE REPAYMENT OF EDUCATIONAL DEBT TO INCLUDE PHYSICIANS PRACTICING IN MEDICALLY UNDERSERVED AREAS OR FOR UNDERSERVED POPULATIONS; INCREASING THE AMOUNT OF EDUCATIONAL DEBT THAT MAY BE PAID BY THE BOARD OF REGENTS; INCREASING THE FEE THAT MAY BE ASSESSED TO CERTAIN STUDENTS PREPARING TO BE PHYSICIANS; PHASING OUT THE TAX CREDIT FOR A PHYSICIAN PRACTICING IN RURAL AREAS; PROVIDING FOR TRANSFERS FROM THE STATE GENERAL FUND TO THE STATE SPECIAL REVENUE ACCOUNT FOR PAYING EDUCATIONAL DEBT BASED ON THE PHASEOUT OF THE

PHYSICIAN TAX CREDIT; AMENDING SECTIONS 15-30-189, 20-26-1501, 20-26-1502, AND 20-26-1503, MCA; REPEALING SECTIONS 15-30-188, 15-30-189, 15-30-190, AND 15-30-191, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES 1553

362 *(House Bill No. 790; L. Jones)* REVISING ASSESSMENTS USED FOR PAYMENT OF EXPENSES INCURRED FOR ADMINISTRATION OF THE UNEMPLOYMENT INSURANCE PROGRAM; PROVIDING THAT FUNDS IN THE EMPLOYMENT SECURITY ACCOUNT MAY BE USED FOR EXPENSES INCURRED IN ADMINISTRATION OF THE UNEMPLOYMENT INSURANCE PROGRAM; CHANGING CONTRIBUTION RATES TO THE UNEMPLOYMENT INSURANCE PROGRAM FOR GOVERNMENTAL ENTITIES AND ADJUSTING RATE SCHEDULES FOR EMPLOYERS UNDER THE UNEMPLOYMENT INSURANCE PROGRAM; AMENDING SECTIONS 39-51-404, 39-51-409, 39-51-1121, 39-51-1212, 39-51-1218, AND 39-51-3207, MCA; AND PROVIDING EFFECTIVE DATES 1556

363 *(House Bill No. 7; Kasten)* PROVIDING FOR RECLAMATION AND DEVELOPMENT GRANTS; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; TRANSFERRING FUNDS; REVISING THE USE OF THE RECLAMATION AND DEVELOPMENT GRANTS ACCOUNT; AMENDING SECTION 90-2-1104, MCA, AND SECTION 2, CHAPTER 473, LAWS OF 2003; REPEALING SECTION 10, CHAPTER 308, LAWS OF 2005; AND PROVIDING EFFECTIVE DATES 1562

364 *(House Bill No. 8; Kasten)* APPROVING RENEWABLE RESOURCE PROJECTS AND REGIONAL WATER PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 59TH LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING REGIONAL WATER PROJECTS AND PROVIDING AN APPROPRIATION FOR THE PROJECTS; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN EFFECTIVE DATE 1566

365 *(House Bill No. 24; Klock)* PROVIDING COMMON CARRIER STATUS TO PIPELINES MOVING CARBON DIOXIDE; AMENDING SECTIONS 69-13-101, 69-13-102, 69-13-201, 69-13-301, 69-13-302, AND 69-13-303, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE 1570

366 *(House Bill No. 39; McNutt)* REVISING THE WATER RIGHT OWNERSHIP UPDATE PROCESS; PROVIDING THAT THE DIVISION, SEVERANCE, OR EXEMPTING OF A WATER RIGHT REQUIRES THE FILING OF A FORM; PROVIDING THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE DEPARTMENT OF REVENUE WILL COORDINATE TO UPDATE OTHER WATER RIGHT OWNERSHIP RECORDS BASED ON PROPERTY TRANSFERS; PROVIDING THAT A TRANSFEREE OF A WATER RIGHT IS LIABLE FOR PAYMENT OF THE FEE AFTER RECEIVING NOTICE; PROVIDING THAT THE RECORDING OF A DEED OR OTHER INSTRUMENT MUST BE DELAYED IN CERTAIN INSTANCES; INCREASING THE PENALTY FOR NOT UPDATING

WATER RIGHT OWNERSHIP RECORDS WITH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS 15-7-308, 85-2-421, 85-2-422, 85-2-424, 85-2-426, AND 85-2-431, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . 1573

367 *(House Bill No. 40; Gallik)* AMENDING THE BIG SKY ON THE BIG SCREEN ACT; REMOVING THE $1 MILLION LIMITATION ON THE AMOUNT OF CREDITS ALLOWED; STANDARDIZING THE APPLICATION FEE FOR TAX CREDITS; INCREASING PERCENTAGES FOR MONTANA LABOR AND FOR QUALIFIED MONTANA EXPENDITURES TO DETERMINE THE AMOUNT OF ALLOWABLE CREDITS; REQUIRING THAT ALL PURCHASES MADE BY A TAXPAYER IN CONNECTION WITH A STATE-CERTIFIED PRODUCTION MUST BE PAID IN FULL BEFORE THE CREDIT FOR QUALIFYING EXPENDITURES MAY BE CLAIMED; AMENDING SECTIONS 15-31-906, 15-31-907, 15-31-908, AND 15-31-911, MCA; REPEALING SECTION 15-31-909, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE 1576

368 *(House Bill No. 49; Hamilton)* REQUIRING THE EDUCATION AND LOCAL GOVERNMENT INTERIM COMMITTEE TO APPOINT A SUBCOMMITTEE TO CONDUCT A STUDY OF LOCAL GOVERNMENT SPECIAL PURPOSE DISTRICTS; SPECIFYING THE MEMBERSHIP OF THE SUBCOMMITTEE; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1579

369 *(House Bill No. 69; McNutt)* CREATING THE MONTANA RESIDENTIAL MORTGAGE LENDER LICENSING ACT; PROVIDING DEFINITIONS; ESTABLISHING LICENSING REQUIREMENTS; PROVIDING FOR LICENSE SUSPENSION, REVOCATION, AND REINSTATEMENT; PROVIDING RULEMAKING AUTHORITY FOR THE DEPARTMENT OF ADMINISTRATION; AUTHORIZING EXAMINATIONS AND INVESTIGATIONS BY THE DEPARTMENT; REGULATING ACTIVITIES OF MORTGAGE LENDERS; PROVIDING CIVIL AND CRIMINAL PENALTIES; PROVIDING FOR CRIMINAL PROCEEDINGS; AND AMENDING SECTION 31-1-111, MCA. 1581

370 *(House Bill No. 96; Kerns)* GENERALLY REVISING THE ESTABLISHMENT OF STATE VETERANS' CEMETERIES; AUTHORIZING THE BOARD OF VETERANS' AFFAIRS TO DESIGNATE A COUNTY VETERANS' CEMETERY AS A STATE VETERANS' CEMETERY SUBJECT TO BOARD CERTIFICATION; PROVIDING AN APPROPRIATION; AMENDING SECTION 10-2-601, MCA; AND PROVIDING AN EFFECTIVE DATE 1599

371 *(House Bill No. 131; Sesso)* REVISING PUBLIC RETIREMENT LAWS; PROVIDING FOR THE ACTUARIAL FUNDING OF THE PUBLIC EMPLOYEES' AND SHERIFFS' RETIREMENT SYSTEMS BY INCREASING EMPLOYER CONTRIBUTION RATES; PROVIDING THAT THE INCREASE WILL NOT BE IMPOSED IF CERTAIN ACTUARIAL CONDITIONS ARE MET; ALLOCATING A PORTION OF THE EMPLOYER CONTRIBUTION IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM DEFINED CONTRIBUTION PLAN TO PAY FOR THE PLAN'S STARTUP LOAN; REDUCING THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT FOR MEMBERS OF THE PUBLIC EMPLOYEES', SHERIFFS', AND GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEMS HIRED OR ASSUMING OFFICE ON OR AFTER JULY 1, 2007; INCREASING THE STATUTORY APPROPRIATION FOR STATE RETIREMENT CONTRIBUTIONS FOR EMPLOYEES OF SCHOOL DISTRICTS; PROVIDING

APPROPRIATIONS; AMENDING SECTIONS 19-3-316, 19-3-319, 19-3-1605, 19-3-2117, 19-7-404, 19-7-711, 19-8-1105, AND 19-21-214, MCA; AND PROVIDING AN EFFECTIVE DATE. 1600

372 *(House Bill No. 141; Jacobson)* GENERALLY REVISING THE MONTANA CONSUMER LOAN ACT; REVISING DEFINITIONS; INCREASING LICENSING FEES; REVISING LICENSE ISSUANCE, DENIAL, SUSPENSION, REVOCATION, AND REINSTATEMENT PROVISIONS; REVISING PROVISIONS RELATING TO FEES CHARGED CONSUMERS; REVISING PROVISIONS RELATING TO INSTALLMENT AND BALLOON PAYMENTS; MODIFYING PROVISIONS RELATING TO WAGE ASSIGNMENTS; REVISING THE DEPARTMENT OF ADMINISTRATION'S AUTHORITY TO CONDUCT INVESTIGATIONS, ISSUE SUBPOENAS, TAKE OATHS, AND EXAMINE WITNESSES; PROVIDING FOR THE ISSUANCE OF CEASE AND DESIST ORDERS BY THE DEPARTMENT; MODIFYING INJUNCTION REQUIREMENTS; PROVIDING A COMPLAINT PROCEDURE; AMENDING SECTIONS 32-5-102, 32-5-103, 32-5-201, 32-5-202, 32-5-204, 32-5-207, 32-5-208, 32-5-301, 32-5-302, 32-5-303, 32-5-305, 32-5-306, 32-5-308, 32-5-310, 32-5-401, 32-5-402, 32-5-403, 32-5-405, AND 32-5-407, MCA; REPEALING SECTIONS 32-5-104, 32-5-321, 32-5-322, 32-5-323, 32-5-324, 32-5-404, 32-5-406, 32-5-501, 32-5-502, 32-5-503, 32-5-504, 32-5-505, AND 32-5-506, MCA; AND PROVIDING EFFECTIVE DATES 1607

373 *(House Bill No. 155; Noonan)* CREATING AN ACCOUNT IN THE STATE TREASURY FROM WHICH PREMIUMS PAID FOR GROUP LIFE INSURANCE BY MONTANA RESIDENTS WHO ARE MEMBERS OF THE MONTANA NATIONAL GUARD, RESERVE, OR ARMED FORCES WHO ARE ON ACTIVE DUTY FOR A CONTINGENCY OPERATION MAY BE REIMBURSED; REQUIRING THE DEPARTMENT OF MILITARY AFFAIRS TO ADOPT RULES TO DETERMINE SERVICE MEMBERS' ELIGIBILITY FOR REIMBURSEMENT FOR GROUP LIFE INSURANCE PREMIUMS PAID AND IMPLEMENT THE REIMBURSEMENT PROGRAM; EXEMPTING FROM STATE INCOME TAXATION THE AMOUNT RECEIVED BY A SERVICE MEMBER AS REIMBURSEMENT FOR GROUP LIFE INSURANCE PREMIUMS PAID; APPROPRIATING FUNDS TO REIMBURSE SERVICE MEMBERS WHO ARE ON ACTIVE DUTY FOR A CONTINGENCY OPERATION FOR THE PREMIUMS PAID BY MEMBERS FOR GROUP LIFE INSURANCE; AMENDING SECTION 15-30-116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1619

374 *(House Bill No. 195; Lange)* RELATING TO SERVICES FOR INDIVIDUALS WHO ARE DEVELOPMENTALLY DISABLED; CLARIFYING THAT AN INDIVIDUAL MAY RETURN TO HIGH SCHOOL AFTER GRADUATION IF THE INDIVIDUAL IS NOT 19 YEARS OF AGE; PROVIDING THAT INDIVIDUALS ELIGIBLE TO RECEIVE SERVICES FOR THE DEVELOPMENTALLY DISABLED ARE NOT DISQUALIFIED FROM ALSO RECEIVING MEDICAID IF QUALIFIED FOR MEDICAID; REQUIRING THAT ASSISTANCE FOR SERVICES BE MADE AVAILABLE TO INDIVIDUALS WHO ARE DEVELOPMENTALLY DISABLED; PROVIDING AN APPROPRIATION; AMENDING SECTION 20-5-101, MCA; AND PROVIDING AN EFFECTIVE DATE 1622

375 *(House Bill No. 240; Nooney)* ESTABLISHING A TEMPORARY EMERGENCY LODGING PROGRAM FOR INDIVIDUALS AND FAMILIES DISPLACED FROM THEIR RESIDENCES; PROVIDING A TAX CREDIT FOR PARTICIPATING ESTABLISHMENTS;

ESTABLISHING LIABILITY FOR DAMAGES; AND PROVIDING AN APPLICABILITY DATE 1624

376 *(House Bill No. 257; Lake)* REVISING THE TAXPAYER BILL OF RIGHTS; REQUIRING THE DEPARTMENT OF REVENUE TO TREAT SIMILARLY SITUATED TAXPAYERS IN A SIMILAR MANNER REGARDING THE ADMINISTRATION AND COLLECTION OF TAXES AND AVAILABLE TAXPAYER REMEDIES; REQUIRING THE DEPARTMENT OF REVENUE TO ADHERE TO THE SAME TAX APPEAL DEADLINES AS THE TAXPAYER; PROVIDING FOR A FEE FOR MONITORING COMPLIANCE WITH THE MONTANA TAXPAYER BILL OF RIGHTS; AMENDING SECTIONS 15-1-222 AND 15-1-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1625

377 *(House Bill No. 278; Stoker)* SETTING THE GENETICS PROGRAM FEE; AMENDING SECTION 33-2-712, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1628

378 *(House Bill No. 330; Bergren)* CREATING THE MONTANA CLEAN RENEWABLE ENERGY BOND ACT; AUTHORIZING GOVERNMENTAL BODIES TO OWN AND OPERATE QUALIFIED ENERGY PROJECTS; AUTHORIZING GOVERNMENTAL BODIES TO ISSUE CLEAN RENEWABLE ENERGY BONDS TO FINANCE THE ACQUISITION OR CONSTRUCTION OF QUALIFIED ENERGY PROJECTS; AUTHORIZING GOVERNMENTAL BODIES TO ENTER INTO CONTRACTS NECESSARY TO ACQUIRE AND CONSTRUCT QUALIFIED ENERGY PROJECTS; PROVIDING TERMS AND CONDITIONS FOR THE ISSUANCE OF THE BONDS; PROVIDING THAT CERTAIN REQUIREMENTS BE MET PRIOR TO PROJECT FINANCING; CLARIFYING THAT THE PROVISIONS OF THIS ACT DO NOT AUTHORIZE A LOCAL GOVERNING BODY TO CONSTRUCT, OWN, OR OPERATE SOME POWERLINES; INCREASING THE AMOUNT OF BONDS ALLOWED UNDER THE MUNICIPAL FINANCE CONSOLIDATION ACT; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 17-5-1604 AND 17-5-1608, MCA; AND PROVIDING EFFECTIVE DATES 1628

379 *(House Bill No. 390; Nooney)* PROVIDING FOR AND REGULATING A FORM OF PARIMUTUEL WAGERING IN WHICH A PERSON DEPOSITS MONEY IN AN ACCOUNT WITH AN ADVANCE DEPOSIT WAGERING HUB OPERATOR LICENSED BY THE BOARD OF HORSERACING TO CONDUCT ADVANCE DEPOSIT WAGERING; AMENDING SECTIONS 23-4-101, 23-4-202, 23-4-301, 23-4-302, AND 23-5-112, MCA; AND PROVIDING AN EFFECTIVE DATE. 1635

380 *(House Bill No. 426; Ross)* REMOVING THE $500,000 LIMIT ON A COUNTY'S ROAD AND BRIDGE CAPITAL IMPROVEMENT FUND; AMENDING SECTION 7-14-2506, MCA; AND PROVIDING AN EFFECTIVE DATE 1645

381 *(House Bill No. 480; Lake)* APPROPRIATING MONEY FOR THE MAINTENANCE AND RESTORATION OF THE DALY MANSION; AND PROVIDING AN EFFECTIVE DATE 1645

382 *(House Bill No. 488; Jopek)* REQUIRING THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE TO CONDUCT A STUDY ON THE REVALUATION OF CLASS THREE AGRICULTURAL LAND, CLASS FOUR RESIDENTIAL AND COMMERCIAL PROPERTY, AND CLASS TEN FOREST LANDS; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE . . 1646

383 *(House Bill No. 512; Jones)* APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO

LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS THROUGH THE TREASURE STATE ENDOWMENT PROGRAM; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT STATE SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR PRELIMINARY ENGINEERING GRANTS; APPROPRIATING MONEY FROM THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM STATE SPECIAL REVENUE ACCOUNT TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FINANCIAL ASSISTANCE TO REGIONAL WATER AUTHORITIES FOR REGIONAL WATER PROJECTS; TERMINATING A PRIOR TREASURE STATE ENDOWMENT GRANT; AMENDING SECTION 1, CHAPTER 435, LAWS OF 2001; AND PROVIDING EFFECTIVE DATES 1647

384 *(House Bill No. 569; Rice)* GENERALLY REVISING LAWS RELATED TO THE CONTROL OF DISEASES AND INSECTS IN NURSERIES; REVISING DEFINITIONS; DEFINING "PLANT DEALER" AND "LANDSCAPE SERVICE"; REVISING NURSERY LICENSE FEES; CLARIFYING THAT DEPARTMENT ACTIONS REQUIRED TO DEAL WITH INFECTED OR INFESTED NURSERY STOCK MUST BE CONDUCTED AT THE OWNER'S EXPENSE; REVISING THE DEPOSIT AND USE OF NURSERY OR PLANT DEALER FEES AND CIVIL PENALTIES; AND AMENDING SECTIONS 80-7-105, 80-7-106, 80-7-108, 80-7-109, 80-7-110, 80-7-122, 80-7-123, 80-7-133, AND 80-7-135, MCA . . 1654

385 *(House Bill No. 583; Jopek)* GENERALLY REVISING THE OPENCUT MINING ACT; AMENDING DEFINITIONS AND TERMINOLOGY; EXPANDING EXEMPTIONS; PROVIDING FOR SUSPENSION AND REVOCATION ORDERS; ELIMINATING APPLICATION FEES; REVISING APPEAL PROVISIONS; AMENDING SECTIONS 82-4-402, 82-4-403, 82-4-406, 82-4-422, 82-4-424, 82-4-425, 82-4-426, 82-4-427, 82-4-431, 82-4-432, 82-4-433, 82-4-434, 82-4-436, AND 82-4-441, MCA; AND REPEALING SECTIONS 82-4-421 AND 82-4-423, MCA 1659

386 *(House Bill No. 608; Olson)* TRANSFERRING MONEY FROM THE STATE GENERAL FUND TO THE ENDOWMENT FOR CHILDREN FUND; AND PROVIDING AN EFFECTIVE DATE 1673

387 *(House Bill No. 616; McChesney)* PROVIDING THAT IT IS LAWFUL TO WAGER ON A FANTASY SPORTS LEAGUE CONDUCTED BY A PARIMUTUEL FACILITY THAT HAS BEEN LICENSED BY THE BOARD OF HORSERACING; PROVIDING A STATUTORY APPROPRIATION; AND AMENDING SECTIONS 23-4-101, 23-4-104, 23-4-201, 23-4-202, 23-4-301, 23-4-302, 23-4-304, 23-5-801, 23-5-802, 23-5-805, AND 23-5-806, MCA. 1674

388 *(House Bill No. 665; Arntzen)* LICENSING AND REGULATING ATHLETIC TRAINERS; ESTABLISHING A BOARD OF ATHLETIC TRAINERS; PROVIDING RULEMAKING AUTHORITY FOR THE BOARD; ESTABLISHING QUALIFICATIONS FOR LICENSURE; PROVIDING TERMS OF LICENSURE; AND PROVIDING VIOLATIONS AND PENALTIES 1683

389 *(House Bill No. 668; Stahl)* ESTABLISHING A PROCEDURE FOR PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS AUTHORIZED TO REQUIRE THE SUBMISSION OF FINGERPRINTS BY LICENSE APPLICANTS PRIOR TO THE ISSUANCE OF A LICENSE; AMENDING SECTIONS 37-1-201 AND 37-1-307, MCA; AND PROVIDING AN APPLICABILITY DATE 1687

390 *(House Bill No. 687; Jones)* EXTENDING INSURANCE AND HEALTH PLAN COVERAGE FOR WELL-CHILD CARE FROM AGE 2 TO AGE 7; AMENDING SECTIONS 2-18-704, 33-22-303, 33-22-512, 33-30-1014, 33-31-301, AND 33-35-306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE 1688

391 *(House Bill No. 831; McNutt)* REVISING WATER LAWS IN CLOSED BASINS; DEFINING TERMS IN WATER USE LAWS; AMENDING REQUIREMENTS FOR AN APPLICATION TO APPROPRIATE GROUND WATER IN A CLOSED BASIN; PROVIDING THAT CERTAIN APPLICATIONS TO APPROPRIATE SURFACE WATER ARE EXEMPT FROM CLOSED BASIN REQUIREMENTS; PROVIDING REQUIREMENTS FOR HYDROGEOLOGIC ASSESSMENTS, MITIGATION PLANS, AND AQUIFER RECHARGE PLANS; PROVIDING MINIMUM WATER QUALITY STANDARDS FOR CERTAIN DISCHARGES OF EFFLUENT; REQUIRING THAT DATA BE SUBMITTED TO THE BUREAU OF MINES AND GEOLOGY; PROVIDING FOR RULEMAKING; PROVIDING FOR A CASE STUDY AND REQUIREMENTS AND A FEE FOR PARTICIPATION IN THE CASE STUDY; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 85-2-102, 85-2-302, 85-2-311, 85-2-329, 85-2-330, 85-2-335, 85-2-336, 85-2-340, 85-2-341, 85-2-342, 85-2-343, 85-2-344, AND 85-2-506, MCA; REPEALING SECTION 85-2-337, MCA; DIRECTING THE AMENDMENT OF ARM 36.12.101 AND 36.12.120; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . 1699

392 *(House Bill No. 840; Hilbert)* ALLOWING FOR GENERIC SPECIALTY LICENSE PLATES FOR TRAILERS; ALLOWING FOR PERMANENT REGISTRATION USING CERTAIN SPECIALTY PLATES; AMENDING SECTIONS 61-3-332, 61-3-479, 61-3-481, AND 61-3-562, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 1723

393 *(Senate Bill No. 48; Esp)* GRANTING TO A RELATIVE WHO IS A CARETAKER BUT NOT A PARENT OF A CHILD THE POWER TO APPROVE MEDICAL CARE FOR THE CHILD UNDER CERTAIN CONDITIONS; PROVIDING FOR A CARETAKER RELATIVE MEDICAL AUTHORIZATION AFFIDAVIT; PROVIDING FOR GOVERNMENTAL IMMUNITY; AMENDING SECTIONS 20-5-412 AND 20-5-420, MCA; AND PROVIDING AN APPLICABILITY DATE 1727

394 *(Senate Bill No. 71; Gebhardt)* REQUIRING A STATE AGENCY TO STATE IN ITS NOTICE OF PROPOSED RULEMAKING THE DATE AND MANNER IN WHICH IT GAVE NOTICE OF ITS INITIAL RULEMAKING EFFORTS TO THE PRIMARY SPONSOR OF THE IMPLEMENTED LEGISLATION; PROVIDING FOR THE LEGAL EFFECT OF THE LACK OF NOTICE TO A PRIMARY SPONSOR OF INTENDED RULEMAKING; AMENDING SECTION 2-4-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . 1733

395 *(Senate Bill No. 94; Esp)* REMOVING THE REQUIREMENT THAT WHOLESALE AND RETAIL NONPRESCRIPTION DRUG MANUFACTURERS BE LICENSED AND REGULATED ENTITIES THROUGH THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AND AMENDING SECTIONS 50-57-101, 50-57-102, AND 50-57-105, MCA 1737

396 *(Senate Bill No. 131; Cobb)* REVISING LAND BANKING LAWS; EXTENDING THE TERMINATION DATE FOR THE SALE OF STATE TRUST LAND AND PURCHASE OF REPLACEMENT PROPERTY THROUGH THE LAND BANKING PROGRAM; DECREASING THE TIMEFRAMES FOR POSTING OF A BID BOND; REDUCING THE PERCENTAGE USED FOR DETERMINING A MINIMUM BID BOND;

REDUCING THE NUMBER OF DAYS PRIOR TO A SALE THAT A LESSEE MAY CANCEL A LAND BANKING SALE; PROVIDING FOR PAYMENT OF ESTIMATED SALE PREPARATION COSTS; PROVIDING FOR A 60-YEAR ACCOUNTING PERIOD FOR FIGURING A REASONABLE ANNUAL RATE OF RETURN; AMENDING SECTIONS 77-2-363, 77-2-364, AND 77-2-366, MCA; AND PROVIDING AN EFFECTIVE DATE 1740

397 *(Senate Bill No. 133; Essmann)* PROVIDING THAT INTERESTS IN UNMATURED LIFE INSURANCE CONTRACTS ARE EXEMPT FROM EXECUTION OF JUDGMENT; AMENDING SECTIONS 25-13-608 AND 25-13-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 1742

398 *(Senate Bill No. 146; Shockley)* GENERALLY REVISING THE JUVENILE DELINQUENCY INTERVENTION ACT AND RELATED PROVISIONS; CLARIFYING THE PURPOSE OF THE ACT; REVISING THE DUTIES OF THE DEPARTMENT OF CORRECTIONS, THE OFFICE OF COURT ADMINISTRATOR, THE COST CONTAINMENT REVIEW PANEL, THE DISTRICT COURT COUNCIL, AND YOUTH COURTS RELATING TO IMPLEMENTATION OF THE JUVENILE DELINQUENCY INTERVENTION PROGRAM; REQUIRING JUDICIAL DISTRICTS TO PARTICIPATE IN THE JUVENILE DELINQUENCY INTERVENTION PROGRAM; REVISING THE DEPARTMENT OF CORRECTIONS' RULEMAKING AUTHORITY; REQUIRING THE DISTRICT COURT COUNCIL TO ADOPT CERTAIN POLICIES AND PROCEDURES; REMOVING COUNTIES' OBLIGATION TO PAY CERTAIN COSTS RELATED TO JUVENILE OUT-OF-HOME PLACEMENTS, PROGRAMS, AND SERVICES; AMENDING SECTIONS 41-5-103, 41-5-112, 41-5-121, 41-5-124, 41-5-130, 41-5-131, 41-5-132, 41-5-1503, 41-5-1512, 41-5-1513, 41-5-1522, 41-5-1523, 41-5-2002, 41-5-2003, 41-5-2004, 41-5-2005, 41-5-2006, 41-5-2011, 52-5-109, AND 53-1-203, MCA; REPEALING SECTIONS 41-5-104 AND 41-5-123, MCA; AND PROVIDING AN EFFECTIVE DATE 1744

399 *(Senate Bill No. 157; Ryan)* GENERALLY REVISING INSURANCE LAWS ADMINISTERED BY THE STATE AUDITOR; REMOVING REDUNDANT REFERENCES FOR REVOKING OR REFUSING TO ISSUE AN INSURANCE CONSULTANT LICENSE; AMENDING SECTIONS 33-1-201, 33-1-311, 33-4-312, 33-17-211, 33-17-214, 33-17-232, 33-17-511, 33-17-1103, 33-18-235, 33-19-105, 33-20-1303, 33-20-1315, 33-22-121, 33-22-122, 33-22-513, 33-22-1517, 33-22-2001, 33-22-2002, 33-22-2004, 33-25-212, 33-25-214, 33-30-1015, 33-31-111, 33-31-311, 33-35-103, 33-35-306, 33-38-105, AND 50-4-703, MCA; REPEALING SECTIONS 33-17-506 AND 33-17-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES 1767

400 *(Senate Bill No. 158; Cocchiarella)* ALLOWING THE DEPARTMENT OF TRANSPORTATION TO ENTER INTO AGREEMENTS WITH AGENCIES OF OTHER STATES TO ALLOW RECIPROCAL REGISTRATION OF INTRASTATE AND INTERSTATE MOTOR CARRIERS, PRIVATE MOTOR CARRIERS, AND FREIGHT FORWARDER AND BROKER INDUSTRIES; SPECIFYING USE OF CERTAIN FEES IMPOSED ON MOTOR CARRIERS; AND AMENDING SECTION 61-3-708, MCA 1787

401 *(Senate Bill No. 162; Schmidt)* REVISING THE MONTANA GENETICS PROGRAM TO EXPAND THE GENETIC AND METABOLIC CONDITIONS FOR WHICH NEWBORNS ARE SCREENED AND TO ALLOW THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN

SERVICES TO CONTRACT FOR FOLLOWUP SERVICES; AND AMENDING SECTIONS 50-19-203 AND 50-19-211, MCA 1788

402 *(Senate Bill No. 172; Tropila)* REVISING THE LOBBYING LAWS TO CLARIFY THE APPLICATION OF THE LAWS TO THE LEGISLATURE AND LEGISLATORS; AND AMENDING SECTIONS 5-7-102 AND 5-7-209, MCA 1789

403 *(Senate Bill No. 184; Hawks)* REVISING THE LAW GOVERNING CONSTRUCTION PROJECTS BY THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION; CLARIFYING PROJECTS THAT DO NOT NEED ARCHITECTURAL AND ENGINEERING REVIEW; INCREASING THE AMOUNT OF CONSTRUCTION PROJECTS THAT DO NOT REQUIRE LEGISLATIVE CONSENT; AMENDING SECTIONS 18-2-102 AND 22-3-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1791

404 *(Senate Bill No. 192; Essmann)* CREATING THE OFFENSE OF CRIMINAL INVASION OF PERSONAL PRIVACY 1794

405 *(Senate Bill No. 209; Essmann)* TRANSFERRING REGISTRATION AND OVERSIGHT OF PROCESS SERVERS AND LEVYING OFFICERS FROM THE CLERKS OF DISTRICT COURT TO THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; PROVIDING FOR A PROCESS SERVER TO BE ON THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; REQUIRING REGISTRATION OF PROCESS SERVERS WITH EXCEPTIONS; AMENDING SECTIONS 2-15-1781, 25-1-1101, 25-1-1104, 25-1-1107, 25-1-1111, 25-1-1112, 25-3-105, 25-3-201, 25-3-203, 25-3-204, 25-3-302, 37-60-101, 37-60-103, 37-60-105, 37-60-202, 37-60-301, 37-60-303, 37-60-304, AND 37-60-405, MCA; REPEALING SECTIONS 25-1-1103, 25-1-1105, AND 25-1-1106, MCA; AND PROVIDING AN EFFECTIVE DATE 1795

406 *(Senate Bill No. 243; Balyeat)* REVISING FISH AND GAME LAWS; PROVIDING FREE CLASS AAA RESIDENT COMBINATION SPORTS AND CLASS A RESIDENT FISHING LICENSES FOR CERTAIN MONTANA NATIONAL GUARD, FEDERAL RESERVE, AND ACTIVE DUTY PERSONNEL FOR UP TO 5 YEARS; ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO RECOUP THE COST OF ISSUING FREE LICENSES ON A QUARTERLY BASIS; AMENDING SECTIONS 87-2-711 AND 87-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1804

407 *(Senate Bill No. 253; Cooney)* ALLOWING CERTAIN BROADCAST CAMPAIGN ADVERTISING MATERIAL AND AN AFFIDAVIT ABOUT THE TRUTH OF THE CONTENT TO BE FILED WITH THE COMMISSIONER OF POLITICAL PRACTICES; AUTHORIZING THE COUNTY ATTORNEY TO INVESTIGATE AND PROSECUTE ALLEGED FALSE SWEARING IN REGARD TO CERTAIN CAMPAIGN ADVERTISING MATERIAL THAT IS SWORN TO BE TRUTHFUL AND VERIFIABLE; INCREASING THE POTENTIAL FINE FOR FALSE SWEARING ABOUT THE ADVERTISING CONTENT; AND AMENDING SECTIONS 13-37-111, 13-37-113, 13-37-124, AND 45-7-202, MCA 1807

408 *(Senate Bill No. 261; Lewis)* INCREASING THE ANNUAL PAYMENT BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO COUNTIES FOR JUNK VEHICLE COLLECTIONS; AMENDING SECTION 75-10-534, MCA; AND PROVIDING AN EFFECTIVE DATE 1811

409 *(Senate Bill No. 293; Laible)* ESTABLISHING A STATE POLICY FOR MANAGEMENT OF PUBLIC FOREST LANDS; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO

SUPPORT RESTORATION AND SUSTAINABLE FOREST MANAGEMENT PRACTICES; REQUIRING PROMOTION OF FOREST MANAGEMENT ACTIVITIES WITHIN AND ADJACENT TO THE WILDLAND URBAN INTERFACE; AND GRANTING AUTHORITY TO INTERVENE IN LITIGATION OR APPEALS OF FEDERAL FOREST MANAGEMENT PROJECTS 1811

410 *(Senate Bill No. 314; Steinbeisser)* REVISING THE WARM WATER GAME FISH SURCHARGE AND STAMP TO REQUIRE THAT A PERSON WHO DESIRES TO FISH IN CERTAIN DESIGNATED WATERS IN WHICH FISH FROM THE FORT PECK MULTISPECIES FISH HATCHERY ARE PLANTED MUST PURCHASE A WARM WATER GAME FISH STAMP; AMENDING SECTION 87-3-236, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1813

411 *(Senate Bill No. 321; Brueggeman)* PROVIDING FOR THE CREATION AND FUNCTIONS OF BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATIONS 1814

412 *(Senate Bill No. 324; Jackson)* REQUIRING AN AGENCY THAT REQUIRES AN AQUIFER TEST TO FORWARD COPIES OF THE TEST RESULTS TO THE BUREAU OF MINES AND GEOLOGY; REQUIRING A WELL DRILLER TO DESIGNATE THE LOCATION OF THE WELL BEING DRILLED USING TWO METHODS; DEFINING "AQUIFER TEST"; AND AMENDING SECTIONS 85-2-501 AND 85-2-516, MCA . . 1833

413 *(Senate Bill No. 350; Perry)* CREATING THE OFFENSE OF CRIMINAL DESTRUCTION OF OR TAMPERING WITH A COMMUNICATION DEVICE; AND PROVIDING PENALTIES 1834

414 *(Senate Bill No. 354; Lind)* DEFINING AND CLARIFYING THE OPERATION OF THE MEDICAID REIMBURSEMENT CONVERSION FACTOR FOR PHYSICIANS; AND ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT POLICY ADJUSTERS 1835

415 *(Senate Bill No. 372; Balyeat)* CREATING A RESIDENT WOLF LICENSE AND A NONRESIDENT WOLF LICENSE; PROVIDING FOR THE ANNUAL AUCTION OR LOTTERY OF A WOLF LICENSE AND A GRIZZLY BEAR LICENSE; ESTABLISHING RESTITUTION FOR THE ILLEGAL TAKING, KILLING, OR POSSESSION OF A WOLF; PROVIDING THAT A PERSON WHO IS RESPONSIBLE FOR THE DEATH OF A WOLF MAY NOT WASTE THE ANIMAL BY ABANDONING THE HEAD OR HIDE IN THE FIELD, EXCEPT A WOLF THAT IS KILLED WHILE ATTACKING, KILLING, OR THREATENING TO KILL A PERSON OR LIVESTOCK; AMENDING SECTIONS 87-1-111 AND 87-3-102, MCA; AND PROVIDING EFFECTIVE DATES 1836

416 *(Senate Bill No. 376; Jackson)* PROVIDING THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MAY ENTER INTO A CONTRACT WITH THE UNITED STATES FOR WATER HELD IN FEDERAL RESERVOIRS AS A MEANS OF PROTECTING THE STATE'S INTEREST IN THOSE WATERS; PROVIDING THAT THE STATE MAY CONTRACT FOR WATER FROM EXISTING FEDERAL RESERVOIRS IF WHEN THE WATER IS PUT TO BENEFICIAL USE, IT IS USED WITHIN THE BASIN IN WHICH THE RESERVOIR IS LOCATED; LIMITING THE AMOUNT OF WATER THAT CAN BE LEASED FROM THE STATE AS THE RESULT OF CONTRACTS FOR WATER FROM FEDERAL RESERVOIRS WHEN THE WATER WILL BE PUT TO BENEFICIAL USE IN A BASIN OTHER THAN THE BASIN WHERE THE FEDERAL RESERVOIR IS LOCATED; PROVIDING THAT THERE IS A LIMIT TO THE AMOUNT OF WATER FOR WHICH THE DEPARTMENT MAY

CONTRACT FROM ANY FEDERAL RESERVOIR; AMENDING SECTION 85-2-141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1839

417 *(Senate Bill No. 379; Laslovich)* CLARIFYING WHEN THE OFFICE OF STATE PUBLIC DEFENDER MAY BE APPOINTED AS COUNSEL IN POSTCONVICTION PROCEEDINGS; AMENDING SECTION 46-8-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1841

418 *(Senate Bill No. 403; Lind)* INCREASING THE AMOUNT OF LAND INCLUDED IN THE DISABLED OR DECEASED VETERANS' RESIDENTIAL PROPERTY TAX EXEMPTION TO LAND NOT TO EXCEED 5 ACRES FROM A LOT; AMENDING SECTION 15-6-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 1842

419 *(Senate Bill No. 412; Brueggeman)* EXEMPTING CERTAIN UNIVERSITY PROJECTS THAT DO NOT INVOLVE STATE APPROPRIATIONS FROM CERTAIN STATE CONSTRUCTION AND CONTRACTING LAWS; AMENDING SECTIONS 18-2-102 AND 20-25-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1843

420 *(Senate Bill No. 413; Moss)* CLARIFYING REQUIREMENTS FOR THE DEPOSIT OF MONEY RECEIVED BY STATE AGENCIES; PROVIDING A PROCESS FOR A STATE AGENCY TO PROPOSE AND RECEIVE APPROVAL FOR A SPECIAL DEPOSIT SCHEDULE FOR MONEY COLLECTED BY THE AGENCY; AND AMENDING SECTIONS 15-1-232, 17-6-105, 23-1-105, 81-3-107, AND 87-1-601, MCA. 1845

421 *(Senate Bill No. 424; Moss)* ADOPTING THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT; PROVIDING GUIDANCE AND AUTHORITY TO CHARITABLE ORGANIZATIONS CONCERNING THE MANAGEMENT AND INVESTMENT OF FUNDS HELD BY THOSE ORGANIZATIONS; IMPOSING DUTIES ON THOSE WHO MANAGE AND INVEST CHARITABLE FUNDS; PROVIDING ADDITIONAL PROTECTIONS FOR CHARITIES AND THE INTERESTS OF DONORS; AMENDING SECTIONS 72-30-101, 72-30-102, 72-30-103, AND 72-30-207, MCA; AND REPEALING SECTIONS 72-30-201, 72-30-202, 72-30-203, 72-30-204, 72-30-205, AND 72-30-206, MCA 1849

422 *(Senate Bill No. 431; Lind)* REVISING THE REQUIREMENTS FOR FLOW-THROUGH HOT SPRINGS POOLS; AND AMENDING SECTION 50-53-115, MCA 1855

423 *(Senate Bill No. 446; Perry)* GENERALLY REVISING THE LAWS RELATING TO REVIEW OF PUBLIC WATER AND SEWAGE SYSTEMS BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY; REMOVING INDUSTRIAL WASTE DISCHARGE SYSTEMS FROM DEPARTMENT REVIEW; REMOVING THE EXEMPTION FROM DEPARTMENT REVIEW OF PUBLIC SEWAGE SYSTEMS THAT HAVE WATER QUALITY DISCHARGE PERMITS; EXPRESSLY AUTHORIZING ADOPTION OF MANAGERIAL AND TECHNICAL CAPACITY RULES; AUTHORIZING THE ADOPTION OF SOURCE WATER PROTECTION REQUIREMENTS; ELIMINATING PROVISIONS THAT DUPLICATE PROVISIONS CONTAINED IN THE WATER QUALITY STATUTES; AND AMENDING SECTIONS 37-42-102, 75-6-102, 75-6-103, 75-6-104, 75-6-112, AND 75-6-120, MCA. 1856

424 *(Senate Bill No. 447; Perry)* REVISING VICTIMS' RIGHTS LAWS AS THEY RELATE TO ADULT OFFENDERS; PROVIDING THAT VICTIMS OF CRIMINAL OFFENSES MUST BE PROVIDED, UPON REQUEST, ONE FREE COPY OF CERTAIN DOCUMENTS FILED IN A CRIMINAL CASE; PROVIDING THAT A VICTIM HAS A RIGHT TO BE

ACCOMPANIED BY A VICTIM ADVOCATE DURING INTERVIEWS; AND AMENDING SECTIONS 46-24-106 AND 46-24-201, MCA 1862

425 *(Senate Bill No. 461; Bales)* REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO RELEASE ALL OR A PORTION OF A BOND IF THE DEPARTMENT IS SATISFIED THAT RECLAMATION OF COAL AND URANIUM OPERATIONS HAS BEEN COMPLETED; CLARIFYING WRITTEN FINDINGS AND RECOMMENDATIONS; AND AMENDING SECTION 82-4-232, MCA. 1864

426 *(Senate Bill No. 491; Moss)* CHANGING THE NAME OF THE AFFORDABLE HOUSING REVOLVING LOAN ACCOUNT TO THE HOUSING MONTANA FUND; PROVIDING THAT MONEY IN THE HOUSING MONTANA FUND MAY BE USED FOR ACQUISITION OF LAND FOR HOUSING DEVELOPMENTS, LAND BANKING AND LAND TRUSTS, AND SHORT-TERM SITE-BASED HOUSING VOUCHERS FOR NEEDY INDIVIDUALS; ADDING STATE GOVERNMENT OR STATE AGENCIES AND PROGRAMS TO THE LIST OF ORGANIZATIONS ELIGIBLE FOR LOANS; AND AMENDING SECTIONS 90-6-107, 90-6-131, 90-6-132, 90-6-133, AND 90-6-134, MCA 1869

427 *(Senate Bill No. 492; Gebhardt)* PROVIDING AN ALTERNATIVE APPRAISAL METHOD FOR CERTAIN PURCHASES OF REAL PROPERTY OR CONSERVATION EASEMENTS BY A COUNTY; AMENDING SECTION 7-8-2202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1872

428 *(Senate Bill No. 523; Laslovich)* PROVIDING THAT THE WORKERS' COMPENSATION COURT IS A COURT OF RECORD; AND AMENDING SECTION 3-1-102, MCA 1873

429 *(Senate Bill No. 540; Jackson)* ALLOWING POSSESSION OF AN ANTIQUE ILLEGAL GAMBLING DEVICE BY A LICENSED RETAIL BUSINESS ESTABLISHMENT FOR PURPOSES OF RESALE AND NOT FOR OPERATION; AMENDING SECTIONS 23-5-112, 23-5-152, AND 23-5-153, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1873

430 *(Senate Bill No. 542; Ryan)* REVISING PAYMENT OPTIONS FOR GROUP LIFE INSURANCE COVERAGE; AND AMENDING SECTIONS 33-20-1101, 33-20-1111, AND 33-20-1209, MCA 1879

431 *(House Bill No. 6; Kasten)* REVISING AND IMPLEMENTING THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; MAKING PERMANENT REVISIONS TO THE USE OF THE RENEWABLE RESOURCE GRANT AND LOAN STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTION 85-1-604, MCA; REPEALING SECTION 11, CHAPTER 307, LAWS OF 2005; AND PROVIDING EFFECTIVE DATES. 1882

432 *(House Bill No. 116; Ripley)* GENERALLY REVISING RESOURCE INDEMNITY TRUST AND GROUND WATER ASSESSMENT LAWS; ELIMINATING THE RECLAMATION AND DEVELOPMENT GRANTS ACCOUNT AND THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM STATE SPECIAL REVENUE ACCOUNT; CREATING THE NATURAL RESOURCES OPERATIONS STATE SPECIAL REVENUE ACCOUNT AND THE NATURAL RESOURCES PROJECTS STATE SPECIAL REVENUE ACCOUNT; REALLOCATING CERTAIN OIL AND GAS PRODUCTION TAXES AND METALLIFEROUS MINES TAXES

INTO THE NEW SPECIAL REVENUE ACCOUNTS; REALLOCATING CERTAIN RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAXES; ELIMINATING CERTAIN STATUTORY APPROPRIATIONS; REALLOCATING CERTAIN RESOURCE INDEMNITY TRUST FUND INTEREST DISTRIBUTIONS; CLARIFYING THE USE OF THE RESOURCE INDEMNITY TRUST FUND; ELIMINATING THE CAP ON THE GROUND WATER ASSESSMENT SPECIAL REVENUE ACCOUNT; CLARIFYING THE USE OF THE WATER STORAGE STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 15-36-331, 15-37-117, 15-38-106, 15-38-202, 15-38-203, 17-5-702, 17-7-502, 19-5-404, 75-1-1101, 75-10-621, 75-10-704, 75-10-743, 80-7-823, 85-1-102, 85-1-603, 85-1-605, 85-1-606, 85-1-613, 85-1-614, 85-1-615, 85-1-616, 85-1-631, 85-2-905, 90-2-1103, 90-2-1111, AND 90-2-1121, MCA; REPEALING SECTIONS 85-1-604 AND 90-2-1104, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. 1890

433 *(House Bill No. 304; Furey)* CREATING THE WATER POLICY INTERIM COMMITTEE; PROVIDING FOR RESEARCH AND STUDY ON WATER-RELATED ISSUES; REQUIRING THAT CERTAIN WATER RIGHT REPORTS AND UPDATES BE PROVIDED TO THE WATER POLICY INTERIM COMMITTEE; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. 1920

434 *(House Bill No. 353; McGillvray)* PROVIDING FOR THE RECORDING AND TRANSCRIPTION BY A PEACE OFFICER OF A TELEPHONIC APPLICATION BY THE PEACE OFFICER FOR A SEARCH WARRANT; AND AMENDING SECTION 46-5-222, MCA. 1922

435 *(House Bill No. 357; Cohenour)* REVISING LAWS PERTAINING TO BLIND VENDORS; PROVIDING FOR THE PLACEMENT OF VENDING MACHINES ON STATE HIGHWAYS BY BLIND VENDORS; AMENDING SECTION 60-5-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1923

436 *(House Bill No. 406; Clark)* EXPANDING ACCESS TO HEALTH CARE SERVICES BY ESTABLISHING A GRANT PROGRAM FOR COMMUNITY HEALTH CENTERS; CREATING AN ADVISORY GROUP; REQUIRING A REPORT TO THE LEGISLATURE; TRANSFERRING GENERAL FUND MONEY; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE 1924

437 *(House Bill No. 592; Wilson)* APPROPRIATING MONEY TO THE DEPARTMENT OF TRANSPORTATION TO ERECT SIGNS TO DIRECT MOTORISTS TO THE MONTANA VETERANS' MEMORIAL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1928

438 *(House Bill No. 715; Olson)* REQUIRING A PORTION OF THE RESEARCH AND COMMERCIALIZATION EXPENDABLE TRUST BE USED FOR CLEAN COAL RESEARCH AND DEVELOPMENT PROJECTS OR RENEWABLE RESOURCE RESEARCH AND DEVELOPMENT PROJECTS; AMENDING SECTIONS 90-3-1002 AND 90-3-1003, MCA; AND PROVIDING AN EFFECTIVE DATE 1928

439 *(House Bill No. 729; Raser)* REVISING ADVERTISING AND PUBLICATION REQUIREMENTS FOR BOARDS OF COUNTY COMMISSIONERS AND CERTAIN OTHER UNITS OF LOCAL GOVERNMENT; PROVIDING THAT A NEWSLETTER OR OTHER PUBLICATION PRODUCED BY A LOCAL GOVERNMENT IS NOT CONSIDERED A NEWSPAPER FOR COUNTY ADVERTISING PURPOSES; AND AMENDING SECTIONS 7-1-2121 AND 7-5-2411, MCA 1931

440 *(House Bill No. 768; Gallik)* REVISING THE LAW RELATED TO OSTENSIBLE AGENCY; AND AMENDING SECTION 28-10-103, MCA 1933

441 *(Senate Bill No. 41; Elliott)* PROVIDING THAT A CITY OR TOWN MAY NOT SERVE AS A PASS-THROUGH ENTITY BY USING ITS POWER OF EMINENT DOMAIN TO OBTAIN PROPERTY TO SELL, LEASE, OR PROVIDE TO A PRIVATE ENTITY FOR THE PURPOSES OF URBAN RENEWAL; PROVIDING THAT FOR THE PUBLIC USE OF URBAN RENEWAL, REDEVELOPMENT AND REHABILITATION OF PROPERTY THAT WAS OBTAINED THROUGH CONDEMNATION MAY BE USED ONLY FOR A PUBLIC USE; AMENDING SECTIONS 7-15-4204, 7-15-4206, 7-15-4258, AND 7-15-4259, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1933

442 *(Senate Bill No. 49; Esp)* GRANTING TO A RELATIVE WHO IS A CARETAKER BUT NOT A PARENT OF A CHILD THE POWER TO ENROLL THE CHILD IN SCHOOL, DISCUSS CERTAIN SCHOOL-RELATED MATTERS, AND CONSENT TO SCHOOL-RELATED MEDICAL CARE UNDER CERTAIN CONDITIONS; PROVIDING FOR A CARETAKER RELATIVE EDUCATIONAL AUTHORIZATION AFFIDAVIT; PROVIDING FOR GOVERNMENTAL IMMUNITY; AMENDING SECTIONS 1-1-215, 20-5-321, 20-5-412, AND 20-5-420, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1938

443 *(Senate Bill No. 51; Hawks)* REVISING GROWTH POLICY AND SUBDIVISION LAWS; REQUIRING GROWTH POLICIES TO EVALUATE THE POTENTIAL FOR FIRE AND WILDLAND FIRE; INCLUDING FIRE AND WILDLAND FIRE AMONG THE NATURAL HAZARDS THAT LOCAL SUBDIVISION REGULATIONS ARE REQUIRED TO REASONABLY ADDRESS; REQUIRING SUBDIVISION REGULATIONS TO IDENTIFY AREAS UNSUITABLE FOR DEVELOPMENT UNLESS CERTAIN MITIGATION MEASURES ARE TAKEN, INCLUDING USE OF CONSTRUCTION TECHNIQUES PROVIDED IN DEPARTMENT OF LABOR AND INDUSTRY ADMINISTRATIVE RULES; PROHIBITING A GOVERNING BODY FROM INCLUDING CERTAIN BUILDING REGULATIONS IN SUBDIVISION REGULATIONS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT RULES THAT IDENTIFY CONSTRUCTION TECHNIQUES TO MITIGATE FIRE HAZARDS; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES TO ADDRESS DEVELOPMENT IN THE WILDLAND-URBAN INTERFACE; AMENDING SECTIONS 76-1-601, 76-3-501, 76-3-504, AND 76-13-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . 1947

444 *(Senate Bill No. 69; Wanzenried)* INCREASING THE ALLOCATION OF COAL SEVERANCE TAX TRUST FUNDS AVAILABLE FOR THE VALUE-ADDED LOAN PROGRAM, THE INFRASTRUCTURE LOAN PROGRAM, AND THE MONTANA ECONOMIC DEVELOPMENT LOAN PROGRAM; AMENDING SECTIONS 17-6-305 AND 17-6-311, MCA; AND PROVIDING AN EFFECTIVE DATE 1953

445 *(Senate Bill No. 100; Jent)* REVISING THE LAW RELATING TO OUTFITTING WITHOUT A LICENSE; DEFINING "OUTFITTING"; REVISING PENALTIES AND PROVIDING FOR ADDITIONAL SENTENCING CONDITIONS THAT MAY BE APPLIED FOR VIOLATIONS; AMENDING SECTION 37-47-344, MCA; AND PROVIDING AN EFFECTIVE DATE 1954

446 *(Senate Bill No. 104; Squires)* SPECIFYING THE TIME WITHIN WHICH A PROSECUTION FOR CERTAIN SEX OFFENSES MAY BE

COMMENCED WHEN THE IDENTITY OF THE SUSPECT WHO IS CHARGED WITH THE OFFENSE IS ESTABLISHED BY DNA EVIDENCE; AND AMENDING SECTION 45-1-205, MCA 1956

447 *(Senate Bill No. 121; Elliott)* PROHIBITING THE SALE AND RESTRICTING THE DISCLOSURE AND USE OF TAX RETURN INFORMATION BY A TAX RETURN PREPARER; PROVIDING RULEMAKING AUTHORITY; PROHIBITING THE DEPARTMENT OF REVENUE FROM PROVIDING INDIVIDUAL INCOME TAX RETURN PREPARATION SERVICES; ALLOWING THE DEPARTMENT OF REVENUE TO PROVIDE FOR THE FILING OF ELECTRONIC INDIVIDUAL INCOME TAX FORMS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1958

448 *(Senate Bill No. 128; Laslovich)* ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CHANGE WATER RIGHTS THAT IT HOLDS IN FEE SIMPLE TO INSTREAM FLOW PURPOSES TO PROTECT, MAINTAIN, OR ENHANCE STREAMFLOW TO BENEFIT FISHERY RESOURCES; REPEALING THE TERMINATION DATE ON LEASING OF WATER RIGHTS BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR INSTREAM FLOW PURPOSES; PROVIDING ADDITIONAL CRITERIA THAT MUST BE MET AND PROCEDURES THAT MUST BE FOLLOWED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CHANGE AN APPROPRIATION RIGHT OR LEASED WATER RIGHT TO INSTREAM FLOW PURPOSES TO ENSURE THAT A CHANGE IN APPROPRIATION RIGHT WILL NOT ADVERSELY AFFECT OTHER WATER RIGHT HOLDERS; AMENDING SECTIONS 85-2-102, 85-2-308, 85-2-402, 85-2-419, 85-2-436, 85-2-602, AND 87-1-257, MCA; REPEALING SECTIONS 85-2-437 AND 85-2-438, MCA, SECTION 11, CHAPTER 658, LAWS OF 1989, SECTIONS 4 AND 7, CHAPTER 740, LAWS OF 1991, AND SECTIONS 5, 6, 7, AND 9, CHAPTER 123, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1960

449 *(Senate Bill No. 130; Story)* GENERALLY REVISING LAWS RELATING TO FIRES; REVISING LAWS GOVERNING THE DEPARTMENT OF JUSTICE'S FIRE PREVENTION AND INVESTIGATION SECTION AND LAWS REFERENCING AND GOVERNING LOCAL GOVERNMENTAL FIRE AGENCIES; STANDARDIZING USAGE OF THE TERM "GOVERNMENTAL FIRE AGENCY"; CLARIFYING THAT A CHIEF OF A GOVERNMENTAL FIRE AGENCY MAY RECEIVE CONFIDENTIAL CRIMINAL JUSTICE INFORMATION; ELIMINATING RESTRICTIONS ON PAY FOR SPECIAL FIRE INSPECTORS; CLARIFYING THE PENALTY FOR SETTING OR LEAVING A FIRE THAT CAUSES DAMAGE AND INCREASING THE MINIMUM FINE; ELIMINATING DUPLICATE PROVISIONS PROHIBITING CERTAIN CAMPFIRES AND THROWING LIGHTED MATERIAL; REQUIRING FIRE INCIDENT REPORTS TO BE FILED WITH THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 2-7-501, 2-15-1519, 2-15-2005, 7-6-204, 18-8-202, 25-13-613, 39-71-118, 40-6-402, 44-5-103, 44-5-303, 46-18-261, 50-3-101, 50-3-102, 50-3-106, 50-5-215, 50-19-403, 50-37-107, 50-37-108, 50-37-109, 50-60-202, 50-61-102, 50-61-114, 50-61-115, 50-61-121, 50-62-101, 50-62-102, 50-62-103, 50-62-112, 50-63-102, 50-63-103, 50-63-202, 50-63-203, 50-63-401, 50-63-402, 50-63-404, 50-78-102, 52-2-733, 52-2-734, 52-4-205, 53-20-307, 61-8-102, 61-8-364, 61-9-402, AND 75-10-725, MCA; AND PROVIDING AN EFFECTIVE DATE. 1978

450 *(Senate Bill No. 147; Shockley)* CLARIFYING THE AUTHORITY OF THE PRESIDING OFFICER OF A BOARD OF COUNTY COMMISSIONERS TO CLOSE AREAS TO ACCESS UPON A DECLARATION OF AN

EMERGENCY OR DISASTER; AMENDING SECTION 10-3-406, MCA; AND PROVIDING AN EFFECTIVE DATE. 2006

451 *(Senate Bill No. 165; Brueggeman)* GENERALLY REVISING THE MONTANA DEFERRED DEPOSIT LOAN ACT; INCLUDING DEFERRED DEPOSIT LENDERS IN THE DEFINITION OF REGULATED LENDERS; INCREASING LICENSING FEES; REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION ANNUALLY EXAMINE EACH DEFERRED DEPOSIT LENDER'S OPERATION; MODIFYING BOOKKEEPING REQUIREMENTS FOR DEFERRED DEPOSIT LENDERS; PROHIBITING ADDITIONAL DEFERRED DEPOSIT LOANS TO CONSUMERS WITH AN OUTSTANDING DEFERRED DEPOSIT LOAN; AUTHORIZING THE DEPARTMENT TO CONDUCT INVESTIGATIONS AND ISSUE SUBPOENAS AND CEASE AND DESIST ORDERS; AUTHORIZING THE DEPARTMENT TO SEEK COURT-ORDERED INJUNCTIONS; AND AMENDING SECTIONS 31-1-111, 31-1-702, 31-1-703, 31-1-705, 31-1-706, 31-1-711, 31-1-712, 31-1-713, 31-1-714, 31-1-715, 31-1-721, AND 31-1-723, MCA 2007

452 *(Senate Bill No. 166; Tropila)* REVISING LAWS RELATING TO FISH AND GAME LICENSURE; PROVIDING FOR THE ISSUANCE OF FREE WILDLIFE CONSERVATION LICENSES TO RESIDENT MINORS WHO ARE 12 YEARS OF AGE OR OLDER AND UNDER 15 YEARS OF AGE AND TO RESIDENTS 62 YEARS OF AGE OR OLDER; PROVIDING THAT RESIDENTS AND CERTAIN NONRESIDENTS WHO HAVE BEEN AWARDED A PURPLE HEART IN SERVICE WITH THE U.S. ARMED FORCES MAY FISH AND HUNT GAME BIRDS WITH ONLY A WILDLIFE CONSERVATION LICENSE; PROVIDING FOR THE TRANSFER OF MONEY FROM THE GENERAL FUND TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS GENERAL LICENSE ACCOUNT TO COMPENSATE FOR LICENSE REVENUE LOST THROUGH THE ISSUANCE OF THE FREE LICENSES AND EXTENSION OF PRIVILEGES TO RECIPIENTS OF A PURPLE HEART; AMENDING SECTIONS 87-2-202, 87-2-801, 87-2-805, AND 87-2-903, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 2017

453 *(Senate Bill No. 173; Juneau)* REVISING LAWS RELATED TO THE STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION; TRANSFERRING ADMINISTRATIVE ATTACHMENT FOR THE STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION FROM THE GOVERNOR'S OFFICE TO THE DEPARTMENT OF COMMERCE; ADDING A MEMBER TO THE COMMISSION; REPEALING THE TERMINATION DATE OF THE STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION; AMENDING SECTIONS 90-1-131 AND 90-1-135, MCA; REPEALING SECTION 19, CHAPTER 512, LAWS OF 1999, SECTION 5, CHAPTER 69, LAWS OF 2001, AND SECTIONS 3 AND 4, CHAPTER 460, LAWS OF 2005; AND PROVIDING AN EFFECTIVE DATE 2021

454 *(Senate Bill No. 200; Lewis)* AUTHORIZING LITIGATION FOR NATURAL RESOURCE DAMAGES AND RESTORATION AT THE UPPER BLACKFOOT MINING COMPLEX, INCLUDING THE MIKE HORSE DAM AND MINE; ESTABLISHING THE NATURAL RESOURCE PROGRAM POLICY COMMITTEE TO OVERSEE THIS LITIGATION AND OTHER NATURAL RESOURCE DAMAGE LITIGATION; AUTHORIZING LEGISLATIVE OVERSIGHT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2023

455 *(Senate Bill No. 201; Laible)* GENERALLY REVISING LAND USE LAWS; ALLOWING LOCAL GOVERNMENTS TO ADOPT GROWTH POLICIES THAT ADDRESS INFRASTRUCTURE PLANNING; ALLOWING CERTAIN GOVERNING BODIES TO ASSESS PLANNING FEES; EXEMPTING CERTAIN LAND DIVISIONS FROM REVIEW; AMENDING SECTIONS 76-1-103, 76-1-601, 76-3-605, 76-3-608, AND 76-3-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2024

456 *(Senate Bill No. 213; Cobb)* PROVIDING THAT THE ESTIMATED FAIR MARKET VALUE MUST BE DETERMINED BY A MONTANA-LICENSED AND MONTANA-CERTIFIED APPRAISER; AMENDING SECTIONS 77-2-213, 77-2-363, AND 77-2-364, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2032

457 *(Senate Bill No. 227; Laslovich)* PROVIDING THAT A JUSTICE'S COURT WRIT OF EXECUTION MAY BE SERVED ANYWHERE IN THE STATE; REVISING THE PROCEDURE FOR A JUDGMENT DEBTOR TO CLAIM AN EXEMPTION FROM EXECUTION ON CERTAIN PROPERTY; PROVIDING A PROCEDURE FOR A LEVY ON A TAX REFUND OR OTHER STATE FUNDS THAT ARE DUE TO A JUDGMENT DEBTOR; PROVIDING THAT A LEVYING OFFICER MAY PERFORM CERTAIN TASKS THAT MAY BE PERFORMED BY A SHERIFF OR CONSTABLE; INCREASING THE TIME WHEN A JUSTICE MAY ISSUE AN ALIAS SUMMONS FROM 1 YEAR TO 2 YEARS FROM THE DATE OF THE FILING OF THE COMPLAINT; PROVIDING THAT A PARTY AT THE PARTY'S DISCRETION MAY APPEAR IN CERTAIN JUSTICE'S COURT PRETRIAL PROCEEDINGS BY TELEPHONE CONFERENCE; AND AMENDING SECTIONS 3-10-304, 25-13-212, 25-13-402, 25-14-101, 25-31-409, 25-31-710, AND 25-31-1104, MCA 2034

458 *(Senate Bill No. 270; Larson)* REVISING THE FILING DEADLINE FOR INDEPENDENT CANDIDATES AND POLITICAL PARTIES NOT PARTICIPATING IN PRIMARY ELECTIONS; AND AMENDING SECTION 13-10-503, MCA 2038

459 *(Senate Bill No. 309; Balyeat)* PROHIBITING THE CONFISCATION OF PRIVATELY OWNED FIREARMS WITHIN THE STATE FOLLOWING THE DECLARATION OF AN EMERGENCY OR DISASTER; AND PROVIDING FOR ENFORCEMENT 2038

460 *(Senate Bill No. 342; Squires)* REQUIRING APPLICANTS FOR LICENSURE AS SOCIAL WORKERS AND PROFESSIONAL COUNSELORS TO SUBMIT FINGERPRINTS FOR CRIMINAL BACKGROUND CHECKS PRIOR TO THE ISSUANCE OF A LICENSE; AMENDING SECTIONS 37-22-101, 37-22-301, 37-23-101, AND 37-23-202, MCA; AND PROVIDING AN APPLICABILITY DATE. 2039

461 *(Senate Bill No. 384; Wanzenried)* ALLOWING A PRIVATE LANDOWNER TO HAVE AN ABANDONED VEHICLE REMOVED FROM THE LANDOWNER'S PROPERTY AFTER MEETING A 5-DAY WAITING PERIOD; AND AMENDING SECTION 61-12-401, MCA 2043

462 *(Senate Bill No. 386; Shockley)* INCREASING THE PENALTY FOR PERSONS WHO DRIVE ON PUBLIC HIGHWAYS WITHOUT OBTAINING A VALID DRIVER'S LICENSE; AND AMENDING SECTIONS 61-5-102 AND 61-5-212, MCA 2044

463 *(Senate Bill No. 387; Squires)* REQUIRING HEALTH INSURERS TO DISCLOSE INFORMATION ABOUT COVERED BENEFITS FOR CANCER SCREENING; AMENDING SECTIONS 2-18-704, 33-22-244, 33-22-262, 33-22-521, 33-31-102, AND 33-31-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 2046

464 *(Senate Bill No. 404; Lind)* CLARIFYING LIABILITY FOR FIREFIGHTERS; PROVIDING FOR LEGAL REPRESENTATION OF FIREFIGHTERS; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND LOCAL GOVERNMENTAL FIRE AGENCIES TO PAY ATTORNEY FEES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2059

465 *(Senate Bill No. 411; Laible)* REVISING ELIGIBILITY FOR ORDERS OF PROTECTION; PROVIDING THAT A VICTIM OF ASSAULT, AGGRAVATED ASSAULT, OR ASSAULT ON A MINOR IS ELIGIBLE FOR AN ORDER OF PROTECTION REGARDLESS OF THE INDIVIDUAL'S RELATIONSHIP TO THE OFFENDER; AMENDING SECTION 40-15-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2060

466 *(Senate Bill No. 417; Brown)* AMENDING THE DEFINITION OF SPECIALTY HOSPITAL; PROVIDING FOR ATTESTATION FOR LICENSING SPECIALTY HOSPITALS; PROVIDING FOR DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES RULEMAKING AUTHORITY; EXTENDING AND REVISING THE MORATORIUM ON LICENSING SPECIALTY HOSPITALS; AMENDING SECTIONS 50-5-101, 50-5-203, AND 50-5-245, MCA; REPEALING SECTION 6, CHAPTER 365, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2061

467 *(Senate Bill No. 436; Gebhardt)* ALLOWING A BOARD OF COUNTY COMMISSIONERS TO LEVY A FEE ON PROPERTY WITHIN A FIRE SERVICE AREA TO FUND WILDLAND FIRE PROTECTION SERVICES; AND AMENDING SECTION 7-33-2404, MCA 2074

468 *(Senate Bill No. 439; Elliott)* CREATING THE MINERAL ROYALTY BACKUP WITHHOLDING ACT; PROVIDING DEFINITIONS; REQUIRING REMITTORS TO WITHHOLD TAXES ON ROYALTY PAYMENTS MADE TO ROYALTY OWNERS; PROVIDING EXCEPTIONS TO THE WITHHOLDING TAX; MAKING REMITTORS LIABLE FOR PAYMENT OF WITHHOLDING TAXES; PROVIDING A WITHHOLDING TAX RATE AND REMITTANCE SCHEDULE; PROVIDING FOR PENALTIES AND INTEREST FOR FAILURE TO REMIT TAX; REQUIRING REMITTORS TO PROVIDE ANNUAL STATEMENTS TO ROYALTY OWNERS AND THE DEPARTMENT OF REVENUE; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE 2075

469 *(Senate Bill No. 448; Wanzenried)* REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO NOTIFY THE OFFICE OF CONSUMER COUNSEL OF PERMIT APPLICATIONS FOR NEW ELECTRICAL GENERATION FACILITIES AND FACILITIES AND UPGRADES PERMITTED UNDER THE MONTANA MAJOR FACILITY SITING ACT; REQUIRING THE OFFICE OF THE CONSUMER COUNSEL TO COMPLETE A CUSTOMER FISCAL IMPACT ANALYSIS FOR NEW ELECTRICAL GENERATION FACILITIES AND FACILITIES AND UPGRADES PERMITTED UNDER THE MONTANA MAJOR FACILITY SITING ACT; PROVIDING FOR THE USE OF THE ANALYSIS; REQUIRING THAT AN APPLICANT PAY COSTS INCURRED BY THE OFFICE OF CONSUMER COUNSEL IN PREPARING A FISCAL IMPACT ANALYSIS; AMENDING SECTIONS 75-1-201, 75-1-205, 75-20-216, AND 75-20-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2080

470 *(Senate Bill No. 449; Gillan)* REQUIRING FUEL EFFICIENCY STANDARDS FOR CERTAIN STATE-OWNED VEHICLES; REQUIRING

A PLAN FOR FUEL AND TRAVEL REDUCTION BY STATE AGENCIES; AND PROVIDING AN EFFECTIVE DATE. 2088

471 *(Senate Bill No. 478; Weinberg)* REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO IMPLEMENT A COMPREHENSIVE SUICIDE PREVENTION PROGRAM, INCLUDING A SUICIDE PREVENTION OFFICER, A COMPREHENSIVE SUICIDE REDUCTION PLAN, AND A 24-HOUR SUICIDE PREVENTION HOTLINE; AND PROVIDING AN EFFECTIVE DATE 2089

472 *(Senate Bill No. 486; Shockley)* REVISING THE OFFENSE OF AGGRAVATED ASSAULT BY INCLUDING IN THE OFFENSE CAUSING REASONABLE APPREHENSION OF SERIOUS BODILY INJURY OR DEATH IN ANOTHER; REVISING THE PENALTY; AND AMENDING SECTION 45-5-202, MCA. 2092

473 *(Senate Bill No. 505; Squires)* RENEWING THE CERVICAL CANCER TASK FORCE; ADDING A PEDIATRICIAN TO THE TASK FORCE; IDENTIFYING STRATEGIES FOR EDUCATING THE PUBLIC REGARDING AVAILABILITY AND EFFICACY OF HUMAN PAPILLOMAVIRUS VACCINE; AMENDING SECTION 50-1-211, MCA, AND SECTION 4, CHAPTER 404, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2092

474 *(Senate Bill No. 518; Perry)* PROVIDING FOR A CERTIFICATE OF BIRTH RESULTING IN A STILLBIRTH; AMENDING SECTION 50-15-101, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. 2094

475 *(Senate Bill No. 525; Elliott)* CLARIFYING THAT TAX AND FEE REVENUE MUST BE RECORDED AS PRESCRIBED BY THE DEPARTMENT OF ADMINISTRATION IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; AMENDING SECTIONS 15-35-108, 15-36-331, 15-37-117, 15-38-106, 15-50-311, 15-51-103, 15-53-156, 15-59-108, 15-60-210, 15-65-121, 15-66-102, 15-67-102, 15-68-820, 15-70-101, 15-70-125, 15-72-106, 16-1-306, 16-1-401, 16-1-404, 16-1-406, 16-1-411, 16-11-114, 16-11-119, 23-5-610, AND 39-71-2321, MCA; REPEALING SECTION 15-1-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 2096

476 *(Senate Bill No. 535; Cocchiarella)* REVISING LAWS RELATING TO ANNUITIES; CREATING THE MONTANA SUITABILITY IN ANNUITY TRANSACTIONS ACT; PROVIDING FOR EXEMPTIONS FROM THE MONTANA SUITABILITY IN ANNUITY TRANSACTIONS ACT; ESTABLISHING DUTIES FOR INSURERS, INSURANCE PRODUCERS, AND INDEPENDENT AGENCIES; CREATING THE MONTANA ANNUITY DISCLOSURE ACT; PROVIDING DEFINITIONS; ESTABLISHING DISCLOSURE REQUIREMENTS FOR BUYER'S GUIDES AND DISCLOSURE DOCUMENTS; REQUIRING REPORTS TO ANNUITY CONTRACT HOLDERS; PROVIDING PENALTIES FOR VIOLATIONS OF EITHER ACT; AND PROVIDING AN APPLICABILITY DATE 2114

477 *(Senate Bill No. 538; Elliott)* ESTABLISHING A BILL OF RIGHTS DAY FOR THE STATE OF MONTANA. 2120

478 *(Senate Bill No. 549; Story)* REVISING THE METHOD FOR CLASSIFYING LAND AS AGRICULTURAL FOR PROPERTY TAX PURPOSES; REQUIRING A MINIMUM DOLLAR AMOUNT OF GROSS INCOME FROM AGRICULTURAL PRODUCTION TO QUALIFY AS CLASS THREE AGRICULTURAL LAND; PROVIDING THAT THE MINIMUM DOLLAR AMOUNT FOR GRAZING LAND BE DETERMINED BY AN ANIMAL UNIT MONTH COMPUTATION DETERMINED BY

MONTANA STATE UNIVERSITY-BOZEMAN; AMENDING SECTION 15-7-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2121

479 *(Senate Bill No. 489; Cocchiarella)* SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII, SECTION 13, OF THE MONTANA CONSTITUTION TO ALLOW UP TO 25 PERCENT OF CERTAIN PUBLIC FUNDS TO BE INVESTED IN PRIVATE CORPORATE CAPITAL STOCK; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2123

480 *(House Bill No. 683; Reinhart)* PROVIDING THAT A FULL GUARDIAN MAY NOT CONSENT TO THE WITHHOLDING OR WITHDRAWAL OF LIFE SUSTAINING TREATMENT OR TO A DO NOT RESUSCITATE ORDER IF THE GUARDIAN DOES NOT HAVE CONSENT AUTHORITY PURSUANT TO THE MONTANA RIGHTS OF THE TERMINALLY ILL ACT, THE LAWS PROVIDING FOR DO NOT RESUSCITATE ORDERS, OR A COURT ORDER; AND AMENDING SECTIONS 50-9-106 AND 72-5-321, MCA 2125

481 *(Senate Bill No. 96; Williams)* GENERALLY REVISING THE LAWS RELATING TO INITIATIVES AND REFERENDUMS; REVISING THE PROCEDURE FOR REVIEWING A PROPOSED BALLOT ISSUE; CHANGING THE ENTITY PREPARING BALLOT STATEMENTS FROM THE ATTORNEY GENERAL TO THE PETITIONER, WITH REVIEW BY THE LEGISLATIVE SERVICES DIVISION AND APPROVAL BY THE ATTORNEY GENERAL FOR INITIATED MEASURES AND PREPARATION BY THE ATTORNEY GENERAL FOR REFERRED MEASURES; REVISING THE ATTORNEY GENERAL'S PROCEDURE FOR REVIEWING PROPOSED BALLOT ISSUES FOR LEGAL SUFFICIENCY; PROVIDING THAT THE SUPREME COURT HAS ORIGINAL JURISDICTION TO HEAR CHALLENGES TO THE ATTORNEY GENERAL'S BALLOT STATEMENTS AND DETERMINATION OF LEGAL SUFFICIENCY; REQUIRING THE ATTORNEY GENERAL TO PREPARE A STATEMENT IF A PROPOSED BALLOT ISSUE CONFLICTS WITH ANOTHER PROPOSED BALLOT ISSUE; REQUIRING THE SECRETARY OF STATE TO PREPARE THE PETITION FORM FOR BALLOT ISSUES; PROVIDING THAT SIGNATURE GATHERERS MUST BE MONTANA RESIDENTS AND MAY NOT BE PAID BASED UPON THE NUMBER OF SIGNATURES GATHERED; ELIMINATING THE CERTIFICATION OF SIGNATURES BY A PERSON WHO ASSISTED IN GATHERING THE SIGNATURES; REQUIRING THAT FACTUAL STATEMENTS CONTAINED IN BALLOT STATEMENTS MUST BE SUPPORTED BY DOCUMENTS FILED WITH THE SECRETARY OF STATE; PROVIDING FOR CONSISTENT USE OF DEFINED TERMS; PROVIDING A PENALTY; AMENDING SECTIONS 3-2-202, 3-5-302, 13-1-101, 13-22-102, 13-27-102, 13-27-201, 13-27-202, 13-27-204, 13-27-205, 13-27-207, 13-27-208, 13-27-302, 13-27-312, 13-27-315, 13-27-316, 13-27-402, 13-27-403, 13-27-409, 13-27-501, 13-35-207, 13-37-210, 13-37-226, AND 13-37-228, MCA; REPEALING SECTIONS 13-27-310 AND 13-27-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2128

482 *(Senate Bill No. 155; Williams)* CREATING AN OLDER MONTANANS TRUST FUND AND PROVIDING FOR THE PURPOSES AND USE OF THE FUND; PROVIDING FOR A TRANSFER OF FUNDS FROM THE HEALTH AND MEDICAID INITIATIVES ACCOUNT TO THE OLDER MONTANANS TRUST FUND; AMENDING SECTIONS 17-7-302, 17-7-304, AND 53-6-1201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 2149

483 *(Senate Bill No. 547; Perry)* STRENGTHENING THE REGISTRATION REQUIREMENTS AND OTHER PROVISIONS APPLICABLE TO SEXUAL OFFENDERS; AMENDING PROVISIONS GOVERNING YOUTH COURT, CRIMINAL PROSECUTION AND PENALTIES, DEFINITIONS, PROBATION AND PAROLE, REGISTRATION OF TRANSIENTS, AND DISSEMINATION OF INFORMATION ABOUT SEXUAL OFFENDERS; ALLOWING THE DEPARTMENT OF CORRECTIONS TO CONTRACT FOR A RESIDENTIAL SEXUAL OFFENDER TREATMENT PROGRAM; AMENDING SECTIONS 41-5-206, 41-5-216, 41-5-1513, 45-1-205, 45-5-503, 45-5-507, 45-5-512, 45-5-601, 45-5-602, 45-5-603, 45-5-625, 46-18-111, 46-18-201, 46-18-202, 46-18-203, 46-18-205, 46-18-222, 46-18-231, 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, 46-23-509, 46-23-1011, AND 53-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 2153

484 *(House Bill No. 160; Stoker)* TRANSFERRING AND APPROPRIATING MONEY FROM THE GENERAL FUND TO REPAY LAND TRUSTS AND TRUST BENEFICIARIES FOR DIVERSIONS FOR ADMINISTRATIVE COSTS; AND PROVIDING AN EFFECTIVE DATE 2185

485 *(House Bill No. 337; Cohenour)* AUTHORIZING A COUNTY, A CONSOLIDATED GOVERNMENT, OR A MUNICIPALITY TO ESTABLISH A VOLUNTEER FIREFIGHTERS' DISABILITY INCOME INSURANCE ACCOUNT; AUTHORIZING A COUNTY, A CONSOLIDATED GOVERNMENT, OR A MUNICIPALITY TO LEVY A TAX, SUBJECT TO VOTER APPROVAL, ON PROPERTY TO PURCHASE DISABILITY INCOME INSURANCE COVERAGE FOR VOLUNTEER FIREFIGHTERS; AMENDING SECTIONS 7-33-2109, 7-33-2209, 7-33-2403, 7-33-4109, AND 7-33-4111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2186

486 *(House Bill No. 368; Himmelberger)* PROVIDING APPROPRIATIONS TO THE LEGISLATIVE SERVICES DIVISION AND TO THE MONTANA HISTORICAL SOCIETY TO SUPPORT BROADCASTING SERVICES AND PERMANENT PRESERVATION OF TELEVISED LEGISLATIVE PROCEEDINGS 2189

487 *(House Bill No. 462; Sands)* PROVIDING FOR THE ESTABLISHMENT OF CONSTITUENT SERVICES ACCOUNTS; PROVIDING FOR THE FUNDING AND USE OF MONEY IN A CONSTITUENT SERVICES ACCOUNT; PROVIDING REPORTING REQUIREMENTS FOR CONSTITUENT SERVICES ACCOUNTS; AMENDING SECTION 13-37-240, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2190

488 *(House Bill No. 491; Sinrud)* PERMITTING TESTIMONY OF CERTAIN CHILD WITNESSES BY TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION IN CRIMINAL CASES INVOLVING SEXUAL OR VIOLENT OFFENSES; AND REPEALING SECTION 46-16-216, MCA . 2192

489 *(House Bill No. 829; Jones)* PROVIDING A MEANS TO RATIFY THE IMPENDING WATER RIGHTS COMPACT AMONG THE BLACKFEET TRIBE, THE STATE OF MONTANA, AND THE UNITED STATES; CREATING A BLACKFEET TRIBE WATER RIGHTS COMPACT MITIGATION ACCOUNT; CREATING A BLACKFEET TRIBE WATER RIGHTS COMPACT INFRASTRUCTURE ACCOUNT; AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADMINISTER THE ACCOUNTS; PROVIDING A FUND TRANSFER; APPROPRIATING FUNDS FOR THE MITIGATION ACCOUNT; AND PROVIDING EFFECTIVE DATES 2194

490 *(Senate Bill No. 22; Weinberg)* REVISING THE ELIGIBILITY REQUIREMENTS FOR THE CHILDREN'S HEALTH INSURANCE PROGRAM; AMENDING SECTION 53-4-1004, MCA; AND PROVIDING AN EFFECTIVE DATE 2196

491 *(House Bill No. 25; Olson)* GENERALLY REVISING THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING AND CUSTOMER CHOICE LAWS; ELIMINATING AND CLARIFYING CERTAIN DEFINITIONS; DEFINING CERTAIN TERMS; CLARIFYING CUSTOMER OPTIONS REGARDING PURCHASING ELECTRICITY SUPPLY; CLARIFYING PUBLIC UTILITY AND COOPERATIVE UTILITY EXEMPTIONS; CLARIFYING ELECTRICITY SUPPLY AND PROCUREMENT REQUIREMENTS; CLARIFYING THE APPROVAL PROCESS FOR ELECTRICITY SUPPLY RESOURCES; REQUIRING THE COMMISSION TO ADDRESS CARBON OFFSETS IN THE APPROVAL PROCESS; CLARIFYING USE OF GENERATION ASSETS; AMENDING SECTIONS 15-72-103, 15-72-104, 35-19-102, 69-1-114, 69-8-101, 69-8-103, 69-8-201, 69-8-210, 69-8-311, 69-8-402, 69-8-403, 69-8-411, 69-8-419, 69-8-420, 69-8-421, 69-8-602, 69-8-603, AND 69-8-1004, MCA; AND REPEALING SECTIONS 69-8-102, 69-8-104, 69-8-202, 69-8-203, 69-8-204, 69-8-208, 69-8-209, 69-8-211, 69-8-301, 69-8-302, 69-8-303, 69-8-304, 69-8-308, 69-8-309, 69-8-310, 69-8-404, 69-8-408, 69-8-409, AND 69-8-410, MCA. 2197

492 *(Senate Bill No. 4; Harrington)* ESTABLISHING A PROCUREMENT REBATE SPECIAL REVENUE ACCOUNT; PROVIDING FOR THE FUNDING AND USE OF MONEY IN THE ACCOUNT; AND PROVIDING AN EFFECTIVE DATE 2219

493 *(Senate Bill No. 12; Williams)* REVISING THE COMMUNITY COLLEGE FUNDING STATUTES TO PROVIDE FOR CALCULATION OF THE STATE GENERAL FUND APPROPRIATION BASED ON VARIABLE AND FIXED COSTS; CLARIFYING THAT THE VARIABLE AND FIXED COSTS AND THE STATE SHARE ARE DETERMINED BY THE LEGISLATURE; PROVIDING DEFINITIONS; AMENDING SECTIONS 20-15-310 AND 20-15-312, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 2219

494 *(Senate Bill No. 25; Larson)* CREATING THE CONTRACT HARVESTING PROGRAM; DEFINING TERMS FOR THE CONTRACT HARVESTING AND SALE OF FOREST PRODUCTS FROM STATE TRUST LANDS; AUTHORIZING CONTRACT HARVESTING OF TIMBER AND FOREST PRODUCTS ON STATE TRUST LANDS; AUTHORIZING THE SALE OF FOREST PRODUCTS BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; CREATING A CONTRACT HARVESTING SUBACCOUNT FOR THE DEPOSIT OF GROSS PROCEEDS FROM CONTRACT HARVESTING SALES AND THE PAYMENT OF CONTRACT HARVESTING COSTS; PROVIDING RULEMAKING AUTHORITY FOR THE BOARD OF LAND COMMISSIONERS TO IMPLEMENT THE CONTRACT HARVESTING PROGRAM; AMENDING SECTIONS 77-1-613, 77-5-201, AND 77-5-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2221

495 *(Senate Bill No. 27; Esp)* CLARIFYING THE RIGHT OF A GRANDPARENT TO HAVE CONTACT WITH A GRANDCHILD IN LIGHT OF DECISIONS BY THE U.S. SUPREME COURT AND THE MONTANA SUPREME COURT; AMENDING SECTION 40-9-102, MCA; AND PROVIDING AN APPLICABILITY DATE 2227

496 *(Senate Bill No. 31; Esp)* ALLOWING CONTINUED CUSTODY OF A CHILD BY THE CHILD'S CARETAKER RELATIVE FOLLOWING VOLUNTARY SURRENDER OF THE CHILD BY A PARENT OF THE

CHILD UNDER CIRCUMSTANCES INDICATING ABANDONMENT; PROVIDING FOR AN EX PARTE ORDER BY A DISTRICT COURT; PROHIBITING A PEACE OFFICER OR COURT FROM REQUIRING SURRENDER OF THE CHILD BY THE CARETAKER RELATIVE EXCEPT IN CERTAIN CIRCUMSTANCES; PROVIDING IMMUNITY; AND PROVIDING AN APPLICABILITY DATE 2230

497 *(Senate Bill No. 74; Jent)* GENERALLY REVISING THE MONTANA TITLE LOAN ACT; INCLUDING TITLE LOAN LICENSEES IN THE DEFINITION OF REGULATED LENDERS; EXPANDING THE SCOPE OF THE ACT TO INCLUDE PAWNBROKERS; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO CONDUCT INVESTIGATIONS AND TO ISSUE SUBPOENAS AND CEASE AND DESIST ORDERS; AUTHORIZING THE DEPARTMENT TO SEEK COURT-ORDERED INJUNCTIONS; PROVIDING FOR RESTITUTION; AND AMENDING SECTIONS 31-1-111, 31-1-802, 31-1-803, 31-1-811, 31-1-816, 31-1-817, AND 31-1-825, MCA 2233

498 *(Senate Bill No. 92; Steinbeisser)* GENERALLY REVISING THE MONTANA MORTGAGE BROKER AND LOAN ORIGINATOR LICENSING ACT; ELIMINATING EXCEPTIONS TO THE EXPERIENCE AND EXAMINATION REQUIREMENTS FOR LICENSING; PROVIDING THAT AN INDIVIDUALLY LICENSED MORTGAGE BROKER MAY ONLY WORK FOR ONE EMPLOYING ENTITY; PROVIDING GUIDELINES IN CASES OF TERMINATION OF EMPLOYMENT OF INDIVIDUALLY LICENSED MORTGAGE BROKERS; REVISING RECORDKEEPING REQUIREMENTS; CLARIFYING WHO PAYS CERTAIN FEES; PROVIDING FOR INVESTIGATIONS BY THE DEPARTMENT OF ADMINISTRATION; ESTABLISHING REQUIREMENTS FOR CEASE AND DESIST ORDERS; REVISING LICENSE REVOCATION AND SUSPENSION PROVISIONS AND PENALTY PROVISIONS; AMENDING SECTIONS 32-9-103, 32-9-108, 32-9-109, 32-9-110, 32-9-115, 32-9-117, 32-9-121, 32-9-122, 32-9-123, 32-9-124, 32-9-125, 32-9-126, 32-9-130, AND 32-9-133, MCA; AND REPEALING SECTIONS 32-9-111 AND 32-9-131, MCA 2240

499 *(Senate Bill No. 103; Lind)* GENERALLY REVISING LOCAL GOVERNMENT FIRE PROTECTION LAWS; CHANGING THOSE WHO MAY PETITION FOR CREATION, ANNEXATION, DIVISION, AND DISSOLUTION OF RURAL FIRE DISTRICT FROM FREEHOLDERS TO OWNERS OF 40 PERCENT OR MORE OF THE REAL PROPERTY WITHIN THE PROPOSED DISTRICT AND OWNERS OF PROPERTY REPRESENTING 40 PERCENT OR MORE OF THE TAXABLE VALUE OF THE PROPERTY WITHIN THE PROPOSED DISTRICT AND CHANGING THE PERCENTAGE OF PETITIONERS REQUIRED; ALLOWING CERTAIN CITIES AND TOWNS TO BE INCLUDED IN A RURAL FIRE DISTRICT; PROHIBITING SIGNATURES FROM BEING WITHDRAWN FROM A PETITION AFTER A CERTAIN TIME PERIOD; REVISING THE POWERS AND DUTIES OF RURAL FIRE DISTRICT TRUSTEES; REMOVING LIMITATIONS ON TRUSTEES' ABILITY TO ENTER INTO CONTRACTS FOR FIRE PROTECTION SERVICES; PROVIDING THAT TWO OR MORE RURAL FIRE DISTRICTS THAT CONSOLIDATE RESULT IN A NEW RURAL FIRE DISTRICT FOR MILL LEVY PURPOSES; REVISING HOW A RURAL FIRE DISTRICT MAY BE DIVIDED AND THE REQUIREMENTS FOR DIVISION; ALLOWING TERRITORY WITHIN CERTAIN CITIES AND TOWNS TO BE ANNEXED INTO A RURAL FIRE DISTRICT; REQUIRING A COUNTY GOVERNING BODY TO EITHER PROVIDE DIRECT FIRE PROTECTION TO COUNTY LAND OR TO ENTER INTO AN AGREEMENT FOR THAT PROTECTION; REMOVING THE

PROHIBITION ON MORE THAN ONE FIRE COMPANY FOR CERTAIN LOCATIONS; REMOVING THE PROVISION THAT RURAL FIRE DISTRICT CHIEFS SERVE WITHOUT COMPENSATION; REMOVING THE PROVISION ALLOWING VOLUNTARY URBAN FIRE CREWS FOR USE IN RURAL AREAS; AMENDING SECTIONS 7-33-2101, 7-33-2102, 7-33-2103, 7-33-2104, 7-33-2105, 7-33-2106, 7-33-2107, 7-33-2109, 7-33-2120, 7-33-2121, 7-33-2123, 7-33-2124, 7-33-2125, 7-33-2126, 7-33-2127, 7-33-2128, 7-33-2202, 7-33-2205, 7-33-2206, 7-33-2210, 7-33-2311, 7-33-2313, AND 7-33-2401, MCA; AND REPEALING SECTIONS 7-33-2122, 7-33-2204, AND 7-33-2207, MCA 2250

500 *(Senate Bill No. 115; Jent)* DIRECTING THAT ALL MONEY COLLECTED BY COURTS AS RESTITUTION FOR THE ILLEGAL KILLING OR POSSESSION OF CERTAIN WILDLIFE BE CREDITED TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR HUNTER EDUCATION AND ENFORCEMENT; AMENDING SECTION 87-1-114, MCA; AND PROVIDING AN EFFECTIVE DATE 2262

501 *(Senate Bill No. 127; Wanzenried)* TO REVISE LAWS RELATING TO THE SALE AND DISTRIBUTION OF WINE BY WINERIES; ALLOWING ALL LICENSED WINERIES TO MAKE LIMITED SALES TO LICENSED WINE RETAILERS; AMENDING SECTIONS 16-3-219, 16-3-301, 16-3-401, 16-3-402, 16-3-404, 16-3-411, 16-3-418, 16-4-107, 16-4-501, 16-4-906, 16-6-104, AND 16-6-314, MCA 2263

502 *(Senate Bill No. 153; Cocchiarella)* REVISING PROFESSIONAL AND OCCUPATIONAL LICENSING LAWS; CREATING EMERITUS STATUS FOR ARCHITECTS; CREATING A RETIREMENT LICENSE FOR PLUMBERS; REVISING THE BOARD OF REALTY REGULATION; REVISING THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; CLARIFYING THE DEFINITION OF "LICENSE"; PROVIDING BOARDS WITH PERMISSION TO REQUIRE STATE, REGIONAL, OR NATIONAL CERTIFICATION; EXPANDING THE UNPROFESSIONAL CONDUCT DESCRIPTION; ADDING ELEVATOR CONTRACTORS, MECHANICS, AND INSPECTORS TO THOSE COVERED BY THE UNPROFESSIONAL CONDUCT STATUTE; ADDING NATUROPATHIC PHYSICIAN, PHYSICIAN ASSISTANT, AND OPTOMETRIST TO DEFINITIONS RELATING TO NURSING; REMOVING THE OATH REQUIREMENT TO APPLY FOR A LICENSE AS A NURSE; CLARIFYING APPLICATION REQUIREMENTS FOR OPTOMETRISTS; CLARIFYING THE APPLICATION PROCESS FOR SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS; CLARIFYING TRAINEE LICENSE TERMS FOR HEARING AID DISPENSERS; REVISING TERMS FOR A VETERINARY LICENSE; REVISING RULEMAKING AUTHORITY FOR THE BOARD OF ALTERNATIVE HEALTH CARE; CLARIFYING LICENSING PROCEDURE FOR NATUROPATHIC PHYSICIANS; REVISING DISTRIBUTION OF CERTAIN LICENSEE FEES FOR OUTFITTERS; CLARIFYING CONDITIONS FOR DENYING, SUSPENDING, OR REVOKING AN OUTFITTER'S, GUIDE'S, OR PROFESSIONAL GUIDE'S LICENSE; REQUIRING PUBLICATION OF A LIST OF LICENSED OUTFITTERS; PROVIDING PENALTIES FOR NONCOMPLIANCE BY REAL ESTATE BROKERS OR PROPERTY MANAGERS WITH TRUST ACCOUNT PROVISIONS; CREATING ENDORSEMENT PROVISIONS FOR A SUPERVISING REAL ESTATE BROKER; CREATING A TEMPORARY LICENSE FOR ELEVATOR INSPECTORS; REVISING THE NAME OF AMBULATORY SURGICAL FACILITIES; PROVIDING ACUPUNCTURISTS WITH LIEN RIGHTS; AMENDING SECTIONS 2-15-1757, 2-15-1781, 25-1-1104, 33-36-103, 37-1-130, 37-1-131, 37-1-302, 37-1-401, 37-1-410, 37-8-102, 37-8-405, 37-8-415, 37-10-302, 37-15-302,

37-16-405, 37-18-306, 37-26-201, 37-26-403, 37-47-318, 37-47-341, 37-51-102, 37-51-301, 37-51-302, 37-60-101, 37-60-103, 37-60-202, 37-60-301, 37-60-302, 37-60-303, 37-60-304, 37-60-309, 37-60-310, 37-60-314, 37-60-402, 37-60-403, 37-60-409, 37-73-208, 50-32-314, 71-3-1111, 71-3-1112, 71-3-1113, 71-3-1114, 71-3-1115, 71-3-1117, AND 71-3-1118, MCA; AND REPEALING SECTIONS 37-60-315 AND 37-60-406, MCA 2270

503 *(Senate Bill No. 168; Jent)* REVISING THE MANDATORY CASH PAYMENT FOR VACATION LEAVE UPON TERMINATION; CLARIFYING THE USE OF VACATION LEAVE PAYMENTS UPON TERMINATION AS PERMISSIBLE CONTRIBUTIONS FOR A VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION; AMENDING SECTIONS 2-18-601, 2-18-617, AND 2-18-1311, MCA; AND PROVIDING AN EFFECTIVE DATE 2300

504 *(Senate Bill No. 206; Cobb)* REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CONDUCT A STUDY TO DETERMINE THE FEASIBILITY, IMPACT, AND COST OF PROVIDING EMPLOYER-SPONSORED HEALTH INSURANCE TO PERSONAL-CARE ATTENDANTS AND DIRECT-CARE EMPLOYEES OF ORGANIZATIONS THAT RECEIVE THE MAJORITY OF THEIR REVENUE AS A RESULT OF PROVIDING MEDICAID-FUNDED LONG-TERM CARE SERVICES BY INCREASING CERTAIN MEDICAID PAYMENTS TO THEIR EMPLOYERS AND REQUIRING THE INCREASED PAYMENTS BE USED TO FUND THE HEALTH INSURANCE; AUTHORIZING THE DEPARTMENT TO ESTABLISH A PILOT PROGRAM; REQUIRING A REPORT TO THE LEGISLATURE; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 2304

505 *(Senate Bill No. 233; Elliott)* PROVIDING FOR THE CREATION OF COUNTY MUSEUM DISTRICTS AND ALLOWING FOR A MUSEUM DISTRICT TO BE LOCATED IN MORE THAN ONE COUNTY; PROVIDING FOR PROTEST OF CREATION OF THE DISTRICT; ALLOWING FOR A LEVY OF TAXES ON PROPERTY LOCATED WITHIN A DISTRICT; REQUIRING CERTAIN PROCEDURES IF THE DISTRICT INCLUDES TERRITORY FROM MORE THAN ONE COUNTY; AND AMENDING SECTIONS 7-6-2527 AND 7-16-2205, MCA 2306

506 *(Senate Bill No. 273; Jent)* GENERALLY REVISING ADMINISTRATION OF STANDARDS AND TRAINING CRITERIA FOR PUBLIC SAFETY PROFESSIONALS; ESTABLISHING A MONTANA PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL AS A QUASI-JUDICIAL BOARD IN PLACE OF THE PEACE OFFICERS' STANDARDS AND TRAINING ADVISORY COUNCIL UNDER THE BOARD OF CRIME CONTROL; PROVIDING THAT THE NEW COUNCIL BE ALLOCATED TO THE DEPARTMENT OF JUSTICE FOR ADMINISTRATIVE PURPOSES; AUTHORIZING RULEMAKING; SPECIFYING MEMBERSHIP; PROVIDING DEFINITIONS AND DUTIES; SPECIFYING RESPONSIBILITY FOR APPLYING THE STANDARDS AND TRAINING REQUIREMENTS; PROVIDING INSTRUCTIONS FOR THE TRANSITION; TRANSFERRING RESPONSIBILITY FOR CONDUCTING TRAINING FOR JUVENILE PROBATION OFFICERS TO THE OFFICE OF COURT ADMINISTRATOR; AMENDING SECTIONS 7-4-2905, 7-31-201, 7-31-202, 7-31-203, 7-32-201, 7-32-214, 7-32-303, 7-32-4112, 19-7-101, 41-5-1706, 44-4-301, 44-4-305, 44-4-902, AND 46-23-1003, MCA; REPEALING SECTION 44-4-302, MCA; AND PROVIDING AN EFFECTIVE DATE 2310

507 *(Senate Bill No. 276; Steinbeisser)* ALLOWING FUNERAL DIRECTORS, UNDERTAKERS, AND MORTICIANS TO SELL CERTAIN TYPES OF FUNERAL INSURANCE SUBJECT TO CERTAIN CONDITIONS IF LICENSED; DEFINING "FUNERAL INSURANCE"; AMENDING SECTIONS 33-17-211, 33-17-214, AND 33-18-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 2321

508 *(Senate Bill No. 279; Balyeat)* ESTABLISHING THE CLEAN CAMPAIGN ACT; REQUIRING CANDIDATES AND COMMITTEES SUPPORTING CANDIDATES TO PROVIDE CANDIDATES IN PRIMARY AND GENERAL ELECTIONS WITH COPIES OF CERTAIN CAMPAIGN ADVERTISING INTENDED TO BE DISTRIBUTED IN THE 10 DAYS PRIOR TO AN ELECTION; PROVIDING CIVIL PENALTIES FOR VIOLATIONS; AND AMENDING SECTION 13-37-128, MCA 2326

509 *(Senate Bill No. 281; Balyeat)* ALLOWING MARRIED TAXPAYERS WHO FILE SEPARATE MONTANA INCOME TAX RETURNS TO USE FEDERAL DETERMINATIONS OF ADJUSTED GROSS INCOME REPORTED ON FEDERAL JOINT RETURNS IN DETERMINING MONTANA ADJUSTED GROSS INCOME FOR CERTAIN INCOME ITEMS; AMENDING SECTIONS 15-30-111, 15-62-207, AND 15-62-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 2327

510 *(Senate Bill No. 316; Elliott)* ALLOWING A PARCEL OF LAND LESS THAN 20 ACRES TO QUALIFY AS AGRICULTURAL LAND IF THE PARCEL HAD PREVIOUSLY TOTALED 20 ACRES OR MORE AND WAS QUALIFIED AS AGRICULTURAL LAND BUT THE SIZE OF THE PARCEL WAS REDUCED TO LESS THAN 20 ACRES FOR A PUBLIC USE BY THE FEDERAL GOVERNMENT, THE STATE, OR A LOCAL GOVERNMENT AND THE PARCEL HAS NOT BEEN FURTHER SPLIT; AMENDING SECTION 15-7-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2333

511 *(Senate Bill No. 348; Gallus)* ELIMINATING THE REQUIREMENT FOR THE APPOINTMENT OF AN ATTORNEY FOR A GUARDIAN AD LITEM IN A CHILD ABUSE AND NEGLECT CASE; ALLOWING AN APPOINTMENT FOR A GUARDIAN AD LITEM OR COURT-APPOINTED SPECIAL ADVOCATE WHEN APPROPRIATE; AMENDING SECTION 41-3-425, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2336

512 *(Senate Bill No. 363; Kaufmann)* PROVIDING THAT PRIVATE PROPERTY MAY BE CONDEMNED THROUGH THE USE OF EMINENT DOMAIN FOR URBAN RENEWAL PROJECTS ONLY IF THE PROPERTY IS DETERMINED TO BE BLIGHTED AND MAY NOT BE ACQUIRED BY EMINENT DOMAIN IF THE PURPOSE OF THE PROJECT IS TO INCREASE TAX REVENUE; PROVIDING THAT THE CONDEMNED PROPERTY MUST BE APPLIED TO A DEMONSTRATED PUBLIC USE; PROVIDING PROCEDURES IF THE PROPERTY IS SOLD; AND AMENDING SECTIONS 7-15-4259, 70-30-102, 70-30-111, AND 70-30-322, MCA 2336

513 *(Senate Bill No. 365; Story)* REVISING LAWS RELATED TO WATER COMMISSIONERS; PROVIDING THAT AT THE DISTRICT COURT'S DISCRETION A BILL MAY BE ISSUED PRIOR TO THE BEGINNING OF A DISTRIBUTION SEASON FOR THE PURPOSE OF OFFSETTING COSTS ASSOCIATED WITH DISTRIBUTING WATER; PROVIDING THAT A BILLING BEFORE A DISTRIBUTION SEASON MAY NOT EXCEED 80 PERCENT OF THE AMOUNT THAT WAS PAID BY A WATER USER DURING THE PRIOR DISTRIBUTION SEASON;

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514 *(Senate Bill No. 382; Laslovich)* AUTHORIZING THE CREATION OF MENTAL HEALTH TREATMENT COURTS FOR OFFENDERS WITH A MENTAL DISORDER; PROVIDING FOR IMPLEMENTATION OF ACCOUNTABILITY AND TREATMENT PROGRAMS; CREATING PROCEDURAL GUIDELINES FOR DISTRICT COURT JUDGES; AMENDING SECTION 3-10-303, MCA; AND PROVIDING AN EFFECTIVE DATE 2343

515 *(Senate Bill No. 433; Laslovich)* ALLOWING A JUDGE TO TERMINATE A DEFERRED OR SUSPENDED SENTENCE UNDER CERTAIN CONDITIONS; AMENDING SECTION 46-18-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2348

516 *(Senate Bill No. 524; Wanzenried)* REVISING LAWS RELATING TO THE SALE AND DISTRIBUTION OF BEER BY BREWERIES AND WINE BY WINERIES; ALLOWING ALL LICENSED BREWERIES TO MAKE LIMITED SALES TO LICENSED BEER RETAILERS; AND AMENDING SECTIONS 16-3-211, 16-3-214, 16-3-301, 16-4-906, 16-6-104, AND 16-6-314, MCA 2349

517 *(Senate Bill No. 118; Cobb)* ELIMINATING THE JUNE 30, 2007, TERMINATION DATE FOR THE HOSPITAL FACILITY UTILIZATION FEE; SETTING NEW FEE PROVISIONS; UPDATING A DEFINITIONAL CITE; AMENDING SECTIONS 15-66-101, 15-66-102, AND 15-66-201, MCA, AND SECTION 20, CHAPTER 390, LAWS OF 2003, AND SECTIONS 4 AND 7, CHAPTER 606, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE . . 2352

518 *(Senate Bill No. 161; Laible)* GENERALLY REVISING CAPTIVE INSURANCE LAWS; ESTABLISHING A CAPTIVE INSURANCE REGULATORY AND SUPERVISION ACCOUNT; REVISING DEFINITIONS; EXPANDING THE DEFINITION OF "PURE CAPTIVE INSURANCE COMPANY" TO INCLUDE CONTROLLED UNAFFILIATED BUSINESS ENTITIES; PROVIDING FOR INVESTMENTS BY PROTECTED CELL CAPTIVE INSURANCE COMPANIES; REVISING LICENSING AND MINIMUM CAPITAL SURPLUS REQUIREMENTS; REVISING PROCEDURES FOR FORMING CAPTIVE INSURANCE COMPANIES; REVISING FILING AND EXAMINATION REQUIREMENTS FOR CAPTIVE RISK RETENTION GROUPS; CLARIFYING TAX COMPUTATION FOR PROTECTED CELL CAPTIVE INSURANCE COMPANIES; SUBSTITUTING THE TERM "PROTECTED CELL CAPTIVE INSURANCE COMPANY" FOR "SPONSORED CAPTIVE INSURANCE COMPANY"; AND AMENDING SECTIONS 33-28-101, 33-28-102, 33-28-104, 33-28-105, 33-28-106, 33-28-107, 33-28-108, 33-28-201, 33-28-202, 33-28-205, 33-28-206, 33-28-207, 33-28-301, 33-28-302, 33-28-303, 33-28-304, AND 33-28-306, MCA 2354

519 *(Senate Bill No. 205; Jent)* TO EXEMPT AUTHORIZED GAME WARDEN POSITIONS FROM THE IMPOSITION OF VACANCY SAVINGS WHEN ESTABLISHING THE BUDGET FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AND PROVIDING AN EFFECTIVE DATE. . 2371

520 *(Senate Bill No. 222; Esp)* REQUIRING A REDUCTION IN SPEED OF AT LEAST 20 MILES PER HOUR BELOW THE POSTED SPEED LIMIT IN CERTAIN SITUATIONS WHEN APPROACHING AN EMERGENCY OR POLICE VEHICLE ON A PUBLIC HIGHWAY WITH A POSTED SPEED LIMIT OF 50 MILES PER HOUR OR GREATER; AND AMENDING SECTIONS 61-8-346 AND 61-9-402, MCA 2372

521 *(Senate Bill No. 550; Laible)* REVISING THE LAWS GOVERNING LOCAL GOVERNMENT STUDY COMMISSIONS; AUTHORIZING THE IMPOSITION OF A MILL LEVY AND PROVIDING FOR AN EXCEPTION FROM THE MILL LEVY LIMITS FOR A LEVY FOR FUNDING LOCAL GOVERNMENT STUDY COMMISSIONS; CLARIFYING THE PROCEDURES FOR PROPOSALS FOR ALTERNATIVE FORMS OR PLANS OF GOVERNMENT MADE BY PETITION OR BY A STUDY COMMISSION; PROVIDING THAT ELECTED OFFICIALS REMAIN IN OFFICE UNLESS THE NEW FORM OR PLAN ELIMINATES THE OFFICE FOR WHICH THEY WERE ELECTED; AND AMENDING SECTIONS 7-3-122, 7-3-141, 7-3-142, 7-3-149, 7-3-151, 7-3-152, 7-3-153, 7-3-155, 7-3-156, 7-3-157, 7-3-158, 7-3-160, 7-3-161, 7-3-175, 7-3-178, 7-3-184, 7-3-187, 7-3-192, 7-3-193, AND 15-10-420, MCA 2374

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1 *(Williams)* REVISING AND ADOPTING THE SENATE RULES 2493

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4 *(Squires)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 15, 2007, TO THE SENATE 2513

5 *(Squires)* CONCURRING IN, CONFIRMING, AND CONSENTING TO AN APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 2007, TO THE SENATE 2522

6 *(Squires)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 3, 2007, TO THE SENATE 2523

8 *(Squires)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 13, 2007, TO THE SENATE 2523

9 *(Squires)* CONCURRING IN, CONFIRMING, AND CONSENTING TO AN APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 13, 2007, TO THE SENATE 2526

10 *(Squires)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 12, 2007, TO THE SENATE 2527

LAWS

Enacted by the

SIXTIETH LEGISLATURE
IN REGULAR SESSION

Held at Helena, the Seat of Government
January 3, 2007, through April 27, 2007

Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

CHAPTER NO. 1

[HB 1]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations. The following amounts are appropriated from the state general fund for fiscal years 2007, 2008, and 2009 for the operation of the 60th legislature and the costs of preparing for the 61st legislature:

LEGISLATIVE BRANCH (1104)

1. Senate (25)	$2,651,550
2. House of Representatives (26)	4,617,043
3. Legislative Services Division (22)	657,352

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 1, 2007

CHAPTER NO. 2

[HB 10]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FIRE SUPPRESSION COSTS FOR THE BIENNIUM ENDING JUNE 30, 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation — reversion. (1) Subject to subsection (2), up to $5,062,271 is appropriated from the general fund to the department of natural resources and conservation forestry program.

(2) The appropriation contained in subsection (1) is intended to provide the necessary funding for fire costs in fiscal year 2006. The unspent balance of the appropriation must revert to the general fund.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 1, 2007

CHAPTER NO. 3

[HB 42]

AN ACT EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-205, MCA, is amended to read:

"17-5-205. Application. The application of the Bond Validating Act, Title 17, chapter 5, part 2, is extended to bonds issued and proceedings taken prior to ~~March 15, 2005~~ *[the effective date of this act]*."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 1, 2007

CHAPTER NO. 4

[HB 41]

AN ACT ELIMINATING RESTRICTIONS ON USE OF THE PRINCIPAL OF THE ENERGY CONSERVATION AND ENERGY ASSISTANCE ACCOUNT IN THE FEDERAL SPECIAL REVENUE FUND; AMENDING SECTION 90-4-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-4-215, MCA, is amended to read:

"90-4-215. Account established — use. (1) There is ~~created~~ an energy conservation and energy assistance account within the federal special revenue fund established in 17-2-102.

(2) The amounts deposited in the account and interest and earnings on the account may be used by the department of public health and human services to fund its low-income energy assistance and home weatherization programs created in 90-4-201. ~~However, the department may use the principal of the account only if the federal grants for either of those programs are reduced below the federal fiscal year 1987 level. The department may not use the principal to increase expenditures to either program above the level of the federal grant for that program for federal fiscal year 1987.~~"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 5, 2007

CHAPTER NO. 5

[HB 21]

AN ACT ALLOWING THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE TO PREPARE FOR INTRODUCTION DURING A SPECIAL SESSION OF THE LEGISLATURE AN ESTIMATE OF THE AMOUNT OF PROJECTED REVENUE; AMENDING SECTIONS 5-3-101 AND 5-5-227, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-3-101, MCA, is amended to read:

"5-3-101. Convening of special session — limiting subjects — committee meetings — compensation. (1) The legislature may be convened in special session by the governor or at the written request of a majority of the members. ~~The~~ *Subject to 5-5-227, the* governor or the legislature may limit the special session to the subjects specified in the call.

(2) (a) A standing committee of the legislature may meet prior to a special session for the purpose of holding hearings and taking action on preintroduced legislation that has been referred to that committee.

(b) Public notice of a hearing to be held by a standing committee prior to a special session must be given at least 7 days before the hearing.

(3) Members of the legislature engaged in presession business for a special session are entitled to receive compensation and expenses as provided in 5-2-302. Members of the legislature are entitled to receive compensation and expenses, as provided in 5-2-301, for the day prior to the convening of a special session."

Section 2. Section 5-5-227, MCA, is amended to read:

"5-5-227. Revenue and transportation interim committee — powers and duties — revenue estimating and use of estimates. (1) The revenue and transportation interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the department of revenue and the department of transportation and the entities attached to the departments for administrative purposes.

(2) *(a)* The committee must have prepared by December 1 for introduction during each regular session of the legislature in which a revenue bill is under consideration an estimate of the amount of revenue projected to be available for legislative appropriation.

(b) The committee may prepare for introduction during a special session of the legislature in which a revenue bill or an appropriation bill is under consideration an estimate of the amount of projected revenue. The revenue estimate is considered a subject specified in the call of a special session under 5-3-101.

(3) The committee's estimate, as introduced in the legislature, constitutes the legislature's current revenue estimate until amended or until final adoption of the estimate by both houses. It is intended that the legislature's estimates and the assumptions underlying the estimates will be used by all agencies with responsibilities for estimating revenue or costs, including the preparation of fiscal notes.

(4) The legislative services division shall provide staff assistance to the committee. The committee may request the assistance of the staffs of the office of the legislative fiscal analyst, the legislative auditor, the department of revenue, and any other agency that has information regarding any of the tax or revenue bases of the state."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved February 13, 2007

CHAPTER NO. 6

[HB 23]

AN ACT CORRECTING THE ERRONEOUS DEPOSIT TO A STATE SPECIAL REVENUE FUND OF A PERCENTAGE OF CERTAIN DRIVER'S LICENSE FEES; AMENDING SECTION 61-5-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-121, MCA, is amended to read:

"61-5-121. Disposition of fees. (1) Except as provided in subsection (3), the disposition of the fees from driver's licenses, motorcycle endorsements, commercial driver's licenses, and replacement driver's licenses provided for in 61-5-114 is as follows:

~~(a) The amount of 22.3% of each driver's license fee, 18.25% of each commercial driver's license fee, and 25% of each replacement driver's license fee must be deposited into an account in the state special revenue fund. Upon receiving an appropriation, the department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. The department shall report the amount deposited and transferred under this subsection (1)(a) to the legislative finance committee by October 31 of the year preceding each regular session of the legislature.~~

~~(b)~~*(a)* (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 2.5% of each driver's license fee, 2.5% of each commercial driver's license fee, and 3.75% of each replacement driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection ~~(1)(b)(i)~~ *(1)(a)(i)* must be deposited into the state general fund.

~~(c)~~*(b)* (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 3.34% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection ~~(1)(c)(i)~~ *(1)(b)(i)* must be deposited into the state general fund.

~~(d)~~*(c)* The amount of 20.7% of each driver's license fee, 16.94% of each commercial driver's license fee, and 8.75% of each replacement driver's license fee must be deposited into the state traffic education account.

~~(e)~~*(d)* In addition to the amounts deposited pursuant to subsections ~~(1)(b)(ii)~~ *(1)(a)(ii)* and ~~(1)(c)(ii)~~ *(1)(b)(ii)*, the remainder of each driver's license fee, each commercial driver's license fee, and each replacement driver's license fee must be deposited into the state general fund.

~~(f)~~*(e)* The amount of 63.46% of each motorcycle endorsement fee must be deposited into the state motorcycle safety account in the state special revenue fund, and the amount of 33.2% of each motorcycle endorsement fee must be deposited into the state general fund.

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections ~~(1)(b)(i)~~ *(1)(a)(i)* and ~~(1)(c)(i)~~ *(1)(b)(i)* into the county general fund. The county treasurer or agent shall then remit all remaining fees to the state for deposit as provided in subsections ~~(1)(a) and (1)(d)~~ *(1)(c)* through ~~(1)(f)~~ *(1)(e)*.

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall deposit the fees as provided in subsections ~~(1)(a)~~ *(1)(a)(ii)*, (1)(b)(ii), ~~(1)(c)(ii),~~ and ~~(1)(d)~~ *(1)(c)* through ~~(1)(f)~~ *(1)(e)*.

(3) The fee for a renewal notice, whether collected by a county treasurer, an authorized agent, or the department, must be remitted to the department for deposit in the state general fund."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 16, 2007

CHAPTER NO. 7

[HB 470]

AN ACT CLARIFYING THAT IN THE SALE OF REAL PROPERTY FOR PAYMENT OF TAXES, INTEREST AND COSTS PAYABLE UPON REDEMPTION ACCRUE UNTIL THE DATE OF REDEMPTION AND MUST BE CALCULATED BY THE COUNTY TREASURER; AMENDING SECTIONS 15-18-212 AND 15-18-217, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-18-212, MCA, is amended to read:

"15-18-212. Notice — proof of notice — penalty for failure to notify. (1) Not more than 60 days prior to and not more than 60 days following the expiration of the redemption period provided in 15-18-111, a notice must be given as follows:

(a) for each property for which there has been issued to the county a tax sale certificate or for which the county is otherwise listed as the purchaser or assignee, the county clerk *and recorder* shall notify all persons considered interested parties in the property and the current occupant of the property, if any, that a tax deed may be issued to the county unless the property tax lien is redeemed prior to the expiration date of the redemption period; or

(b) for each property for which there has been issued a tax sale certificate to a purchaser other than the county or for which an assignment has been made, the purchaser or assignee, as appropriate, shall notify all persons considered interested parties in the property, if any, that a tax deed will be issued to the purchaser or assignee unless the property tax lien is redeemed prior to the expiration date of the redemption period.

(2) (a) Except as provided in subsection (2)(b), if the county is the purchaser, an assignment has not been made, and the board of county commissioners has not directed the county treasurer to issue a tax deed during the period described in subsection (1) but the board of county commissioners at a time subsequent to the period described in subsection (1) does direct the county treasurer to issue a tax deed, the county clerk *and recorder* shall provide notification to all interested parties and the current occupant, if any, in the manner provided in subsection (1)(a). The notification required under this subsection must be made not less than 60 days or more than 120 days prior to the date on which the county treasurer will issue the tax deed.

(b) If the county commissioners direct the county treasurer to issue a tax deed within 6 months after giving the notice required by subsection (1)(a), additional notice need not be given.

(3) (a) If a purchaser other than the county or an assignee fails or neglects to give notice as required by subsection (1)(b) and the failure or neglect is evidenced by failure of the purchaser or assignee to file proof of notice with the county clerk *and recorder* as required in subsection ~~(7)~~ *(8)*, the county treasurer shall notify the purchaser or assignee of the obligation to give notice under subsection (1)(b). The notice of obligation may be sent by certified mail, return receipt requested, to the purchaser or assignee at the address contained on the tax sale certificate provided for in 15-17-212 or on the assignment form provided for in 15-17-323.

(b) If within 120 days after the county treasurer mails the notice of obligation the purchaser or assignee fails to give notice as required by subsection (1)(b), as evidenced by failure to file proof of notice with the county clerk *and recorder* as required in subsection ~~(7)~~ *(8)*, the county treasurer shall cancel the property tax lien evidenced by the tax sale certificate or the assignment. Upon cancellation of the property tax lien, the county treasurer shall file or record with the county clerk and recorder a notice of cancellation on a form provided for in 15-18-217.

(4) The notice required under subsections (1) and (2) must be made by certified mail, return receipt requested, to each interested party and the current occupant, if any, of the property. The address to which the notice must be sent is, for each interested party, the address disclosed by the records in the office of the county clerk *and recorder* and, for the occupant, the street address or other known address of the subject property.

(5) In all cases in which the address of an interested party is not known, the person required to give notice shall, within the period described in subsection (1) or not less than 60 days or more than 120 days prior to the date upon which the county treasurer will otherwise issue a tax deed, whichever is appropriate, commence publishing once a week for 2 successive weeks, in the official newspaper of the county or another newspaper as the board of county commissioners may by resolution designate, a notice containing the information contained in subsection (6), plus:

(a) the name of the interested party for whom the address is unknown;

(b) a statement that the address of the interested party is unknown;

(c) a statement that the published notice meets the legal requirements for notice of a pending tax deed issuance; and

(d) a statement that the interested party's rights in the property may be in jeopardy.

(6) The notices required by subsections (1), (2), and (5) must contain the following:

(a) a statement that a property tax lien exists on the property as a result of a property tax delinquency;

(b) a description of the property on which the taxes are or were delinquent, which must be the same as the description of the property on the tax sale certificate or in the record described in 15-17-214(2)(b);

(c) the date that the property taxes became delinquent;

(d) the date that the property tax lien attached as the result of a tax sale;

(e) the amount of taxes due, including penalties, interest, and costs, as of the date of the notice of pending tax deed issuance, which amount must include a separate listing of the delinquent taxes, penalties, interest, and costs that must be paid for the property tax lien to be liquidated;

(f) the name and address of the purchaser;

(g) the name of the assignee if an assignment was made as provided in 15-17-323;

(h) the date that the redemption period expires or expired;

(i) a statement that if all taxes, penalties, interest, and costs are not paid to the county treasurer on or prior to the date on which the redemption period

expires or on or prior to the date on which the county treasurer will otherwise issue a tax deed, ~~that~~ a tax deed may be issued to the purchaser on the day following the date on which the redemption period expires or on the date on which the county treasurer will otherwise issue a tax deed; and

(j) the business address and telephone number of the county treasurer who is responsible for issuing the tax deed.

(7) The amount of interest and costs provided for in subsection (6)(e) continues to accrue until the date of redemption. The total amount of interest and costs that must be paid for redemption must be calculated by the county treasurer as of the date of payment.

~~(7)~~*(8)* Proof of notice in whatever manner given must be filed with the county clerk *and recorder*. If the purchaser or assignee is other than the county, the proof of notice must be filed with the county clerk *and recorder* within 30 days of the mailing or publishing of the notice. If the purchaser or assignee is the county, the proof of notice must be filed before the issuance of the tax deed under this chapter. Once filed, the proof of notice is prima facie evidence of the sufficiency of the notice.

~~(8)~~*(9)* A county or any officer of a county may not be held liable for any error of notification."

Section 2. Section 15-18-217, MCA, is amended to read:

"15-18-217. Form of cancellation. The notice of cancellation required by 15-18-212 of a tax lien as evidenced by a tax sale certificate or assignment may be made as follows:

I, ..., the treasurer of ..... County, certify that ..... (name of the purchaser or the purchaser's agent or assignee) of ..... (address), purchased a tax lien ..... (tax sale certificate no. or tax lien assignment no.) on property owned by ..... (name of owner of record). See legal description attached as exhibit "A", Tax Receipt No. ..... on ..... (date).

I further certify that pursuant to 15-18-212(3)(a), notice was given to ..... (name of purchaser or the purchaser's agent or assignee) that the tax lien will be canceled if the purchaser does not comply with provisions of 15-18-212 within 120 days from ..... (date of mailing of certified letter).

I further certify that the treasurer of ..... County has no record of notice by the owner of the tax lien in accordance with ~~15-18-212(7)~~ *15-18-212(8)*.

Therefore, noncompliance by the assignee has caused the tax lien to be canceled this ..... (date).

.....

Name of County Treasurer"

Section 3. Applicability. [This act] applies to a redemption for which penalties, interest, and costs are paid for after October 1, 2007.

Approved February 22, 2007

CHAPTER NO. 8

[HB 121]

AN ACT CLARIFYING THE RESPONSIBILITY OF THE DEPARTMENT OF TRANSPORTATION FOR THE ADMINISTRATION OF THE HIGHWAY

TRAFFIC SAFETY PROGRAM; REQUIRING THE DEPARTMENT TO WORK WITH THE OFFICE OF PUBLIC INSTRUCTION TO PROVIDE SUPPORT AND MAINTENANCE OF DRIVER TRAINING FACILITIES; AND AMENDING SECTION 61-2-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-2-103, MCA, is amended to read:

"61-2-103. Duties. (1) The governor is responsible for the administration of the highway traffic safety program. The governor may contract and do all other things necessary to secure the full benefits available to this state under the ~~Federal~~ *federal* Highway Safety Act*,* ~~of 1966~~ *23 U.S.C. 401 through 403,* and, in so doing, may cooperate with federal and state agencies, private and public organizations, and individuals to effectuate the purposes of that enactment and all amendments to it. The governor may appoint an administrator of the highway traffic safety program to carry out the governor's responsibilities under this part. For purposes of participation in the ~~Federal~~ *federal* Highway Safety Act ~~of 1966~~, *23 U.S.C. 401 through 403,* the governor shall designate the superintendent of public instruction as the state agency responsible for all aspects of federally assisted driver education and safety programs in the public schools, including the approval of the programs, certification of teachers, and the acceptance, allocation, and expenditure of funds for driver education in accordance with applicable federal laws and regulations. Nothing in this part interferes with the provisions of Title 20, chapter 7, part 5, or 20-9-603.

(2) The department shall:

(a) advise and assist the governor in all matters of highway safety ~~and establish comprehensive training programs, including establishment and regulation of driver training schools, certification of the schools and instructors, and establishment of adult training and retraining programs~~;

~~(b) develop and procure practice driving facilities, simulators, and other teaching aids for school and driver training use; and~~

~~(c)~~*(b)* establish a continuing and adequate research program designed to determine the causes of accidents and effect a program of prevention.*; and*

(c) cooperate with the office of public instruction to provide support and maintenance of driver training facilities that comply with the federal Highway Safety Act, 23 U.S.C. 401 through 403.

(3) The department of justice shall:

(a) establish a uniform system of driver licensing, including mental and physical standards; and

(b) prescribe and establish safety regulations for motor vehicles and operators."

Approved March 1, 2007

CHAPTER NO. 9

[HB 333]

AN ACT PROVIDING FOR AND REGULATING PARIMUTUEL WAGERING ON MATCH BRONC RIDES AND WILD HORSE RIDES; AMENDING

SECTIONS 23-4-101, 23-4-104, 23-4-105, 23-4-201, AND 23-4-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-4-101, MCA, is amended to read:

"23-4-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of horseracing provided for in 2-15-3106.

(2) "Board of stewards" means a board composed of three stewards who supervise race meets.

(3) "Department" means the department of livestock provided for in Title 2, chapter 15, part 31.

(4) "Immediate family" means the spouse, parents, children, grandchildren, brothers, or sisters of an official or licensee regulated by this chapter who have a permanent or continuous residence in the household of the official or licensee and all other persons who have a permanent or continuous residence in the household of the official or licensee.

(5) "Match bronc ride" means a saddle bronc riding contest consisting of two sections known as a "long go" and a "short go" in which the win, place, and show winners are determined by judges of the rides for each go.

~~(5)~~*(6)* "Minor" means a person under 18 years of age.

~~(6)~~*(7)* "Persons" means individuals, firms, corporations, fair boards, and associations.

~~(7)~~*(8)* (a) "Race meet" means racing of registered horses or mules*, match bronc rides, and wild horse rides* at which the parimutuel system of wagering is used. The term includes horseraces, mule races, and greyhound races that are simulcast.

(b) The term does not include live greyhound racing.

~~(8)~~*(9)* "Racing" means live racing of registered horses or mules and simulcast racing of horses, mules, and greyhounds.

~~(9)~~*(10)* "Simulcast" means a live broadcast of an actual horserace, mule race, or greyhound race at the time it is run. The term includes races of local or national prominence.

~~(10)~~*(11)* "Simulcast facility" means a facility at which horseraces, mule races, or greyhound races are simulcast and wagering on the outcome is permitted under the parimutuel system.

~~(11)~~*(12)* "Steward" means an official hired by the department and by persons sponsoring a race meet to regulate and control the day-to-day conduct and operation of a sanctioned meet.

(13) "Wild horse ride" means wild horse riding contest in which three-person teams attempt to saddle a wild horse and ride it completely around a track with the first to do so declared the winner."

Section 2. Section 23-4-104, MCA, is amended to read:

"23-4-104. Duties of board. The board shall adopt rules to govern race meets and the parimutuel system. These rules shall include the following:

(1) definitions;

(2) auditing;

(3) supervision of the parimutuel system;

(4) corrupt practices;

(5) supervision, duties, and responsibilities of the executive secretary, presiding steward, racing secretary, and other racing officials;

(6) licensing of all personnel who have anything to do with the substantive operation of racing;

(7) the establishment of dates for race meets and meetings in the best interests of breeding and racing in this state;

(8) the veterinary practices and standards which must be observed in connection with race meets;

(9) absolute responsibility of trainers for the condition of horses and mules, regardless of the acts of third parties;

(10) licensing or renewal of a license of a person whose license has been suspended by the board or another horseracing jurisdiction;

(11) setting license fees commensurate with the cost of issuing a license;

(12) the time, conduct, and supervision of simulcast races and parimutuel betting on simulcast races; ~~and~~

(13) licensing, approval, and regulation of simulcast facilities*; and*

(14) licensing, approval, and regulation of match bronc rides and wild horse rides."

Section 3. Section 23-4-105, MCA, is amended to read:

"23-4-105. (Temporary) Authority of board. The board shall license and regulate racing*, match bronc rides, and wild horse rides* and review race meets held in this state under this chapter. All percentages withheld from amounts wagered must be deposited in the board's agency fund account. The board shall then distribute all funds collected under 23-4-202(4)(d), 23-4-204(3), and 23-4-302(3) to live race purses or for other purposes for the good of the existing horseracing industry. If the board decides to authorize new forms of racing, including new forms of simulcast racing, not currently engaged in Montana, the board shall do so after holding public hearings to determine the effects of these forms of racing on the existing saddle racing program in Montana. The board shall consider both the economic and safety impacts on the existing racing and breeding industry.

23-4-105. (Effective July 1, 2007) Authority of board. The board shall license and regulate racing*, match bronc rides, and wild horse rides* and review race meets held in this state under this chapter. All percentages withheld from amounts wagered must be deposited in a state special revenue account and are statutorily appropriated to the board as provided in 17-7-502. The board shall then distribute all funds collected under 23-4-202(4)(d), 23-4-204(3), and 23-4-302(3) to live race purses or for other purposes for the good of the existing horseracing industry. If the board decides to authorize new forms of racing, including new forms of simulcast racing, not currently authorized in Montana the board shall do so after holding public hearings to determine the effects of these forms of racing on the existing saddle racing program in Montana. The board shall consider both the economic and safety impacts on the existing racing and breeding industry."

Section 4. Section 23-4-201, MCA, is amended to read:

"23-4-201. Licenses. (1) A person may not hold a race meet, including simulcast race meets under the parimutuel system, in this state without a valid license issued by the department under this chapter. A person applying for a license to hold a race meet under this chapter shall file with the department an application that must set forth the time, place, and number of days the license will continue and other information the board requires.

(2) A person who participates in a race meet*, except for a match bronc ride or a wild horse ride,* must be licensed and charged an annual fee set by the board . The annual fee must be paid to the department and used for expenses of administering this chapter. Each person holding a license under this chapter shall comply with this chapter and with the rules adopted and orders issued by the board.

(3) A license may not be issued to a person who has failed to pay the fees, taxes, or money required under this chapter.

(4) An application to hold a race meet must be submitted to the department, and the board shall act on the application within 30 days. The board is the sole judge of whether the race meet may be licensed and the number of days the meet may continue.

(5) The board shall require that a fair board and an independent racing association conducting a race meet comply with the requirements of the rules adopted by the board before granting a license.

(6) A racing association consisting of a local fair board or an association approved by a local fair board may apply for a license to hold a simulcast race meet in a simulcast facility.

(7) An unexpired license held by a person who violates this chapter or who fails to pay to the department the sums required under this chapter is subject to cancellation and revocation by the board."

Section 5. Section 23-4-202, MCA, is amended to read:

"23-4-202. (Temporary) Penalty for violations of law — authority of board — judicial review. (1) A person holding a race meet or an owner, trainer, or jockey participating in a race meet*, except a participant in a match bronc ride or a wild horse ride*, without first being licensed under this chapter, or a person violating this chapter is guilty of a misdemeanor.

(2) The board or, upon the board's authorization, the board of stewards of a race meet at which they officiate may exclude from racecourses in this state a person whom the board considers detrimental to the best interest of racing as defined by rules of the board.

(3) As its own formal act or through an act of a board of stewards of a race meet, the board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed $1,000, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may forbid application for relicensure for a 2-year period. Fines collected under this subsection must be deposited in the general fund.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed under this chapter. The rules may include provisions for the following:

(a) summary imposition of penalty by the stewards of a race meet, including a fine and license suspension, subject to review under the contested case provisions of the Montana Administrative Procedure Act;

(b) stay of a summary imposition of penalty by either the board or board of stewards;

(c) retention of purses pending final disposition of complaints, protests, or appeals of stewards' rulings;

(d) setting aside of up to 3% of exotic wagering on races, including simulcast races, to be deposited in the board's agency fund account. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(e) using 2% of exotic wagering on live racing to be immediately and equally distributed to all purses except stakes races;

(f) assessment of penalty and interest on the late payment of fines, which must be paid before licenses are reinstated;

(g) definition of exotic forms of wagering on races to be allowed;

(h) standards for simulcast facilities; ~~and~~

(i) conduct and supervision of simulcast races and parimutuel betting or wagering on simulcast races*; and*

(j) conduct and supervision of match bronc rides and wild horse rides.

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter.

23-4-202. (Effective July 1, 2007) Penalty for violations of law — authority of board — judicial review. (1) A person holding a race meet or an owner, trainer, or jockey participating in a race meet*, except a participant in a match bronc ride or a wild horse ride,* without first being licensed under this chapter or a person violating this chapter is guilty of a misdemeanor.

(2) The board or, upon the board's authorization, the board of stewards of a race meet at which the stewards officiate may exclude from racecourses a person whom the board or board of stewards considers detrimental to the best interest of racing as defined by rules of the board.

(3) As its own formal act or through an act of a board of stewards of a race meet, the board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed $1,000, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may prohibit application for relicensure for a 2-year period. Fines collected under this subsection must be deposited in the general fund.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed under this chapter. The rules may include provisions for the following:

(a) summary imposition of penalty by the stewards of a race meet, including a fine and license suspension, subject to review under the contested case provisions of the Montana Administrative Procedure Act;

(b) stay of a summary imposition of penalty by either the board or board of stewards;

(c) retention of purses pending final disposition of complaints, protests, or appeals of stewards' rulings;

(d) setting aside of up to 3% of exotic wagering on races, including simulcast races, to be deposited in a state special revenue account and statutorily appropriated to the board as provided in 17-7-502. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(e) using 2% of exotic wagering on live racing to be immediately and equally distributed to all purses except stakes races;

(f) assessment of penalty and interest on the late payment of fines, which must be paid before licenses are reinstated;

(g) definition of exotic forms of wagering on races to be allowed;

(h) standards for simulcast facilities; ~~and~~

(i) conduct and supervision of simulcast races and parimutuel betting or wagering on simulcast races*; and*

(j) conduct and supervision of match bronc rides and wild horse rides.

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter."

Section 6. Effective date. [This act] is effective on passage and approval.

Approved March 12, 2007

CHAPTER NO. 10

[SB 15]

AN ACT PROHIBITING THE PICKETING OF FUNERALS UNDER CERTAIN CIRCUMSTANCES; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the Legislature reveres the rights of free speech, association, and privacy guaranteed or protected by both the state and federal constitutions; and

WHEREAS, the memorialization of a loved one is often a time of significant grief involving particularly somber and sacred rites and rituals, whether religious in nature or not; and

WHEREAS, people attending funerals, particularly loved ones and family members of the deceased, are involved in a circumstance of disquiet and grieving that civil society has traditionally recognized and accorded deepest respect and privacy; and

WHEREAS, the Legislature finds that it is likely that the circumstances of a funeral, including the gathering of many people at one place for solemn services during a time of mourning and emotional vulnerability, mean that picketing at a funeral subjects mourners to messages that the mourners are powerless to avoid and to which they are essentially captive, whether they agree with the messages or not; and

WHEREAS, it has been discovered that regardless of the picketers' message, picketing at a funeral to promote a position garners the picketers significant

attention to their message that they might not otherwise enjoy, not in the least by the fact that society finds such exploitation of another's grief shocking to the conscience; and

WHEREAS, the Legislature finds that funeral picketing may constitute a deliberate verbal or visual assault on funeral mourners who are powerless to avoid the assault; and

WHEREAS, the Legislature finds that the taking of unjust advantage of funeral mourners is a flagrant and egregious exploitation of grief that constitutes an assault that justifies proscription; and

WHEREAS, the Legislature recognizes the right of speakers to convey a message; and

WHEREAS, the Legislature recognizes the right of people to grieve and memorialize the death of a loved one; and

WHEREAS, the Legislature recognizes the need to carefully balance the rights of speakers against the privacy rights of those who may be unwilling and captive recipients of the speakers' message; and

WHEREAS, the Legislature finds that there is a significant government interest in preserving and protecting the sanctity and dignity of funeral services and in protecting funeral mourners from unwanted and unwarranted intrusion by strangers by narrowly tailoring the prohibition on funeral picketing for a relatively brief time period and only to a certain distance from funeral sites, thereby leaving open ample alternative channels of communication.

THEREFORE, the Legislature finds it necessary and right to enact this Right to Grieve in Privacy Act.

Be it enacted by the Legislature of the State of Montana:

Section 1. Funeral picketing — penalties. (1) A person commits the offense of funeral picketing if the person knowingly engages in picketing within 1,500 feet of any property boundary entrance to or exit from a funeral site during the period from 1 hour before the scheduled commencement of the funeral services until 1 hour after the actual completion of the funeral services.

(2) A person convicted of funeral picketing shall be fined an amount not less than $250 and not more than $1,000 or be imprisoned in the county jail for a term not to exceed 12 months, or both.

(3) This section does not affect any proceeding against a person for violation of any other provision of law. A district court may enjoin conduct proscribed by this section.

(4) In addition to, and not in lieu of, the penalties provided for in subsection (2), a district court may in a civil action award damages, including punitive damages, attorney fees, and other appropriate relief, to a person who suffers injury as a result of activity that may be a violation of this section.

(5) As used in this section, the following definitions apply:

(a) "Funeral" or "funeral services" means the ceremonies, rituals, and memorial services held in connection with the memorial of a deceased person or in connection with the burial, cremation, or other disposition of a human body, including the assembly and dispersal of the persons attending the funeral.

(b) "Funeral site" means a church, synagogue, mosque, funeral home, mortuary, cemetery, gravesite, mausoleum, or other public or private place where a funeral is conducted.

(c) "Picketing" means the making of any noise or diversion that can reasonably be expected to disturb a funeral by:

(i) standing, sitting, or repeated walking, riding, driving, or other similar action by a person displaying or carrying a banner, placard, flag, sign, or similar device that is not a part of the funeral services;

(ii) engaging, with or without the use of a sound amplification device, in loud oration, speech, singing, chanting, whistling, or yelling that is not part of the funeral services;

(iii) distributing any handbill, pamphlet, leaflet, or other written or printed material other than written material that is distributed as part of the funeral services; or

(iv) obstructing or preventing the intended uses of a public street, public sidewalk, or other public space.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 8, part 1, and the provisions of Title 45, chapter 8, part 1, apply to [section 1].

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to offenses committed on or after [the effective date of this act].

Approved March 16, 2007

CHAPTER NO. 11

[SB 54]

AN ACT GENERALLY REVISING LAWS RELATING TO LICENSING BOARDS; PROVIDING FOR JOINT MEETINGS OF BOARDS WITH A SIMILAR OR OVERLAPPING SCOPE OF PRACTICE OR DUAL LICENSURE; REVISING DEPARTMENT DUTIES TOWARD BOARDS; CHANGING THE BOARD OF ATHLETICS TO A PROGRAM; EXPANDING JURISDICTION OVER ATHLETIC EVENTS TO ANY COMBATIVE EVENT; REMOVING AN EXCEPTION FOR COMBATIVE EVENTS FOR CONTESTANTS UNDER 16 YEARS OF AGE CONDUCTED BY A RECOGNIZED AMATEUR ASSOCIATION; COMBINING THE BOARD OF LANDSCAPE ARCHITECTS WITH THE BOARD OF ARCHITECTS; REPEALING THE UNIFORM ATHLETE AGENTS ACT; AMENDING SECTIONS 2-15-1730, 2-15-1744, 2-15-1750, 2-15-1753, 2-15-1761, 18-2-113, 23-3-301, 23-3-402, 23-3-404, 23-3-405, 23-3-501, 23-3-502, 23-3-601, 23-3-602, 23-3-603, 37-1-101, 37-1-401, 37-65-102, 37-65-204, 37-65-323, AND 37-66-103, MCA; REPEALING SECTIONS 2-15-1762, 2-15-1772, 23-3-401, 23-3-403, 37-66-201, 37-66-202, 37-76-101, 37-76-102, 37-76-103, 37-76-104, 37-76-105, 37-76-106, 37-76-107, 37-76-108, 37-76-109, 37-76-113, 37-76-114, 37-76-115, 37-76-116, 37-76-117, 37-76-118, 37-76-119, 37-76-120, 37-76-121, 37-76-122, AND 37-76-123, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Joint meetings — department duties. (1) The department shall convene a joint meeting once every 2 years of two or more boards that:

(a) have licensees with dual licensure in related professions or occupations;

(b) have licensees licensed by another board in a related profession or with similar scopes of practice, including but not limited to:

(i) health care boards;

(ii) mental health care boards;

(iii) design boards;

(iv) therapeutic boards; or

(v) technical boards; or

(c) have issues of joint concern or related jurisdiction with each other.

(2) A quorum is not required for the joint meeting. However, one member from each board shall attend.

(3) The department shall report to the interim committee responsible for monitoring boards with regard to attendance and issues of concern addressed by the boards.

Section 2. Section 2-15-1730, MCA, is amended to read:

"2-15-1730. Alternative health care board — composition — terms — allocation. (1) There is an alternative health care board.

(2) The board consists of six members appointed by the governor with the consent of the senate. The members are:

(a) two persons from each of the health care professions regulated by the board who have been actively engaged in the practice of their respective professions for at least 3 years preceding appointment to the board;

(b) one public member who is not a member of a profession regulated by the board; and

(c) one member who is a Montana physician whose practice includes obstetrics.

(3) The members must have been residents of this state for at least 3 years before appointment to the board.

(4) All members shall serve staggered 4-year terms. The governor may remove a member from the board for neglect of a duty required by law, for incompetency, or for unprofessional or dishonorable conduct.

(5) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121.

~~(6) The board is designated a quasi-judicial board for the purposes of 2-15-124, except that one member of the board need not be an attorney licensed to practice law in this state.~~"

Section 3. Section 2-15-1744, MCA, is amended to read:

"2-15-1744. Board of social work examiners and professional counselors. (1) (a) The governor shall appoint a board of social work examiners and professional counselors consisting of seven members.

(b) Three members must be licensed social workers, and three must be licensed professional counselors.

(c) One member must be appointed from and represent the general public and may not be engaged in social work.

~~(d)~~*(2)* The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

~~(e)~~*(3)* ~~The board is designated a quasi-judicial board.~~ Members are appointed, serve, and are subject to removal in accordance with 2-15-124.

~~(2) Notwithstanding the qualifications for appointment contained in subsection (1), a person may be appointed to the board without being licensed as a professional counselor if he is issued a license under Title 37, chapter 23, within 30 days after his appointment.~~"

Section 4. Section 2-15-1750, MCA, is amended to read:

"2-15-1750. Board of respiratory care practitioners. (1) There is a board of respiratory care practitioners. The board consists of five members appointed by the governor. Each member must be a citizen of the United States and a resident of this state. The governor may request advice from the Montana society for respiratory care in making appointments to the board.

(2) The board consists of:

(a) three respiratory care practitioners, each of whom has engaged in the practice of respiratory care for a period of at least 3 years immediately preceding ~~their~~ appointment to the board. At least one of these members must have passed the registry examination for respiratory therapists administered by the national board for respiratory care, and at least one of these members must have passed the entry-level examination for respiratory therapy technicians administered by the national board for respiratory care.

(b) one physician licensed in Montana who has a special interest in the treatment of cardiopulmonary diseases; and

(c) one member of the public who is not a member of a health care profession.

(3) ~~The board is a quasi-judicial board, except that one member of the board need not be an attorney licensed to practice law in this state.~~ Members are appointed, serve, are compensated, and are subject to removal as provided in 2-15-124.

(4) The board is allocated to the department of labor and industry for administrative purposes only as provided in 2-15-121."

Section 5. Section 2-15-1753, MCA, is amended to read:

"2-15-1753. Board of clinical laboratory science practitioners. (1) There is a board of clinical laboratory science practitioners.

(2) The board is composed of five members who have been residents of this state for at least 2 years prior to appointment and who are actively engaged in their respective practices.

(3) Members are appointed by the governor, with consent of the senate. The members are:

(a) one physician who is qualified to direct a high complexity laboratory as provided for in the federal clinical laboratory regulations set forth in 42 CFR part 493;

(b) three clinical laboratory science practitioners who, except for the initial appointments, hold active licenses as clinical laboratory science practitioners in Montana; and

(c) one public member who is not associated with or financially interested in the practice of clinical laboratory science.

(4) Following the initial appointments of members to the board, all members shall serve 4-year terms. The terms of the initial appointments must be staggered, with three members serving ~~a~~ 4-year ~~term~~ *terms* and two members serving ~~a~~ 2-year ~~term~~ *terms*. A member may not serve more than two consecutive terms.

(5) Whenever a vacancy occurs on the board during a term of office, the governor shall appoint a successor with similar qualifications for the remainder of the unexpired term.

(6) The board is allocated to the department for administrative purposes only, as provided in 2-15-121.

~~(7) The board is designated a quasi-judicial board for the purposes of 2-15-124, except that a member of the board need not be an attorney licensed to practice law in this state.~~

~~(8)~~*(7)* Members of the board are entitled to compensation and travel expenses as provided by law."

Section 6. Section 2-15-1761, MCA, is amended to read:

"2-15-1761. Board of architects *and landscape architects.* (1) There is a board of architects *and landscape architects*.

(2) The board consists of ~~four~~ *six* members appointed by the governor with the consent of the senate. The members are:

(a) two ~~registered~~ *licensed* architects who have been in continuous practice for 3 years before their appointment;

(b) one ~~registered~~ *licensed* architect who is on the staff of the Montana state university-Bozeman school of architecture; ~~and~~

(c) one representative of the public who is not engaged in or directly connected with the practice of architecture *or landscape architecture; and*

(d) two licensed landscape architects.

(3) Each member must have been a resident of Montana for 4 years prior to appointment.

(4) Each member shall serve for a term of 3 years.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 7. Section 18-2-113, MCA, is amended to read:

"18-2-113. Architects on public buildings to be certified. A contract for the employment of or the rendering of professional services by any person relating to the planning or construction of public buildings or other public works or improvements may not be entered into by this state or its agencies or a county, city, or school district in this state unless the person is the holder in good standing of a ~~certificate~~ *license* granted *under Title 37, chapter 65,* by the board of architects ~~entitling him to practice architecture in this state~~ *and landscape architects*."

Section 8. Section 23-3-301, MCA, is amended to read:

"23-3-301. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

~~(1) "Board" means the board of athletics provided for in 2-15-1772.~~

~~(2)~~*(1) "Combative events" means a match, exhibition, contest, show, or tournament involving contestants in boxing, wrestling, mud wrestling, martial arts, or any other combative practice as defined by the department by rule.*

(2) "Contestant" means a professional or semiprofessional practitioner of boxing, wrestling, mud wrestling, martial arts, or any other combative practice as defined by the department by rule.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) "Program" means a set of operations governed by the statutes in this chapter and the rules adopted by the department under this chapter."

Section 9. Section 23-3-402, MCA, is amended to read:

"23-3-402. Enforcement of rules ~~by board member — board designees.~~ ~~(1) In absence of a quorum of the board, any board member in attendance at and supervising a contest or exhibition has the full power of the board in enforcing rules of the board.~~

~~(2)~~*(1)* The ~~board~~ *department* may designate in writing ~~representatives~~ *a representative* to act specifically on behalf of the ~~board~~ *department* but only within the scope of the written authority.

(2) The representative shall attend and supervise a combative event and has the authority from the department to enforce rules adopted under this chapter."

Section 10. Section 23-3-404, MCA, is amended to read:

"23-3-404. ~~Board jurisdiction~~ *Jurisdiction* — license required — contestant participation. (1) The ~~board~~ *department* has sole management, control, and jurisdiction over each professional or semiprofessional ~~wrestling or boxing match or exhibition, including "so you think you are tough" boxing matches and mud wrestling,~~ *combative event* involving recognition, a prize, or *a* purse and at which an admission fee is charged, either directly or indirectly, in the form of dues or otherwise, to be held within the state, except a ~~match or exhibition~~ *combative event* conducted:

(a) by a university, college, or high school; *or*

(b) by the military~~; or~~

~~(c) for contestants under 16 years of age, by a recognized amateur association~~.

(2) ~~No~~ *An* organization or individual may *not* conduct a *combative event* ~~match or exhibition~~ within the ~~board's~~ *department's* jurisdiction unless ~~it or he~~ *the organization or individual* is the holder of an appropriate license granted by the ~~board~~ *department*.

(3) ~~No~~ *A* referee, manager, or judge may *not* participate in a ~~match or exhibition~~ *combative event* within the ~~board's~~ *department's* jurisdiction unless ~~he is~~*:*

(a) the individual is licensed by the ~~board~~ *department;* and

(b) the ~~match or exhibition~~ *combative event* is conducted by an organization or individual licensed by the ~~board~~ *department*.

(4) ~~No professional or semiprofessional boxer or wrestler~~ *A contestant* may *not* participate in a ~~match or exhibition~~ *combative event* within the ~~board's~~ *department's* jurisdiction unless ~~he is~~*:*

(a) the contestant is licensed by the ~~board and~~ *department;*

(b) the ~~match or exhibition~~ *combative event* is conducted by an organization or individual licensed by the ~~board and his right~~ *department; and*

(c) the department has not suspended the right of the contestant to participate ~~has not been suspended~~ under 23-3-603."

Section 11. Section 23-3-405, MCA, is amended to read:

"23-3-405. Rules. (1) The ~~board~~ *department* may adopt rules for the administration and enforcement of this chapter.

(2) (a) The rules must include the granting, suspension, and revocation of licenses and the qualification requirements for those to be licensed to conduct ~~matches or exhibitions~~ *combative events* or to be licensed as referees, managers, or judges. License qualifications must include appropriate knowledge, experience, and integrity.

(b) The rules may include but are not limited to the following:

(i) the labeling of a match as a championship match;

(ii) the number and length of rounds and the weight of gloves;

(iii) the extent and timing of the physical examination of contestants;

(iv) the attendance of a referee and the referee's powers and duties; and

(v) review of decisions made by officials.

(3) The rules must:

(a) meet or exceed the safety codes required by recognized professional boxing ~~and~~*,* wrestling*, and other* organizations *conducting combative events*;

(b) provide reasonable measures for the fair conduct of the ~~matches or exhibitions~~ *combative events* and for the protection of the health and safety of the contestants;

(c) require a physical examination of each contestant prior to each ~~match or exhibition~~ *combative event*;

(d) provide for the qualifications of judges, referees, and seconds and for their payment by the promoter; and

(e) provide for the attendance at ringside of one or more of the following and require the promoter to pay for that person's attendance:

(i) a licensed physician as defined in 37-3-102;

(ii) a licensed physician assistant as defined in 37-20-401; or

(iii) a licensed advanced practice registered nurse as defined in 37-8-102."

Section 12. Section 23-3-501, MCA, is amended to read:

"23-3-501. Licenses — fees. (1) The ~~board~~ *department* may issue a license to a professional or semiprofessional ~~boxing or wrestling~~ promoter *of combative events*, whether an individual or organization, for the sole purpose of conducting professional or semiprofessional ~~matches or exhibitions~~ *combative events*.

(2) The ~~board~~ *department* may issue licenses to qualified referees, managers, ~~boxers, wrestlers,~~ *contestants,* seconds, trainers, and judges.

(3) A license issued in accordance with subsections (1) and (2) expires on the date set by department rule.

(4) Each application for a license under this section must be accompanied by a fee, as provided in 37-1-134, set by the ~~board~~ *department*."

Section 13. Section 23-3-502, MCA, is amended to read:

"23-3-502. Bond — conditions. (1) ~~No~~ *A* license to conduct professional or semiprofessional ~~matches or exhibitions~~ *combative events* may *not* be issued unless the licensee has executed a bond in the sum of not less than $5,000.

(2) The bond must be conditioned on faithful compliance by the licensee with the provisions of this chapter and the rules of the ~~board~~ *department*."

Section 14. Section 23-3-601, MCA, is amended to read:

"23-3-601. Report of ticket sales — tax on gross receipts — disposition of money received. (1) An individual or organization licensed to conduct a ~~boxing or wrestling~~ *combative event* ~~match or exhibition must~~ *shall*, within 24 hours after the completion of each *combative event* ~~match or exhibition~~, furnish to the department a written report, verified by one of its officers or owners, showing the number of tickets sold for the *combative event* ~~match or exhibition~~, the amount of gross proceeds, and other matters ~~as~~ *that* the ~~board~~ *department* prescribes and ~~must~~ *shall* also within 24 hours pay to the department a tax of 5% of its total gross receipts~~,~~ after deducting the federal admission tax, if any, from the sale of tickets.

(2) All taxes and fees collected by the department ~~or the board~~ under this chapter must be deposited in the state special revenue fund for the use of the ~~board~~ *program*, subject to 37-1-101(6)."

Section 15. Section 23-3-602, MCA, is amended to read:

"23-3-602. Examination of books and records on failure to make report or on unsatisfactory report — penalty for failure to pay tax. (1) If an individual or organization fails to make a report of a *combative event* ~~contest~~ at the time prescribed by 23-3-601 or if the report is unsatisfactory to the ~~board~~ *department*, the ~~board~~ *department* may examine the books and records of the individual or organization and subpoena and examine witnesses under oath for the purpose of determining the total amount of its gross receipts for a *combative event* ~~contest~~ and the amount of tax due under this chapter.

(2) If the individual or organization remains in default in the payment of tax ascertained to be due for a period of 20 days after notice to ~~such delinquent~~ *the individual or organization* of the amount due, the delinquent *individual or organization* forfeits its license and is disqualified from receiving a new license."

Section 16. Section 23-3-603, MCA, is amended to read:

"23-3-603. Discipline. (1) A license issued under the provisions of this chapter may, after notice and opportunity for hearing, be revoked or suspended by the ~~board~~ *department* for a violation of the provisions of this chapter or any rule of the ~~board~~ *department*.

(2) The ~~board~~ *department* may, after notice and opportunity for hearing, reprimand any ~~professional or semiprofessional athlete~~ *contestant* or suspend, for a period not to exceed 1 year, ~~his~~ *the contestant's* right to participate in any *combative event* ~~match or exhibition~~ conducted by any licensee for:

(a) ~~unsportsmanlike~~ conduct *unbecoming a contestant* while engaged in or arising directly from any *combative event* ~~match or exhibition~~;

(b) failure to compete in good faith or engaging in any sham *combative event* ~~match or exhibition~~; or

(c) the use of threatening or abusive language toward officials or spectators."

Section 17. Section 37-1-101, MCA, is amended to read:

"37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department of labor and industry shall:

(1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;

(2) standardize policies and procedures and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) contract for or administer and grade examinations required by each board;

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board *or a program* within the department;

(6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;

(7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(e);

(9) *(a)* provide notice to the *board and to the* appropriate legislative interim committee when a board cannot operate in a cost-effective manner;

(b) suspend all duties under this title related to the board except for services related to renewal of licenses;

(c) review the need for a board and make recommendations to the legislative interim committee with monitoring responsibility for the boards for legislation revising the board's operations to achieve fiscal solvency; and

(d) notwithstanding 2-15-121, recover the costs by one-time charges against all licensees of the board after providing notice and meeting the requirements under the Montana Administrative Procedure Act;

(10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary; and

(11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided."

Section 18. Section 37-1-401, MCA, is amended to read:

"37-1-401. Uniform regulation for licensing programs without boards — definitions. As used in this part, the following definitions apply:

(1) "Complaint" means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the department;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether the department should seek an injunction.

(4) "License" means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by:

(a) Title 37, chapter 35~~,~~ *or* 72~~, or 76~~; or

(b) Title 50, chapter 39, 74, or 76.

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of:

(a) Title 37, chapter 35~~,~~ *or* 72~~, or 76~~; or

(b) Title 50, chapter 39, 74, or 76."

Section 19. Section 37-65-102, MCA, is amended to read:

"37-65-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Architect" means an individual *who is* technically and legally qualified to practice architecture and who is authorized under this chapter to practice architecture.

(2) "Board" means the board of architects *and landscape architects* provided for in 2-15-1761.

(3) "Building" means a structure intended primarily for human occupancy or use.

(4) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(5) "Practice of architecture" means any professional service or creative work requiring the application of advanced knowledge of architectural design, building construction, and standards and involving the constant exercise of discretion and judgment in those activities, in which the safeguarding of life, health, or property is concerned, as consultation, investigation, evaluation, planning, design, or inspection of construction for any public or private building.

(6) "Public building" means any building that the state or any political subdivision of the state maintains for the use of the public."

Section 20. Section 37-65-204, MCA, is amended to read:

"37-65-204. Rulemaking. The board ~~of architects~~ may adopt, amend, or repeal rules necessary for the implementation and enforcement of *Title 37, chapter 66, and* this chapter in accordance with the provisions of the Montana Administrative Procedure Act."

Section 21. Section 37-65-323, MCA, is amended to read:

"37-65-323. Injunction. Whenever the board ~~of architects~~ has reasonable cause to believe that a person is violating any provision of *Title 37, chapter 66,* this chapter, or *a* rule of the board, it may, in addition to the remedies provided in 37-65-322 *or 37-66-322, as appropriate,* and without prejudice ~~thereto~~, bring an action in the district court for the county in which the violation is occurring to enjoin ~~such~~ *the* person from continuing to engage in ~~such~~ *the* violation or from doing any act ~~in furtherance thereof~~ *that contributes to the violation*."

Section 22. Section 37-66-103, MCA, is amended to read:

"37-66-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of *architects and* landscape architects provided for in ~~2-15-1762~~ *2-15-1761*.

(2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(3) "Landscape architect" means a person who holds a ~~certificate~~ *license* to practice landscape architecture in the state of Montana under the provisions of this chapter.

(4) *(a)* "Landscape architecture" means performing services in conjunction with all aspects of the planning and design of the exterior environment for human use and environmental protection. ~~It includes regional planning of natural resources, urban and rural planning and design, institutional design, park and recreation planning and design, and the preparation of project master plans.~~ It is the design discipline specifically oriented to addressing the problems involved in adapting ~~man's~~ *the* uses of land to the characteristics of the exterior environment both functionally and aesthetically. ~~It~~

(b) The term includes *regional planning of natural resources; urban and rural planning and design; institutional design; park and recreation planning and design; contract negotiations;* the preparation of *project master plans,* contract documents, construction specifications, construction cost estimates, and project contracts~~. It includes contract negotiations,~~*;* project management~~,~~*;* and construction management.

(c) The term does not include the design of structures or facilities with separate and self-contained purposes that are ordinarily included in the practice of engineering or architecture and does not include the making of land surveys or final land plats for official approval or recording."

Section 23. Deposit of license fees. Money received by the department for license fees from landscape architects must be deposited in the state special revenue fund for the use of the board subject to 37-1-101(6).

Section 24. Repealer. Sections 2-15-1762, 2-15-1772, 23-3-401, 23-3-403, 37-66-201, 37-66-202, 37-76-101, 37-76-102, 37-76-103, 37-76-104, 37-76-105, 37-76-106, 37-76-107, 37-76-108, 37-76-109, 37-76-113, 37-76-114, 37-76-115, 37-76-116, 37-76-117, 37-76-118, 37-76-119, 37-76-120, 37-76-121, 37-76-122, and 37-76-123, MCA, are repealed.

Section 25. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 37, chapter 1, part 1, and the provisions of Title 37, chapter 1, part 1, apply to [section 1].

(2) [Section 23] is intended to be codified as an integral part of Title 37, chapter 66, part 3, and the provisions of Title 37, chapter 66, part 3, apply to [section 23].

Section 26. Effective date. [This act] is effective July 1, 2007.

Approved March 16, 2007

CHAPTER NO. 12

[SB 97]

AN ACT CLARIFYING THAT THE DEPARTMENT OF JUSTICE MAY RECEIVE A WORKERS' COMPENSATION PAYMENT FOR A HIGHWAY PATROL MEMBER RECEIVING A DEPARTMENT OF JUSTICE SALARY BENEFIT; AMENDING SECTIONS 39-71-742, 39-71-743, AND 44-1-511, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-742, MCA, is amended to read:

"39-71-742. Who may receive payment. (1) ~~Where payment is~~ *A payment* due to a child under 18 years of age or to a person adjudged incompetent~~, the same shall~~ *must* be made to the parent or ~~to~~ the ~~duly~~ appointed guardian, ~~as the case may be,~~ and the written receipt ~~of such parent or guardian~~ *for the payment* ~~shall~~ *must* acquit the employer, the insurer, or *the* department~~, as the case may be,~~ of further liability.

(2) A payment due to a member of the highway patrol receiving the salary benefit provided in 44-1-511 must be made to the department of justice to offset the salary benefit until the member is no longer eligible to receive the salary benefit.

~~(2)~~*(3)* In other cases, payment ~~shall~~ *must* be made to the person entitled ~~thereto~~ *to the payment* or to ~~his duly~~ *the person's* authorized representative."

Section 2. Section 39-71-743, MCA, is amended to read:

"39-71-743. Assignment or attachment of payments. (1) Payments under this chapter may not be assignable, subject to attachment or garnishment, or held liable in any way for debts, except:

(a) as provided in 71-3-1118;

(b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established by order of a court of competent jurisdiction or by order rendered in an administrative process authorized by state law;

(c) as provided in 53-2-612 or 53-2-613 for medical benefits paid pursuant to this chapter; ~~or~~

(d) as provided in 39-71-742; or

~~(d)~~*(e)* for workers' compensation benefits payable to an injured worker to pay restitution to an insurer whenever the injured worker is subject to

court-ordered restitution for theft of workers' compensation benefits. The insurer shall notify the injured worker in writing of the withholding of any court-ordered restitution from the injured worker's benefits.

(2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support as follows:

(a) for any periodic payment, an amount up to the percentage amount established in the guidelines promulgated by the department of public health and human services pursuant to 40-5-209; or

(b) for any lump-sum award, an amount up to that portion of the award that is necessary to pay current child support and a past-due child support obligation.

(3) After determination that the claim is covered under the Workers' Compensation Act, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. Except as provided in 39-71-704(7), a fee or charge is not payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer."

Section 3. Section 44-1-511, MCA, is amended to read:

"44-1-511. Payment of salary benefit to officers injured in performance of duty. ~~(1)~~ A member of the highway patrol who, in the performance of ~~his~~ *the member's* duties, suffers an injury ~~which~~ *that* necessitates medical or other remedial treatment and ~~which~~ *that* renders ~~him~~ *the member* unable to perform ~~his~~ *the member's* duties ~~shall~~ *must* be paid the full amount of ~~his~~ *the member's* regular salary as a salary benefit until one of the following occurs:

~~(a) He~~ *(1) the member* ceases to be disabled~~.~~*;*

~~(b) A~~ *(2) a* period of 1 year elapses after the date of the injury~~.~~*;*

~~(c) Although~~ *(3) although* disabled, ~~he~~ *the member* is ordered returned to light duty by the chief of the highway patrol~~.~~*;*

~~(d) Although~~ *(4) although* disabled, ~~he~~ *the member* accepts a transfer position within the department of justice~~.~~*; or*

~~(e) He~~ *(5) the member* waives ~~his~~ *the* benefit.

~~(2) The department of justice shall set off the amount of any workers' compensation award actually received against the salary benefit payable under this section.~~"

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2007

CHAPTER NO. 13

[SB 101]

AN ACT AUTHORIZING THE PLACEMENT OF A PLAQUE TO COMMEMORATE THE ORIGINAL HEADQUARTERS OF THE MONTANA HIGHWAY PATROL; AND AMENDING SECTION 2-17-808, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-808, MCA, is amended to read:

"2-17-808. Placement of certain busts, plaques, statues, memorials, monuments, and art displays. (1) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in the capitol:

(a) the busts of Thomas J. Walsh, Burton K. Wheeler, and Joseph Dixon;

(b) the plaques commemorating Theodore Brantley, Fred Whiteside, the first Montana volunteers who fought in the Spanish-American War, the construction of the capitol from 1899 to 1902, the 1972 Montana constitutional convention, and the women legislators' centennial;

(c) the murals by Edgar S. Paxson, Ralph E. DeCamp, Charles M. Russell, Amedee Joullin, and F. Pedretti and sons;

(d) the statues of:

(i) Wilbur Fiske Sanders;

(ii) Jeannette Rankin; and

(iii) Mike and Maureen Mansfield;

(e) the Montana statehood centennial bell;

(f) the gallery of outstanding Montanans;

(g) the Montana constitutional exhibit; and

(h) the biographical descriptions of Montana's governors, to be placed near the portraits of the governors.

(2) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the grounds of the capitol:

(a) the statues of Thomas Francis Meagher and Lady Liberty;

(b) the plaques commemorating:

(i) Donald Nutter;

(ii) President George H. W. Bush; and

(iii) American prisoners of war and personnel of the United States armed services missing in action;

(c) two benches with plaques recognizing contributors to the 1997-2000 capitol restoration, repair, and renovation project;

(d) the Montana centennial square; and

(e) the monument of the ten commandments.

(3) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the capitol complex grounds:

(a) the statue by Robert Scriver entitled "symbol of the pros";

(b) the monuments to the liberty bell, the veterans' and pioneer memorial building—landscape beautification project, Montana veterans, and Pearl Harbor survivors and the peace pole;

(c) the sculptures of the herd bull and the eagle;

(d) the plaques commemorating the Montana national guard and Lewis and Clark; and

(e) the arrastra.

(4) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in state buildings on the capitol complex:

(a) the paintings of Dr. W. F. Cogswell and the paintings entitled "burning bush", "dryland farmer", "farm girl", "the river rat", "top of the world", "angus #68", "the source", "the Bozeman trail", and "the Mullan road";

(b) the art displays known as "Montana workers—mining, ranching, and building", "copper city rodeo", "dancing cascade", "save a piece of the sky", and "night light";

(c) the plaque commemorating Walt Sullivan, ~~and~~ the plaque of the Sam W. Mitchell building, *and the plaque commemorating the original headquarters of the Montana highway patrol*; and

(d) the busts of Lee Metcalf and Sam W. Mitchell.

(5) The senate sculpture depicting the Lewis and Clark expedition is to be placed for up to 50 years, subject to renewal, on the west wall in the senate chambers.

(6) The council shall determine the specific placement of the items identified in subsections (1) through (4)."

Approved March 16, 2007

CHAPTER NO. 14

[HB 44]

AN ACT ELIMINATING THE SCHOOL BOND CONTINGENCY LOAN FUND; AMENDING SECTIONS 17-5-703 AND 17-5-704, MCA; REPEALING SECTIONS 20-9-466 AND 20-9-467, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-703, MCA, is amended to read:

"17-5-703. (Temporary) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a treasure state endowment regional water system fund;

(d) a coal severance tax permanent fund;

(e) a coal severance tax income fund;

~~(f) a coal severance tax school bond contingency loan fund;~~ and

~~(g)~~*(f)* a big sky economic development fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) ~~through (5)~~ *and (4)*.

~~(3) (a) As long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.~~

~~(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.~~

~~(4)~~*(3)* (a) Until June 30, 2016, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund ~~and in excess of amounts that are transferred pursuant to subsection (3)~~.

(b) Until June 30, 2016, the state treasurer shall quarterly transfer to the treasure state endowment regional water system fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund ~~and in excess of amounts that are transferred pursuant to subsection (3)~~.

(c) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(d) The state treasurer shall monthly transfer from the treasure state endowment regional water system fund to the treasure state endowment regional water system special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account for regional water systems authorized under 90-6-715. Earnings not transferred to the treasure state endowment regional water system special revenue account must be retained in the treasure state endowment regional water system fund.

~~(5)~~*(4)* (a) From July 1, 2005, through June 30, 2025, the state treasurer shall quarterly transfer to the big sky economic development fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund ~~and in excess of amounts that are transferred pursuant to subsection (3)~~.

(b) The state treasurer shall monthly transfer from the big sky economic development fund to the economic development special revenue account, provided for in 90-1-205, the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-1-204. Earnings not transferred to the economic development special revenue account must be retained in the big sky economic development fund.

~~(6)~~*(5)* Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund. (Terminates June 30, 2016—sec. 1, Ch. 70, L. 2001.)

17-5-703. (Effective July 1, 2016) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a coal severance tax permanent fund;

(d) a coal severance tax income fund;

~~(e) a coal severance tax school bond contingency loan fund;~~ and

~~(f)~~*(e)* a big sky economic development fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) ~~through (5)~~ *and (4)*.

~~(3) (a) As long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.~~

~~(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.~~

~~(4)~~*(3)* (a) Until June 30, 2016, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund ~~and in excess of amounts that are transferred pursuant to subsection (3)~~.

(b) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

~~(5)~~*(4)* (a) From July 1, 2005, through June 30, 2025, the state treasurer shall quarterly transfer to the big sky economic development fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in

subsection (2) to be retained in the fund ~~and in excess of amounts that are transferred pursuant to subsection (3)~~.

(b) The state treasurer shall monthly transfer from the big sky economic development fund to the economic development special revenue account, provided for in 90-1-205, the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-1-204. Earnings not transferred to the economic development special revenue account must be retained in the big sky economic development fund.

~~(6)~~*(5)* Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund."

Section 2. Section 17-5-704, MCA, is amended to read:

"17-5-704. Investment of funds. Money in the coal severance tax bond fund, the coal severance tax permanent fund, *and* the coal severance tax income fund~~, and the coal severance tax school bond contingency loan fund~~ must be invested in accordance with the investment standards for coal severance tax funds. Income and earnings, excluding unrealized gains and losses, from all funds must be deposited in the state general fund."

Section 3. Repealer. Sections 20-9-466 and 20-9-467, MCA, are repealed.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2007

CHAPTER NO. 15

[HB 72]

AN ACT REVISING THE PROFESSIONAL EMPLOYER ORGANIZATION LAW; ESTABLISHING REQUIREMENTS FOR THE DEPARTMENT OF LABOR AND INDUSTRY PERTAINING TO BACKGROUND CHECKS RELATED TO PROFESSIONAL EMPLOYER ORGANIZATION LICENSING; ALLOWING WAIVERS OF CERTAIN PERIODIC REPORTING REQUIREMENTS; REQUIRING PROOF OF MONTANA WORKERS' COMPENSATION INSURANCE COVERAGE; AMENDING SECTIONS 39-8-202, 39-8-205, AND 39-8-207, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-8-202, MCA, is amended to read:

"39-8-202. Initial license application — application fee — standards — provisional license. (1) An applicant for initial licensure as a professional employer organization or group shall file with the department a completed application on a form provided by the department.

(2) The application must be accompanied by a nonrefundable application fee and any material or information required by the department that demonstrates compliance with the requirements of this chapter. The application fee is:

(a) $750 for a resident or nonresident unrestricted license; and

(b) $500 for a restricted license.

(3) As a condition of licensure under this chapter, an applicant who is not a resident or who is domiciled outside the state must first be licensed as a professional employer organization or group in the state in which the applicant is a resident or is domiciled if licensing is required by that state.

(4) An applicant for licensure as a professional employer organization or group must meet *one of* the following *applicable* standards:

(a) An individual must be 18 years of age or older.

(b) A partnership or a limited partnership shall provide the names and home addresses of all partners, indicate whether each partner is a general or a limited partner, and include a copy of the partnership agreement or an affidavit signed by all partners acknowledging that a written partnership agreement does not exist.

(c) A corporation shall state the names and home addresses of all officers, directors, and shareholders who own a 5% or greater interest in the corporation. A domestic or foreign corporation must have filed any required documents with the secretary of state and ~~must~~ *shall* remain in good standing ~~in order~~ to conduct business pursuant to this chapter.

(d) A limited liability company shall state the names and home addresses of those individuals who own a 5% or greater interest in the limited liability company. A domestic or foreign limited liability company must have filed any required documents with the secretary of state and ~~must~~ *shall* remain in good standing ~~in order~~ to conduct business pursuant to this chapter.

(e) A group:

(i) must be authorized to act on behalf of the group;

(ii) shall include for each professional employer organization within the group the information required in subsection (4); and

(iii) shall guarantee, on a form provided by the department and executed by each professional employer organization within the group, payment of all financial obligations with respect to wages, payroll-related taxes, insurance premiums, and employee benefits of each other member within the group.

(5) *(a)* An applicant shall also provide:

~~(a)~~*(i)* the trade name or names under which the applicant conducts business, the business's taxpayer or employer identification number, the address of the business's principal place of business in the state, and the addresses of any other offices within the state through which the applicant intends to conduct business as a professional employer organization or group. If the applicant's principal place of business is located in another state, the address must be provided.

~~(b)~~*(ii)* a list by jurisdiction of each name under which the applicant has operated in the preceding 5 years, including any alternative names, names of predecessors, and names of related business entities with common majority ownership, and detailed information on the background of each controlling person to the extent required by the department; and

~~(c)~~*(iii)* other information requested by the department to show that the applicant and each controlling person are of good moral character, have business integrity, and are financially responsible. "Good moral character" means a personal history of honesty, trustworthiness, and fairness; a good reputation for fair dealings; and respect for the rights of others and for the laws of this state and nation.

(b) (i) As a prerequisite to the issuance of a license, the department shall require the applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(ii) The applicant shall sign a release of information to the department and is responsible to the department of justice for the payment of all fees associated with the criminal background check.

(iii) Upon completion of the criminal background check, the department of justice shall forward all criminal justice information, as defined in 44-5-103, concerning the applicant that involves the conviction of a criminal offense in any jurisdiction to the department, as authorized in 44-5-303.

(iv) At the conclusion of any background check required by this section, the department must receive the criminal background check report but may not receive the fingerprint card of the applicant. Upon receipt of the criminal background check report, the department of justice shall promptly destroy the fingerprint card of the applicant.

(c) If an applicant has a history of criminal convictions, then pursuant to 37-1-203, the applicant has the opportunity to demonstrate to the department that the applicant is sufficiently rehabilitated to warrant the public trust, and if the department determines that the applicant is not, the license may be denied.

(6) (a) Except for an applicant who is granted a restricted license under subsection (9), an applicant shall maintain a tangible accounting net worth of not less than $50,000, evidenced by:

(i) providing financial statements that have been independently audited by a certified public accountant in accordance with generally accepted accounting principles; or

(ii) providing independently compiled financial statements and a $100,000 security deposit in a form that is acceptable to the department.

(b) If, after licensure, an applicant defaults in paying wages or payroll-related taxes or in meeting any liability arising pursuant to Title 39, chapter 71, or this chapter, the security deposit may be used to meet those obligations. The security deposit may not be used in determining the net worth of an applicant.

(c) (i) Documents submitted to establish net worth must reflect net worth as of a date not more than 6 months prior to the date on which the application is submitted.

(ii) Financial statements submitted must be attested by the president, chief financial officer, and at least one controlling person of the professional employer organization or group.

(iii) If an applicant is unable to meet the $50,000 net worth requirement, the applicant shall provide to the department a surety bond, a letter of credit, or marketable securities acceptable to the department in an amount of not less than $50,000 to cover the deficiency. If, after licensure, an applicant defaults in paying wages or payroll-related taxes or in meeting any liability arising pursuant to Title 39, chapter 71, or this chapter, the surety bond, letter of credit, or marketable securities provided to the department may be used to meet those obligations.

(7) The applicant shall maintain a positive working capital, as evidenced by financial statements.

(8) The department may provide by rule for the acceptance, in lieu of the requirements of subsections (6) and (7), of an affidavit provided by a bonded, independent, and qualified assurance organization that has been approved by the department certifying the qualifications of a professional employer organization or group seeking licensure under this chapter.

(9) The department may issue a restricted license for limited operation within this state to a professional employer organization or group that is a resident of or domiciled in another state if:

(a) the applicant's state of residence or domicile provides for licensing of professional employer organizations or groups~~,~~ *and* the applicant is licensed and in good standing in that state and that state grants a similar privilege for restricted licensing to professional employer organizations or groups that are residents of or domiciled in this state and that are licensed under this chapter;

(b) the applicant does not maintain an office, a sales force, or a sales representative in this state and does not solicit clients who are residents of or domiciled in this state; and

(c) the applicant does not have more than 100 leased employees working in this state.

(10) An applicant for a ~~restricted~~ license shall appoint a recognized and approved entity as its registered agent to receive service of legal process issued against it in this state *if a registered agent has not already been appointed*.

(11) The department may issue a provisional license to an applicant that allows the applicant to operate in this state while the applicant's application is being processed by the department. The department may not charge a fee for a provisional license. The department may adopt rules to implement the provisions of this subsection.

(12) A license issued under 39-8-204 or this section may not be transferred."

Section 2. Section 39-8-205, MCA, is amended to read:

"39-8-205. Renewal fees. (1) The fee for the renewal of a resident or nonresident unrestricted license is $750.

(2) The fee for the renewal of a restricted license is $500.

(3) The application fee required in 39-8-202 does not apply to the renewal of an unrestricted license.

~~(4) A restricted license may not be granted to a professional employer organization or group that is a resident of or domiciled in another state if the state requires licensing but does not grant a similar privilege for restricted licensing to a licensee who is a resident of or domiciled in this state.~~

~~(5)~~*(4)* Fees collected must be used by the department to implement this chapter."

Section 3. Section 39-8-207, MCA, is amended to read:

"39-8-207. Requirements of licensee. (1) A professional employer organization or group shall, by written contract with the client, establish the responsibilities and duties of each party. The contract must disclose to the client:

(a) the services provided, the administrative fee, and the respective rights and obligations of the parties;

(b) a statement providing that the professional employer organization or group:

(i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.

(ii) assumes responsibility for the payment of wages of employees, workers' compensation premiums, payroll-related taxes, and employee benefits from its own accounts without regard to payments by the client; and

(iii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.

(c) a statement that, with respect to a worker supplied to a client by a professional employer organization or group, the client shares joint and several liability for any wages, workers' compensation premiums, and payroll-related taxes and for any benefits left unpaid by the professional employer organization or group and that, in the event that the licensee's license is suspended or revoked, this liability is retroactive to the client's entering into a contract with the licensee; and

(d) a statement that the client is responsible for compliance with the Montana Safety Culture Act, Title 39, chapter 71, part 15.

(2) The professional employer organization or group shall:

(a) give written notice of the general nature of the relationship between the professional employer organization or group and the client to each employee assigned to perform services at the client's place of work. The disclosure must provide that the professional employer organization:

(i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.

(ii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.

(b) submit to the department, within 90 days of the end of each calendar quarter, information certified by an independent certified public accountant demonstrating that all payroll-related taxes for the quarter have been paid. Upon a showing of reasonable cause, one 30-day extension may be granted for each quarter. *The department, by rule, may waive the requirements of this subsection (2)(b) if the licensee provides to the department an affidavit from an organization of the type specified in 39-8-202(8).*

(c) maintain and make available for the department or its agent all records relating to the licensee's business conduct. Records must be maintained for 5 years after terminating ~~an employee leasing arrangement or~~ *a* professional employer arrangement *or employee leasing arrangement*.

(d) notify the department in writing within 20 days of a change of business address or a change in partners, directors, officers, members, or controlling persons designated in the license;

(e) notify the department in writing within 20 days after a client either commences or terminates a professional employer arrangement or an employee leasing arrangement with that professional employer organization or group; and

(f) post the license issued in a conspicuous place in the principal place of business and display, in clear public view in each licensee's office, a notice stating that the professional employer organization or group is licensed and regulated by the department.

(3) *(a)* When a professional employer organization or group uses a professional employer arrangement with the client, both the professional employer organization or group and the client are the immediate employers of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state.

(b) When a professional employer organization or group uses an employee leasing arrangement with the client, the professional employer organization or group is the immediate employer of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state.

(4) A professional employer organization or group shall:

(a) pay wages and collect, report, and pay payroll-related taxes from its own accounts;

(b) pay unemployment taxes, pursuant to 39-51-1103, and provide, maintain, and secure all records and documents required of employers under the unemployment insurance laws of this state. For unemployment reporting purposes, each professional employer organization is the employing unit, as defined in 39-51-201, and shall keep separate records and submit quarterly wage lists for each of its clients.

(c) provide workers' compensation coverage for all employees and provide, maintain, and secure all records and documents required of employers under the workers' compensation laws of this state. A license may not be issued to a professional employer organization or group until the department receives proof of *Montana* workers' compensation coverage for ~~all employees assigned to any client location in this state~~ *the professional employer organization or group*.

(5) A professional employer organization or group is an employer for sponsoring and maintaining employee benefit and welfare plans. The plans, if limited to employees of the professional employer organization or group, are not multiple employer welfare arrangements. This section does not preclude the client from providing benefits to employees coemployed by a professional organization or group.

(6) A professional employer organization or group shall disclose to the department, to each client, and to its employees information on any health or life fringe benefit program provided for its employees. The information must include:

(a) the type of benefits;

(b) the identity of each insurer providing each type of coverage;

(c) the amount of benefits for each type of coverage and to whom or on whose behalf the benefits will be paid;

(d) the policy limits on each insurance policy; and

(e) whether coverage is fully insured, partially insured, or fully self-funded.

(7) Disclosure required by this section may be made by any written means reasonably calculated to adequately inform the employees, including a summary plan description that meets the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq., as amended.

(8) (a) Subject to any contrary provisions of the contract between the client and the professional employer organization or group, the professional employer arrangement that exists between the parties must be interpreted for purposes of insurance, bonding, and employer liability pursuant to subsection (8)(b).

(b) The professional employer organization or group:

(i) is entitled, along with the client, to the exclusivity of the remedy under both the workers' compensation and employers' liability provisions of a workers' compensation policy or plan of either party; and

(ii) is not liable for the acts, errors, or omissions of a client or of an employee acting under the direction and control of a client, subject to the provisions of this chapter. Subject to the provisions of this chapter, a client is not liable for the acts, errors, or omissions of a professional employer organization or group or of any employee of a professional employer organization or group acting under the direction and control of the professional employer organization or group.

(9) A professional employer organization *or group* that applies for workers' compensation coverage shall also maintain and furnish to the insurer sufficient information to permit the calculation of an experience modification factor for each client employer, including but not limited to:

(a) the client employer's corporate or business name;

(b) the client employer's taxpayer or employer identification number;

(c) the client employer's risk identification number;

(d) a listing of all employees assigned to each client employer and the applicable classification code and payroll; and

(e) the client employer's first report of injury identifying the client employer and any other information necessary to permit the calculation of an experience modification factor for each client employer.

(10) An employee assigned to a client by a professional employer organization or group is considered the employee of the client for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, and liquor liability insurance carried by the client. An employee assigned to a client by a professional employer organization or group is not an employee of the professional employer organization or group for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, or liquor liability insurance carried by the professional employer organization or group unless the employee is included by reference in an employment arrangement contract, insurance contract, or bond.

(11) The sale of professional employer services pursuant to this chapter does not constitute the sale of insurance under Title 33 unless the professional employer organization or group:

(a) undertakes to indemnify another or pay or provide a specified or determinable amount of benefit based on determinable contingencies unless done through a licensed insurer or an employee welfare benefit plan as defined in 29 U.S.C. 1002(1);

(b) solicits, negotiates, effects, procures, delivers, renews, continues, or binds an insurance policy unless done through a licensed insurance producer; or

(c) is not exempt under 33-17-103(4).

(12) A sole proprietor or a working member of a partnership working under a professional employer arrangement may not receive unemployment insurance benefits unless the individual would otherwise be entitled to benefits if the professional employer arrangement did not exist.

(13) If the professional employer organization or group or the client complies with the provisions of 39-71-401 with respect to a worker under the professional employer arrangement, the professional employer organization or group and the client, with respect to those workers, are not uninsured employers, as defined in 39-71-501, and are not subject to the provisions of 39-71-508 or 39-71-515."

Section 4. Effective date. [This act] is effective July 1, 2007.

Approved March 16, 2007

CHAPTER NO. 16

[HB 115]

AN ACT REVISING AND CLARIFYING THE REQUIREMENTS FOR THE PUBLICATION OF ANNUAL AND BIENNIAL HUNTING, FISHING, TRAPPING, AND LAND USE REGULATIONS, SPECIAL SEASON CLOSURES, CREATION OR CLOSURE OF PRESERVES, REFUGES, SANCTUARIES, REST GROUNDS, OR CLOSED DISTRICTS, AND EMERGENCY CLOSURES OF DEPARTMENT OF FISH, WILDLIFE, AND PARKS LANDS AND PUBLIC WATERS THAT ARE ADOPTED BY THE FISH, WILDLIFE, AND PARKS COMMISSION; AMENDING SECTIONS 87-1-202 AND 87-5-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-202, MCA, is amended to read:

"87-1-202. ~~Posting and publication~~ *Publication* of orders~~,~~ *and* rules~~, and regulations~~. *(1)* ~~The orders,~~ *Except as provided in subsection (2), annual and biennial* rules~~, and regulations of the department shall~~ *adopted by the commission setting seasonal hunting, fishing, trapping, and land use regulations must* be published ~~and posted in the following manner:~~

~~(1) Those having general application throughout the state shall be published in such manner and to such an extent as the department deems necessary and may direct~~ *in a pamphlet format that is made available to the public at all department offices and through all license providers.*

(2) ~~Those of general or special character having local application only shall be published once in some newspaper having general circulation in the locality or district wherein such rules, regulations, or orders are applicable and shall be posted in three conspicuous places in the locality or district in which they are applicable.~~ *Site-specific land use regulations applicable to a particular fishing access site, wildlife management area, park site, or other department land, including but not limited to speed limits, road and off-road restrictions or closures, places where camping is allowed or prohibited, and seasonal closures*

for management purposes, must be indicated to the public by signs on the premises of the particular fishing access site, wildlife management area, park site, or other department land.

(3) (a) Commission orders setting management seasons, providing for game damage hunts, and closing special seasons pursuant to 87-1-304 may be published by:

(i) use of the department's website;

(ii) use of a telephone hotline number; or

(iii) any other method that is readily available to the public.

(b) The method for notifying the public of the closure of a special season must be stated in the rule that establishes the special season.

(4) Public notification of emergency closures of department lands, public waterways, and hunting, fishing, and trapping seasons that are based on public health, safety, and welfare must be made in the manner and to the extent that the department considers necessary in light of the facts surrounding the emergency, including, when practical, onsite posting of the emergency closure."

Section 2. Section 87-5-402, MCA, is amended to read:

"87-5-402. Posting of notice and additional provisions. (1) Preserves, refuges, sanctuaries, rest grounds, or closed districts ~~made or~~ created by ~~said~~ *the* department and any land or water areas or portions ~~thereof~~ *of preserves, refuges, sanctuaries, rest grounds, or closed districts* closed by ~~said~~ *the* department ~~shall~~ *must* be conspicuously posted for a period of 20 days, with posters setting forth their purposes and the penalties for violating the orders, ~~and~~ rules, and regulations of the department applicable to them. Not less than 20 days before *creation of* any fish and game district, ~~closed district,~~ preserve, refuge, sanctuary, ~~or~~ rest ground, ~~so created by said department,~~ *or closed district* or closure of land or water areas ~~becomes effective~~, publication ~~shall~~ *must* be made ~~as provided in 87-1-202~~ of the boundaries of ~~such~~ *the* fish and game district, ~~closed district,~~ preserve, refuge, sanctuary, ~~or~~ rest ground, ~~so created by said department~~ *or closed district*, ~~such~~ *with* boundaries ~~to be~~ accurately designated by definite topographic monuments or public land survey. *Publication must be in a newspaper having general circulation in the locality of the fish and game district, preserve, refuge, sanctuary, rest ground, or closed district.*

(2) The hunting, pursuing, capturing, killing, or taking of any fish, game animals, game birds, or fur-bearing animals in violation of the *orders,* rules, *or* regulations~~, or orders~~ of the department governing any closed season, fish and game district, *preserve,* refuge, sanctuary, ~~preserve,~~ rest ground, or closed land or water area promulgated by ~~said~~ *the* department ~~shall be~~ *is* punishable ~~with~~ *by* the ~~same~~ penalties ~~as~~ provided for the violation of ~~the state fish and game~~ laws ~~of this state~~ regarding closed seasons.

(3) All game preserves or refuges ~~heretofore~~ created are continued in full ~~force and~~ effect until ~~such time as the same are~~ *they are* changed by the department in the manner ~~herein~~ designated *in this section*. ~~Said~~ *The* department ~~shall have~~ *has* the right, power, and authority, when properly petitioned, to alter and change the boundaries of or entirely do away with and abandon any preserve or refuge, ~~excepting~~ *except* the Sun River game preserve, when, in the opinion of ~~said~~ *the* department, it is ~~to~~ *in* the best interest ~~so~~ to do *so*."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2007

CHAPTER NO. 17

[HB 122]

AN ACT INCREASING THE DEPARTMENT OF TRANSPORTATION'S AUTHORIZED LEASE TERM FROM 10 YEARS TO 40 YEARS ON LEASES FOR SPACE, IMPROVEMENTS, OR EQUIPMENT IN STATE AIRPORTS; AND AMENDING SECTION 67-2-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 67-2-302, MCA, is amended to read:

"67-2-302. State airports — operation. (1) The department may:

(a) lease, for a term not exceeding 40 years, airports or other air navigation facilities or real property acquired or set apart for airport purposes to private parties, a municipal or state government or the national government, or a department of either for operation;

(b) lease or assign, for a term not exceeding ~~10~~ *40* years, space, area, improvements, or equipment on those airports to private parties, a municipal or state government or the national government, or a department of either for operation or use consistent with the purposes of this title;

(c) sell any part of those airports, other air navigation facilities, or real property to a municipal or state government or to the United States or a department or instrumentality of the United States for purposes incidental to or for aeronautical purposes; and

(d) confer the privilege of concessions for supplying goods, commodities, things, services, and facilities upon the premises of those airports. However, in conferring the concessions, the public may not be deprived of its rightful, equal, and uniform use of the subject of the concessions.

(2) The department may determine the charges or rental for the use of state airports, the charges for service or accommodations under its control, and the terms and conditions under which the property may be used. However, the public may not be deprived of its rightful, equal, and uniform use of the property. Charges must be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expenses of operation to the state.

(3) The state has, and the department may enforce, agisters' liens as provided by law for repair, improvement, storage, or care of any personal property.

(4) The department may employ persons or contract with persons or firms to provide law enforcement in and around state airports whenever required by federal aviation regulations."

Approved March 16, 2007

CHAPTER NO. 18

[HB 126]

AN ACT REPEALING THE REQUIREMENT THAT THE DEPARTMENT OF TRANSPORTATION SET LIABILITY INSURANCE RATES FOR COMMERCIAL AIR CARRIERS; REPEALING SECTIONS 67-3-401, 67-3-402, 67-3-403, 67-3-404, AND 67-3-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Sections 67-3-401, 67-3-402, 67-3-403, 67-3-404, and 67-3-405, MCA, are repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2007

CHAPTER NO. 19

[HB 127]

AN ACT REQUIRING THE DEPARTMENT OF TRANSPORTATION TO MAKE IMMEDIATE DEPOSIT OF AIRCRAFT REGISTRATION FEES TO THE GENERAL FUND; AND AMENDING SECTION 67-3-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 67-3-205, MCA, is amended to read:

"67-3-205. Aircraft registration account — source of funds — allocation. (1) There is an account in the state special revenue fund to which must be credited all money received from fees paid in lieu of tax on aircraft*,* as required in ~~this part~~ *15-24-304* and ~~15-24-304~~ *this part,* and all penalties collected for registration violations*,* as provided in 67-3-202.

(2) Money in the account is allocated as follows:

(a) 90% to the state general fund; and

(b) 10% to the department for the purpose of administering and enforcing aircraft registration.

(3) The allocations required in subsection (2)~~(a)~~ must be made ~~twice annually~~ *when received* by the department. ~~The first allocation must be made between March 15 and March 30 and the second allocation must be made between July 1 and July 15.~~

~~(4) The allocation required in subsection (2)(b) must be made on July 1 of each year.~~"

Approved March 16, 2007

CHAPTER NO. 20

[HB 219]

AN ACT ADDING DEFINITIONS OF "SELL" AND "STORAGE LOT" TO MOTOR VEHICLE DEFINITIONS; PROVIDING THAT A DEALER MAY STORE MOTOR VEHICLES ON A STORAGE LOT UNDER CERTAIN

CIRCUMSTANCES; AMENDING SECTIONS 61-1-101 AND 61-4-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-101, MCA, is amended to read:

"61-1-101. Definitions. As used in this title, unless the context indicates otherwise, the following definitions apply:

(1) (a) "Authorized agent" means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department's motor vehicle titling, registration, or driver records, using an approved automated interface, for specific functions or purposes upon behalf of a third party.

(b) For purposes of this subsection (1), "person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.

(2) "Authorized agent agreement" means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent must operate in performing specific motor vehicle or driver-related record functions.

(3) "Bus" means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(4) (a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(b) The term does not include a truck canopy cover or topper.

(5) "Certificate of title" means the paper record issued by the department or by the appropriate agency of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons and the motor vehicle specifically described in the record and that provides notice of a perfected security interest in the motor vehicle.

(6) "Commercial driver's license" means:

(a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; and

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.

(7) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(i) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(iii) is designed to transport at least 16 passengers, including the driver;

(iv) is a school bus; or

(v) is of any size and is used in the transportation of hazardous materials as defined in 61-8-801.

(b) The following vehicles are not commercial motor vehicles:

(i) an authorized emergency service vehicle:

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) entitled to the exemptions granted under 61-8-107;

(ii) a vehicle:

(A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;

(B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and

(C) not used to transport goods for compensation or for hire; or

(iii) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in part-time national guard training, and national guard military technicians, or active duty United States coast guard personnel.

(c) For purposes of this subsection (7):

(i) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;

(ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle;

(iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; and

(iv) "school bus" has the meaning provided in 49 CFR 383.5.

(8) "Commission" means the state transportation commission.

(9) "County where a vehicle is domiciled" means the county in which the vehicle owner permanently resides or, if a vehicle is owned by a corporation or is leased or used for commercial purposes, the county in which the vehicle is permanently assigned or most frequently used, dispatched, or controlled.

(10) "Custom vehicle" means a motor vehicle other than a motorcycle that:

(a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or

(ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(11) (a) "Dealer" means a person, firm, association, or corporation that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker, as defined in 61-4-131, of new or used motor vehicles, trailers, semitrailers, or pole trailers that are not registered in the name of the person, firm, association, or corporation and that are required to be licensed under chapter 4 of this title.

(b) The term does not include the following:

(i) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(ii) employees of the persons included in subsection (11)(b)(i) when engaged in the specific performance of their duties as employees; or

(iii) public officers while performing or in the operation of their duties.

(12) "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.

(13) "Department" means the department of justice acting directly or through its duly authorized officers or agents.

(14) "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.

(15) "Driver" means a person who drives or is in actual physical control of a vehicle.

(16) "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

(a) any temporary license or instruction permit;

(b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;

(c) any nonresident's driving privilege;

(d) a motorcycle endorsement; or

(e) a commercial driver's license.

(17) "Electric personal assistive mobility device" means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour.

(18) "For hire" means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(19) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

(20) "Highway" or "public highway" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

(21) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(22) "Implement of husbandry" means a vehicle that is designed for agricultural purposes and exclusively used by the owner of the vehicle in the conduct of the owner's agricultural operations.

(23) "Kit vehicle" is a motor vehicle assembled from a manufactured kit either as:

(a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle; or

(b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain, commonly referred to as a donor vehicle.

(24) "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

(25) "Manufactured home" has the meaning provided in 15-1-101.

(26) "Manufacturer" includes any person, firm, corporation, or association engaged in the manufacture of motor vehicles, trailers, or semitrailers as a regular business.

(27) "Manufacturer's certificate of origin" means the original paper record produced and issued by the manufacturer of a vehicle or, if in a medium authorized by the department, an electronic record created and transmitted by the manufacturer of a vehicle to the manufacturer's agent or a licensed dealer. The record must establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of ownership of the vehicle to the person or persons named in the certificate.

(28) "Mobile home" or "housetrailer" has the meaning provided in 15-1-101.

(29) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

(30) (a) "Motor carrier" means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles upon a public highway in this state for the transportation of property for hire on a commercial basis.

(b) The term does not include motor carriers regulated under Title 69, chapter 12.

(31) (a) "Motorcycle" means a motor vehicle having not more than three wheels in contact with the ground and a saddle on which the operator sits or a platform on which the operator stands and a driving wheel in contact with the ground in addition to the wheels of the vehicle itself. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.

(b) The term does not include a tractor, a bicycle as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.

(32) (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.

(b) The term does not include a bicycle, as defined in 61-8-102, or a motorized nonstandard vehicle.

(33) "Motor home" means a motor vehicle:

(a) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

(b) containing permanently installed independent life support systems that meet the ANSIA/A119.2 standard; and

(c) providing at least four of the following types of facilities:

(i) cooking, refrigeration, or icebox;

(ii) self-contained toilet;

(iii) heating or air-conditioning, or both;

(iv) potable water supply, including a faucet and sink; or

(v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply; or both.

(34) (a) "Motorized nonstandard vehicle" means a vehicle, upon or by which a person may be transported, that:

(i) is propelled by its own power, using an internal combustion engine or an electric motor;

(ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(c) The term does not include an electric personal assistive mobility device or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(35) (a) "Motor vehicle" means a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state.

(b) The term does not include a bicycle as defined in 61-8-102 or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

(36) "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.

(37) "Nonresident" means a person who is not a resident of this state.

(38) (a) "Not used for general transportation purposes" means the operation of a motor vehicle, registered as a collector's item, a custom vehicle, or a street rod, to or from a car club activity or event or an exhibit, show, cruise night, or parade, or other occasional transportation activity.

(b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.

(39) (a) "Off-highway vehicle" means a self-propelled vehicle used for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) The term does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) vehicles otherwise issued a certificate of title and registered under the laws of the state, unless the vehicle is used for off-road recreation on public lands.

(40) "Operator" means a person who is in actual physical control of a motor vehicle.

(41) "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested the right of possession or control.

(42) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

(43) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

(44) "Pole trailer" means a vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

(45) "Police officer" means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(46) (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor capable of producing not more than 50 horsepower.

(b) The term does not include golf carts.

(47) "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

(48) (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated upon rails.

(b) The term does not include streetcars.

(49) "Recreational vehicle" includes self-propelled vehicles originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use.

(50) "Registration" or "register" means the act or process of creating an electronic record, maintained by the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records.

(51) "Registration decal" means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county treasurer to the owner of a motor vehicle, trailer, semitrailer, or pole trailer as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department under 61-3-101.

(52) "Registration receipt" means a paper record that is produced and issued or, if authorized by the department, an electronic record that is transmitted by the department, its authorized agent, or a county treasurer to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the vehicle for the registration period indicated in the receipt.

(53) "Retail sale" means the sale of a new motor vehicle or used motor vehicle, a recreational vehicle, a trailer, a travel trailer, a motorcycle, a quadricycle, or special mobile equipment by a dealer to a person for purposes other than resale.

(54) "Revocation" means that the driver's license and privilege to drive a motor vehicle on the public highways are terminated and may not be renewed or restored. An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.

(55) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways, the term refers to any roadway separately but not to all roadways collectively.

(56) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

(57) "Sell" means to transfer ownership from one person to another person or from a dealer to another person for consideration.

~~(57)~~*(58)* "Semitrailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.

~~(58)~~*(59)* "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, that is designed primarily for travel on snow or ice, that may be steered by skis or runners, and that is not otherwise registered or licensed under the laws of the state of Montana.

~~(59)~~*(60)* "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance

machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this subsection is partial and does not exclude other vehicles that are within the general terms of this subsection.

~~(60)~~*(61)* (a) "Specially constructed vehicle" means a motor vehicle, including a motorcycle, that:

(i) was not originally constructed under a distinctive make, model, or type by a generally recognized manufacturer of motor vehicles;

(ii) has been structurally modified so that it does not have the same appearance as similar vehicles from a generally recognized manufacturer of motor vehicles;

(iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from other vehicles;

(iv) has been constructed or assembled by using major component parts from one or more manufactured vehicles and that cannot be identified as a specific make or model; or

(v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.

(b) The term does not include a motor vehicle that has been repaired or restored to its original design by replacing parts.

~~(61)~~*(62)* (a) "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use.

(b) The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.

~~(62)~~*(63)* (a) "Stop", when required, means complete cessation from movement.

(b) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrol officer, or traffic control sign or signal.

(64) "Storage lot" means property owned, leased, or rented by a dealer that is not contiguous to the dealer's established place of business where a motor vehicle from the dealer's inventory may be placed when space at the dealer's established place of business is not available.

~~(63)~~*(65)* "Street" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

~~(64)~~*(66)* "Street rod" means a motor vehicle, other than a motorcycle, that:

(a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949, including a kit vehicle intended to resemble a vehicle manufactured before 1949; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

~~(65)~~*(67)* "Suspension" means that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn, but only during the period of suspension.

~~(66)~~*(68)* "Temporary registration permit" means a paper record:

(a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:

(i) required vehicle and owner information; and

(ii) the purpose for which the record was generated; and

(b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs.

~~(67)~~*(69)* "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

~~(68)~~*(70)* (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

~~(69)~~*(71)* "Transaction summary receipt" means an electronic record produced and issued by the department, its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain a unique transaction record number and summarize and verify the electronic filing of the transaction described in the receipt on the electronic record of title maintained under 61-3-101.

~~(70)~~*(72)* "Travel trailer" means a vehicle:

(a) that is 40 feet or less in length;

(b) that is of a size or weight that does not require special permits when towed by a motor vehicle;

(c) with gross trailer area of less than 320 square feet; and

(d) that is designed to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.

~~(71)~~*(73)* "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

~~(72)~~*(74)* "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

~~(73)~~*(75)* "Under the influence" has the meaning provided in 61-8-401.

~~(74)~~*(76)* "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, given away, or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or

agent of the manufacturer or importer and that has been used so as to have become what is commonly known as "secondhand" within the ordinary meaning of that term.

~~(75)~~*(77)* "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.

~~(76)~~*(78)* (a) "Vehicle" means a device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.

(b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

~~(77)~~*(79)* "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the motor vehicle or a component part of the motor vehicle.

~~(78)~~*(80)* "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~(79)~~*(81)* "Wholesaler" means a person, firm, partnership, association, or corporation that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, recreational vehicle, trailer, semitrailer, pole trailer, special mobile equipment, motorcycle, or quadricycle only to vehicle dealers and auto auctions licensed under chapter 4, part 1."

Section 2. Section 61-4-123, MCA, is amended to read:

"61-4-123. Dealer requirements and restrictions. (1) A dealer may not offer for sale, trade, or consignment any motor vehicle type not authorized by the license issued to the dealer by the department or use a dealer or demonstrator plate on a motor vehicle of a type for which the dealer is not licensed.

(2) A dealer may not display at the dealer's established place of business or any approved off-premises sale location a motor vehicle offered for sale, trade, or consignment unless the Monroney label required for new motor vehicles pursuant to 15 U.S.C. 1232 or the buyer's guide label required for used motor vehicles pursuant to 16 CFR, part 455, is affixed to the side window of the motor vehicle or is conspicuously displayed within the motor vehicle in a fashion that is readily readable by a customer.

(3) *(a)* Except as provided in subsection (4), a dealer may not sell or display a motor vehicle offered for sale at any geographic location other than that of the dealer's established place of business as listed on the dealer's license.

(b) A dealer may park a motor vehicle in a storage lot if:

(i) local zoning regulations permit that type of use;

(ii) the lot is in the county where the dealer's established place of business is located;

(iii) the dealer does not sell or advertise the sale of the motor vehicle at the lot; and

(iv) if applicable, the placement of the motor vehicle complies with the dealer's franchise agreement.

(4) (a) A dealer may conduct an off-premises display and sale at a geographic location other than that of the dealer's established place of business as listed on the dealer's license if the dealer notifies the department 10 days in advance, on a form prescribed by the department, of the opening date and location of an off-premises display and sale and obtains a permit from the department. The department may require proof from the dealer that the location proposed for the off-premises display and sale is in compliance with local zoning ordinances. Except for recreational vehicle, motor home, or travel trailer dealers, an off-premises display and sale must be conducted within the county of the dealer's licensed location. The display and sale may not exceed 10 consecutive days, and a licensed dealer may not conduct more than 10 off-premises displays and sales during any 1 calendar year.

(b) A dealer may display one or more motor vehicles inside an airport terminal or shopping mall without obtaining an off-premises display and sale permit if no actual sales are made, or could be made, at the terminal or mall.

(c) Upon prior written notice to the department, a dealer may display one motor vehicle at a geographic location other than that of the dealer's established place of business as listed on the dealer's license if no actual sales are made, or could be made, at the display location and the display:

(i) conspicuously promotes or supports an event or a program sponsored by a nonprofit corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes and the motor vehicle is displayed at a location where the event is being held or the program is being promoted; or

(ii) conspicuously promotes a joint commercial endeavor between the dealer and another clearly identified business entity and the motor vehicle is displayed on premises owned or leased by the other business entity and where the other entity regularly conducts its business. A display under this subsection (4)(c)(ii) may not exceed 90 days.

(5) If more than one dealer displays motor vehicles and maintains an established place of business at the same geographic location, each dealer shall ensure that all motor vehicle records, office facilities, and inventory, if applicable, are physically segregated from those of the other dealer and clearly identified and attributed to the appropriate dealer.

(6) A dealer shall install and maintain telephone service at the dealer's established place of business. The telephone service must be listed in the directory assistance that applies to the area in which the business is located.

(7) A dealer shall conspicuously post at the dealer's established place of business written notice indicating the regular and customary office hours maintained by the dealer.

(8) (a) A dealer shall carry and continuously maintain a general liability insurance policy that covers any motor vehicle bearing a set of dealer plates or a demonstrator plate that is offered for demonstration or loan to a customer or that otherwise may be operated by a customer in the regular course of the dealer's business operations.

(b) A dealer shall ensure that the department is named as a certificate holder on any general liability insurance policy held by the dealer, that the

minimum term of the policy is 1 year, and that a lapse of insurance does not occur as a result of cancellation or termination of a previously certified policy.

(c) This subsection (8) does not relieve a dealer of the mandatory motor vehicle liability insurance obligation imposed under chapter 6 of this title.

(9) A dealer shall display at the dealer's established place of business at least one sign stating the name of the business and indicating that motor vehicles are offered for sale, trade, or consignment. The letters of the sign must be at least 6 inches in height and clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2007

CHAPTER NO. 21

[HB 292]

AN ACT ALLOWING A COUNTY TO ENTER INTO LEASE-PURCHASE AGREEMENTS FOR A PERIOD NOT TO EXCEED 20 YEARS FOR THE CONSTRUCTION, FURNISHING, AND PURCHASING OF A DETENTION CENTER AND TO LEASE COUNTY PROPERTY USED FOR A DETENTION CENTER FOR A PERIOD NOT TO EXCEED 30 YEARS; AMENDING SECTIONS 7-8-2231 AND 7-32-2201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-2231, MCA, is amended to read:

"7-8-2231. Authorization to lease county property. (1) The board of county commissioners has jurisdiction and power, under ~~such~~ limitations and restrictions ~~as~~ *that* are prescribed by law, to lease and ~~demise~~ *transfer* county property, however acquired, ~~which~~ *that* is not necessary to the conduct of the county's business or the preservation of county property and for which immediate sale cannot be had. ~~Such~~ *The* leases ~~shall~~ *must* be *made* in ~~such~~ *a* manner and for ~~such~~ purposes ~~as~~ *that*, in the judgment of the board, ~~shall seem~~ *are* best suited to advance the public benefit and welfare.

(2) Except as provided in 7-8-2233 *and 7-32-2201(5)*:

(a) all ~~such~~ property must be leased subject to sale by the board; and

(b) ~~no~~ *a* lease ~~shall~~ *may not* be for a period to exceed 10 years."

Section 2. Section 7-32-2201, MCA, is amended to read:

"7-32-2201. Establishing detention center — detention center contract — regional detention center — *authority for county to lease its property for detention center*. For the confinement of lawfully committed persons, the governing body of a county may participate in or undertake one or more of the following:

(1) A detention center may be built or provided and kept in good repair at the expense of the county in each county, except that whenever in the discretion of the governing body of two or more local governments it is necessary or desirable to build, provide, or ~~utilize~~ *use* a multijurisdictional detention center, they may do so in any of the jurisdictions concerned. The multijurisdictional detention

center ~~shall~~ *must* be built or provided and kept in good repair at the expense of the local governments concerned on a basis as the governing bodies agree.

(2) A county or two or more local governments acting together may provide for the detention center allowed by subsection (1) by:

(a) establishing in the county government the position of detention center administrator and hiring a person, who is answerable to the governing body of the county, to fill the position or appointing the sheriff as detention center administrator; or

(b) entering into an agreement with a private party under which the private party will provide, maintain, or operate the detention center.

(3) The detention centers in this state are kept by the detention center administrators of the local governments in which they are situated. In the case of a multijurisdictional detention center as provided in subsection (1), the detention center ~~shall~~ *must* be kept by the local governments ~~utilizing~~ *using* the detention center on a basis as the governing bodies agree.

(4) The board of county commissioners has jurisdiction and power, under ~~such~~ limitations and restrictions ~~as~~ *that* are prescribed by law, to cause a detention center to be erected, furnished, maintained, and operated. The costs must be paid for out of the county treasury.

(5) The board of county commissioners has the power to lease to any person or entity any real or personal property of the county necessary or appropriate for use as a detention center. A lease entered into under this section must be for a period not to exceed 30 years and may not be limited by 7-8-2231.

(6) A county or two or more local governments acting together may enter into a lease-purchase agreement with a person or entity for a period not to exceed 20 years for the construction, furnishing, and purchasing of a detention center."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2007

CHAPTER NO. 22

[HB 419]

AN ACT ALLOWING A TOWN OR THIRD-CLASS CITY TO PLACE GAS TAX FUNDS IN A RESTRICTED ASSET ACCOUNT WITHIN THE GAS TAX APPORTIONMENT FUND UNTIL AN EXPENDITURE IS NEEDED; AMENDING SECTION 15-70-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-101, MCA, is amended to read:

"15-70-101. Disposition of funds. (1) All taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be placed in a highway revenue account in the state special revenue fund to the credit of the department of transportation. All interest and income earned on the account must be deposited to the credit of the account and any unexpended balance in the account must remain in the account. Those funds allocated to cities, towns, counties, and consolidated city-county governments in this section must, in accordance with the provisions of 15-1-501, be paid by the department of

transportation from the state special revenue fund to the cities, towns, counties, and consolidated city-county governments.

(2) The amount of $16,766,000 of the taxes collected under this chapter is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated each fiscal year on a monthly basis to the counties, incorporated cities and towns, and consolidated city-county governments in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (2)(a) through (2)(c):

(a) The amount of $100,000 must be designated for the purposes and functions of the Montana local technical assistance transportation program in Bozeman.

(b) The amount of $6,306,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the national highway system and the primary system, bears to the total rural road mileage in the state, exclusive of the national highway system and the primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state.

(c) The amount of $10,360,000 must be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the national highway system and the primary system, within corporate limits bears to the total street and alley mileage, exclusive of the national highway system and primary system, within the corporate limits of all cities and towns in Montana.

(3) (a) For the purpose of allocating the funds in subsections (2)(b) and (2)(c) to a consolidated city-county government, each entity must be considered to have separate city and county boundaries. The city limit boundaries are the last official city limit boundaries for the former city unless revised boundaries based on the location of the urban area have been approved by the department of transportation and must be used to determine city and county populations and road mileages in the following manner:

(i) Percentage factors must be calculated to determine separate populations for the city and rural county by using the last official decennial federal census population figures that recognized an incorporated city and the rural county. The factors must be based on the ratio of the city to the rural county population, considering the total population in the county minus the population of any other incorporated city or town in the county.

(ii) The city and county populations must be calculated by multiplying the total county population, as determined by the latest official decennial census or the latest interim year population estimates from the Montana department of

commerce as supplied by the United States bureau of the census, minus the population of any other incorporated city or town in that county, by the factors established in subsection (3)(a)(i).

(b) The amount allocated by this method for the city and the county must be combined, and single monthly payments must be made to the consolidated city-county government.

(4) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, county, or consolidated city-county government might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the primary or secondary highway system or urban extensions to those systems. The governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys. *The governing body of a town or third-class city may place all or a part of the 25% in a restricted asset account within the gas tax apportionment fund that is carried forward until there is a need for the expenditure.*

(5) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of $25,000.

(6) For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined annually for counties and biennially for cities according to the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(7) For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns, counties, and consolidated city-county governments to furnish to the department of transportation a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

(8) Except by a town or third-class city as provided in subsection (4), the funds authorized by this section may not be used for the purchase of capital equipment.

(9) Funds authorized by this section must be used for construction and maintenance programs."

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved March 16, 2007

CHAPTER NO. 23

[HB 431]

AN ACT REQUIRING THAT THE DEPARTMENT OF LIVESTOCK DEFINE "CLASS" AS IT PERTAINS TO CLASSES OF UTILIZATION OF MILK BY RULE AND USE THE CURRENT DEFINITIONS OF CLASSES OF UTILIZATION OF MILK THAT ARE FOUND IN THE CODE OF FEDERAL REGULATIONS; ALLOWING THE DEPARTMENT TO COMBINE ANY OF THE CLASSES OF MILK PROVIDED FOR IN THE FEDERAL DEFINITIONS INTO A SINGLE CLASS; AND AMENDING SECTIONS 81-23-101 AND 81-23-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-23-101, MCA, is amended to read:

"81-23-101. Definitions. (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of milk control provided for in 2-15-3105.

~~(b) "Class I milk" includes all bottled or packaged milk, low fat, buttermilk, chocolate milk, whipping cream, commercial cream, half-and-half, skim milk, fortified skim milk, skim milk flavored drinks, eggnog, and any other fluid milk not specifically classified in this chapter, whether raw, pasteurized, homogenized, sterile, or aseptic.~~

~~(c) "Class II milk" includes milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.~~

~~(d) "Class III milk" includes milk used in the manufacture of butter, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.~~

(b) (i) "Class" refers to the classes of utilization of milk that the department shall define by rule.

(ii) In adopting rules under this subsection (1)(b), the department shall use the current definitions of classes of utilization of milk that are found in Title 7 CFR, part 1000.40, except that the department may combine any of the classes of milk provided for in the federal definitions into a single class.

~~(e)~~*(c)* "Consumer" means a person or an agency, other than a dealer, who purchases milk for consumption or use.

~~(f)~~*(d)* "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.

~~(g)~~*(e)* "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors. The term, however, excludes a person purchasing milk from a dealer licensed under this chapter, for resale over the counter at retail or for consumption on the premises.

~~(h)~~*(f)* "Licensee" means a person who holds a license from the department.

~~(i)~~*(g)* "Market" means an area of the state designated by the department as a natural marketing area.

~~(j)~~*(h)* "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when raw and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise processed and all of which are designated as grade A by a constituted health authority and including those secretions that are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

~~(k)~~*(i)* "Person" means an individual, firm, corporation, or cooperative association or the dairy operated by the department of corrections at the Montana state prison.

~~(l)~~*(j)* "Producer" means a person who produces milk for consumption in this state, selling it to a distributor.

~~(m)~~*(k)* "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

~~(n)~~*(l)* "Producer-distributor" means a person both producing and distributing milk for consumption in this state.

~~(o)~~*(m)* "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for consumption on the premises and includes but is not limited to retail stores of all types, restaurants, boardinghouses, fraternities, sororities, confectioneries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

(2) The department may assign new milk products~~, not expressly included in one of the classes defined in this section,~~ to the class that ~~in its discretion it determines to be~~ *the department considers* proper."

Section 2. Section 81-23-302, MCA, is amended to read:

"81-23-302. Establishment of minimum prices. (1) The board shall*, by adopting rules,* fix minimum producer prices for ~~class I, class II, and class III milk by adopting rules in a manner prescribed by the Montana Administrative Procedure Act~~ *classes of utilization of milk as defined by the department*.

(2) The board shall establish prices by means of flexible formulas that must be devised so that ~~they~~ *the formulas* bring about automatic changes in all minimum prices that are justified on the basis of changes in production, supply, processing, distribution, and retailing costs.

(3) The board shall consider the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states so that minimum prices that are fair and equitable to producers and consumers may result.

(4) The board shall, when publishing notice of proposed rulemaking under authority of this section, set forth the specific factors that must be taken into consideration in establishing the formulas and, in particular, in determining costs of production and of the actual dollars and cents costs of production that preliminary studies and investigations of auditors or accountants in ~~its~~ *the department's* employment indicate will or should be shown at the hearing so that all interested parties will have *an* opportunity to be heard and to question or rebut the considerations as a matter of record.

(5) Specific factors may include but are not limited to the following items:

(a) current and prospective supplies of milk in relation to current and prospective demands for milk for all purposes;

(b) the cost factors in producing milk, which must include among other things the prices paid by farmers generally, as used in parity calculations of the United States department of agriculture, prices paid by farmers for dairy feed in particular, and farm wage rates in this state;

(c) the alternative opportunities, both farm and nonfarm, open to milk producers, which must include among other things the prices received by farmers for all products other than milk, the prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(d) the prices of butter, nonfat dry milk, and cheese;

(e) the need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk.

(6) If the board at any time proposes to base all or part of an official order establishing or revising milk pricing formulas upon facts within its own knowledge, as distinguished from evidence that may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed rulemaking under authority of this section, notify the consuming public and the milk industry of the specific facts within its own knowledge that it will consider~~,~~ so that all interested parties will have *an* opportunity to be heard and to question or rebut the facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule the formula under which minimum producer prices for milk ~~in classes I, II, and III~~ must be computed.

(8) This section may not be construed as requiring the board to promulgate a specific number of formulas, but it must be construed liberally so that the board may adopt a reasonable method of expression to accomplish the objective set forth in subsection (7).

(9) Each rule establishing or revising milk pricing formulas must classify milk by forms, classes, grades, or uses as the board considers advisable and must specify the minimum prices for the forms, classes, grades, and uses.

(10) Distributors who have processing facilities in this state shall, whenever possible, purchase milk from Montana producers for the processing of products to be sold in this state~~, provided that~~ *if* milk is available from Montana producers at the price set by the board.

(11) The board shall adopt rules ~~after notice and hearing in the manner prescribed by the Montana Administrative Procedure Act~~ to regulate transportation rates that distributors, contract haulers, and others charge producers for interplant transportation of milk. An allowance for transportation of milk between plants may not be permitted unless it is found by the board to be necessary to permit the movement of milk in the public interest. The board may promulgate rules regarding the requirement for first call on Montana milk supplies, as provided in subsection (10). Rules must be coordinated with those adopted pursuant to fair trade practices under 81-23-303.

(12) All milk purchased by a distributor must be purchased on a uniform basis. The basis to be used must be established by the board after the producers and the distributors have been consulted.

(13) The board may amend ~~an official~~ *a* rule in the same manner provided in this section for the original establishment of milk pricing formulas. The board may in its discretion, when it determines that the need exists, give notice of and hold statewide public hearings affecting establishment or revision of milk pricing formulas.

(14) Upon petition of a distributor or a majority of a distributor's producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices. If the board finds that the evidence presented at the hearing warrants the establishment of a base or quota plan, the board shall proceed by ~~official~~ order to establish the base or quota plan.

(15) (a) Upon petition by 10% or 20 of the licensed producers in Montana, whichever is less, or upon petition by a licensed producer-distributor or distributor, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a statewide pooling arrangement as a method of payment of producer prices, provided that at the hearing, the board shall, among other things, specifically receive and consider evidence concerning production and marketing practices that have historically prevailed statewide. If the board finds that the evidence presented at the hearing warrants the establishment of a statewide pooling arrangement, the board shall proceed by ~~official~~ order to establish the arrangement. An ~~official~~ order is not effective until it is approved in a referendum conducted by the board by mail among affected producers, producer-distributors, and distributors. The ~~official~~ order must be approved by a majority of the producers, producer-distributors, and distributors voting, representing more than 50% of the milk produced in Montana that is to be included in the proposed pool, based on each producer's average monthly production for the 12 months immediately preceding the referendum. If the board finds it necessary, the board may conduct more than one referendum on any order.

(b) The order of the board establishing the statewide pooling arrangement may include other provisions that the board considers necessary for the proper and efficient operation of the pool. These provisions may include but are not limited to:

(i) a statewide base or quota plan contemplated in subsection (14);

(ii) the establishment of a pool settlement fund to be administered by the department for the purpose of receiving payments from pool distributors or making payments to them as necessary in order to operate and administer the statewide pool; and

(iii) the establishment of a pool expense fund for the purpose of offsetting the costs to the department of administering the pool, funded by a special levy assessed against each pool producer.

(c) During the initial startup of a statewide pool, the department may draw from existing cash reserves to fund a pool settlement fund and a pool expense fund, but withdrawals from the cash reserve must be reimbursed.

(d) An order of the board establishing a statewide pooling arrangement that has been approved in a referendum may be rescinded in the same manner as provided for approval of the order under subsection (15)(a). The order may be amended without a referendum if, prior to amending the order, the board gives written notice of its intended action and holds a public hearing ~~as required under the Montana Administrative Procedure Act~~.

(16) The requirements of this section concerning notices of hearings for the establishment of milk pricing formulas apply to any hearings regarding base or quota plans or statewide pooling arrangements or abandonment of base or quota plans or statewide pooling arrangements.

(17) Rules adopted pursuant to this section must be enforced and audited for compliance by the department."

Approved March 16, 2007

CHAPTER NO. 24

[HB 18]

AN ACT REPEALING THE STATUTORY TIME LIMIT FOR FILING TRAVEL EXPENSE VOUCHERS FOR MULTICOUNTY TRAVEL BY DISTRICT COURT JUDGES IN MULTICOUNTY DISTRICTS; REPEALING SECTION 3-5-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 3-5-216, MCA, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 22, 2007

CHAPTER NO. 25

[HB 38]

AN ACT AUTHORIZING THE FISH, WILDLIFE, AND PARKS COMMISSION TO ISSUE LICENSES AT REDUCED PRICES TO HARVEST ANTLERLESS MOOSE, COW OR CALF BISON, AND ADULT EWE MOUNTAIN SHEEP FOR MANAGEMENT PURPOSES; CLARIFYING THE ISSUANCE OF LICENSES FOR A SECOND ELK; AMENDING SECTIONS 87-2-104, 87-2-505, AND 87-2-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-104, MCA, is amended to read:

"87-2-104. Number of licenses allowed — fees. (1) It is unlawful for ~~any~~ *a* person to apply for, purchase, or possess more than one license of any one class or more than one special license for any one species listed in 87-2-701. This provision does not apply to Class B-4 or Class B-5 licenses or to licenses issued under subsection (3) for game management purposes. However, when more than one license is authorized by the commission, it is unlawful to apply for, purchase, or possess more licenses than are authorized.

(2) The department may prescribe rules and regulations for the issuance or sale of a replacement license in the event the original license is lost, stolen, or destroyed upon payment of a fee not to exceed $5.

(3) When authorized by the commission for game management purposes, the department may*:*

(a) issue more than one Class A-3 *resident deer A*, Class A-4 *resident deer B*, ~~Class A-5, Class A-7,~~ Class B-7 *nonresident deer A*, Class B-8 *nonresident deer B*,

~~Class B-10, Class B-11,~~ or special antelope license to an applicant~~.~~*; and* ~~An applicant for these game management licenses is not at the time of application required to hold any license or permit of that class.~~

(b) issue a special antlerless moose license, a special cow or calf bison license, or one or more special adult ewe mountain sheep licenses to an applicant.

(4) *For all of the game management licenses issued under subsection (3), the commission shall determine the hunting districts or portions of hunting districts for which the licenses are to be issued, the number of licenses to be issued, and all terms and conditions for the use of the licenses.*

(5) When authorized by the commission for game management purposes, the department may issue Class A-9~~,~~ resident antlerless elk B tag licenses and Class B-12 nonresident antlerless elk B tag licenses entitling the holder to take an antlerless elk. ~~An applicant must have a Class A-5 or Class A-7 license to be eligible for a Class A-9 license. An applicant must have a Class B-10 or Class B-13 license to be eligible for a Class B-12 license.~~ *Unless otherwise reduced pursuant to subsection (6), the fee for a Class B-12 license is $273.* The commission shall determine the hunting districts or portions of hunting districts for which Class A-9 and Class B-12 licenses are to be issued, the number of licenses to be issued, and all terms and conditions for the use of the licenses.

~~(5)~~*(6)* The fee for ~~any~~ *a* resident or nonresident license of any class issued under subsection (3) ~~must~~ *or (5) may* be ~~set~~ *reduced* annually by the department ~~and may not exceed the regular fee provided by law for that class or species~~."

Section 2. Section 87-2-505, MCA, is amended to read:

"87-2-505. Class B-10—nonresident big game combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of the fee of $628 plus the nonresident hunting access enhancement fee in 87-2-202(3)(d) or upon payment of the fee established as provided in 87-1-268 if the license is one of the licenses reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a B-10 nonresident big game combination license that entitles a holder who is 12 years of age or older to all the privileges of Class B, Class B-1, and Class B-7 licenses and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 11,500 unreserved Class B-10 licenses may be sold in any 1 license year.

(2) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-10 big game combination license drawing may pay a fee of $25 to participate in a preference system for deer and elk permits established by the commission.

~~(3) A holder of a Class B-10 nonresident big game combination license may apply for a Class B-12 nonresident antlerless elk B tag license when authorized by the commission pursuant to 87-2-104. The fee for a Class B-12 license is $273. The license entitles the holder to hunt in the hunting district or portion of a hunting district and under the terms and conditions specified by the commission.~~"

Section 3. Section 87-2-702, MCA, is amended to read:

"87-2-702. Restrictions on special licenses. (1) A person who has killed or taken any game animal, except a deer, an elk, or an antelope, during the current license year is not permitted to receive a special license under this chapter to hunt or kill a second game animal of the same species.

(2) The commission may require applicants for special permits authorized by this chapter to obtain a valid big game license for that species for the current year prior to applying for a special permit.

(3) A person may take only one grizzly bear in Montana with a license authorized by 87-2-701.

(4) (a) Except as provided in 87-1-271(2), a person who receives a moose, mountain goat, or limited mountain sheep license, ~~with the exception of an adult ewe license,~~ as authorized by 87-2-701, *with the exception of an anterless moose or an adult ewe game management license issued under 87-2-104,* is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection (4)(a), "limited mountain sheep license" means a license that is valid for an area in which the number of licenses issued is restricted.

(b) Except as provided in 87-1-271(2), a person who takes a mountain sheep using an unlimited mountain sheep license, with the exception of a mountain sheep taken pursuant to an adult ewe license, as authorized by 87-2-701, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection (4)(b), "unlimited mountain sheep license" means a license that is valid for an area in which the number of licenses issued is not restricted."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 22, 2007

CHAPTER NO. 26

[HB 46]

AN ACT ADOPTING THE MOST RECENT VERSION OF FEDERAL LAWS AND REGULATIONS, FORMS, PRECEDENTS, AND USAGES, INCLUDING THE UNIFORM CODE OF MILITARY JUSTICE, FOR USE BY THE STATE MILITARY FORCES; AND AMENDING SECTION 10-1-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-104, MCA, is amended to read:

"10-1-104. Federal regulations to govern. (1) Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the national guard, as in effect on October 1, ~~2005~~ *2007*, insofar as they are applicable and not inconsistent with the constitution and laws of this state or with a rule or regulation adopted pursuant to 10-1-105, apply to and govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code.

(2) The Uniform Code of Military Justice, as in effect on October 1, ~~2005~~ *2007*, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the code, is adopted for use by the national guard of this state and applies, insofar as the code is not otherwise

inconsistent with the constitution and laws of this state, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the constitution and laws of this state, or with a rule or regulation adopted pursuant to 10-1-105, to the greatest extent practicable to govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code when the members are serving other than in a federal capacity under Title 10 of the United States Code."

Approved March 22, 2007

CHAPTER NO. 27

[HB 48]

AN ACT AUTHORIZING THE DEPARTMENT OF MILITARY AFFAIRS TO ESTABLISH THE NATIONAL GUARD EDUCATION BENEFIT PROGRAM; EXTENDING THE TERMINATION DATE FOR TUITION WAIVERS FOR A QUALIFIED MEMBER OF THE MONTANA NATIONAL GUARD; AMENDING SECTION 20-25-421, MCA, AND SECTION 5, CHAPTER 577, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-25-421, MCA, is amended to read:

"20-25-421. (Temporary) Charges for tuition — waivers. (1) The regents may prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction.

(2) The regents may:

(a) waive nonresident tuition for selected and approved nonresident students, not to exceed at any unit 2% of the full-time equivalent enrollment at that unit during the preceding year; however, when necessary, tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements that provide for the payment, when required, of the student support fee by the reciprocal state;

(b) waive resident tuition for students at least 62 years of age;

(c) waive tuition and fees for:

(i) persons of one-fourth Indian blood or more who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

(ii) persons designated by the department of corrections pursuant to 52-5-112 or 53-1-214;

(iii) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;

(iv) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States;

(v) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action; or

(vi) the spouse or children of a Montana national guard member who was killed or died as a result of injury, disease, or other disability incurred in the line of duty while serving on state active duty;

(d) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance requirements at the state university or college of the person's choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:

(i) a paid or volunteer member of a municipal or rural fire department;

(ii) a law enforcement officer as defined in 7-32-201; or

(iii) a full-time highway patrol officer.

(e) waive tuition for up to 5,000 credits each academic year in accordance with the Montana national guard education benefit program ~~established by~~, *which* the department of military affairs *is authorized to establish*. The waivers provided for in this subsection (2)(e) are intended to be available for up to 5 years after the person qualifies. (Terminates June 30, ~~2009—sec. 5, Ch. 577, L. 2005~~ *2011*.)

20-25-421. (Effective July 1, ~~2009~~ *2011*) Charges for tuition — waivers. (1) The regents may prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction.

(2) The regents may:

(a) waive nonresident tuition for selected and approved nonresident students, not to exceed at any unit 2% of the full-time equivalent enrollment at that unit during the preceding year; however, when necessary, tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements that provide for the payment, when required, of the student support fee by the reciprocal state;

(b) waive resident tuition for students at least 62 years of age;

(c) waive tuition and fees for:

(i) persons of one-fourth Indian blood or more who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

(ii) persons designated by the department of corrections pursuant to 52-5-112 or 53-1-214;

(iii) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;

(iv) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States;

(v) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action; or

(vi) the spouse or children of a Montana national guard member who was killed or died as a result of injury, disease, or other disability incurred in the line of duty while serving on state active duty;

(d) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance requirements at the state university or college of the person's choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:

(i) a paid or volunteer member of a municipal or rural fire department;

(ii) a law enforcement officer as defined in 7-32-201; or

(iii) a full-time highway patrol officer.

(3) If funds are available after the waivers provided for in subsection (2), the regents may waive tuition for up to 5,000 credits each academic year ~~[~~in accordance with the *Montana* national guard education benefit program ~~provided for in 10-1-121~~]*, which the department of military affairs is authorized to establish*."

Section 2. Section 5, Chapter 577, Laws of 2005, is amended to read:

"**Section 5. Termination.** [This act] terminates June 30, ~~2009~~ *2011*."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 22, 2007

CHAPTER NO. 28

[HB 76]

AN ACT REVISING AND CLARIFYING PROCEDURES FOR PROCESSING OF HUMAN RIGHTS COMPLAINTS; ADDING THE DEPARTMENT OF LABOR AND INDUSTRY AS A PARTY OF INTEREST IN TEMPORARY INJUNCTION PROVISIONS AND IN PROVISIONS FOR ENFORCEMENT PETITIONS FOR ORDERS AND CONCILIATION AGREEMENTS; CLARIFYING THE FUNCTION OF INFORMAL INVESTIGATION PROCESS; CLARIFYING PROCEDURES INCLUDING PROCEDURES FOR FILING COMPLAINTS, DEPARTMENT PROCESSES FOLLOWING INFORMAL INVESTIGATIONS BY THE DEPARTMENT, FILING OF OBJECTIONS, AND HEARING PROCEDURES AND RESPONSIBILITIES; CLARIFYING PROCEDURES UPON A FINDING OF DISCRIMINATION AND IN APPEALS; REVISING AND CLARIFYING PROCEDURES FOR THE REVIEW OF DEPARTMENT ACTION BY THE HUMAN RIGHTS COMMISSION; REVISING AND CLARIFYING PROCEDURES FOR CONCLUSION OF A COMPLAINT; REVISING AND CLARIFYING PROCEDURES AND REMEDIES IN HOUSING DISCRIMINATION COMPLAINTS; AMENDING SECTIONS 49-2-501, 49-2-503, 49-2-504, 49-2-505, 49-2-506, 49-2-508, AND 49-2-510, MCA; REPEALING SECTIONS 49-2-507 AND 49-2-509, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-2-501, MCA, is amended to read:

"49-2-501. Filing complaints. (1) ~~A complaint may be filed with the department by any party~~ *A person* claiming to be aggrieved by any discriminatory practice prohibited by this chapter *may file a complaint with the department*.

(2) A complaint may be filed on behalf of a ~~party claiming to be aggrieved by a discriminatory practice~~ *person charging unlawful discrimination* prohibited by this chapter if the person acting on behalf of the ~~aggrieved~~ *charging* party is the ~~aggrieved~~ *charging* party's guardian, attorney, or duly authorized representative or an advocacy group, labor organization, or other organization acting as an authorized representative.

(3) The complaint must be ~~in the form of a~~ written~~,~~ *and* verified ~~complaint stating~~ *and must state* the name and address of the party~~, educational institution, financial institution, or governmental entity or agency~~ alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice.

(4) (a) Except as provided in 49-2-510 and subsection (4)(b) of this section, a complaint under this chapter must be filed with the department within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(b) If the ~~complainant~~ *charging party* has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.

~~(c) Any complaint not filed within the times set forth in this section may not be considered by the commission or the department.~~

(5) If the department determines that the complaint is untimely, it shall dismiss the complaint on a finding of no reasonable cause. A charging party may file objections to the dismissal with the commission pursuant to [section 6]."

Section 2. Section 49-2-503, MCA, is amended to read:

"49-2-503. Temporary relief by court order. At any time after a complaint is filed under this chapter, a district court may, upon the application of the commissioner*, the department,* or the ~~complainant~~ *charging party*, enter a preliminary injunction against a respondent in the case. The procedure for granting the order is as provided by statute for preliminary injunctions in civil actions."

Section 3. Section 49-2-504, MCA, is amended to read:

"49-2-504. Informal investigation ~~and~~ — conciliation — *findings.* (1) ~~(a)~~ The department shall informally investigate the matters set out in the complaint promptly and impartially~~. If the department determines that~~ *to determine whether there is reasonable cause to believe that* the allegations are supported by a preponderance of the evidence~~, it~~.

(2) (a) During the informal investigation process and before the department issues a finding under subsection (7), the department may attempt to resolve the complaint by mediation.

(b) If the department makes a finding under subsection (7)(c) that there is reasonable cause to believe that unlawful discrimination occurred, the department shall attempt to ~~achieve a resolution of~~ *resolve* the complaint by ~~conference,~~ conciliation~~, and persuasion~~ *in a manner* that, in addition to providing redress for the complaint, includes conditions that eliminate the discriminatory practice, if any, ~~identified~~ *found* in the investigation.

(3) The department shall, within 10 business days following receipt of a filed complaint, notify a respondent that the respondent is the subject of a filed complaint. The notification must be in writing and must include a copy of the filed complaint. If requested, the department shall also provide the parties with all other information related to the complaint in the possession of the department that is not currently in the possession of the parties or a party. The department shall make known to the parties the fact that information is available upon request. The department may not investigate a complaint until it has received notice that the respondent has received the department's notification of the complaint.

~~(b)~~*(4)* If ~~a complaint is filed relative to an employment-related complaint and if the commissioner decides~~ *the department determines* that the inclusion of documents or information ~~contained in the complaint~~ *obtained by the department* would seriously impede the rights of a person or the proper investigation of the complaint, the information may be excluded from the notification by providing a written summary of the information ~~contained in the complaint~~. The written summary must include sufficient information to give maximum effect to the intent of this chapter.

~~(2)~~*(5)* The respondent shall file an answer to a complaint filed with the department within 10 business days of the respondent's receipt of the complaint. An answer may be a response simply admitting or denying the allegations without further specificity or requesting additional information from the department. The time for filing an answer may be extended by a showing of good cause.

~~(3)~~*(6)* The department shall commence proceedings within 30 days after receipt of a complaint.

~~(4)~~*(7) (a)* ~~The~~ *After the informal investigation, the* department shall ~~make~~ *issue* a finding ~~regarding the merit or nonmerit of the complaint~~ *on whether there is reasonable cause to believe that a preponderance of the evidence supports the charging party's allegation of unlawful discrimination. The finding must be issued* within 180 days after a complaint is filed, except that the department shall ~~make~~ *issue* the finding within 120 days after a complaint is filed under 49-2-305.

(b) If the department finds that there is no reasonable cause to believe that unlawful discrimination occurred, it shall issue a notice of dismissal and dismiss the case from the department's administrative process. After receipt of a notice of dismissal, a charging party may:

(i) continue the administrative process by filing objections with the commission as provided in [section 6]; or

(ii) discontinue the administrative process and commence proceedings in district court as provided in [section 6].

(c) If the department finds that there is reasonable cause to believe that unlawful discrimination occurred and conciliation efforts are unsuccessful, the department shall certify the complaint for hearing pursuant to 49-2-505."

Section 4. Section 49-2-505, MCA, is amended to read:

"49-2-505. Contested case hearing — *appeal to commission — final agency decision.* (1) ~~If the informal efforts to eliminate the alleged discrimination are unsuccessful, the~~ *The* department shall hold a *contested case* hearing on ~~the~~ *a* complaint *that is certified for hearing under 49-2-504 or that is remanded for hearing by the commission or by a reviewing court*. The department shall serve notice of the hearing and a copy of the complaint on the parties.

(2) ~~(a)~~ If the parties mutually agree to ~~permit the department to retain jurisdiction of the case under this chapter for a period of time that exceeds~~ *extend the time for hearing beyond* 12 months after the complaint ~~was~~ *is* filed, then the parties shall stipulate to a schedule for proceedings to be established by the department.

~~(b)~~ The department shall, not later than 395 days after the complaint was filed, set a date for an administrative hearing in the case *in accordance with the stipulated schedule*.

~~(c) The case must be heard no later than 90 days after the date is set by the department. The~~ *After a hearing date is set, the* department may, in its sole discretion, issue a continuance of the hearing date only upon a showing of good cause.

(3) (a) The hearing must be held by the department in the county where the unlawful conduct is alleged to have occurred unless a party ~~charged in the complaint~~ requests and is granted a change of venue for good cause shown. The case in support of the complaint may be presented before the department by the ~~complainant~~ *charging party* or an attorney representing the ~~complainant~~ *charging party*. The hearing ~~and any subsequent proceedings under this chapter~~ must be held in accordance with the applicable portions of the Montana Rules of Civil Procedure ~~as adopted by the department~~.

(b) Upon request of the hearings officer, the department may present evidence with regard to activity conducted. However, except in cases brought pursuant to 42 U.S.C. 3601, et seq., the department may not represent either party in a contested case hearing.

(c) If the case is not settled, fully decided on order or motion, or otherwise resolved, after a hearing, the hearings officer shall issue a decision. If the decision is not appealed to the commission within 14 days as provided in subsection (4), the decision becomes final and is not appealable to district court.

(4) A party may appeal a decision of the hearings officer ~~to the commission. A party shall provide notice of its~~ *by filing an* appeal ~~to~~ *with* the commission~~, the department, and all parties~~ within ~~10 business~~ *14* days ~~of receipt~~ *after the issuance* of the notice of decision of the administrative hearing.

(5) The commission shall hear all appeals within 120 days of receipt of ~~notice of~~ *an* appeal. *The commission may affirm, reject, or modify the decision in whole or in part.* The commission shall render a *final agency* decision within 90 days of hearing the appeal.

~~(5)~~*(6)* All hearings conducted under this section may, upon stipulation of the parties, be heard telephonically.

~~(6)~~*(7)* The *department or the* commission may make provisions for defraying the expenses of an indigent party in a ~~contested case~~ hearing held pursuant to this chapter.

~~(7)~~*(8)* The prevailing party in a hearing under this section may bring an action in district court for attorney fees *and costs*. The court in its discretion may allow the prevailing party reasonable attorney fees *and costs*. An action under this section must comply with the Montana Rules of Civil Procedure.

(9) Within 30 days after the commission issues a final agency decision in writing under subsection (5), a party may petition a district court for judicial review of the final agency decision as provided in 2-4-702."

Section 5. Section 49-2-506, MCA, is amended to read:

"49-2-506. Procedure upon ~~a~~ *decision* finding ~~of~~ discrimination. (1) If the ~~commission or the department, after a hearing,~~ *hearings officer* finds that a party against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, ~~the commission or~~ the department shall order the party to refrain from engaging in the discriminatory conduct. The order may:

(a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;

(c) require a report on the manner of compliance.

(2) Except as provided in 49-2-510, the order may not require the payment of punitive damages.

(3) Whenever ~~a commission or department~~ *an* order or conciliation agreement requires inspection by the department for a period of time to determine if the respondent is complying with that order or agreement, the period of time may not be more than 1 year."

Section 6. Dismissal after informal proceedings — filing of objections — procedures — action in district court. (1) If the department, after the informal investigation, issues a notice of dismissal under 49-2-501(5) or 49-2-504(7)(b), a charging party may file objections to the dismissal with the commission. The objections must be filed with the commission within 14 days after the issuance of the notice of dismissal.

(2) (a) The commission shall consider the objection in an informal hearing and review the department's findings for an abuse of discretion.

(b) If the commission overrules the objection, it shall issue its order affirming the department's notice of dismissal.

(c) If the commission sustains the objection, it shall reopen the case by remanding it to the department.

(3) (a) Within 90 days after the department has issued a notice of dismissal pursuant to 49-2-501(5) or 49-2-504(7)(b) or within 90 days after the commission has issued an order affirming the department's notice of dismissal pursuant to subsection (2)(b) of this section, the charging party may commence a civil action for appropriate relief on the merits of the case in the district court in the district in which the alleged violation occurred. If the charging party fails to commence the civil action in the district court within 90 days after the final agency decision has been issued, the claim is barred. The court may provide the same relief as described in 49-2-506. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees and costs.

(b) Within 30 days after the commission issues an order affirming the department's notice of dismissal pursuant to subsection (2)(b), a party may petition a district court for judicial review of the final agency decision as provided in 2-4-604.

Section 7. Section 49-2-508, MCA, is amended to read:

"49-2-508. Enforcement of commission or department order or conciliation agreement. If the order issued under 49-2-506 is not obeyed, the commissioner*, the department,* or a party may petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's or department's order by any appropriate order. The commissioner*, the department,* or a party may also commence a civil action in an appropriate district court for relief for a breach of a conciliation agreement."

Section 8. Filing in district court — compliance with administrative procedures required. (1) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of chapter 3 or this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. A claim or request for relief based upon the acts may not be entertained by a district court other than by the procedures specified in this chapter.

(2) In addition to dismissal under 49-2-501(5) or 49-2-504(7)(b), the department shall dismiss a complaint if:

(a) the charging party fails to keep the department advised of changes of address and the department finds that the failure has impeded the administrative proceedings; or

(b) a period of 12 months has elapsed from the filing of a complaint and neither the department nor the commission has held a hearing pursuant to 49-2-505 or an informal hearing pursuant to [section 6]. However, the department or the commission may refuse to dismiss a complaint under this subsection (2)(b) if:

(i) more than 30 days have elapsed since service of notice of hearing under 49-2-505;

(ii) the parties have stipulated to a reasonable extension of the timeframes; or

(iii) through litigation a party has unsuccessfully sought to prevent the department or the commission from conducting administrative proceedings on the complaint.

(3) Within 90 days after the department has issued a notice of dismissal pursuant to subsection (2), the charging party may commence a civil action for appropriate relief on the merits of the case in the district court in the district in which the alleged violation occurred. If the charging party fails to commence a civil action within 90 days after the dismissal has been issued, the claim is barred. The court may provide the same relief as described in 49-2-506. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees and costs.

Section 9. Section 49-2-510, MCA, is amended to read:

"49-2-510. Procedures and remedies for enforcement of housing discrimination laws. (1) A complaint may be filed with the department by or

on behalf of a ~~party~~ *person* claiming to be aggrieved by any discriminatory practice prohibited by 49-2-305. The complaint must be ~~in~~ written ~~form,~~ *and* verified by the aggrieved ~~party,~~ *person* and must be filed with the department within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(2) If ~~the department, on appeal, or the commission,~~ in a hearing under 49-2-505~~,~~ *the department* finds that a ~~party~~ *person* against whom a complaint was filed under this part has engaged in a discriminatory practice in violation of 49-2-305, the department ~~or the commission~~ may, in addition to the remedies and injunctive and other equitable relief provided by 49-2-506, to vindicate the public interest, assess a civil penalty:

(a) in an amount not exceeding $10,000 if the respondent has not been adjudged in any prior judicial or formal administrative proceeding to have committed any prior discriminatory housing practice in violation of 49-2-305; and

(b) in an amount not exceeding $25,000 if the respondent has been adjudged in any prior judicial or formal administrative proceedings to have committed one or more similar discriminatory housing practices in repeated violation of ~~a subsection of~~ 49-2-305 during the 5-year period ending on the date of the filing of the written complaint.

(3) In the case of ~~an order~~ *a decision* with respect to a discriminatory housing practice in violation of 49-2-305 that occurred in the course of a business subject to licensing or regulation by a governmental agency, the ~~commission~~ *department* shall, no later than 30 days after the date of the issuance of the order ~~or, if the order is judicially reviewed, no later than 30 days after the order is affirmed send copies of the findings of fact, the conclusions of law, and the order~~ *send a copy of the decision* to the licensing or regulatory agency.

(4) (a) ~~When~~ *Following completion of the informal investigation of* a complaint ~~is~~ filed under 49-2-305, a ~~complainant~~ *charging party* or a respondent may elect to have the claims decided in a civil action in lieu of a hearing under 49-2-505. The election must be made *in writing* no later than ~~20~~ *30* days after ~~receipt by the electing person of service~~ *the service* of notice of ~~certification for~~ hearing under 49-2-505 *on the electing party*. The ~~person making the~~ election ~~shall~~ *must* give notice to the department and to all ~~complainants and~~ other ~~respondents~~ *parties* named in the complaint. Within 30 days after the election is made, the ~~complainant~~ *charging party*, the commissioner, or the aggrieved party may commence a civil action in an appropriate district court on behalf of the aggrieved party if the department has made a finding that the allegations of the complaint are supported by a preponderance of the evidence. If the department has made a finding that the allegations of the complaint are not supported by a preponderance of the evidence, the ~~complainant~~ *charging party* may commence a civil action in an appropriate district court in accordance with subsection (5). An aggrieved party with respect to the issues to be determined in a civil action brought by the department may intervene in the action.

(b) The department may not continue administrative proceedings on a complaint after an election is made in accordance with subsection (4)(a). *The charging party may commence a civil action in an appropriate district court in accordance with subsection (5). An aggrieved party with respect to issues to be determined in a civil action brought by the department may intervene in the action.*

(5) (a) An aggrieved party may commence a civil action in an appropriate district court within 2 years after an alleged unlawful discriminatory practice under 49-2-305 occurred or was discovered or within 2 years of the breach of a conciliation agreement entered into under 49-2-504 in a case alleging a violation of 49-2-305. The computation of the 2-year period does not include any time during which an administrative proceeding under this title was pending with respect to a complaint alleging a violation of 49-2-305. The tolling of the time limit for commencing a civil action does not apply to actions arising from breach of a conciliation agreement.

(b) An aggrieved party may commence a civil action under this subsection *(5)* for a violation of 49-2-305 whether or not a complaint has been filed under 49-2-501 and without regard to the status of a complaint filed with the department, except as provided in subsection (5)(d). If the department has obtained a conciliation agreement with the consent of the aggrieved party, an action may not be filed under this subsection *(5)* by the aggrieved party regarding the alleged violation of 49-2-305 that forms the basis for the complaint except for the purpose of enforcing the terms of the agreement.

(c) The commission or the department may not continue administrative proceedings on a complaint after the filing of a civil action commenced by the aggrieved party under this subsection (5) seeking relief with respect to the same alleged violation of 49-2-305.

(d) An aggrieved party may not commence a civil action under this subsection (5) with respect to an alleged violation of 49-2-305 if the commission or the department has commenced a hearing on the record under 49-2-505 regarding the same complaint.

(e) Upon application by a person alleging a violation of 49-2-305 in a civil action under this subsection (5) or by a person against whom the violation is alleged, the court may:

(i) appoint an attorney for the applicant and the respondent; or

(ii) authorize the commencement or continuation of a civil action without the payment of fees, costs, or security if, in the opinion of the court, the party is financially unable to bear the costs of the civil action. As in all actions brought in forma pauperis, the burden of showing lack of financial ability rests with the party claiming financial hardship.

(6) If the court finds that a party against whom a complaint was filed under this section has been adjudicated in a civil or formal administrative proceeding to have engaged in a similar discriminatory practice in violation of ~~a subsection of~~ 49-2-305, the court may, consistent with the provisions of subsection (2) *of this section*, award punitive damages. The court may also award attorney fees *and costs* to the substantively prevailing party.

(7) ~~(a) Except as provided in subsection (7)(b), all~~ *All* civil *damages* and ~~administrative~~ penalties ~~and other revenue generated under this part~~, *monetary or otherwise, awarded under this section to an organization that is not an aggrieved party* must be deposited in the state general fund.

~~(b) Damages or penalties, whether monetary or otherwise, may not inure to an organization unless the organization is an aggrieved party. This section does not affect any amount owed to an aggrieved party.~~"

Section 10. Repealer. Sections 49-2-507 and 49-2-509, MCA, are repealed.

Section 11. Codification instruction. [Sections 6 and 8] are intended to be codified as an integral part of Title 49, chapter 2, part 5, and the provisions of Title 49, chapter 2, part 5, apply to [sections 6 and 8].

Section 12. Effective date. [This act] is effective July 1, 2007.

Approved March 22, 2007

CHAPTER NO. 29

[HB 82]

AN ACT REVISING THE ELEMENTS OF THE CRIME OF POSSESSION OF CHILD PORNOGRAPHY; PROVIDING DEFINITIONS; AMENDING SECTIONS 45-5-625 AND 50-19-501, MCA; AND REPEALING SECTION 45-5-620, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly, by any means of communication, including electronic communication ~~as defined in 45-8-213~~, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication~~, as defined in 45-8-213,~~ in which a child is engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication~~, as defined in 45-8-213,~~ in which a child is engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or

(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication~~, as defined in 45-8-213,~~ in which a child is engaged in sexual conduct, actual or simulated.

(2) (a) A person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than $10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed $10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections.

(4) As used in this section, the following definitions apply:

(a) "Electronic communication" means a sign, signal, writing, image, sound, data, or intelligence of any nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.

(b) "Sexual conduct" means:

(i) actual or simulated:

(A) sexual intercourse, whether between persons of the same or opposite sex;

(B) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;

(C) bestiality;

(D) masturbation;

(E) sadomasochistic abuse;

(F) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person; or

(G) defecation or urination for the purpose of the sexual stimulation of the viewer; or

(ii) depiction of a child in the nude or in a state of partial undress with the purpose to abuse, humiliate, harass, or degrade the child or to arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.

(c) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.

(d) "Visual medium" means:

(i) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

(ii) any disk, diskette, or other physical media that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method."

Section 2. Section 50-19-501, MCA, is amended to read:

"50-19-501. Nursing mother and infant protection. (1) The Montana legislature finds that breastfeeding a baby is an important and basic act of nurturing that must be protected in the interests of maternal and child health and family values. A mother has a right to breastfeed the mother's child in any location, public or private, where the mother and child are otherwise authorized

to be present, irrespective of whether or not the mother's breast is covered during or incidental to the breastfeeding.

(2) A unit of local government may not prohibit breastfeeding in public by local ordinance.

(3) The act of breastfeeding may not be considered:

(a) a nuisance as provided in Title 27, chapter 30;

(b) indecent exposure as provided for in 45-5-504;

(c) sexual conduct as defined in ~~45-5-620(1)(f)~~ *45-5-625*; or

(d) obscenity as provided for in 45-8-201."

Section 3. Repealer. Section 45-5-620, MCA, is repealed.

Approved March 22, 2007

CHAPTER NO. 30

[HB 106]

AN ACT ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF COMMERCE ACT AS AN OMBUDSMAN FOR THE TOURISM INDUSTRY AND RECREATIONISTS IN ALL MATTERS CONCERNING THE MANAGEMENT AND REGULATION OF THE LEVEL OF FLATHEAD LAKE; AMENDING SECTION 90-1-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-1-104, MCA, is amended to read:

"90-1-104. Functions of department of commerce — recreational development. The department of commerce shall:

(1) exercise state responsibility for that part of recreational planning and development ~~which~~ *that* is directly related to private investment in recreational facilities;

(2) assemble and correlate information ~~which~~ *that* may influence the development of recreational enterprises and disseminate it to persons, firms, or corporations interested in constructing or maintaining recreational facilities open to the public; *and*

~~(3) serve as an ombudsman for the tourism industry and recreationists in all matters concerning the management and regulation of the level of Flathead Lake; and~~

~~(4)~~*(3)* coordinate the promotion of Indian tourism activities in the state in cooperation with the seven tribal governments and the coordinator of Indian affairs."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 22, 2007

CHAPTER NO. 31

[HB 137]

AN ACT REVISING CONDITIONS UNDER THE MICROBUSINESS DEVELOPMENT ACT TO INCREASE ACCESS TO DEVELOPMENT LOANS; REVISING THE DEFINITION OF "QUALIFIED MICROBUSINESS"; AMENDING SECTIONS 17-6-402, 17-6-403, AND 17-6-407, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-402, MCA, is amended to read:

"17-6-402. Legislative findings and purpose. (1) The legislature finds and declares that:

(a) it is the policy of the state to foster and encourage economic development within the state in order to promote the general welfare of the people;

(b) no program exists by which the state encourages and assists in the creation, development, and financing of businesses with fewer than 10 full-time equivalent employees and gross revenues of less than ~~$500,000~~ *$1 million* a year, which represent a significant component of and potential for growth in the state's economy; and

(c) neither the public sector nor the private sector currently satisfies the financial needs of these businesses.

(2) The purpose of this part is to create a program to encourage and assist in the creation, development, and financing of businesses with fewer than 10 full-time equivalent employees and gross revenues of less than ~~$500,000~~ *$1 million* a year.

(3) The process of certification of microbusiness development corporations and selection among competing proposals for development loans must be open and competitive and allow access to the competition to all interested communities and organizations and must provide for selecting for award of development loans those projects that are best qualified according to the criteria established under 17-6-406 through 17-6-408."

Section 2. Section 17-6-403, MCA, is amended to read:

"17-6-403. Definitions. As used in this part, the following definitions apply:

(1) "Certified microbusiness development corporation" means a microbusiness development corporation certified pursuant to 17-6-408.

(2) "Department" means the department of commerce provided for in 2-15-1801.

(3) "Development loan" means money loaned to a certified microbusiness development corporation by the department for the purpose of making microbusiness loans under the provisions of this part.

(4) "Microbusiness development corporation" means a nonprofit corporation organized and existing under the laws of the state to provide training, technical assistance, and access to capital for the startup or expansion of qualified microbusinesses.

(5) "Microbusiness loan" means a loan made from or guaranteed by a revolving loan fund contributed to by the microbusiness finance program.

(6) "Program" means the microbusiness finance program established in 17-6-406.

(7) "Qualified microbusiness" means a business enterprise located in the state that:

(a) produces goods or provides services and has fewer than 10 full-time equivalent employees and annual gross revenue of less than ~~$500,000~~ *$1 million*; or

(b) produces energy using an alternative renewable energy source as defined in 15-6-225.

(8) "Revolving loan fund" means a fund required to be established by a certified microbusiness development corporation that receives a development loan."

Section 3. Section 17-6-407, MCA, is amended to read:

"17-6-407. Microbusiness development loan account and finance program administrative account — criteria — limitations. (1) (a) There is in the state special revenue fund a microbusiness development loan account into which funds allocated for that purpose and money received in repayment of the principal of development loans must be deposited.

(b) The department may make development loans from the account to a certified microbusiness development corporation.

(c) Interest earned on the account must be deposited in the microbusiness finance program administrative account established in subsection (2).

(2) There is in the state special revenue fund a microbusiness finance program administrative account into which must be deposited:

(a) all interest received on development loans received directly from microbusiness development corporations;

(b) service charges or fees received from certified microbusiness development corporations;

(c) grants, donations, and private or public income; and

(d) all interest earned on money in the account and interest earned on money in the account provided for in subsection (1)(a).

(3) Money in the administrative account may be transferred to the development loan account or be used to pay the costs of the program, including personnel, travel, equipment, supplies, consulting costs, and other operating expenses of the program.

(4) Subject to subsection (1), a certified microbusiness development corporation that receives a development loan may apply for an additional loan if the applicant meets the performance criteria established by the department.

(5) To establish the criteria for making development loans, the department shall consider:

(a) the plan for providing services to microbusinesses;

(b) the scope of services to be provided by the certified microbusiness development corporation;

(c) the geographic representation of all regions of the state, including urban, rural[, and tribal] communities;

(d) the plan for providing service to minorities, women, and low-income persons;

(e) the ability of the corporation to provide business training and technical assistance to microbusiness clients;

(f) the ability of the corporation, with a plan, to:

(i) monitor and provide financial oversight of recipients of microbusiness loans;

(ii) administer a revolving loan fund; and

(iii) investigate and qualify financing proposals and to service credit accounts;

(g) sources and sufficiency of operating funds for the certified microbusiness development corporation; and

(h) the intent of the corporation, with a plan and written indications of local institutional support, to provide services to a designated multicounty region of the state.

(6) Development loan funds may be used by a certified microbusiness development corporation to:

(a) satisfy matching fund requirements for other state, federal, or private funding only if funding is intended and used for the purpose of providing or enhancing the certified microbusiness development corporation's ability to provide and administer loans, technical assistance, or management training to microbusinesses;

(b) establish a revolving loan fund from which the certified microbusiness development corporation may make loans to qualified microbusinesses, provided that a single loan does not exceed ~~$35,000~~ *$100,000* and the outstanding balance of all loans to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share does not exceed ~~$35,000~~ *$100,000*;

(c) establish a guarantee fund from which the certified microbusiness development corporation may guarantee loans made by financial institutions to qualified microbusinesses. However, a single guarantee may not exceed ~~$35,000~~ *$100,000*, and the aggregate of all guarantees to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share may not exceed ~~$35,000~~ *$100,000*.

(7) Development loan funds may not be:

(a) loaned for relending or investment in stocks, bonds, or other securities or for property not intended for use in production by the recipient of the loan; or

(b) used to:

(i) refinance a nonperforming loan held by a financial institution; or

(ii) pay the operating costs of a certified microbusiness development corporation. However, interest income earned from the proceeds of a development loan may be used to pay operating expenses.

(8) Certified microbusiness development corporations are required to contribute cash from other sources to leverage and secure development loans from the program. Contributions provided by the corporation must be on a ratio

of at least $1 from other sources for each $6 from the program. These contributions may come from a public or private source other than the program and may be in the form of equity capital, loans, or grants.

(9) Development loans must be made pursuant to a development loan agreement and may be amortization or term loans, bear interest at less than the market rate, be renewable, be callable, and contain other terms and conditions considered appropriate by the department and that are consistent with the purposes of and with rules promulgated to implement this part.

(10) Each certified microbusiness development corporation that receives a development loan under this part shall provide the department with an annual audit from an independent certified public accountant. The audit must cover all of the microbusiness development corporation's activities and must include verification of compliance with requirements specific to the microbusiness program.

(11) A certified microbusiness development corporation that is in default for nonperformance under rules established by the department may be required to refund the outstanding balance of development loans awarded prior to the default declaration. A development loan is secured by a first lien on all funds and all receivables administered under the authority of the microbusiness development act by the corporation receiving the loan. (Bracketed language terminates June 30, 2009—secs. 3, 4, Ch. 460, L. 2005.)"

Section 4. Effective date. [This act] is effective July 1, 2007.

Approved March 22, 2007

CHAPTER NO. 32

[HB 156]

AN ACT GENERALLY REVISING LONG-TERM CARE INSURANCE LAWS; REVISING DEFINITIONS; REVISING PROVISIONS RELATING TO NONFORFEITURE BENEFITS; EXPANDING RULEMAKING AUTHORITY FOR THE COMMISSIONER OF INSURANCE; REVISING PROVISIONS RELATING TO DELIVERY OF POLICY SUMMARIES; REVISING PROVISIONS RELATING TO BENEFIT TRIGGERS; PROVIDING ADDITIONAL STANDARDS FOR LONG-TERM CARE INSURANCE CONTRACTS; REQUIRING TRAINING FOR INSURANCE PRODUCERS IN THE LONG-TERM CARE FIELD; PROVIDING PENALTIES; AMENDING SECTIONS 33-20-127, 33-20-128, 33-22-1107, 33-22-1111, 33-22-1115, 33-22-1116, 33-22-1119, 33-22-1121, 33-22-1123, 33-22-1124, AND 33-22-1125, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-20-127, MCA, is amended to read:

"33-20-127. Life insurance policy with long-term care provision or accelerated benefits provision — summary required. At the time of policy delivery, a summary must be delivered to the insured for an individual life insurance policy that provides ~~long-term care benefits or~~ accelerated benefits within the policy or by rider. *An individual life insurance policy that provides long-term care benefits must provide a summary as described in 33-22-1123.* In the case of direct response solicitations, the insurer shall deliver the summary upon the applicant's request but ~~no~~ *not* later than the time of policy delivery. In

addition to complying with all applicable requirements, the summary must also include:

(1) an explanation of how the long-term care benefits or accelerated benefits interact with other components of the policy, including deductions from death benefits;

(2) an illustration of the amount of benefits, the length of benefits, and the guaranteed lifetime benefits, if any, for each covered person;

(3) any exclusions, reductions, and limitations of long-term care benefits and accelerated benefits; and

(4) if applicable to the policy type:

(a) a disclosure of the effects of exercising other rights under the policy;

(b) a disclosure of guaranties related to long-term care costs of insurance charges; and

(c) current and projected maximum lifetime benefits."

Section 2. Section 33-20-128, MCA, is amended to read:

"33-20-128. Life insurance policy paying long-term benefits — monthly report. When a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status, a monthly report must be provided to the policyholder *as provided for in 33-22-1123 and this section*. The report must include the following information for the month for which the report is issued:

(1) the amount of long-term care benefits paid out during the month;

(2) an explanation of any changes in the policy, including without limitation death benefits or cash values, resulting from long-term care benefits having been paid out; and

(3) the amount of long-term care benefits existing or remaining."

Section 3. Scope. This part is not intended to supersede the obligations of entities subject to this part to comply with the substance of other applicable insurance laws insofar as they do not conflict with this part. However, laws and regulations designed and intended to apply to medicare supplement insurance policies may not be applied to long-term care insurance.

Section 4. Section 33-22-1107, MCA, is amended to read:

"33-22-1107. Definitions. As used in this part, the following definitions apply:

(1) "Activities of daily living" means:

(a) eating;

(b) toileting;

(c) transferring;

(d) bathing;

(e) dressing; and

(f) continence.

(2) "Applicant" means:

(a) in the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and

(b) in the case of a group long-term care insurance policy, the proposed certificate holder.

(3) "Appropriate sale criteria" means the set of conditions that an insurance company is required to address with an applicant that help to determine whether or not a particular insurance policy or contract offered for sale is appropriate to the applicant. These conditions must include but are not limited to any insurance premium involved in the policy, the income of the applicant, and the savings and investments of the applicant.

(4) "Certificate" means a certificate issued under a group long-term care insurance policy that has been delivered or issued for delivery in this state.

(5) "Group long-term care insurance" means a long-term care insurance policy that is delivered or issued for delivery in this state and issued to:

(a) (i) ~~an employer~~ *one or more employers*;

(ii) a labor organization;

(iii) a trust established by an employer or labor organization; or

(iv) a trustee of a fund established by ~~an employer or labor organization~~ *one or more employers or labor organizations* or a combination of employers and labor organizations for:

(A) employees or former employees or a combination of employees and former employees; or

(B) members or former members of the labor organization or a combination of members and former members;

(b) ~~a~~ *any* professional, trade, or occupational association for its current, former, or retired members or a combination of current, former, and retired members if the association:

(i) is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and

(ii) has been maintained in good faith for purposes other than obtaining insurance; or

(c) an association, a trust, or the trustee of a fund established, created, or maintained for the benefit of members of one or more associations.

(i) Prior to advertising, marketing, or offering the policy within this state, the association or the insurer of the association shall file evidence with the commissioner that the association has:

(A) a minimum of 100 persons at the outset;

(B) been organized and maintained in good faith for purposes other than obtaining insurance;

(C) been in active existence for at least 1 year; and

(D) a constitution and bylaws requiring that the association hold regular meetings at least annually to further purposes of the membership; except for credit unions, the association collects dues or solicits contributions from members; and the members have voting privileges and representation on the governing board and committees.

(ii) Thirty days after filing, the association ~~is~~ *must be* considered ~~as having~~ *to have* satisfied the organizational requirements unless the commissioner finds

~~after hearing~~ that the association does not satisfy the organizational requirements.

(d) a group other than as described in subsections (5)(a) through (5)(c) if the commissioner determines that the:

(i) issuance of the group policy is not contrary to the best interests of the public;

(ii) issuance of the group policy would result in economies of acquisition or administration; and

(iii) benefits are reasonable in relation to the premiums charged.

(6) (a) "Long-term care insurance":

(i) means ~~a~~ *any insurance* policy ~~or certificate~~ that is advertised, marketed, offered, or designed to provide coverage for not less than 12 consecutive months for ~~a~~ *each* covered person, on an expense-incurred, indemnity, prepaid, or other basis, for ~~a~~ *one or more* necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, or maintenance or personal-care ~~service~~ *services* provided in a setting other than an acute care unit of a hospital;

(ii) may be issued by an insurer, fraternal benefit society, *nonprofit* health service corporation, prepaid health plan, health maintenance organization, or similar organization to the extent that ~~it~~ *the organization* is otherwise authorized to issue life or health insurance;

(iii) includes group and individual annuities and life insurance policies ~~or riders~~ that provide directly or that supplement long-term care insurance;

(iv) includes any product advertised, marketed, or offered as long-term care insurance regardless of any exceptions to the definition included in this section;

(v) includes a policy ~~or rider~~ that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity; and

(vi) includes qualified long-term care insurance contracts.

(b) Long-term care insurance does not include:

(i) ~~an~~ *any* insurance policy that is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income *or related asset* protection coverage, accident-only coverage, specified disease or specified accident coverage, or limited benefit health coverage; or

(ii) life insurance policies that accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement and that provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

(c) An insurance policy that is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident-only coverage, specified disease or specified accident coverage, or limited benefit health coverage and that also contains long-term care insurance benefits of a duration of at least 6 months is not required to meet the requirements of this

part unless the premium allocable to the long-term care insurance benefits contained in the policy is greater than 25% of the total policy premium.

(7) "Policy" means ~~a~~ *any* policy, *certificate,* contract, membership contract, *subscriber agreement,* health care services agreement, rider, or endorsement delivered or issued for delivery in this state by an insurer, fraternal benefit society, health service corporation, prepaid health plan, health maintenance organization, or similar organization.

(8) "Preexisting condition" means a condition for which medical advice or treatment was recommended by or received from a provider of health care services within 6 months preceding the effective date of coverage of an insured person.

(9) "Qualified long-term care insurance contract" *or "federally tax-qualified long-term care insurance contract"* means:

(a) an individual or group insurance contract that meets the requirement of section 7702B of the Internal Revenue Code, 26 U.S.C. 7702B, if:

(i) the only insurance protection provided under the contract is coverage of qualified long-term care services~~;~~*, as defined in [section 13]. A contract may also satisfy the requirements of this subsection (9)(a) if payments are made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate.*

(ii) the contract does not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under 42 U.S.C. 1395 or would be reimbursable but for the application of a deductible or coinsurance amount~~;~~*. The requirements of this subsection (9)(a) do not apply to expenses that are reimbursable under 42 U.S.C. 1395 only as a secondary payor. A contract may also satisfy the requirements of this subsection (9)(a) if payments are made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate.*

(iii) the contract is guaranteed renewable *within the meaning of section 7702B(b)(1)(C) of the Internal Revenue Code, 26 U.S.C. 7702B(b)(1)(C)*;

(iv) the contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed. All refunds of premiums and all policyholder dividends or similar amounts under the contract are to be applied as a reduction in future premiums or to increase future benefits. However, a refund of the aggregate premium paid under the contract may be allowed in the event of death of the insured or a complete surrender or cancellation of the contract.

(v) the contract contains the consumer protection provisions set forth in section 7702B(g) of the Internal Revenue Code, 26 U.S.C. 7702B(g); or

(b) a life insurance contract that provides long-term care coverage by rider or as a part of the contract as long as the contract complies with section 7702B*(b) and (e)* of the Internal Revenue Code, 26 U.S.C. 7702B*(b) and (e)*.

~~(10) (a) "Qualified long-term care services" means necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services and maintenance for personal-care services for which an insured is eligible under a qualified long-term care insurance contract and that are provided pursuant to a plan of care prescribed by a licensed health care practitioner.~~

~~(b) For the purposes of this subsection (10), "licensed health care practitioner" means any of the following individuals when licensed in this state:~~

~~(i) a physician, as defined in 42 U.S.C. 1395x(r)(1);~~

~~(ii) a registered professional nurse;~~

~~(iii) a licensed social worker; or~~

~~(iv) another individual as determined by rules of the commissioner adopted for purposes of compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.~~

~~(11)~~*(10)* "Transferring" means moving into or out of a bed, chair, or wheelchair."

Section 5. Section 33-22-1111, MCA, is amended to read:

"33-22-1111. Outline of coverage. (1) (a) An insurer shall deliver an outline of coverage as approved by the commissioner to a prospective applicant for long-term care insurance at the time of initial solicitation through means that prominently direct the attention of the recipient to the document and its purpose.

(b) The commissioner shall prescribe a standard format, including style, arrangement, and overall appearance, and the content of the outline of coverage.

(c) In the case of insurance producer solicitations, an insurance producer shall deliver the outline of coverage prior to the presentation of an application or enrollment form.

(d) In the case of direct response solicitations, the insurer shall deliver the outline of coverage upon the earlier of the applicant's request or the delivery of the policy.

(2) The outline of coverage must include:

(a) a description of the principal benefits and coverage provided in the policy;

(b) a statement of the principal exclusions, reductions, and limitations contained in the policy;

(c) a statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premiums. Continuation or conversion provisions of a group policy must be specifically described.

(d) a statement that the outline of coverage is only a summary of the policy issued or applied for, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions;

(e) a description of the terms under which the policy or certificate may be returned and the premium refunded; ~~and~~

(f) a brief description of the relationship of cost of care and benefits*; and*

(g) a statement that discloses to the policyholder or certificate holder whether the policy is intended to be a federally tax-qualified long-term care insurance contract.

(3) The outline of coverage:

(a) must prominently display the name of the insurer;

(b) must be a freestanding document not dependent for purposes of reader comprehension upon any other document;

(c) must use no smaller than 12-point type; and

(d) may not contain material of an advertising nature."

Section 6. Section 33-22-1115, MCA, is amended to read:

"33-22-1115. Prior hospitalization or institutionalization. (1) A long-term care insurance policy may not be delivered or issued for delivery in Montana if the policy conditions eligibility for a benefit:

(a) on a prior hospitalization requirement;

(b) provided in an institutional care setting on the receipt of a higher level of institutional care; or

(c) other than waiver of premium, postconfinement benefits, postacute care benefits, or recuperative benefits, on a prior institutionalization requirement.

(2) A long-term care insurance policy containing a limitation or condition for eligibility other than those prohibited in subsection (1) must clearly label, in a separate paragraph of the policy or certificate entitled "Limitations or Conditions on Eligibility for Benefits", the limitations or conditions, including ~~the~~ *any* required number of days of confinement.

(3) A long-term care insurance policy that contains a benefit advertised, marketed, or offered as a home health care benefit may not condition receipt of a benefit on a prior institutionalization requirement.

(4) A long-term care insurance policy that conditions eligibility of noninstitutional benefits on the prior receipt of institutional care may not require a prior institutional stay of more than 30 days ~~for which benefits are paid~~.

(5) A long-term care insurance policy that provides ~~a benefit~~ *benefits* only following institutionalization may not condition the ~~benefit~~ *benefits* upon admission to a facility for the same or a related condition within a period of less than 30 days after discharge from the institution."

Section 7. Section 33-22-1116, MCA, is amended to read:

"33-22-1116. Nonforfeiture benefits — ~~availability~~ *offer requirement.* ~~An insurance company offering~~ *(1) Except as provided in subsection (3),* a long-term care insurance policy ~~or certificate shall offer to each prospective purchaser the choice between a policy that includes nonforfeiture benefits to the defaulting or surrendering policyholder or certificate holder and one that does not include nonforfeiture benefits~~ *may not be delivered or issued for delivery in this state unless the policyholder or certificate holder has been offered the option of purchasing a policy that includes a nonforfeiture benefit. The offer of a nonforfeiture benefit may be in the form of a rider that is attached to the policy.*

(2) If a policyholder or certificate holder declines the nonforfeiture benefit, the insurer shall provide a contingent benefit upon lapse that must be available for a specified period of time following a substantial increase in premium rates.

(3) When a group long-term care insurance policy is issued, the offer required in subsection (1) must be made to the group policyholder. However, if the policy is issued as group long-term care insurance as defined in 33-22-1107(5)(d), other than to a continuing care retirement community or other similar entity, the offer must be made to each proposed certificate holder."

Section 8. Section 33-22-1119, MCA, is amended to read:

"33-22-1119. Right to return policy — free look — *refunds upon denial of application.* (1) ~~A person insured under an individual long-term care insurance policy has~~ *A long-term care insurance applicant and insured has* the right to return the policy within 30 days of ~~its~~ *the policy's* delivery and to have the premium refunded if, after ~~examining~~ *examination of* the policy, the *applicant or* insured is not satisfied for any reason. ~~An individual~~ *A* long-term care insurance policy must have a notice prominently printed on the first page of the policy or attached to ~~it~~ *the policy* stating that the *applicant or* insured has the right to return the policy within 30 days of ~~its~~ *the policy's* delivery and to have the premium refunded if, after ~~examining~~ *examination of* the policy, *other than a certificate issued to a group defined in 33-22-1107(5)(a),* the *applicant or* insured is not satisfied for any reason.

(2) ~~A~~ *An applicant or a* person insured under a long-term care insurance policy issued pursuant to a direct response solicitation has the right to return the policy ~~or certificate~~ within 30 days of its delivery and to have the premium refunded if, after ~~examining~~ *examination of* the policy, the *applicant or the* insured is not satisfied for any reason. A long-term care insurance policy ~~or certificate~~ issued pursuant to a direct response solicitation must have a notice prominently printed on the first page or attached to it stating that the *applicant or the* insured has the right to return the policy within 30 days of its delivery and to have the premium refunded if, after ~~examining~~ *examination of* the policy, the *applicant or the* insured is not satisfied for any reason.

(3) If the application of a person for long-term care insurance is denied, any refund due the person must be refunded within 30 days of the denial or return of the application."

Section 9. Section 33-22-1121, MCA, is amended to read:

"33-22-1121. Rules. The commissioner may adopt rules necessary to implement this part, including but not limited to rules that:

(1) establish loss ratio standards for long-term care insurance policies;

(2) promote premium adequacy and protect the policyholder in the event of substantial rate increases;

(3) establish minimum standards for insurance producer training, marketing practices, compensation, and testing;

(4) establish penalties and reporting practices for long-term care insurance;

~~(2)~~*(5)* specify ~~the requirements for offering the sale of a policy with nonforfeiture benefits and~~*, with respect to nonforfeiture benefits and contingent benefits:*

(a) the type or types of nonforfeiture benefits to be offered as part of long-term care insurance policies;

(b) the standards for nonforfeiture benefits;

(c) the rules regarding contingent benefits upon lapse, including:

(i) a determination of the specified period of time during which a contingent benefit upon lapse will be available;

(ii) the substantial premium rate increase that triggers a contingent benefit upon lapse as described in 33-22-1116; and

(d) the types of appropriate sale criteria to be communicated at the time of application;

~~(3)~~*(6)* establish a requirement for the mandatory triggering of policy benefits based upon the number of activities of daily living that an individual is capable or incapable of performing; and

~~(4)~~*(7)* are necessary to implement a determination made by the secretary of health and human services pursuant to ~~Public Law 104-191~~ *45 CFR, parts 160 and 164,* as to who is a licensed health care practitioner."

Section 10. Section 33-22-1123, MCA, is amended to read:

"33-22-1123. Delivery of policy ~~or certificate~~ — *policy summary* — *monthly reports.* *(1)* If an application for a long-term care insurance policy ~~or a certificate meeting the requirements of Public Law 104-191~~ is approved, the ~~health insurance~~ issuer ~~of the policy or certificate~~ shall deliver the policy ~~or certificate~~ to the applicant~~,~~ *or* policyholder~~, or certificate holder~~ not later than 30 days after the date of ~~issue~~ *approval*.

(2) (a) At the time of delivery of an individual life insurance policy that provides long-term care benefits within the policy or by rider, a policy summary must be provided to the insured.

(b) In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request, and whether or not a request is made, a policy summary must be delivered not later than at the time the policy is delivered.

(c) In addition to complying with any other applicable requirements, the summary must include:

(i) an explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;

(ii) an illustration of the amount of benefit, the length of benefit, and the guaranteed lifetime benefit, if any, for each covered person;

(iii) any exclusions, reductions, and limitations on benefits of long-term care;

(iv) a statement that any long-term care inflation protection option required by the Administrative Rules of Montana is or is not available under this policy;

(d) If applicable to the policy type, the summary must also include:

(i) a disclosure of the effects of other exercising rights under the policy;

(ii) a disclosure of guarantees related to long-term care costs of insurance charges; and

(iii) current and projected maximum lifetime benefits.

(3) The required provisions of the policy summary may be incorporated into a basic illustration required to be delivered in accordance with administrative rules or into the life insurance policy summary.

(4) Any time a long-term care benefit funded through a life insurance vehicle by the acceleration of the death benefits is in benefit payment status, a monthly report must be provided to the policyholder. The report must include:

(a) any long-term care benefits paid out during the month;

(b) an explanation of any changes in the policy, such as to death benefits or cash values, due to long-term care benefits being paid out; and

(c) the amount of long-term care benefits existing or remaining."

Section 11. Section 33-22-1124, MCA, is amended to read:

"33-22-1124. Denial of claims. If a claim under a long-term care insurance policy ~~or certificate meeting the requirements of Public Law 104-191~~ is denied, the ~~health insurance~~ issuer shall, not later than 60 days after ~~the receipt of~~ *the date of* a written request by the ~~policy holder~~ *policyholder*, certificate holder, or the representative of either of them:

(1) provide a written explanation of the reasons for the denial; and

(2) provide all information possessed by the ~~health insurance~~ issuer relating to the denial."

Section 12. Section 33-22-1125, MCA, is amended to read:

"33-22-1125. Benefit triggers. (1) A long-term care insurance policy ~~or certificate~~ may not be delivered or issued for delivery in this state unless it complies with the requirements *of this section and applicable rules*~~, as established by rules of the commissioner~~, for the triggering of mandatory provision of benefits.

(2) *(a)* A ~~qualified~~ long-term care insurance ~~contract~~ *policy* must condition the payment of benefits on a determination of the insured's inability to perform activities of daily living *or on cognitive impairment*. ~~for an expectation of at least 90 days because of a loss of level of disability described under regulations adopted by the U.S. secretary of the treasury and because of:~~

~~(a) a loss of functional capacity requiring the substantial assistance of another person to perform the prescribed activities of daily living; or~~

~~(b) a severe cognitive impairment requiring substantial supervision, including verbal cueing, by another person to protect the insured from harming the insured or others for from threats to the insured's health or safety.~~

~~(3) An insured meets a condition of payment if, within the preceding 12-month period, a licensed health care practitioner has certified that the insured has met the requirements and the practitioner has prescribed the qualified long-term care insurance services pursuant to a plan of care.~~

(b) Eligibility for the payment of benefits may not be more restrictive than requiring a deficiency in the ability to perform not more than three of the activities of daily living *or requiring the presence of cognitive impairment*.

(c) Insurers may use activities of daily living to trigger covered benefits that are in addition to those contained in the definition under 33-22-1107 or rules as long as they are defined in the policy.

(3) An insurer may use additional provisions for the determination of when benefits are payable under a policy. However, the provisions may not restrict or be in lieu of the requirements contained in subsections (1) and (2).

(4) For purposes of this section, the determination of a deficiency may not be more restrictive than:

(a) requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or

(b) if the deficiency is due to the presence of a cognitive impairment, the need for supervision or verbal cueing by another person in order to protect the insured or others.

(5) Assessments of activities of daily living and cognitive impairment must be performed by licensed or certified professionals, such as physicians, nurses, or social workers.

(6) Long-term care insurance policies must include a clear description of the process of appealing and resolving benefit determinations."

Section 13. Additional standards for qualified long-term care contracts — definitions. (1) For the purposes of this section, the following definitions apply:

(a) (i) "Chronically ill individual" has the meaning provided by section 7702B(c)(2) of the Internal Revenue Code, 26 U.S.C. 7702B(c)(2), and means any individual who has been certified by a licensed health care practitioner as:

(A) being unable to perform without substantial assistance from another individual at least two activities of daily living for a period of at least 90 days due to a loss of functional capacity; or

(B) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

(ii) The term may not include an individual otherwise meeting the requirements of subsections (1)(a)(i) (A) or (1)(a)(i)(B) unless within the preceding 12-month period a licensed health care practitioner has certified that the individual meets the requirements of subsections (1)(a)(i)(A) or (1)(a)(i)(B).

(b) "Licensed health care practitioner" means a physician, as defined in section 1861(r)(1) of the Social Security Act, 42 U.S.C. 1395x(r)(1), a registered professional nurse, licensed social worker, or other individual who meets the requirements prescribed by the secretary of the treasury.

(c) "Maintenance or personal care services" means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual, including the protection from threats to health and safety due to severe cognitive impairment.

(d) "Qualified long-term care services" means services that meet the requirements of section 7702(c)(1) of the Internal Revenue Code, 26 U.S.C. 7702(c)(1), and that:

(i) provide necessary diagnostic, preventative, therapeutic, curative, treatment, mitigation, and rehabilitative services;

(ii) provide maintenance or personal care services that are required by a chronically ill individual; and

(iii) are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(2) A qualified long-term care insurance contract must condition the payment of benefits on a certification of the insured's inability to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity or to severe cognitive impairment.

(3) Certifications regarding activities of daily living and cognitive impairment required pursuant to subsection (2) must be performed by the following licensed or certified professionals:

(a) physicians or registered professional nurses;

(b) licensed social workers; or

(c) other individuals who meet the requirements prescribed by the secretary of the treasury.

(4) Certifications required pursuant to subsection (2) may be performed by a licensed health care professional at the direction of the insurer as is reasonably necessary with respect to a specific claim, except that when a licensed health care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity and the insured is in claim status, the certification may not be rescinded and additional certifications may not be performed until after the expiration of the 90-day period.

(5) Qualified long-term care insurance contracts must include a clear description of the process for appealing and resolving disputes with respect to benefit determinations.

Section 14. Incontestability period. (1) Upon a showing of misrepresentation that is material to the acceptance for coverage, a policy that has been in force for less than 6 months may be rescinded by the insurer or the insurer may deny an otherwise valid long-term care insurance claim.

(2) Upon a showing of misrepresentation that is both material to the acceptance for coverage and that pertains to the condition for which benefits are sought, a policy that has been in force for at least 6 months but less than 2 years may be rescinded by the insurer or the insurer may deny an otherwise valid long-term care insurance claim.

(3) After a policy has been in force for 2 years, it is not contestable upon the grounds of misrepresentation alone. The policy may only be contested upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.

(4) (a) A long-term care insurance policy may be field-issued if the compensation to the field issuer is not based on the number of policies sold.

(b) For purposes of this subsection (A), "field-issued" means a policy issued by a producer or a third-party administrator pursuant to the underwriting authority granted to the producer or third-party administrator by an insurer and using the insurer's underwriting guidelines.

(5) If an insurer has paid benefits under the long-term care insurance policy, the benefit payments may not be recovered by the insurer if the policy is rescinded.

(6) In the event of the death of the insured, this section may not be applied to the remaining death benefit of a life insurance policy that accelerates benefits for long-term care. In that situation, the remaining death benefits under the policy must be governed by Title 33, chapter 20. In all other situations, this section applies to life insurance policies that accelerate benefits for long-term care.

Section 15. Insurance producer training requirements. (1) An individual may not sell, solicit, or negotiate long-term care insurance unless the individual is licensed as an insurance producer for disability or life insurance, has completed a one-time training course on or before July 1, 2008, and completes ongoing training within every 24-month period following July 1, 2008.

(2) The training requirements of this section may be approved as continuing education courses under Title 33, chapter 17, part 12.

(3) The one-time training course required by this section may not be less than 8 hours, and the ongoing training required by this section may not be less than 4 hours for each 24-month period.

(4) (a) The training must consist of topics related to long-term care insurance, long-term care services, and, if applicable, qualified state long-term care insurance partnership programs.

(b) The training must address but is not limited to:

(i) state and federal regulations and requirements and the relationship between qualified state long-term care insurance partnership programs and other public and private coverage of long-term care services, including medicaid;

(ii) available long-term care services and providers;

(iii) changes or improvements in long-term care services or providers;

(iv) alternatives to the purchase of private long-term care insurance;

(v) the effect of inflation on benefits and the importance of inflation protection; and

(vi) consumer suitability standards and guidelines.

(5) The training required by this section may not include training that is specific to the insurer or a company product or that includes any sales or marketing information, materials, or training, other than those required by state or federal law.

(6) (a) An insurer subject to this section shall obtain verification that an insurance producer acting on the insurer's behalf receives the training required by this section before the insurance producer is permitted to sell, solicit, or negotiate the insurer's long-term care insurance products.

(b) The insurer shall maintain records subject to this state's record retention requirements and make the verification of the insurance producer's compliance with training requirements available to the commissioner upon request.

(7) (a) An insurer subject to this section shall maintain records with respect to the training of its insurance producers concerning the distribution of its policies that will allow the commissioner to provide assurance to the department of public health and human services that insurance producers have received the required training and that the insurance producers have demonstrated an understanding of the insurer's policies and the relationship of the policies to public and private coverage of long-term care, including medicaid, in this state.

(b) The records must be maintained in accordance with this state's record retention requirements and must be made available to the commissioner upon request.

(8) The satisfaction of the training requirements required by this section in any state must be considered to satisfy the training requirements in this state.

Section 16. Penalties. In addition to any other penalty provided for in Title 33, an insurer or an insurance producer found to have violated any requirement of this state relating to the regulation of long-term care insurance or the marketing of long-term care insurance is subject to a fine of up to three times the amount of any commissions paid for each policy involved in the violation or up to $10,000, whichever is greater.

Section 17. Codification instruction. [Sections 3 and 13 through 16] are intended to be codified as an integral part of Title 33, chapter 22, part 11, and the provisions of Title 33, chapter 22, part 11, apply to [sections 3 and 13 through 16].

Section 18. Effective date. [This act] is effective July 1, 2007.

Approved March 22, 2007

CHAPTER NO. 33

[HB 158]

AN ACT GENERALLY REVISING FILING REQUIREMENTS FOR CORPORATIONS AND LIMITED LIABILITY COMPANIES; DEFINING "AUTHORIZED AGENT"; ALLOWING THE SECRETARY OF STATE TO CORRECT CERTAIN ERRORS ON DOCUMENTS CAUSED BY A FILING OFFICER; EXPANDING THE TYPE OF INSTRUMENTS THAT MAY BE FILED WITH THE SECRETARY OF STATE AS SURETY FOR SEISMIC EXPLORATION ACTIVITY; AND AMENDING SECTIONS 32-1-422, 35-1-113, 35-1-217, 35-1-1104, 35-1-1309, 35-2-119, 35-2-1109, 35-8-102, 35-8-208, 82-1-104, AND 82-1-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-422, MCA, is amended to read:

"32-1-422. Restriction on investment in corporate stock — rulemaking authority. (1) Except as provided in subsections (2) and (3), a commercial or savings bank may not purchase or invest its capital or surplus or money of its depositors, or any part of its capital or surplus or money of its depositors, in the capital stock of any corporation unless the purchase or acquisition of capital stock is necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock purchased or acquired to prevent the loss must be sold by the bank within 6 months after purchase or acquisition if it can be sold for the amount of the claim of the bank against it. All capital stock purchased or acquired must be sold for the best price obtainable by the bank within 1 year after purchase or acquisition, or if the stock is unmarketable, it must be charged off as an investment loss, which is equivalent to the stock's sale. A person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of the stock.

(2) A bank may acquire and hold for its own account:

(a) up to 20% of its capital and surplus in the capital stock of a bank service corporation organized solely for the purpose of providing services to banks;

(b) shares of stock of a federal reserve bank and a federal home loan bank, without limitation of amount;

(c) shares of stock in a Montana capital company or a Montana small business investment capital company within limits prescribed by the Montana Capital Company Act; and

(d) shares of stock or financial interests in an affiliate or a subsidiary, the business activities of which are limited to those allowed by law for a bank.

(3) A bank may invest any amount up to the limit established by the department of its unimpaired capital and surplus in shares of stock of:

(a) the federal national mortgage association;

(b) the federal home loan mortgage corporation;

(c) the federal agricultural mortgage corporation; and

(d) other corporations created pursuant to acts of congress to meet the agricultural, housing, health, transit, educational, environmental, or similar needs of the nation when the department determines that the investment is in the public interest.

(4) A bank may, upon written application and approval of the department, make an investment in an amount permitted by the department by rule so long as the investment serves primarily to promote the public welfare, including the welfare of low- and moderate-income families and communities in need of jobs, housing, and public services. A bank may also, with the department's approval, purchase interests in an entity, as defined in 35-1-113~~(9)~~, that makes investments for similar public welfare purposes.

(5) The department shall adopt rules to implement this section. The rules pertaining to the investments allowed in subsection (4) may be substantially equivalent to or more stringent than the eleventh power provided for in 12 U.S.C. 24 and the policy guidelines on community development issued by the office of the comptroller of the currency."

Section 2. Section 35-1-113, MCA, is amended to read:

"35-1-113. Definitions. As used in this chapter, the following definitions apply:

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Authorized agent" means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.

~~(2)~~*(3)* "Authorized shares" means the shares of all classes that a domestic or foreign corporation is authorized to issue.

~~(3)~~*(4)* "Conspicuous" means written so that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics, boldface, or contrasting color or typing in capitals or underlining is conspicuous.

~~(4)~~*(5)* "Corporation" or "domestic corporation" means a corporation for profit that is not a foreign corporation and that is incorporated under or subject to the provisions of this chapter.

~~(5)~~*(6)* "Deliver" includes mail.

~~(6)~~*(7)* "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or an incurrence of indebtedness, by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or other form.

~~(7)~~*(8)* "Effective date of notice" means the date determined as provided in 35-1-116.

~~(8)~~*(9)* "Employee" includes an officer but not a director. A director may accept duties that make that director an employee.

~~(9)~~*(10)* "Entity" includes:

(a) a corporation and a foreign corporation;

(b) a not-for-profit corporation;

(c) a profit and a not-for-profit unincorporated association;

(d) a business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and

(e) a state, the United States, or a foreign government.

~~(10)~~*(11)* "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

~~(11)~~*(12)* "Governmental subdivision" includes an authority, county, district, and city or town.

~~(12)~~*(13)* "Includes" denotes a partial definition.

~~(13)~~*(14)* "Individual" includes the estate of an incompetent or deceased individual.

~~(14)~~*(15)* "Means" denotes an exhaustive definition.

~~(15)~~*(16)* "Notice" means notice as provided in 35-1-116.

~~(16)~~*(17)* "Person" includes an individual and an entity.

~~(17)~~*(18)* "Principal office" means the office, whether in-state or out-of-state, that is designated in the annual report as the office where the principal executive offices of a domestic or foreign corporation are located.

~~(18)~~*(19)* "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

~~(19)~~*(20)* "Record date" means the date established under 35-1-535, 35-1-618 through 35-1-630, and 35-1-712 or under 35-1-516 through 35-1-533 and 35-1-541 through 35-1-548 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determination must be made as of the close of business on the record date unless another time for determination is specified when the record date is fixed.

~~(20)~~*(21)* "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under 35-1-441 for custody of the minutes of the meetings of the board of directors, for custody of the minutes of the shareholders' meetings, and for authenticating records of the corporation.

~~(21)~~*(22)* "Share" means the unit into which the proprietary interests in a corporation are divided.

~~(22)~~*(23)* "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

~~(23)~~*(24)* "State", when referring to a part of the United States, includes a state, commonwealth, territory, or insular possession of the United States and the agencies and governmental subdivisions of the entities listed.

~~(24)~~*(25)* "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

~~(25)~~*(26)* "United States" includes a district, an authority, a bureau, a commission, a department, and any other agency of the United States.

~~(26)~~*(27)* "Voting group" means shares of one or more classes or series that under the articles of incorporation of this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group."

Section 3. Section 35-1-217, MCA, is amended to read:

"35-1-217. Filing requirements. All of the following requirements must be met before a document ~~is entitled to~~ *may* be filed under this section by the secretary of state:

(1) A document that is required or permitted by this chapter to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by this chapter. It may contain other information as well.

(3) The document must be typewritten or printed.

(4) The document must be in the English language. A corporate name need not be in English if it is written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations need not be in English if it is accompanied by a reasonably authenticated English translation.

(5) *(a) Except as provided in subsection (5)(b), the* ~~The~~ document must be executed:

~~(a)~~*(i)* by the presiding officer of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

~~(b)~~*(ii)* if directors have not been selected or the corporation has not been formed, by an incorporator; or

~~(c)~~*(iii)* if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(b) A corporation's annual report may be executed as provided in subsection (5)(a) or by the corporation's authorized agent.

(6) The person executing the document shall sign ~~it~~ *the document* and state beneath or opposite the person's signature the person's name and the capacity in which the person signs. The document may but need not contain the corporate seal, an attestation by the secretary or an assistant secretary, ~~and~~ *or* an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for the document under rules adopted pursuant to 35-1-1315.

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by:

(a) the correct filing fee; and

(b) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law."

Section 4. Section 35-1-1104, MCA, is amended to read:

"35-1-1104. Annual report for secretary of state. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report*, executed as provided in 35-1-217,* that sets forth:

(a) the name of the corporation and the state or country under whose law it is incorporated;

(b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;

(c) the address of its principal office;

(d) the names and business addresses of its directors and principal officers;

(e) a brief description of the nature of its business;

(f) the total number of authorized shares, itemized by class and series, if any, within each class; and

(g) the total number of issued and outstanding shares, itemized by class and series, if any, within each class.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed."

Section 5. Section 35-1-1309, MCA, is amended to read:

"35-1-1309. Filing duty of secretary of state. (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of 35-1-217 and 35-1-218, if applicable, the secretary of state shall file ~~it~~ *the document*.

(2) The secretary of state shall file a document by stamping or otherwise endorsing on the document "Filed", the secretary of state's official title, and the date and time the document was received by the secretary of state for filing. Except as provided in 35-1-315 and 35-1-1034, after filing a document, the secretary of state shall deliver a certification letter to the domestic or foreign corporation or its representative as acknowledgment that the document has been filed and all applicable fees have been paid.

(3) If the secretary of state refuses to file a document, the secretary of state shall return ~~it~~ *the document* to the domestic or foreign corporation or the corporation's representative within 10 *business* days after the document was delivered to the secretary of state, together with a brief written explanation of the reason for the refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not:

(a) affect the validity or invalidity of the document in whole or *in* part;

(b) relate to the correctness or incorrectness of information contained in the document; or

(c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

(5) The secretary of state may correct errors caused by a filing officer. The error and the correction must be retained in the file containing the document in which the error appeared. For the purposes of this subsection, a filing officer is a person employed in a filing office as defined in 30-9A-102."

Section 6. Section 35-2-119, MCA, is amended to read:

"35-2-119. Filing requirements. All of the following requirements must be met before a document may be filed under this section by the secretary of state:

(1) A document that is required or permitted by this chapter to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by this chapter. ~~It~~ *The document* may contain other information as well.

(3) The document must be typewritten or printed.

(4) The document must be in the English language. However, a corporate name does not need to be in English if it is written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations does not need to be in English if it is accompanied by a reasonably authenticated English translation.

(5) *(a) Except as provided in subsection (5)(b), the* ~~The~~ document must be executed:

~~(a)~~*(i)* by the presiding officer of the corporation's board of directors, its president, or another of its officers;

~~(b)~~*(ii)* if directors have not been selected or the corporation has not been formed, by an incorporator; or

~~(c)~~*(iii)* if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(b) (i) A corporation's annual report may be executed as provided in subsection (5)(a) or by the corporation's authorized agent.

(ii) For the purposes of this subsection (5)(b) "authorized agent" means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.

(6) The person executing the document shall sign ~~it~~ *the document* and state beneath or opposite the signature the person's name and the capacity in which the person signs. The document may but does not need to contain the corporate seal, an attestation by the secretary or an assistant secretary, or an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for a document under 35-2-1108.

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by:

(a) the correct filing fee; and

(b) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law."

Section 7. Section 35-2-1109, MCA, is amended to read:

"35-2-1109. Filing duty of secretary of state. (1) If a document delivered to the office of the secretary of state for filing satisfies the applicable requirements of 35-2-119 and 35-2-120, the secretary of state shall file ~~it~~ *the document*.

(2) The secretary of state shall file a document by stamping or otherwise endorsing on the document "Filed", the secretary of state's official title, and the date and time the secretary of state received the document. Except as provided in 35-2-314 and 35-2-830, after filing a document, the secretary of state shall deliver a certification letter to the domestic or foreign corporation or its representative as acknowledgment that the document has been filed and the fee has been paid.

(3) If the secretary of state refuses to file a document, the secretary of state shall return the document to the domestic or foreign corporation or its representative within 10 *business* days after the document was delivered to the secretary of state and include a brief written explanation of the reason for the refusal.

(4) The secretary of state's duty concerning the documents under this section is ministerial. Filing or refusal to file a document does not:

(a) affect the validity or invalidity of the document in whole or in part;

(b) relate to the correctness or incorrectness of information contained in the document; or

(c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

(5) The secretary of state may correct errors caused by a filing officer. The error and the correction must be retained in the file containing the document in which the error appeared. For the purposes of this subsection, a filing officer is a person employed in a filing office as defined in 30-9A-102."

Section 8. Section 35-8-102, MCA, is amended to read:

"35-8-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Articles of organization" means articles filed pursuant to 35-8-201 and those articles as amended or restated. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed under the laws of the state or country where it is organized.

(2) "At-will company" means a limited liability company other than a term company.

(3) "Authorized agent" means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.

~~(3)~~*(4)* "Business" includes every trade, occupation, profession, or other lawful purpose, whether or not carried on for profit.

~~(4)~~*(5)* "Corporation" means a corporation formed under the laws of this state or a foreign corporation.

~~(5)~~*(6)* "Court" includes every court having jurisdiction in the case.

~~(6)~~*(7)* "Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under federal, state, or foreign law governing insolvency.

~~(7)~~*(8)* "Disqualified person" means any person or entity that for any reason is or becomes ineligible under this chapter to become a member in a professional limited liability company.

~~(8)~~*(9)* "Distribution" means a transfer of money, property, or other benefit to a member in that member's capacity as a member of a limited liability company or to a transferee of a member's distributional interest.

~~(9)~~*(10)* "Distributional interest" means all of a member's interest in the distributions of a limited liability company.

~~(10)~~*(11)* "Event of dissociation" means an event that causes a person to cease to be a member.

~~(11)~~*(12)* "Foreign corporation" means a corporation that is organized under the laws of a state other than Montana or under the laws of any foreign country.

~~(12)~~*(13)* "Foreign limited liability company" means an entity that is:

(a) an unincorporated entity;

(b) organized under laws of a state other than Montana or under the laws of any foreign country;

(c) organized under a statute pursuant to which an entity may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and

(d) not required to be registered or organized under any statute of this state other than this chapter.

~~(13)~~*(14)* "Foreign limited partnership" means a limited partnership formed under the laws of any state other than Montana or under the laws of any foreign country.

~~(14)~~*(15)* "Foreign professional limited liability company" means a limited liability company organized for the purpose of rendering professional services under the laws of any state other than Montana.

~~(15)~~*(16)* "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

~~(16)~~*(17)* "Limited liability company" or "domestic limited liability company" means an organization that is formed under this chapter.

~~(17)~~*(18)* "Limited partnership" means a limited partnership formed under the laws of this state or a foreign limited partnership.

~~(18)~~*(19)* "Manager" means a person who, whether or not a member of a manager-managed company, is vested with authority under 35-8-301.

~~(19)~~*(20)* "Manager-managed company" means a limited liability company that is so designated in its articles of organization.

~~(20)~~*(21)* "Member" means a person who has been admitted to membership in a limited liability company, as provided in 35-8-703, and who has not dissociated from the limited liability company.

~~(21)~~*(22)* "Member-managed company" means a limited liability company other than a manager-managed company.

~~(22)~~*(23)* "Operating agreement" means an agreement, including amendments, as to the conduct of the business and affairs of a limited liability company and the relations among the members, managers, and the company that is binding upon all of the members.

~~(23)~~*(24)* "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity.

~~(24)~~*(25)* "Professional limited liability company" means a limited liability company designating itself as a professional limited liability company in its articles of organization.

~~(25)~~*(26)* "Professional service" means a service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not be lawfully rendered by a limited liability company that is not a professional limited liability company.

~~(26)~~*(27)* "Qualified person" means a natural person, limited liability company, general partnership, or professional corporation eligible under this chapter to own shares issued by a professional limited liability company.

~~(27)~~*(28)* "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is recoverable in a perceivable form.

~~(28)~~*(29)* "Sign" means to identify a record by means of a signature, mark, or other symbol with the intent to authenticate it.

~~(29)~~*(30)* "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

~~(30)~~*(31)* "Surviving limited liability company" means the constituent entity surviving the merger, as identified in the articles of merger provided for in 35-8-1201.

~~(31)~~*(32)* "Term company" means a limited liability company designated as a term company in its articles of organization."

Section 9. Section 35-8-208, MCA, is amended to read:

"35-8-208. Annual report for secretary of state. (1) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the limited liability company and the state or country under whose law it is organized;

(b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;

(c) the address of its principal office;

(d) (i) if the limited liability company is managed by a manager or managers, a statement that the company is managed in that fashion and the names and street addresses of the managers;

(ii) if the management of a limited liability company is reserved to the members, a statement to that effect;

(e) if the limited liability company is a professional limited liability company, a statement that all of its members and not less than one-half of its managers are qualified persons with respect to the limited liability company.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic limited liability company is organized or a foreign limited liability company is authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to ~~it~~ *the limited liability company* for correction.

(5) The annual report must be executed by at least one member of the limited liability company *or by the authorized agent* ~~and must include the street address of the member~~.

(6) A domestic professional limited liability company or a foreign professional limited liability company authorized to transact business in this state shall annually file before April 15, with each licensing authority having jurisdiction over a professional service of a type described in its articles of organization, a statement of qualification setting forth the names and addresses of the members and managers of the company and additional information that the licensing authority may by rule prescribe as appropriate in determining whether the company is complying with the provisions of part 13 of this chapter and rules promulgated under part 13 of this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification."

Section 10. Section 82-1-104, MCA, is amended to read:

"82-1-104. ~~Surety bond~~ *Indemnification of property owners* — restoration of surface. (1) Prior to performing ~~such~~ seismic activity, a person, firm, or corporation shall ~~also~~ file with the secretary of state a ~~good and sufficient~~ surety bond*, cash, certificate of deposit, or other instrument acceptable to the secretary of state* in the amount of $10,000 for a single ~~such~~ seismic crew or a blanket surety bond*, cash, certificate of deposit, or other instrument acceptable to the secretary of state* in the amount of $25,000 for all ~~such~~ seismic crews operating within the state for ~~such~~ *the* person, firm, or corporation~~, which bond shall~~ *to* indemnify the owners of property within this state ~~against such physical~~ *for physical* damages to ~~such~~ *their* property ~~as may arise as the result of such~~ *resulting from any* seismic exploration. Partial or complete forfeiture of the *surety* bond*, cash, certificate of deposit, or other instrument acceptable to the secretary of state* must be determined by the appropriate court of civil jurisdiction.

(2) Unless ~~otherwise agreed as between~~ the owner of the surface *rights* and ~~such~~ *the* person, firm, or corporation~~,~~ *conducting seismic activity agree otherwise,* it ~~shall be~~ *is* the obligation of ~~such~~ *the* person, firm, or corporation upon completion of *seismic* exploration to plug all "shot holes" in ~~such a~~ *the* manner ~~as shall be~~ specified by the board of oil and gas conservation to contain any water within its native strata by filling the ~~hole~~ *holes* with bentonite mud, cement, or other material approved by the board of oil and gas conservation ~~as required~~ to contain the water. ~~and capping the same~~ *In addition, the holes must be capped* in a manner and with a material specified by the board *of oil and gas conservation~~,~~ so that* the top of ~~which~~ *the* cap ~~shall be of~~ *is a* sufficient depth below the surface of the land to allow cultivation. The portion of the ~~hole~~ *holes* above the cap ~~shall~~ *must* be filled with native material.

(3) Upon completion of any seismic exploration, the person, firm, or corporation *conducting the exploration* shall remove all stakes, markers, cables, ropes, wires, and debris or other material used in ~~such~~ *the* exploration and shall also restore the surface around any shot holes as near as practicable to its original condition.

(4) The *surety* bond*, cash, certificate of deposit, or other instrument acceptable to the secretary of state must* ~~shall~~ remain on file with the secretary of state so long as the exploration is ~~carried on or engaged in~~ *conducted*, plus an additional 5 years ~~thereafter~~ *after the cessation of the exploration activities*~~;~~ ~~provided, however, that the~~. *The* aggregate liability *for the exploration activities* ~~of the surety shall in no event~~ *may not* exceed the amount of ~~said~~ *the surety* bond*, cash, certificate of deposit, or other instrument acceptable to the secretary of state*. Upon the filing of ~~such~~ *the surety* bond, *cash, certificate of deposit, or other instrument acceptable to the secretary of state,* ~~said~~ *the* secretary of state shall issue to the person, firm, or corporation a certificate showing that ~~such~~ *the surety* bond*, cash, certificate of deposit, or other instrument acceptable to the secretary of state* has been filed. ~~and showing~~ *The certificate must contain* the name of the designated resident agent within the state for service of process for ~~such~~ *the* person, firm, or corporation."

Section 11. Section 82-1-107, MCA, is amended to read:

"82-1-107. Permitholder to furnish information to surface user. (1) Before commencing seismic activity, the person, firm, or corporation *conducting the seismic activity* shall notify the surface user as to the approximate time schedule of the planned activity, and upon request*,* the following information ~~shall~~ also *must* be furnished:

(a) the name and permanent address of the seismic exploration firm, along with the name and address of the firm's designated agent for the state if different from that of the firm;

(b) evidence of a valid permit to engage in seismic exploration;

(c) name and address of the company insuring the seismic firm or, if self-insured, evidence of ~~such~~ self-insurance;

(d) the number *or other identifying information* ~~of~~ *for* the *surety* bond*, cash, certificate of deposit, or other instrument acceptable to the secretary of state and* required in 82-1-104;

(e) a description of the planned seismic activity and where it will take place; *and*

(f) anticipated need, if any, to obtain water from the surface user during planned seismic activity.

(2) The surface user is responsible for providing the permitholder with the name and permanent address of a responsible person with whom communication may be maintained."

Approved March 22, 2007

CHAPTER NO. 34

[HB 162]

AN ACT REVISING THE REQUIREMENT FOR APPOINTMENT OF COUNSEL FOR A PERSON WITH A DEVELOPMENTAL DISABILITY IN A

PROCEEDING FOR COMMITMENT TO A RESIDENTIAL FACILITY; AND AMENDING SECTION 53-20-125, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-20-125, MCA, is amended to read:

"53-20-125. Outcome of screening — recommendation for commitment to residential facility — hearing. (1) A person may be committed to a residential facility only if the person:

(a) is 18 years of age or older; and

(b) is determined to be seriously developmentally disabled and in need of commitment to a residential facility by the residential screening team, as provided in 53-20-133, and by a court, as provided in 53-20-129 or in this section.

(2) If as a result of the screening required by 53-20-133 the residential facility screening team concludes that the respondent who has been evaluated is seriously developmentally disabled and recommends that the respondent be committed to a residential facility for treatment and habilitation on an extended basis, the team shall file its written recommendation and report with the court. The report must include the factual basis for the recommendation and must describe any tests or evaluation devices that have been employed in evaluating the respondent.

(3) ~~At the request of the respondent, the respondent's parents or guardian, or the responsible person, the~~ *The* court shall order the office of state public defender, provided for in 47-1-201, to assign counsel for the respondent. If the parents are indigent and if the parents request it or if a guardian is indigent and requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111.

(4) Notice of the determination of the residential facility screening team must be mailed or delivered to:

(a) the respondent;

(b) the respondent's parents, guardian, or next of kin, if known;

(c) the responsible person;

(d) the respondent's advocate, if any;

(e) the county attorney;

(f) the residential facility;

(g) the attorney for the respondent, if any; and

(h) the attorney for the parents or guardian, if any.

(5) The respondent, the respondent's parents or guardian, the responsible person, the respondent's advocate, if any, or the attorney for any party may request that a hearing be held on the recommendation of the residential facility screening team.

(6) Notice of the hearing must be mailed or delivered to each of the parties listed in subsection (5).

(7) The hearing must be held before the court without jury. The rules of civil procedure apply.

(8) If the court finds that the respondent is seriously developmentally disabled and in need of commitment to a residential facility, it shall order the

respondent committed to a residential facility for an extended course of treatment and habilitation. If the court finds that the respondent has a developmental disability but is not seriously developmentally disabled, it shall dismiss the petition and refer the respondent to the department of public health and human services to be considered for placement in community-based services according to 53-20-209. If the court finds that the respondent does not have a developmental disability or is not in need of developmental disability services, it shall dismiss the petition.

(9) If none of the parties notified of the recommendation request a hearing, the court may issue an order for the commitment of the respondent to the residential facility for an extended period of treatment and habilitation or the court may initiate its own inquiry as to whether the order should be granted.

(10) The court may refuse to authorize commitment of a respondent to a residential facility for an extended period of treatment and habilitation if commitment is not in the best interests of the respondent.

(11) An order for commitment must be accompanied by findings of fact.

(12) A court order entered in a proceeding under this part must be provided to the residential facility screening team."

Approved March 22, 2007

CHAPTER NO. 35

[HB 226]

AN ACT PROHIBITING THE HOLDER OF A REPLACEMENT LICENSE, PERMIT, OR TAG FROM MAKING THE REPLACEMENT LICENSE, PERMIT, OR TAG AVAILABLE FOR USE BY ANOTHER PERSON; AMENDING SECTION 87-2-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-104, MCA, is amended to read:

"87-2-104. Number of licenses, *permits, or tags* allowed — fees. (1) It is unlawful for ~~any~~ *a* person to apply for, purchase, or possess more than one license*, permit, or tag* of any one class or more than one special license for any one species listed in 87-2-701. This provision does not apply to Class B-4 or Class B-5 licenses or to licenses issued under subsection ~~(3)~~ *(4)* for game management purposes. However, when more than one license*, permit, or tag* is authorized by the commission, it is unlawful to apply for, purchase, or possess more licenses*, permits, or tags* than are authorized.

(2) *It is unlawful for the holder of a replacement license, permit, or tag to make the replacement license, permit, or tag available for use by another person.*

(3) The department may prescribe rules and regulations for the issuance or sale of a replacement license*, permit, or tag* ~~in the event~~ *if* the original license*, permit, or tag* is lost, stolen, or destroyed ~~upon payment of a fee not to exceed $5~~ *upon payment of a fee not to exceed $5*.

~~(3)~~*(4)* When authorized by the commission for game management purposes, the department may issue more than one Class A-3, Class A-4, Class A-5, Class A-7, Class B-7, Class B-8, Class B-10, Class B-11, or special antelope license to

an applicant. An applicant for these game management licenses is not at the time of application required to hold any license or permit of that class.

~~(4)~~*(5)* When authorized by the commission for game management purposes, the department may issue Class A-9~~,~~ resident antlerless elk B tag licenses and Class B-12 nonresident antlerless elk B tag licenses entitling the holder to take an antlerless elk. An applicant must have a Class A-5 or Class A-7 license to be eligible for a Class A-9 license. An applicant must have a Class B-10 or Class B-13 license to be eligible for a Class B-12 license. The commission shall determine the hunting districts or portions of hunting districts for which Class A-9 and Class B-12 licenses are to be issued, the number of licenses to be issued, and all terms and conditions for the use of the licenses.

~~(5)~~*(6)* The fee for ~~any~~ *a* resident or nonresident license of any class issued under subsection ~~(3)~~ *(4)* must be set annually by the department and may not exceed the regular fee provided by law for that class or species."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 22, 2007

CHAPTER NO. 36

[HB 255]

AN ACT CLARIFYING THE TYPES OF RESIDENCES IN WHICH DISABLED OR HOMEBOUND CUSTOMERS MAY RECEIVE COSMETOLOGY AND BARBERING SERVICES OUTSIDE OF A SALON OR A SHOP; PROVIDING EXCLUSIONS FROM THE DEFINITION OF "SALON OR SHOP"; AND AMENDING SECTION 37-31-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-31-101, MCA, is amended to read:

"37-31-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of barbers and cosmetologists provided for in 2-15-1747.

(2) "Booth" means any part of a salon or shop that is rented or leased for the performance of barbering, cosmetology, electrology, esthetics, or manicuring services, as specified in 39-51-204.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) (a) "Electrology" means the study of and the professional practice of permanently removing superfluous hair by destroying the hair roots through passage of an electric current with an electrified needle. Electrology includes electrolysis and thermolysis. Electrology may include the use of waxes for epilation and the use of chemical depilatories.

(b) Electrology does not include pilethermology, which is the study and professional practice of removing superfluous hair by passage of radio frequency energy with electronic tweezers and similar devices.

(5) "Esthetician" means a person licensed under this chapter to engage in the practice of esthetics.

(6) "Esthetics" means skin care of the body, including but not limited to hot compresses or the use of approved electrical appliances or chemical compounds formulated for professional application only and the temporary removal of superfluous hair by means of lotions, creams, or mechanical or electrical apparatus or appliances on another person.

(7) "Manicuring" includes care of the nails, the hands, the lower arms, the feet, and the lower legs and the application and maintenance of artificial nails.

(8) "Place of residence" means a home and the following residences defined under 50-5-101:

(a) an assisted living facility;

(b) an intermediate care facility for the developmentally disabled;

(c) a hospice;

(d) a critical access hospital;

(e) a long-term care facility; or

(f) a residential treatment facility.

~~(8)~~*(9)* "Practice or teaching of barbering" means any of the following practices performed for payment, either directly or indirectly, upon the human body for tonsorial purposes and not performed for the treatment of disease or physical or mental ailments:

(a) shaving or trimming a beard;

(b) cutting, styling, coloring, or waving hair;

(c) straightening hair by the use of chemicals;

(d) giving facial or scalp massages, including treatment with oils, creams, lotions, or other preparations applied by hand or mechanical appliance;

(e) shampooing hair, applying hair tonic, or bleaching or highlighting hair; or

(f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to the scalp, face, hands, or neck.

~~(9)~~*(10)* (a) "Practice or teaching of cosmetology" means work included in the terms "hairdressing", "manicuring", "esthetics", and "beauty culture" and performed in salons or shops, in booths, or by itinerant cosmetologists when the work is done for the embellishment, cleanliness, and beautification of the hair and body.

(b) The practice and teaching of cosmetology may not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established store or place of business holding a license from the state of Montana as a store or place of business.

~~(10)~~*(11) (a)* "Salon or shop" means the physical location in which a person licensed under this chapter practices barbering, cosmetology, electrology, esthetics, or manicuring.

(b) The term does not include a room provided in a place of residence that is used for the purposes of barbering, cosmetology, electrology, esthetics, or manicuring unless the owner, manager, or operator allows the room to be used for the practice of barbering or the practice of cosmetology to serve nonresidents for compensation, in which case the room must be licensed as a salon or a shop.

~~(11)~~*(12)* "School" means a program and location approved by the board with respect to its course of instruction for training persons in barbering, cosmetology, electrology, esthetics, or manicuring and that meets any other criteria established by the board."

Approved March 22, 2007

CHAPTER NO. 37

[HB 274]

AN ACT ALLOWING SPECIAL MILITARY OR VETERAN LICENSE PLATES TO BE ISSUED FOR TRAVEL TRAILERS OR TRAILERS; AMENDING SECTION 61-3-458, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-458, MCA, is amended to read:

"61-3-458. Special plates for military personnel, veterans, and spouses. (1) (a) Active military personnel, veterans, or the surviving spouse of an eligible veteran, if the spouse has not remarried, may be issued special military or veteran license plates as provided in this section.

(b) Subject to the provisions of 61-3-332 and except as otherwise provided in this chapter, special license plates issued pursuant to this section must be numbered in sets of two with a different number on each set and must be properly displayed as provided in 61-3-301. Special military or veteran license plates may not be issued for a motorcycle, quadricycle, ~~travel trailer, trailer,~~ semitrailer, or pole trailer. Special military or veteran license plates bearing a wheelchair as the symbol of a person with a disability may be issued to a person who meets the qualifications under 61-3-332(9) and this section.

(2) (a) Upon application, after paying all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees and special license plate fees and providing an official certificate from the applicant's unit commander verifying the individual's eligibility and authorizing the department to issue the plates to the individual, eligible military personnel may be issued one set of special military license plates as provided in this subsection (2).

(b) A member of the Montana national guard who is a state resident may be issued special license plates with a design or decal displaying the letters "NG". However, the member shall surrender the plates to the department when the member becomes ineligible.

(c) A member of the reserve armed forces of the United States who is a state resident may be issued special license plates according to the member's branch of service verified in the application with a design or decal displaying one of the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); or United States marine corps reserve, MCR (globe and anchor). However, the member shall surrender the plates to the department when the member becomes ineligible.

(d) An active member of the regular armed forces of the United States who is a state resident may be issued special license plates inscribed with a symbol signifying the United States army, United States navy, United States air force,

United States marine corps, or United States coast guard, according to the member's branch of service verified in the application. However, the member shall surrender the plates to the department upon becoming ineligible.

(3) (a) Upon application, after presenting proper identification and a department of defense form 214 (DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment verifying the applicant's eligibility and paying the veterans' cemetery fee specified in 61-3-459 and all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees under this chapter, subject to the provisions of 61-3-460, an eligible veteran must be issued any set and more than one set of the special license plates provided for in this subsection (3) that the member requests and is eligible to receive.

(b) A veteran may be issued special license plates displaying the letters "DV", which entitles the veteran to the parking privileges allowed to a person with a special parking permit issued under Title 49, chapter 4, part 3, if the veteran:

(i) has been awarded the purple heart and has been rated by the U.S. department of veterans affairs as 50% or more disabled because of a service-connected injury; or

(ii) is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability.

(c) A veteran who has been awarded the purple heart may be issued special license plates with the purple heart decal displaying the words "combat wounded".

(d) A veteran who was captured and held prisoner by the military force of a foreign nation may be issued special license plates with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(e) If the veteran was a member of the United States armed forces on December 7, 1941, and during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) was on station at Pearl Harbor on the island of Oahu or was offshore from Pearl Harbor at a distance of not more than 3 miles, the veteran may be issued special license plates designed to show that the veteran is a survivor of the Pearl Harbor attack.

(f) A person who is a member of the legion of valor may be issued special plates displaying a design or decal depicting the recognized legion of valor medallion.

(g) A veteran may be issued special license plates displaying the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the veteran's service record verified in the application.

(h) A member or a former member of the Montana national guard eligible to receive a military retirement may be issued special license plates displaying the Montana national guard insignia and the words "National Guard veteran".

(4) Upon request, after paying the veterans' cemetery fee provided in 61-3-459 and all applicable vehicle registration fees under this chapter, subject to the provisions of 61-3-460, the surviving spouse of an eligible veteran, if the spouse has not remarried, may retain the special license plates issued to the

deceased veteran, except the special "DV" plates provided for under subsection (3)(b).

(5) For purposes of this section, "veteran" has the meaning provided in 10-2-101."

Section 2. Effective date. [This act] is effective January 1, 2008.

Approved March 22, 2007

CHAPTER NO. 38

[HB 290]

AN ACT ALLOWING THE FIRE SERVICES TRAINING SCHOOL TO MAKE ITS RESOURCES AVAILABLE TO LOCAL FIRE PROTECTION ENTITIES IN AN EMERGENCY; AND AMENDING SECTION 20-31-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-31-104, MCA, is amended to read:

"20-31-104. Coordination with other agencies. *(1)* The fire services training school shall coordinate its programs and cooperate with state and local fire services to the maximum possible extent in accordance with the policy of the board of regents.

(2) The fire services training school may make its resources available, upon request of a local fire protection entity, for assistance in local emergencies."

Approved March 22, 2007

CHAPTER NO. 39

[HB 402]

AN ACT REVISING FEES COLLECTED BY THE SUPREME COURT; REQUIRING CROSS-APPELLANTS TO PAY A FILING FEE; INCREASING CERTAIN FEES AND ADDING FEES; AMENDING SECTION 3-2-403, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-2-403, MCA, is amended to read:

"3-2-403. Fees. The clerk ~~must~~ *shall* collect the following fees:

(1) for filing the ~~transcript on~~ *notice of* appeal in any civil case appealed to the supreme court, ~~$75~~ *$100* payable by *both* the appellant ~~as payment in full for all services rendered in the case up to the remittitur to the court below~~ *and cross-appellant*;

(2) for filing a petition for any writ, ~~$75, as payment in full for all services rendered in the cause~~ *$100*;

(3) for retrieval of court records from the secretary of state, actual fees charged by the secretary of state;

~~(3)~~*(4)* for a certificate of good standing as an attorney, $5;

~~(4)~~*(5)* for preparing copies of documents on file, 15 cents ~~per~~ *a* page;

~~(5)~~*(6)* for each certified copy under seal, $1."

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved March 22, 2007

CHAPTER NO. 40

[SB 10]

AN ACT ESTABLISHING A SINGLE UNIFORM RATE OF MILEAGE ALLOWANCE FOR LEGISLATORS; AMENDING SECTION 2-18-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-503, MCA, is amended to read:

"2-18-503. Mileage — allowance. (1) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage for the distance actually traveled by motor vehicle and no more unless otherwise specifically provided by law.

(2) (a) When a state officer or employee~~, including a legislator on legislative business,~~ is authorized to travel by motor vehicle~~,~~ and chooses to use a privately owned motor vehicle even though a government-owned or government-leased motor vehicle is available, the officer or employee may be reimbursed only at the rate of 48.15% of the mileage rate allowed by the United States internal revenue service for the current year.

(b) When a privately owned motor vehicle is used because a government-owned or government-leased motor vehicle is not available or because the use is in the best interest of the governmental entity and a notice of unavailability of a government-owned or government-leased motor vehicle or a specific exemption is attached to the travel claim, then a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year must be paid for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(3) Members of the legislature, ~~while traveling between their residences and Helena,~~ jurors, witnesses, county agents, and all other persons, except a state officer or employee, who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage at a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(4) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own airplanes in the performance of official duties are entitled to collect mileage for the nautical air miles actually traveled at a rate of twice the mileage allotment for motor vehicle travel and no more unless specifically provided by law.

(5) This section does not alter 5-2-301.

(6) The department of administration shall prescribe policies necessary for the effective administration of this section for state government. The Montana

Administrative Procedure Act, Title 2, chapter 4, does not apply to policies prescribed to administer this part."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 22, 2007

CHAPTER NO. 41

[SB 11]

AN ACT REVISING THE OPTIONAL RETIREMENT SYSTEM MEMBERSHIP REQUIREMENT FOR EMPLOYEES OF THE LEGISLATIVE BRANCH PERFORMING DUTIES RELATED TO A LEGISLATIVE SESSION; AMENDING SECTION 19-3-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-412, MCA, is amended to read:

"19-3-412. Optional membership. (1) Except as provided in subsection (2), the following employees and elected officials in covered positions shall elect either to become active members of the retirement system or to decline this optional membership by filing an irrevocable, written application with the board in the manner prescribed in subsection (3):

(a) elected officials of the state or local governments who:

(i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or

(ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the defined contribution plan at the time of their election;

(b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working ~~6~~ *10* months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes.

(2) ~~(a) Except as provided in subsection (2)(b), employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.~~

~~(b) A legislator may also become a member as of the date prior to December 30, 2000, that the legislator filed an irrevocable written application with the board to become a member and paid the employee share of contributions determined by the board to be required to purchase the legislator's prior service credit. However, the legislator shall purchase at least 5 years of service credit or, if the legislator has less than 5 years of membership service, service credit equal to all of the legislator's membership service. The legislative branch is responsible for paying the amount determined by the board to be the employer's~~

~~share of contributions required to purchase a legislator's service credit under this subsection (2)(b).~~

~~(c)~~ A member who after April 17, 2003, is elected to a local government position in which the member works less than 960 hours in a calendar year may, within 180 days of being elected, decline optional membership with respect to the member's elected position.

(3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1) and provide written application forms to each employer.

(b) Each employee or elected official in a position covered under subsection (1) shall obtain the written application form from the employer and complete and return it to the board.

(c) The written application must be filed with the board*:*

(i) for an employee described in subsection (1)(d), within 300 days of the commencement of the employee's employment; and

(ii) for an employee or elected official described in subsection (1)(a), (1)(b), (1)(c), (1)(e), or (1)(f), within 180 days of the commencement of the employee's or elected official's employment.

(d) The employer shall retain a copy of the employee's or elected official's written application.

(4) If the employee or elected official fails to file the written application required under subsection (1) with the board within the time allowed in subsection (3), the employee or elected official waives membership.

(5) An employee or elected official who declines optional membership may not receive membership service or service credit for the employment for which membership was declined.

(6) An employee or elected official who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service credit pursuant to this subsection must comply with 19-3-505.

(7) Except as provided in subsection (2)~~(c)~~, membership in the retirement system is not optional for an employee or elected official who is already a member. Upon employment in a position for which membership is optional:

(a) a member who was an active member before the employment remains an active member;

(b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(8) (a) An employee or elected official who declines membership for a position for which membership is optional may not later become a member while still employed in that position.

(b) If, after a break in service of 30 days or more, an employee who was employed in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership.

(c) If the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(9) An employee accepting a position that requires membership shall become a member even if the employee previously declined membership and did not have a 30-day break in service."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 22, 2007

CHAPTER NO. 42

[SB 20]

AN ACT CLARIFYING THE AUTHORITY TO APPOINT A TEMPORARY CONSERVATOR; AMENDING SECTION 72-5-421, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-5-421, MCA, is amended to read:

"72-5-421. Powers of court as to property and affairs of protected persons generally — *temporary conservatorship.* The court has the following powers ~~which~~ *that* may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:

(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for ~~his~~ *the protected person's* benefit or the benefit of ~~his~~ *the protected person's* dependents. *If the court finds that the welfare of the person requires immediate action, it may, with or without notice, appoint a temporary conservator for the person for a specified period not to exceed 6 months. The court may designate the authority of the temporary conservator, depending on the needs and circumstances of the protected person. The court may not invest a temporary conservator with more powers than are required by the circumstances necessitating the appointment. The order of appointment of a temporary conservator must state the specific powers and duties of the temporary conservator.*

(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor ~~which~~ *that* are or might be necessary for the best interests of the minor, ~~his~~ *the minor's* family, and members of ~~his~~ *the minor's* household.

(3) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of ~~his~~ *the person's* household, all the powers over ~~his~~ *the person's* estate and affairs ~~which~~ ~~he~~ *that the person* could exercise if present and not under disability, except the power to make a will. These powers include but are not limited to *the* power to:

(a) make gifts;

(b) convey or release ~~his~~ *the person's* contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety;

(c) exercise or release ~~his~~ *the person's* powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment;

(d) enter into contracts;

(e) create revocable or irrevocable trusts of property of the estate ~~which~~ *that* may extend beyond ~~his~~ *the person's* disability or life;

(f) exercise options of the disabled person to purchase securities or other property;

(g) exercise ~~his~~ *the person's* rights to elect options and change beneficiaries under insurance and annuity policies and surrender the policies for their cash value;

(h) exercise ~~his~~ *the person's* right to an elective share in the estate of ~~his~~ *the person's* deceased spouse and renounce any interest by testate or intestate succession or by inter vivos transfer.

(4) The court may exercise or direct the exercise of its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding 20% of any year's income of the estate, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person and that ~~he~~ *the protected person* either is incapable of consenting or has consented to the proposed exercise of power.

(5) An order made pursuant to this section, determining that a basis for appointment of a conservator or other protective order exists, has no effect on the capacity of the protected person."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 22, 2007

CHAPTER NO. 43

[SB 35]

AN ACT TO INCLUDE THE STATE OF MONTANA IN THE STATEWIDE MUTUAL AID SYSTEM; AMENDING SECTION 10-3-903, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-903, MCA, is amended to read:

"10-3-903. Statewide mutual aid system — definitions. As used in this part, the following definitions apply:

(1) "Committee" means the Montana intrastate mutual aid committee created in 10-3-904.

(2) "Disaster" has the meaning provided in 10-3-103.

(3) "Emergency" has the meaning provided in 10-3-103.

(4) "Member jurisdiction" means *the state of Montana or* a political subdivision or a federally recognized Indian tribe that participates in the system.

(5) "System" means the Montana intrastate mutual aid system provided for in 10-3-906."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 22, 2007

CHAPTER NO. 44

[SB 39]

AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 60TH LEGISLATURE; AND AMENDING SECTIONS 2-15-3304, 7-1-2111, 7-6-1544, 7-14-4631, 7-15-4296, 7-15-4299, 10-3-1204, 13-1-202, 15-2-102, 15-30-313, 15-35-102, 15-39-105, 15-39-107, 15-70-357, 16-2-101, 16-3-322, 16-3-324, 16-11-149, 17-5-507, 17-7-112, 20-3-324, 20-5-322, 20-5-420, 20-9-408, 20-9-443, 20-9-472, 20-9-501, 20-25-421, 23-2-502, 23-2-614, 23-2-615, 30-9A-501, 33-1-1302, 33-1-1303, 33-10-106, 33-20-1303, 33-20-1315, 33-22-2001, 37-1-101, 37-1-303, 37-8-202, 37-27-302, 37-31-331, 37-73-216, 37-47-201, 44-1-504, 45-5-209, 50-60-115, 50-60-705, 61-1-101, 61-3-101, 61-3-116, 61-3-217, 61-3-224, 61-3-301, 61-3-303, 61-3-311, 61-3-321, 61-3-461, 61-3-462, 61-3-721, 61-4-109, 61-5-121, 61-8-715, 76-9-103, 76-14-103, 76-15-302, 82-4-127, 82-4-222, 85-2-225, 85-2-350, AND 87-5-704, MCA, SECTION 14, CHAPTER 464, LAWS OF 2005, AND SECTION 5, CHAPTER 535, LAWS OF 2005.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-3304, MCA, is amended to read:

"2-15-3304. State coordinator for rangeland resources. The department shall maintain and staff the office of state coordinator for the ~~rangeland resources act~~ *Montana Rangeland Resources Act*."

Section 2. Section 7-1-2111, MCA, is amended to read:

"7-1-2111. Classification of counties. (1) For the purpose of regulating the compensation and salaries of all county officers~~,~~ not otherwise provided for~~,~~ and for fixing the penalties of officers' bonds, the counties of this state must be classified according to the taxable valuation of the property in the counties upon which the tax levy is made as follows:

(a) first class—all counties having a taxable valuation of $50 million or more;

(b) second class—all counties having a taxable valuation of $30 million or more and less than $50 million;

(c) third class—all counties having a taxable valuation of $20 million or more and less than $30 million;

(d) fourth class—all counties having a taxable valuation of $15 million or more and less than $20 million;

(e) fifth class—all counties having a taxable valuation of $10 million or more and less than $15 million;

(f) sixth class—all counties having a taxable valuation of $5 million or more and less than $10 million;

(g) seventh class—all counties having a taxable valuation of less than $5 million.

(2) As used in this section, "taxable valuation" means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a manufacturer's rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) that portion of the taxable value of the county on December 31, 1997, attributable to buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors;

(d) that portion of the taxable value of the county on December 31, 1997, attributable to trailers, pole trailers, and semitrailers with a declared weight of less than 26,000 pounds;

(e) the value provided by the department of revenue under 15-36-332(7);

(f) 50% of the taxable value of the county on December 31, 1999, attributable to telecommunications property under 15-6-141;

(g) 50% of the taxable value in the county on December 31, 1999, attributable to electrical generation property under 15-6-141;

(h) the value provided by the department of revenue under 15-24-3001;

(i) 6% of the taxable value of the county on January 1 of each tax year; ~~and~~

(j) 45% of the contract sales price of the gross proceeds of coal in the county as provided in 15-23-703 and as reported under 15-23-702*; and*

(k) 33 1/3% of the value of bentonite produced during the previous year as provided in 15-39-110(15) and as reported under 15-39-101."

Section 3. Section 7-6-1544, MCA, is amended to read:

"7-6-1544. Resort area district board — election — term. (1) The first election of the board must be held at the next regular, primary, or school election immediately succeeding the creation of the resort area district. Each succeeding election must be held every 2 years to coincide with the election for local government officials as provided in 13-1-104(2).

(2) A petition of nomination, signed by at least five electors from within the resort area district, may be filed with the election administrator in any county containing a portion of the resort area district. A nominating petition must be filed ~~at least~~ *between* 135 days and ~~not fewer than~~ 75 days before the election.

(3) (a) If the number of candidates filing a petition is insufficient to complete board membership, the existing board shall appoint as many members as are needed to complete the five-member board.

(b) An appointee to the board must be elected by a majority of those voting at the election conducted under 13-1-104 immediately following the appointment.

If an appointee does not receive a majority of votes cast in the election, the appointee's term expires, and the board shall initiate the process described in this subsection (3).

(c) The term of a resort area district board member appointed and subsequently elected under the provisions of this subsection (3) is 4 years."

Section 4. Section 7-14-4631, MCA, is amended to read:

"7-14-4631. Compliance with land use laws required. (1) All parking facilities of a commission ~~shall be~~ *are* subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the parking facility is situated.

(2) In the planning and location of any parking facility, a commission ~~shall be~~ *is* subject to the relationship of the facility to any ~~master plan~~ *growth policy* or sections of a ~~master plan~~ *growth policy* for the development of the area in which the commission functions."

Section 5. Section 7-15-4296, MCA, is amended to read:

"7-15-4296. Aerospace transportation and technology districts. (1) A local governing body, by ordinance and following a public hearing, may authorize the creation of an aerospace transportation and technology district for aerospace transportation and technology infrastructure development projects if the proposed aerospace transportation and technology district:

(a) consists of a continuous area with an accurately described boundary;

(b) is zoned for use in accordance with the area ~~master planning~~ *growth policy* document;

(c) does not include any property included within an existing urban renewal area district or industrial infrastructure development district created pursuant to this part;

(d) is found to be deficient in infrastructure improvements for industrial development; and

(e) has as its purpose the development of infrastructure to encourage the location and retention of aerospace transportation and technology infrastructure development projects in the state.

(2) An aerospace transportation and technology district may use tax increment financing pursuant to the provisions of 7-15-4282 through 7-15-4293."

Section 6. Section 7-15-4299, MCA, is amended to read:

"7-15-4299. Industrial districts. (1) A local governing body, by ordinance and following a public hearing, may authorize the creation of an industrial district for industrial infrastructure development projects if the proposed industrial district:

(a) consists of a continuous area with an accurately described boundary;

(b) is zoned for light or heavy industrial use in accordance with the area ~~master planning~~ *growth policy* document;

(c) does not include any property included within an existing urban renewal area district created pursuant to this part;

(d) is found to be deficient in infrastructure improvements for industrial development; and

(e) has as its purpose the development of infrastructure to encourage the growth and retention of secondary, value-adding industries.

(2) An industrial district may use tax increment financing pursuant to the provisions of 7-15-4282 through 7-15-4293."

Section 7. Section 10-3-1204, MCA, is amended to read:

"10-3-1204. State emergency response commission. (1) There is a state emergency response commission that is attached to the department for administrative purposes. The commission consists of 27 members appointed by the governor. The commission must include representatives of the national guard, the air force, the department of environmental quality, the division, the department of transportation, the department of justice, the department of natural resources and conservation, the department of public health and human services, a fire service association, the fire *services* training school, the emergency medical services and injury prevention section of the health policy and services division in the department of public health and human services, the department of fish, wildlife, and parks, Montana hospitals, an emergency medical services association, a law enforcement association, an emergency management association, a public health-related association, a trucking association, a utility company doing business in Montana, a railroad company doing business in Montana, the university system, a local emergency planning committee, a tribal emergency response commission, the national weather service, the Montana association of counties, the Montana league of cities and towns, and the office of the governor. Members of the commission serve ~~a term~~ *terms* of 4 years and may be reappointed. The members shall serve without compensation. The governor shall appoint two presiding officers from the appointees, who shall act as copresiding officers.

(2) The commission shall implement the provisions of this part. The commission may create and implement a state hazardous material incident response team to respond to incidents. The members of the team must be certified in accordance with the plan.

(3) The commission may enter into written agreements with each entity or person providing equipment or services to the state hazardous material incident response team.

(4) The commission or its designee may direct that the state hazardous material incident response team be available and respond, when requested by a local emergency response authority, to incidents according to the plan.

(5) The commission may contract with persons to meet state emergency response needs for the state hazardous material incident response team.

(6) The commission may advise, consult, cooperate, and enter into agreements with agencies of the state and federal government, other states and their state agencies, cities, counties, tribal governments, and other persons concerned with emergency response and matters relating to and arising out of incidents.

(7) The commission may encourage, participate in, or conduct studies, investigations, training, research, and demonstrations for and with the state hazardous material incident response team, local emergency responders, and other interested persons.

(8) The commission may collect and disseminate information relating to emergency response to incidents.

(9) The commission may accept and administer grants, gifts, or other funds, conditional or otherwise, made to the state for emergency response activities provided for in this part.

(10) The commission may prepare, coordinate, implement, and update a plan that coordinates state and local emergency authorities to respond to incidents within the state. The plan must be consistent with this part. All state emergency response responsibilities relating to an incident must be defined by the plan.

(11) The commission has the powers and duties of a state emergency response commission under the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq., except that the division shall oversee the creation, annual local review, and exercise and revision of the local emergency operations plan as provided by state law.

(12) The commission shall promulgate rules and procedures limited to cost recovery procedures, certification of state *hazardous material incident* response team members, and deployment of the state hazardous material incident response team, which must be a part of the plan.

(13) The commission shall act as an all-hazard advisory board to the division by:

(a) assisting the division in carrying out its responsibilities by providing the division with recommendations on issues pertaining to all-hazard emergency management; and

(b) authorizing the establishment of subcommittees to develop and provide the recommendations called for in subsection (13)(a).

(14) The commission shall appoint the members of the Montana intrastate mutual aid committee provided for in 10-3-904.

(15) All state agencies and institutions shall cooperate with the commission in the commission's efforts to carry out its duties under this part."

Section 8. Section 13-1-202, MCA, is amended to read:

"13-1-202. Forms and rules prescribed by secretary of state — consultation. (1) In carrying out the responsibilities under 13-1-201, the secretary of state shall prepare and deliver to the election administrators:

(a) written directives and instructions relating to and based on the election laws;

(b) sample copies of prescribed and suggested forms; and

(c) advisory opinions on the effect of election laws other than those laws in chapter 35, 36, or 37 of this title.

(2) The secretary of state may prescribe the design of any election form required by law. The secretary of state shall seek the advice of election administrators and printers in designing the required forms.

(3) Each election administrator shall comply with the directives and instructions and shall provide election forms prepared as prescribed.

(4) Each election administrator shall provide data to the secretary of state that the secretary of state determines is necessary to:

(a) evaluate voting system performance against the benchmark standard adopted pursuant to 13-17-103~~(2)~~*(3)*;

(b) evaluate the security, accuracy, and accessibility of elections; and

(c) assist the secretary of state in making recommendations to improve voter confidence in the integrity of the election process.

(5) The secretary of state shall regularly consult with and seek the advice of local election administrators in implementing the provisions of this section."

Section 9. Section 15-2-102, MCA, is amended to read:

"15-2-102. Qualification and compensation. (1) To be appointed a member of the state tax appeal board, a person must possess knowledge of the subject of taxation and skill in matters pertaining ~~thereto~~ *to the subject of taxation*. ~~No~~ *A* person ~~so~~ appointed may *not* hold any other state *office* or any office under the government of the United States or under the government of any other state. The person shall devote the entire time to the duties of the office and ~~shall~~ *may* not hold any other position of trust or profit or engage in any occupation or business interfering or inconsistent with the person's duties. The state tax appeal board is ~~transferred~~ *attached* to the department of administration for administrative purposes only as ~~is specified~~ *provided* in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(2) State tax appeal board members ~~shall~~ *must* be paid a salary equivalent to that of a grade 17 salary as provided in 2-18-312. State tax appeal board members must receive pay and pay adjustments consistent with those required by the legislature for classified state employees in 2-18-303 and 2-18-304. The member designated as presiding officer as provided for in 15-2-103 must have an additional 5% added to the salary. All members of the board ~~shall~~ *must* receive travel expenses as provided for in 2-18-501 through 2-18-503~~, as amended,~~ when away from the capital on official business."

Section 10. Section 15-30-313, MCA, is amended to read:

"15-30-313. Deferment of taxes for person in military service — filing of return. (1) The collection *of the tax imposed by 15-30-103* from a person in the military service, as defined by section 511 of the Servicemembers Civil Relief Act, 50 App. U.S.C. 511, as amended, ~~of the tax imposed by 15-30-103,~~ whether due prior to or during the person's period of military service, must be deferred for not more than 180 days after the termination of the person's period of military service if the person's ability to pay the tax is materially impaired by reason of military service.

(2) Interest and penalty on any amount of tax that is deferred for any period under 15-30-314 or this section may not accrue for the period of deferment by reason of nonpayment. The running of any statute of limitations against the payment of the tax by any lawful means must be suspended for the period of military service of any person for whom the collection of the tax is deferred under this section and for an additional period of 1 year beginning with the day following the period of military service.

(3) In accordance with the provisions of section 7508 of the Internal Revenue Code, 26 U.S.C. 7508, the individual income tax return of a person~~, and the person's spouse,~~ serving in a combat zone or participating in a contingency operation *and of the person's spouse* is due on or before 180 days after the time of disregarded service plus the disregarded period of qualified hospitalization attributable to an injury suffered while serving in the combat zone or contingency operation."

Section 11. Section 15-35-102, MCA, is amended to read:

"15-35-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Agreement" means a signed contract that is valid under Montana law between a coal mine operator and a purchaser or broker for the sale of coal that is produced in Montana.

(2) (a) "Base consumption level" for a purchaser, except as provided in subsection (2)(b), applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the volume of coal purchased during calendar year 1986 from all Montana coal mine operators; or

(ii) the greater of:

(A) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators; or

(B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.

(b) If the volume calculated in subsection (2)(a)(i) is less than one-third of the volume calculated in subsection (2)(a)(ii), the base consumption level is the volume calculated in subsection (2)(a)(ii).

(3) (a) Except as provided in subsection (3)(b), "base production level" for a coal mine operator applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984; or

(ii) the volume of coal produced in Montana and sold to a purchaser in 1986.

(b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i).

(4) "Broker" means any person who resells Montana coal.

(5) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how the royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes ~~only:~~

~~(a) for quarterly periods ending on and after September 30, 1984, 15 cents per ton plus 75% of the difference between 15 cents per ton and the amount of federal, state, and tribal government royalties actually paid;~~

~~(b) for quarterly periods ending on and after September 30, 1985, 15 cents per ton plus 50% of the difference between 15 cents per ton and the amount of federal, state, and tribal government royalties actually paid;~~

~~(c) for quarterly periods ending on and after September 30, 1986, 15 cents per ton plus 25% of the difference between 15 cents per ton and the amount of federal, state, and tribal government royalties actually paid; and~~

~~(d) for quarterly periods ending on and after September 30, 1987,~~ 15 cents per ton.

(6) "Department" means the department of revenue.

(7) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electrical energy, or any other form of energy.

(8) "Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers.

(9) "Produced" means severed from the earth.

(10) "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

(11) "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed the purchaser's base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser.

(12) "Strip mining" is defined in 82-4-203 and includes "surface mining".

(13) "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

(14) "Ton" means 2,000 pounds.

(15) "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203."

Section 12. Section 15-39-105, MCA, is amended to read:

"15-39-105. Penalties and interest for violation. (1) (a) A person who fails to file a statement as required by 15-39-102 must be assessed a penalty as provided in 15-1-216. The department may waive the penalty as provided in 15-1-206.

(b) A person who fails to file the statement required by 15-39-102 and to pay the tax before the due date must be assessed a penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(2) A person who purposely fails to pay the tax when due must be assessed an additional penalty as provided in 15-1-216~~(1)(d)~~*(2)*."

Section 13. Section 15-39-107, MCA, is amended to read:

"15-39-107. Interest on deficiency — penalty. (1) Interest accrues on unpaid or delinquent taxes as provided in 15-1-216. The interest must be computed from the date on which the statement and tax were originally due.

(2) If the payment of a tax deficiency is not made within 60 days after it is due and payable and if the deficiency is due to negligence on the part of the taxpayer but without fraud, the penalty imposed by 15-1-216~~(1)(c)~~*(2)* must be added to the amount of the deficiency."

Section 14. Section 15-70-357, MCA, is amended to read:

"15-70-357. Improperly imported fuel — seizure. (1) As used in this section, the following definitions apply:

(a) "conveyance" means a tank car, vehicle, or vessel that is used to transport fuel;

(b) "department" means the department of transportation; and

(c) "peace officer" means an employee of the department of transportation designated or appointed as a peace officer under 61-10-154 or 61-12-201.

(2) Pursuant to 61-12-206(5), a peace officer may:

(a) stop and search a conveyance in the state if the peace officer has reasonable cause to believe that the conveyance is being used to carry improperly imported fuel and is intentionally avoiding fuel tax responsibilities; and

(b) seize without a warrant imported fuel for which the distributor or transporter has not obtained a valid Montana gasoline or special fuel distributor license as required in 15-70-202 and 15-70-341.

(3) The peace officer shall obtain authorization from the director of the department of transportation or the director's designee before seizing fuel.

(4) Upon seizing the fuel that the peace officer believes to be improperly imported, the peace officer may:

(a) direct the rerouting or transfer of the fuel to a location designated by the department. The department shall reimburse the carrier for transportation costs from the point of seizure to the location designated by the department.

(b) unload the fuel; and

(c) take three samples of the fuel from the cargo tank for examination.

(5) Within 48 hours after seizure of the improperly imported fuel, the department shall issue a notice of right to file claim for the return of interest or title to the fuel. The notice must be issued to:

(a) the original owner of the fuel;

(b) the owner of the transportation company that conveyed the fuel; and

(c) any other interested party.

(6) The parties listed in subsections (5)(a) through (5)(c) may file a claim for the return of interest or title to the fuel within 30 days after the date of seizure. If a claim is filed for interest or title to the seized fuel, the department shall:

(a) provide the opportunity for a hearing;

(b) if requested, conduct the hearing within 5 days after receiving the claim;

(c) make a final determination of the party to take interest or title to the fuel within 2 working days after the hearing; and

(d) mail notice of the department's determination to interested parties.

(7) (a) The department may determine that the seized fuel be forfeited by the original owner and may:

(i) sell the fuel to the licensed Montana distributor predetermined through a bidding process established in department administrative rule; or

(ii) use the forfeited fuel for a public purpose determined by the department.

(b) The department shall issue a certificate of sale to the licensed distributor who purchases the seized fuel.

(c) The net proceeds from the sale of the fuel must be deposited in the general fund, less:

(i) the applicable taxes, fees, and penalties, which the department shall deposit in a highway revenue account in the state special revenue fund, as required in 15-70-101; and

(ii) the administrative costs incurred in conjunction with the seizure and disposal of the improperly imported fuel.

(8) If the department determines that the original owner of the fuel may reclaim interest or title to the fuel, the department may:

(a) return to the owner money, less tax and penalty, equal to the wholesale value of the fuel on the day of the seizure; or

(b) return the fuel.

(9) A person forfeits the interest, right, and title to improperly imported fuel if the person:

(a) fails to file a claim for the seized fuel within the time allowed in subsection ~~(5)~~ *(6)*; or

(b) is determined to be guilty of violating fuel tax laws.

(10) A person whose fuel is seized under this section is not relieved of any penalties imposed for illegal fuel importation in Title 15, chapter 70."

Section 15. Section 16-2-101, MCA, is amended to read:

"16-2-101. Establishment and closure of agency liquor stores — agency franchise agreement — kinds and prices of liquor. (1) The department shall enter into agency franchise agreements to operate agency liquor stores as the department finds feasible for the wholesale and retail sale of liquor.

(2) (a) The department may from time to time fix the posted prices at which the various classes, varieties, and brands of liquor may be sold, and the posted prices must be the same at all agency liquor stores.

(b) (i) The department shall supply from the state liquor warehouse to agency liquor stores the various classes, varieties, and brands of liquor for resale at the state posted price to persons who hold liquor licenses and to all other persons at the retail price established by the agent.

(ii) (A) According to the ordering and delivery schedule set by the department, an agency liquor store may place a liquor order with the department at its state liquor warehouse in the manner to be established by the department.

(B) The agency liquor store's purchase price is the department's posted price less the agency liquor store's commission rate and less the agency liquor store's

~~weighed~~ *weighted* average discount ratio. For purposes of this subsection (2)(b)(ii)(B), for agency liquor stores or employee-operated state liquor stores that were operating on June 30, 1994, the weighted average discount ratio is the ratio between an agency liquor store's or the employee-operated state liquor store's full case discount sales divided by the agency liquor store's or employee-operated state liquor store's gross sales, based on fiscal year 1994 reported sales, times the state discount rate for case lot sales, as provided in 16-2-201, divided by the state discount rate for full case lot sales in effect on June 30, 1994. For all other stores that are placed in service after June 30, 1994, the weighted average discount ratio is the average ratio in fiscal year 1994 for similar sized stores for 1 year of operation. The weighted *average* discount ratio must be computed on the store's first 12 months of operation.

(C) All liquor purchased from the state liquor warehouse by an agency liquor store must be paid for within 60 days of the date on which the department invoices the liquor to the agency liquor store.

(c) An agency liquor store may sell table wine at retail for off-premises consumption.

(3) Agency liquor stores may not be located in or adjacent to grocery stores in communities with populations over 3,000.

(4) Agency liquor stores must receive commissions payable as follows:

(a) (i) a 10% commission for agencies in communities with less than 3,000 in population, unless adjusted pursuant to subsection (6); or

(ii) a commission established by competitive bidding unless adjusted pursuant to subsection (6) for agencies in communities with 3,000 or more in population; plus

(b) for agency liquor stores operating under a renewed franchise agreement or that have been operated for at least 3 years under an original franchise agreement, a percentage based upon the total annual dollar volume of sales in the previous fiscal year, as follows:

(i) for agency liquor stores with a volume of sales of $500,000 or more, ~~0.125% beginning July 1, 2002, 0.5% beginning July 1, 2003, and~~ 0.875% beginning July 1, 2004;

(ii) for agency liquor stores with a volume of sales of less than $500,000, ~~1.25% beginning July 1, 2002, 1.25% beginning July 1, 2003, and~~ 1.5% beginning July 1, 2004; or

(iii) for a city with more than one agency liquor store, in lieu of the addition to a commission increase provided in subsection (4)(b)(i) or (4)(b)(ii), for each *agency liquor* store in the city, an addition to its commission rate equal to the increase granted the *agency liquor* store with the lowest commission rate.

(5) An agency franchise agreement must:

(a) be effective for a 10-year period and must be renewed at the existing commission rate for additional 10-year periods if the requirements of the agency franchise agreement have been satisfactorily performed;

(b) require the agent to maintain comprehensive general liability insurance and liquor liability insurance throughout the term of the agency franchise agreement in an amount established by the department of administration. The insurance policy must:

(i) declare the department as an additional insured; and

(ii) hold the state harmless and agree to defend and indemnify the state in a cause of action arising from or in connection with the agent's negligent acts or activities in the execution and performance of the agency franchise agreement.

(c) provide that upon termination by the department for cause or upon mutual termination, the agent is liable for any outstanding liquor purchase invoices. If payment is not made within the appropriate time, the department may immediately repossess all liquor inventory, wherever located.

(d) specify the reasonable service and space requirements that the agent will provide throughout the term of the agency franchise agreement.

(6) (a) The commission percentage that the department pays the agent under subsection (4)(a) may be reviewed ~~on July 1, 1998, and~~ every ~~succeeding~~ 3 years at the request of either party. If the agent concurs, the department may adjust the commission percentage to be paid during the remaining term of the agency franchise agreement or until the next time the commission percentage is reviewed, if that is sooner than the term of the agency franchise agreement, to a commission percentage that is equal to the average commission percentage being paid agents with similar sales volumes if:

(i) the agent's commission percentage is less than the average; and

(ii) all the requirements of the agency franchise agreement have been satisfactorily performed.

(b) The adjusted commission percentage determined under subsection (6)(a) may be greater than the average commission paid agents with similar sales volume:

(i) if the agent demonstrates that:

(A) the agent has experienced cost increases that are beyond the agent's control, including but not limited to increases in the federally established minimum wage or escalation in prevailing rent; and

(B) the average commission percentage is insufficient to yield net income commensurate with net income experienced before the cost increases occurred; and

(ii) if the department demonstrates that it is unable to indicate adjustments in the requirements specified in the agent's franchise agreement that will eliminate the impact of cost increases.

(7) The liability insurance requirement may be reviewed every 3 years ~~after July 1, 1995,~~ at the request of either the agent or the department. If the agent concurs, the department may adjust the requirements to be effective during the remaining term of the agency franchise agreement if the adjustments adequately protect the state from risks associated with the agent's negligent acts or activities in the execution and performance of the agency franchise agreement. The amount of liability insurance coverage may not be less than the minimum requirements of the department of administration.

(8) (a) The department may terminate an agency franchise agreement if the agent has not satisfactorily performed the requirements of the agency franchise agreement because the agent:

(i) charges retail prices that are less than the department's posted price for liquor, sells liquor to persons who hold liquor licenses at less than the posted price, or sells liquor at case discounts greater than the discount provided for in 16-2-201 to persons who hold liquor licenses;

(ii) fails to maintain sufficient liability insurance;

(iii) has not maintained a quantity and variety of product available for sale commensurate with demand, delivery cycle, repayment schedule, mixed case shipments from the department, and the ability to purchase special orders;

(iv) at an agency liquor store located 35 miles or more from the nearest agency liquor store, has operated the agency liquor store in a manner that makes the premises unsanitary or inaccessible for the purpose of making purchases of liquor; or

(v) fails to comply with the express terms of the agency franchise agreement.

(b) The department shall give an agent 30 days' notice of its intent to terminate the agency franchise agreement for cause and specify the unmet requirements. The agent may contest the termination and request a hearing within 30 days of the date of notice. If a hearing is requested, the department shall suspend its termination order until after a final decision has been made pursuant to the Montana Administrative Procedure Act.

(c) In the case of failure to make timely payments to the department for liquor purchased, the department may terminate the agency franchise agreement and immediately repossess any liquor purchased and in the possession of the agent. If an agency franchise agreement is terminated, the agent may contest the termination and request a hearing within 30 days of the department's repossession of the liquor. The agency liquor store shall remain closed until a final decision has been reached following a hearing held pursuant to the Montana Administrative Procedure Act.

(9) An agency franchise agreement may be terminated upon mutual agreement by the agent and the department.

(10) An agent may assign an agency franchise agreement to a person who, upon approval of the department, is named agent in the agency franchise agreement, with the rights, privileges, and responsibilities of the original agent for the remaining term of the agency franchise agreement. The agent shall notify the department of an intent to assign the agency franchise agreement 60 days before the intended effective date of the assignment. The department may not unreasonably withhold approval of an assignment request.

(11) A person or entity may not hold an ownership interest in more than one agency liquor store.

(12) The department shall maintain sufficient inventory in the state warehouse in order to meet a monthly service level of at least 97%."

Section 16. Section 16-3-322, MCA, is amended to read:

"16-3-322. Recordkeeping. (1) A licensee, at the time of the sale of a keg, shall record the following:

(a) the purchaser's name, address, and date of birth and the number of the purchaser's driver's license, state-issued or military identification card, or valid United States or foreign passport;

(b) the date of purchase;

(c) the name of the clerk making the sale; *and*

~~[(d) the keg identification number required under 16-3-321]; and~~

~~(e)~~*(d)* the purchaser's signature and date of purchase.

(2) The licensee shall maintain the record for not less than 45 days after the date of the sale.

(3) A licensee who maintains the records required by this section shall make the records available during regular business hours for inspection by law enforcement pursuant to 16-3-323."

Section 17. Section 16-3-324, MCA, is amended to read:

"16-3-324. Violations. (1) A person who knowingly fails to attach a keg tag as provided in 16-3-321 is guilty of a misdemeanor and shall be fined an amount not to exceed $100.

(2) A person may not remove, deface, or damage the identification on a keg purposely to make it unreadable. A person convicted of purposely removing*,* ~~or~~ defacing*, or damaging* a tag shall be fined an amount not to exceed $500 or be imprisoned in the county jail for not more than 6 months, or both."

Section 18. Section 16-11-149, MCA, is amended to read:

"16-11-149. Hearings before state tax appeal board. A person aggrieved by any action of the department or its authorized agents taken to enforce the tax provisions of this part, except for a revocation of a license pursuant to 16-11-144, may apply to the state tax appeal board, in writing, for a hearing or rehearing within 30 days after the action of the department or its authorized agents. The board shall promptly consider the application, set the application for hearing, and notify the applicant of the time and place fixed for the hearing or rehearing, which may be at its office or in the county of the applicant. After the hearing or rehearing, the board may make any further or other order ~~in the premises as~~ *on the grounds that* it may consider proper and lawful and shall furnish a copy to the applicant. The department, on its own initiative, may order a contested case hearing on any matter concerned with licensing, as defined in 2-4-102, in connection with the administration of this part upon at least 10 days' notice in writing to the person or persons to be investigated."

Section 19. Section 17-5-507, MCA, is amended to read:

"17-5-507. State pledge of gasoline tax — use. (1) The state pledges, appropriates, and directs to be credited as received to the debt service account~~[, as defined in 17-5-401,]~~ that portion of the net proceeds from the collection of gasoline taxes that may from time to time be needed to comply with the principal and interest and reserve requirements stated in subsection (2) ~~of this section~~. The pledge and appropriation made in this section must remain at all times a first and prior charge upon all money received as net proceeds from the collection of gasoline taxes. ~~The term "net proceeds", as used in this section, means all funds in the state treasury as of any date, derived from the collection of the license tax imposed on gasoline distributors by 15-70-204, less the amount of all refunds of those taxes for which applications have been made pursuant to law but that have not yet been paid or rejected. The term "debt service account", as used in this section, means a separate highway fund that is created within the debt service fund type established by 17-2-102 and must be segregated by the treasurer from all other money in that or any other fund in the treasury and used only to pay highway bonds and interest on those bonds when due, so long as the bonds or interest remain unpaid.~~

(2) Money in the debt service account must be used to:

(a) pay interest and principal when due on highway bonds;

(b) accumulate a reserve, in the amount required in subsection (2)(c), for the further security of those payments; and

(c) maintain a reserve in an amount at least equal, after each interest and principal payment, to the maximum amount of interest and principal that will become due on all bonds that are then outstanding in any subsequent fiscal year.

(3) Money received in the debt service account in excess of the principal, interest, and reserve requirements stated in subsection (2) must be transferred by the treasurer to the highway revenue account in the state special revenue fund. If the balance at any time on hand in the debt service account is not sufficient for compliance with subsection (2), the treasurer shall credit to that account an amount sufficient to restore the balance from the next receipts of net proceeds from the collection of gasoline taxes.

(4) As used in this section:

(a) "debt service account" means a separate highway fund that is created within the debt service fund type established by 17-2-102 and must be segregated by the treasurer from all other money in that or any other fund in the treasury and used only to pay highway bonds and interest on those bonds when due, so long as the bonds or interest remain unpaid; and

(b) "net proceeds" means all funds in the state treasury as of any date, derived from the collection of the license tax imposed on gasoline distributors by 15-70-204, less the amount of all refunds of those taxes for which applications have been made pursuant to law but that have not yet been paid or rejected."

Section 20. Section 17-7-112, MCA, is amended to read:

"17-7-112. Submission deadlines — budgeting schedule. The following is the schedule for the preparation of a state budget for submission to the legislature convening in the following year:

(1) By August 1, forms necessary for preparation of budget estimates must be distributed pursuant to 17-7-111(2).

(2) (a) By September 1, each agency shall submit the information required under 17-7-111 to the budget director. The department of justice shall submit information received from counties concerning the state's share of county attorney salaries.

(b) As provided in 7-4-2502(2)(a), the department of justice is not obligated to provide more than one-half of the salary of a county attorney based on the amount included in the department's budget and appropriated for that purpose.

(3) By September 1, the budget director shall submit each state agency's budget request required under 17-7-111(3) to the legislative fiscal analyst. The transfer of budget information must be done on a schedule mutually agreed to by the budget director and the legislative fiscal analyst in a manner that facilitates an even transfer of budget information that allows each office to maintain a reasonable staff workflow.

(4) By October 10, the budget director shall furnish the legislative fiscal analyst with a preliminary budget reflecting the base budget in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst.

(5) By October 30, a budget request must be prepared by the budget director and submitted to the legislative fiscal analyst on behalf of any agency that did not present the information required by this section. The budget request must

be based upon the budget director's studies of the operations, plans, and needs of the institution, university unit, or agency.

(6) By November 1, the budget director shall furnish the legislative fiscal analyst with a present law base for each agency and a copy of the documents that reflect the anticipated receipts and other means of financing the base budget and present law base for each fiscal year of the ensuing biennium. The material must be in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst.

(7) By November 12, the budget director shall furnish the legislative fiscal analyst with the documents, in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst, that reflect expenditures to the second level, as provided in 17-1-102(3), by funding source and detailed by accounting entity.

(8) By November 15, the proposed pay plan schedule and the ~~information technology~~ *statewide project budget* summary required by 17-7-111(4), a preliminary budget that meets the statutory requirements for submission of the budget to the legislature, and a summary of the preliminary budget designed for distribution to members and members-elect of the legislature must be submitted to the legislative fiscal analyst.

(9) By December 15, the budget director shall submit a preliminary budget to the governor and to the governor-elect, if there is one, as provided in 17-7-121, and shall furnish the legislative fiscal analyst with all amendments to the preliminary budget.

(10) By January 7, recommended changes proposed by a governor-elect must be transmitted to the legislative fiscal analyst and the legislature as provided in 17-7-121."

Section 21. Section 20-3-324, MCA, is amended to read:

"20-3-324. Powers and duties. As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, ~~teacher~~ *teacher's* aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the *school* districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) ~~subject to 15-10-420,~~ establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative ~~agreement~~ fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) set the length of the school term, school day, and school week in accordance with 20-1-302;

(18) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special education parts of this title;

(19) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(20) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(21) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

(22) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except *that* trustees from a first-class school district may share the responsibility for visiting each school in the district;

(23) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(24) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided by a local civic group.

(25) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110;

(26) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education;

(27) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in 20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution;

(28) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303;

(29) consider and, if advisable for a high school or K-12 district, establish a student financial institution, as defined in 32-1-115; and

(30) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

Section 22. Section 20-5-322, MCA, is amended to read:

"20-5-322. Residency determination — notification — appeal for attendance agreement. (1) In considering an out-of-district attendance agreement, except as provided in 20-9-707, the trustees shall determine the child's district of residence on the basis of the provisions of 1-1-215.

(2) Within 10 days of the initial application for an agreement, the trustees of the district of choice shall notify the parent or guardian of the child and the trustees of the district of residence involved in the out-of-district attendance agreement of the anticipated date for approval or disapproval of the agreement.

(3) Within 10 days of approval or disapproval of an out-of-district attendance agreement, the trustees shall provide copies of the approved or disapproved attendance agreement to the parent or guardian and to the child's district of residence.

(4) Within 15 days of receipt of an approved out-of-district attendance agreement, the trustees of the district of residence shall approve or disapprove the agreement under the provisions of this part and forward the completed agreement to the county superintendent of schools of the county of residence, the trustees of the district of choice, and the parent or guardian.

(5) If an out-of-district attendance agreement is disapproved or no action is taken, the parent may appeal the disapproval or lack of action to the county

superintendent and, subsequently, to the superintendent of public instruction under the provisions for the appeal of controversies in this title.

(6) For purposes of payment under 20-5-324~~(6)~~*(2)*, a nonresident student who becomes a resident by reaching ~~the age of~~ 18 *years of age* during the school year may continue to have tuition paid on the student's behalf for the duration of the student's enrollment in the district for that school year."

Section 23. Section 20-5-420, MCA, is amended to read:

"20-5-420. Self-administration of asthma medication. (1) As used in this section, the following definitions apply:

(a) "Anaphylaxis" means a systemic allergic reaction that can be fatal in a short time period and is also known as anaphylactic shock.

(b) "Asthma" means a chronic disorder or condition of the lungs that requires lifetime, ongoing, medical intervention.

(c) "Medication" means a medicine, including inhaled bronchodilators, inhaled corticosteroids, and autoinjectable epinephrine, prescribed by a licensed physician as defined in 37-3-102, a physician assistant who has been authorized to prescribe asthma medications as provided in 37-20-404, or an advanced practice registered nurse with prescriptive authority as provided in 37-8-202~~(5)~~*(1)(h)*.

(d) "Self-administration" means a pupil's discretionary use of the asthma medication prescribed for the pupil.

(2) A school, whether public or nonpublic, shall permit the self-administration of medication by a pupil with asthma if the parents or guardians of the pupil provide to the school:

(a) written authorization, acknowledging and agreeing to the liability provisions in subsection (4), for the self-administration of medication;

(b) a written statement from the pupil's physician, physician assistant, or advanced practice registered nurse containing the following information:

(i) the name and purpose of the medication;

(ii) the prescribed dosage; and

(iii) the time or times at which or the special circumstances under which the medication is to be administered;

(c) documentation that the pupil has demonstrated to the health care practitioner and the school nurse, if available, the skill level necessary to administer the medication as prescribed; and

(d) documentation that the pupil's physician, physician assistant, or advanced practice registered nurse has formulated a written treatment plan for managing asthma or anaphylaxis episodes of the pupil and for medication use by the pupil during school hours.

(3) The information provided by the parents or guardians must be kept on file in the office of the school nurse or, in the absence of a school nurse, the school's administrator.

(4) The school district or nonpublic school and its employees and agents are not liable as a result of any injury arising from the self-administration of medication by the pupil unless an act or omission is the result of gross negligence, willful and wanton conduct, or an intentional tort. The parents or guardians of the pupil must be given a written notice and sign a statement

acknowledging that the school district or nonpublic school may not incur liability as a result of any injury arising from the self-administration of medication by the pupil and that the parents or guardians shall indemnify and hold harmless the school district or nonpublic school and its employees and agents against any claims, except a claim based on an act or omission that is the result of gross negligence, willful and wanton conduct, or an intentional tort.

(5) The permission for self-administration of medication is effective for the school year for which it is granted and must be renewed each subsequent school year or, if the medication dosage, frequency of administration, or other conditions change, upon fulfillment of the requirements of this section.

(6) If the requirements of this section are fulfilled, a pupil with asthma may possess and use the pupil's medication:

(a) while in school;

(b) while at a school-sponsored activity;

(c) while under the supervision of school personnel;

(d) before or after normal school activities, such as while in before-school or after-school care on school-operated property; or

(e) while in transit to or from school or school-sponsored activities.

(7) If provided by the parent or guardian and in accordance with documents provided by the pupil's physician, physician assistant, or advanced practice registered nurse, backup medication must be kept at a pupil's school in a predetermined location or locations to which the pupil has access in the event of an asthma or anaphylaxis emergency.

(8) Youth correctional facilities are exempt from this section and shall adopt policies related to access and use of asthma medications."

Section 24. Section 20-9-408, MCA, is amended to read:

"20-9-408. Definition of forms of bonds. As used in this part*, the following definitions apply*:

(1) "~~amortization~~ *"Amortization* bond" means that form of bond on which a part of the principal is required to be paid each time that interest becomes due and payable. The part payment of principal increases with each following installment in the same amount that the interest payment decreases, so that the combined amount payable on principal and interest is the same on each payment date. However, the payment on the initial interest payment date may be less or greater than the amount of other payments on the bond, reflecting the payment of interest only or the payment of interest for a period different from that between other interest payment dates. The final payment may vary from prior payments in amount as a result of rounding prior payments.

(2) "~~general~~ *"General* obligation bonds" means bonds that pledge the full faith and credit and the taxing power of a school district~~;~~.

(3) "~~impact~~ *"Impact* aid revenue bonds" means bonds that pledge and are payable solely from federal impact aid basic support payments received and deposited to the credit of the ~~account~~ *fund* established in 20-9-514~~; and~~.

(4) "~~serial~~ *"Serial* bonds" means a bond issue payable in annual installments of principal commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing or subject to mandatory sinking fund redemption in each installment, commencing with the installment payable in the fourth year after the date of

issue, not exceeding three times the principal amount of the bonds payable in the immediately preceding installment."

Section 25. Section 20-9-443, MCA, is amended to read:

"20-9-443. Disposition of remaining debt service fund. (1) Except as provided in subsection (2), when all of the bonds, bond interest, and special improvement district obligations of a school district have been fully paid, all money remaining in the debt service fund for the school district and all money that may come into the debt service fund from the payment of the delinquent taxes must be transferred by the county treasurer to the building reserve levy fund, the technology acquisition and depreciation fund, or the general fund as designated by the school district if the subsequent use of the funds by the school district is limited to constructing, equipping, or enlarging school buildings or purchasing land needed for school purposes in the district.

(2) Any federal impact aid funding remaining in the debt service fund of a school district that has fully repaid the bonds and bond interest must revert to the district's impact aid ~~account~~ *fund* established pursuant to 20-9-514."

Section 26. Section 20-9-472, MCA, is amended to read:

"20-9-472. Security for impact aid revenue bonds — agreement of state. (1) To secure the payment of principal and interest on impact aid revenue bonds, the trustees of a school district by resolution or indenture of trust may provide that impact aid revenue bonds are secured by a first lien on the federal impact aid basic support payments received and credited to the ~~account~~ *fund* established in 20-9-514 and pledge to the holders of the impact aid revenue bonds all of the money in the impact aid revenue bond debt service fund.

(2) Upon receipt of the federal impact aid basic support payment, the county treasurer shall deposit in the impact aid revenue bond debt service fund the amount that is required to pay the principal of and interest on the impact aid revenue bonds coming due in the next 12-month period and to restore any deficiency in the impact aid revenue bond debt service reserve account. Excess federal impact aid basic support payment revenue must be deposited as provided in 20-9-514. The school district and county treasurer may designate a trustee for holders of the bonds to receive the school district's impact aid revenue for purposes of making the annual debt service payments on impact aid revenue bonds and may authorize the trustee to establish and maintain the impact aid revenue bond debt service fund and impact aid revenue bond debt service reserve account.

(3) Any pledge made pursuant to this section is valid and binding from the time the pledge is made, and the money pledged and received by the county treasurer on behalf of the school district to be placed in the impact aid revenue bond debt service fund account is immediately subject to the lien of the pledge without any future physical delivery or further act. A lien of any pledge is valid and binding against all parties that have claims of any kind against the school district, regardless of whether the parties have notice of the lien. The bond resolution or indenture of trust that creates the pledge, when adopted by the trustees of any district, is notice of the creation of the pledge, and those instruments are not required to be recorded in any other place to perfect the pledge.

(4) The state pledges to and agrees with the holders of impact aid revenue bonds that the state will not limit, alter, or impair the ability of a school district to qualify for impact aid revenue or in any way impair the rights and remedies of

the bondholders until all bonds issued under this section, together with interest on the bonds, interest on any unpaid installments of principal or interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The trustees of any district, as agents for the state, may include this pledge and undertaking in resolutions and indentures authorizing and securing the bonds."

Section 27. Section 20-9-501, MCA, is amended to read:

"20-9-501. Retirement costs and retirement fund. (1) The trustees of a district or the management board of a cooperative employing personnel who are members of the teachers' retirement system or the public employees' retirement system, ~~or~~ who are covered by unemployment insurance, or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems as provided in subsection (2)(a). The district's or the cooperative's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's or the cooperative's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's or the cooperative's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's or the cooperative's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) (a) The district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the retirement fund for the following:

(i) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from state or local funding sources;

(ii) a cooperative employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the cooperative's interlocal ~~agreement~~ *cooperative* fund if the fund is supported solely from districts' general funds and state special education allowable cost payments, pursuant to 20-9-321, or are paid from the miscellaneous programs fund, provided for in 20-9-507, from money received from the medicaid program, pursuant to 53-6-101;

(iii) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district's school food services fund provided for in 20-10-204; and

(iv) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district impact aid fund, pursuant to 20-9-514.

(b) For an employee whose benefits are not paid from the retirement fund, the district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the funding source that pays the employee's salary.

(3) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer

contributions to the systems in accordance with the financial administration provisions of this title.

(4) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) countywide school retirement block grants distributed under 20-9-631;

(v) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(vi) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (9), subtracting the money available for reduction of the levy requirement, as determined in subsection (4)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(5) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(6) The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

(7) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(8) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as

provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(9) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (5)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(10) The levy for a community college district may be applied only to property within the district.

(11) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements for county school funds supporting elementary and high school district retirement obligations to the superintendent of public instruction not later than the second Monday in September. The report must be completed on forms supplied by the superintendent of public instruction."

Section 28. Section 20-25-421, MCA, is amended to read:

"20-25-421. (Temporary) Charges for tuition — waivers. (1) The regents may prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction.

(2) The regents may:

(a) waive nonresident tuition for selected and approved nonresident students, not to exceed at any unit 2% of the full-time equivalent enrollment at that unit during the preceding year; however, when necessary, tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements that provide for the payment, when required, of the student support fee by the reciprocal state;

(b) waive resident tuition for students at least 62 years of age;

(c) waive tuition and fees for:

(i) persons of one-fourth Indian blood or more who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

(ii) persons designated by the department of corrections pursuant to 52-5-112 or 53-1-214;

(iii) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;

(iv) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States;

(v) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action; or

(vi) the spouse or children of a Montana national guard member who was killed or died as a result of injury, disease, or other disability incurred in the line of duty while serving on state active duty;

(d) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance requirements at the state university or college of the person's choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:

(i) a paid or volunteer member of a municipal or rural fire department;

(ii) a law enforcement officer as defined in 7-32-201; or

(iii) a full-time highway patrol officer.

(e) waive tuition for up to 5,000 credits each academic year in accordance with the Montana national guard education benefit program established by the department of military affairs. The waivers provided for in this subsection (2)(e) are intended to be available for up to 5 years after the person qualifies. (Terminates June 30, 2009—sec. 5, Ch. 577, L. 2005.)

20-25-421. (Effective July 1, 2009) Charges for tuition — waivers. (1) The regents may prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction.

(2) The regents may:

(a) waive nonresident tuition for selected and approved nonresident students, not to exceed at any unit 2% of the full-time equivalent enrollment at that unit during the preceding year; however, when necessary, tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements that provide for the payment, when required, of the student support fee by the reciprocal state;

(b) waive resident tuition for students at least 62 years of age;

(c) waive tuition and fees for:

(i) persons of one-fourth Indian blood or more who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

(ii) persons designated by the department of corrections pursuant to 52-5-112 or 53-1-214;

(iii) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;

(iv) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States;

(v) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action; or

(vi) the spouse or children of a Montana national guard member who was killed or died as a result of injury, disease, or other disability incurred in the line of duty while serving on state active duty;

(d) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance requirements at the state university or college of the person's choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:

(i) a paid or volunteer member of a municipal or rural fire department;

(ii) a law enforcement officer as defined in 7-32-201; or

(iii) a full-time highway patrol officer.

(3) If funds are available after the waivers provided for in subsection (2), the regents may waive tuition for up to 5,000 credits each academic year ~~[in accordance with the national guard education benefit program provided for in 10-1-121]~~."

Section 29. Section 23-2-502, MCA, is amended to read:

"23-2-502. Definitions. As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Certificate of number" means the certificate issued by the county treasurer to the owner of a motorboat or sailboat or by the department of justice to dealers or manufacturers, assigning the motorboat or sailboat an identifying number and containing other information as required by the department of justice.

(2) "Dealer" means a person who engages in whole or in part in the business of buying, selling, or exchanging new and unused vessels or used vessels, or both, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.

(3) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(4) "Documented vessel" means a vessel that has and is required to have a valid marine document as a vessel of the United States.

(5) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat or sailboat.

(6) "Lienholder" means a person holding a security interest.

(7) "Manufacturer" means a person engaged in the business of manufacturing or importing new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

(8) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

(9) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(10) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

(11) (a) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation.

(b) The term does not include a lessee under a lease not intended as security.

(12) "Passenger" means each person carried on board a vessel other than:

(a) the owner or the owner's representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have not contributed any consideration for their carriage and who are paid for their services; or

(d) a guest on board a vessel that is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for the guest's carriage.

(13) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(14) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

(15) "Registration decal" means an adhesive sticker produced by the department of justice and issued by the department of justice, an authorized agent as defined in 61-1-101, or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft as proof of payment of fees ~~in lieu of tax~~ imposed on the motorboat, sailboat, or personal watercraft for the registration period indicated on the decal as recorded by the department of justice under 61-3-101.

(16) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

(17) "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation and is valid against third parties generally.

(18) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

(19) "Validation decal" means an adhesive sticker produced by the department and issued by the department or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft verifying the identifying number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner to meet requirements of the federal standard numbering system.

(20) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(21) "Waters of this state" means any waters within the territorial limits of this state."

Section 30. Section 23-2-614, MCA, is amended to read:

"23-2-614. Exemptions. (1) (a) The provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 with respect to registration, registration decals, certificates of title, and certificates of ownership do not apply to snowmobiles owned or used by the United States or another state or any agency or political subdivision of the United States or another state.

(b) Snowmobiles owned by the state of Montana or any agency or political subdivision of this state are exempt only from the payment of fees and must otherwise comply with all the requirements of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644.

(2) The provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 with respect to registration, registration decals, certificates of title, and certificates of ownership do not apply to unregistered snowmobiles owned by nonresidents of Montana who either:

(a) display visual proof that a nonresident temporary-use *snowmobile* permit has been purchased; or

(b) use the snowmobile only in races and for not more than 30 days in the state. "Race" means an organized competition on a predetermined course that is run according to accepted rules."

Section 31. Section 23-2-615, MCA, is amended to read:

"23-2-615. Nonresident temporary-use *snowmobile* permits — use of fees. (1) The requirements for a nonresident ~~temporary-snowmobile-use~~ *temporary-use snowmobile* permit are as follows:

(a) Application for the issuance of the permit must be made at locations and upon forms prescribed by the department. The forms must include but are not limited to:

(i) the applicant's name and permanent address; and

(ii) an affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of $15, of which 50 cents is a search and rescue surcharge, a nonresident ~~temporary-snowmobile-use~~ *temporary-use snowmobile* sticker must be issued. The sticker must be permanently affixed in a conspicuous manner on the snowmobile.

(2) The ~~temporary~~ *temporary-use snowmobile* permit is valid during the fiscal year in which it is issued.

(3) The *temporary-use snowmobile* permit is not proof of ownership, and a certificate of title may not be issued.

(4) (a) A nonresident ~~temporary-snowmobile-use~~ *temporary-use snowmobile* permit is not required for a snowmobile that qualifies as a racing snowmobile under 23-2-622.

(b) A nonresident ~~temporary snowmobile use~~ *temporary-use snowmobile* permit is not required for a snowmobile that will be used only on trails that are managed jointly by agreement between Montana and another state.

(5) Except as provided in subsection (1)(b), money collected by payment of fees under this section must be deposited in the state special revenue fund to the credit of the department and used as follows:

(a) $8 must be expended in areas that are impacted by nonresident snowmobile use to assist in offsetting snowmobile trail grooming costs;

(b) $1.50 must be used by the department for the enforcement of snowmobile laws pursuant to 23-2-641;

(c) 50 cents must be remitted to the license agent who sold the nonresident ~~temporary snowmobile use~~ *temporary-use snowmobile* permit; and

(d) $4.50 must be used by the department for the statewide snowmobile trail grooming program.

(6) The failure to display the permit as required by this section or the making of false statements in obtaining the permit is a misdemeanor, punishable by a fine of not less than $25 or more than $100."

Section 32. Section 30-9a-501, MCA, is amended to read:

"30-9A-501. Filing office. (1) Except as otherwise provided in subsection (2), if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(a) the office designated for the filing or recording of a mortgage on the real property if:

(i) the collateral is as-extracted collateral or timber to be cut; or

(ii) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(b) the office of secretary of state in all other cases, including if the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(2) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of secretary of state. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement that is or is to become fixtures.

(3) The office in which a financial institution ~~must~~ *is required to* file an effective financing statement, as defined in 7 U.S.C. 1631, is the office of the secretary of state."

Section 33. Section 33-1-1302, MCA, is amended to read:

"33-1-1302. Insurance, medical care discount card, and pharmacy discount card fraud — insurer. (1) A person commits the act of insurance, medical care discount card, or pharmacy discount card fraud when, in the course of offering or selling insurance, a medical care discount card, or a pharmacy discount card, the person misrepresents a material fact, known to the person to be untrue or made with reckless indifference as to whether it is true, with the intention of causing another person to rely upon the misrepresentation to that relying person's detriment.

(2) The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose the penalties provided for in 33-1-317 for a violation of this section. Failure to pay a fine under this section results in a lien upon the assets and property of the person as provided in 33-1-318(3).

(3) In addition to any penalty provided for in 33-1-317, the commissioner may require a person regulated under this title who commits insurance, medical care discount card, or pharmacy discount card fraud to make full restitution to the victim for all financial losses sustained as a result of the fraud with interest of 10% a year from the date of the fraud plus any costs and reasonable attorney fees, less the amount of any income, refund, or other benefit received by the victim from the insurance, medical care discount card, or pharmacy discount card.

(4) The commissioner may require a person who commits insurance fraud to make full restitution to any insurer, purported insurer, or insurance producer who may have sustained any losses as a result of the fraud with interest of 10% a year from the date of the loss plus any costs and reasonable attorney fees.

(5) An insurer, insurance producer, or other person who sustained any losses and who was awarded restitution may bring suit to recover those sums, including any attorney fees, interest at 10% a year, and costs incurred in obtaining a judgment.

(6) Failure of a person to pay any amount ordered under this section constitutes a forfeiture of the right to do business in this state.

(7) A person who purposely or knowingly is involved in the misappropriation or theft of insurance premiums or proceeds, ~~or~~ a medical care discount card fee*, or a pharmacy discount card fee* commits the offense of theft and deceptive practices and is punishable as provided in 45-6-301 and 45-6-317, and the commissioner may refer evidence concerning the violation to the attorney general or other appropriate prosecuting attorney.

(8) As used in this section "medical care discount card" and "pharmacy discount card" have the meanings provided in 33-38-102."

Section 34. Section 33-1-1303, MCA, is amended to read:

"33-1-1303. Reporting requirements. (1) An insurer, insurance producer, or other person who has reason to believe *that* insurance*, medical care discount card, or pharmacy discount card* fraud has occurred shall report the suspected fraud to the commissioner or to the insurance producer's or other person's insurer within 60 days of discovery of the occurrence. An insurer shall review a report given to the insurer, and if the insurer determines that there is a reasonable likelihood that fraud has occurred the insurer shall forward the report to the commissioner within 30 days of receipt.

(2) In the absence of malice, an insurer, insurance producer, or other person may not be subjected to civil liability for reporting or providing information or otherwise cooperating with an investigation of insurance*, medical care discount card, or pharmacy discount card* fraud."

Section 35. Section 33-10-106, MCA, is amended to read:

"33-10-106. Plan of operation — delegation to other organization. (1) (a) The association shall submit to the commissioner a plan of operation and any amendments ~~thereto~~ *to the plan of operation that are* necessary or suitable to ~~assure~~ *ensure* the fair, reasonable, and equitable administration of the

association. The plan of operation and any amendments ~~thereto shall~~ *to the plan* become effective upon approval in writing by the commissioner.

(b) If at any time the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate ~~such~~ reasonable rules ~~as~~ *that* are necessary or advisable to effectuate the provisions of this part. ~~Such~~ *The* rules ~~shall~~ continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation ~~shall~~ *must*:

(a) establish the procedures ~~whereby~~ *under which* all the powers and duties of the association under 33-10-105 and 33-10-116 will be performed;

(b) establish procedures for handling assets of the association;

(c) establish the amount and method of reimbursing members of the board of directors under 33-10-104;

(d) establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims;

(e) establish regular places and times for meetings of the board of directors;

(f) establish procedures for records to be kept of all financial transactions of the association, its insurance producers, and the board of directors;

(g) provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within 30 days after the action or decision;

(h) establish the procedures ~~whereby~~ *under which* selections for the board of directors will be submitted to the commissioner;

(i) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under 33-10-105~~(2)(b)~~*(3)(b)* and 33-10-116, are delegated to a corporation, association, or other organization ~~which~~ *that* performs or will perform functions similar to those of ~~this~~ *the* association or its equivalent in two or more states. ~~Such a~~ *A* corporation, association, or organization ~~shall~~ *must* be reimbursed as a servicing facility would be reimbursed and ~~shall~~ *must* be paid for its performance of any other functions of the association. A delegation under this subsection ~~shall take~~ *takes* effect only with the approval of both the board of directors and the commissioner and may be made only to a corporation, association, or organization ~~which~~ *that* extends protection not substantially less favorable and effective than that provided by this part."

Section 36. Section 33-20-1303, MCA, is amended to read:

"33-20-1303. License requirements. (1) A person may not act as or purport to be a viatical settlement provider unless licensed as a viatical settlement provider under this part.

(2) (a) Except as provided in ~~subsection~~ *subsections* (2)(b) and (2)(c), a person may not broker, solicit, or negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or otherwise act on behalf of a viator without first having obtained a license as a viatical settlement broker

from the commissioner. An applicant for a viatical settlement broker's license shall:

(i) attend required viatical settlement broker training and pass a viatical settlement broker examination designated by the commissioner by rule; and

(ii) pay a fee for an original viatical settlement broker's license pursuant to 33-2-708. The fees for license renewal and lapsed license reinstatement for a viatical settlement broker's license are as provided in 33-2-708.

(b) A resident or nonresident insurance producer must be considered to meet the licensing requirements of a viatical settlement broker and must be permitted to operate as a viatical settlement broker if the insurance producer is licensed as an insurance producer with a life insurance line of authority in this state or in the insurance producer's home state and has been licensed for at least 1 year. In addition:

(i) not later than 30 days from the first day of operating as a viatical settlement broker, the insurance producer shall notify the commissioner, on a form or in a manner prescribed by the commissioner, that the insurance producer is acting as a viatical settlement broker and shall pay a fee pursuant to 33-2-708(1)(b)(viii). The notification must include an acknowledgment by the insurance producer that the insurance producer will operate as a viatical settlement broker in accordance with this part.

(ii) regardless of the manner in which the insurance producer is compensated, the insurance producer must be considered to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator.

(c) If requested by the commissioner, a life insurance producer acting as a viatical settlement broker under this subsection (2) who has previously complied with subsection (2)(b)(i) shall report to the commissioner when renewing a resident or nonresident life insurance producer's license regarding the life insurance producer's intent to continue to act as a viatical settlement broker. The statement regarding an intent to continue acting as a viatical settlement broker must be made on the life insurance producer's license renewal form. A person who makes a statement pursuant to this subsection (2)(c) may not be charged an additional fee.

(d) The provisions of subsections (2)(a) and (2)(b) do not prohibit a person licensed as an attorney, certified public accountant, or certified financial planner who is accredited by a nationally recognized accreditation agency, who is retained to represent the viator, and whose compensation is not paid directly or indirectly by the viatical settlement provider from negotiating viatical settlement contracts without having to obtain a license as a viatical settlement broker.

(3) Regardless of the manner in which a viatical settlement broker or insurance producer is compensated, the viatical settlement broker or insurance producer must be considered to represent only the viator and the viatical settlement broker or insurance producer owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator.

(4) (a) In order to obtain a license to transact business as a viatical settlement provider or as a viatical settlement broker, if required to obtain a viatical settlement broker's license under the provisions of subsection (2)(a), an applicant shall apply for the license in a form approved by the commissioner and shall pay the fee required for the application.

(b) The commissioner may request biographical, organizational, locational, financial, employment, and other information on the application form that the commissioner determines to be relevant to the evaluation of applications and to the granting of the license. The commissioner may require a statement of the business plan or plan of operation of the applicant. The commissioner shall require an applicant for a viatical settlement provider license to file with the application for the commissioner's approval a copy of the viatical settlement contract that the applicant intends to use in business under the license.

(c) If an applicant is a corporation, the corporation must be:

(i) incorporated or organized under the laws of this state; or

(ii) a foreign corporation authorized to transact business in this state.

(d) If the applicant is a partnership, the partnership must be organized under the laws of this state.

(5) (a) An individual licensed as a viatical settlement broker must meet the continuing education requirements in 33-17-1203.

(b) The hours of continuing education required under subsection ~~(4)(a)~~ *(5)(a)* must be in the subjects of life insurance, viaticals, or ethics.

(c) For an individual licensed as a viatical settlement broker, the 24-month period for meeting the continuing education requirements must correlate with the broker's license renewal period.

(d) The viatical settlement broker's license of an individual who fails to comply with this continuing education requirement and who has not been granted an extension of time to comply in accordance with 33-17-1203~~(3)~~*(2)* must be terminated and promptly surrendered to the commissioner."

Section 37. Section 33-20-1315, MCA, is amended to read:

"33-20-1315. Rules — standards — bond. The commissioner may, in accordance with the provisions of 33-1-313, adopt rules for the purpose of carrying out this part. In addition, the commissioner:

(1) may establish standards for evaluating reasonableness of payments under viatical settlement contracts for insured persons who are terminally ill or chronically ill. The authority includes but is not limited to regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy. For the purpose of the standards, the commissioner shall consider payments made in regional and national viatical settlement markets to the extent that this information is available, as well as model standards developed by the national association of insurance commissioners. When the insured is not terminally ill or chronically ill, the commissioner may not establish standards for evaluating the reasonableness of payments, except that a viatical settlement provider shall pay an amount greater than the greater of the cash surrender value or the accelerated death benefit then available.

(2) shall require a bond or other mechanism for financial accountability of viatical settlement providers and viatical settlement brokers; and

(3) shall adopt rules to establish:

(a) trade practice standards for the purpose of regulating advertising and solicitation of viatical settlement contracts;

(b) fees that are commensurate with fees charged pursuant to 33-2-708; and

(c) the continuing education program provided for in 33-20-1303~~(4)~~*(5)*."

Section 38. Section 33-22-2001, MCA, is amended to read:

"33-22-2001. Establishment of small business health insurance pool — intent. (1) There is established a nonprofit legal entity known as the small business health insurance pool, with participating membership consisting of all employer members of the purchasing pool.

(2) The small business health insurance pool is created as a voluntary purchasing pool pursuant to the provisions of 33-22-1815 through 33-22-1817.

(3) Subject to the conditions in 53-6-1201, the purchasing pool shall make group health plan coverage available effective January 1, 2006.

(4) It is the intent of the legislature that the board:

(a) establish criteria that will allow the greatest number of employees possible to be eligible for premium assistance payments by not permitting eligibility for premium assistance payments under this part to employees who continue ~~[to maintain enrollment in another]~~ *other* comprehensive health insurance coverage through a spouse, parent, or other person; and

(b) allow eligible small employers to determine the length of the waiting period that will apply to their employees as long as the waiting period:

(i) is not more than 12 months; and

(ii) applies to all eligible employees within that small group in the same manner.

(5) The legislative auditor shall conduct or have conducted, at least once each biennium covering the prior 2 fiscal years, a financial compliance audit of the board and the purchasing pool. The cost of the audit must be paid for by the purchasing pool as a direct cost not subject to the cap on administrative expenses."

Section 39. Section 37-1-101, MCA, is amended to read:

"37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department ~~of labor and industry~~ shall:

(1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;

(2) standardize policies and procedures and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) contract for or administer and grade examinations required by each board;

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;

(6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;

(7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307~~(1)(c)~~*(1)(d)*;

(9) provide notice to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;

(10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary; and

(11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided."

Section 40. Section 37-1-303, MCA, is amended to read:

"37-1-303. Scope. This part governs the licensure, the practice and unauthorized practice, and the discipline of professions and occupations governed by this title unless otherwise provided by statutes relating to a specific board and the profession or occupation it regulates. The provisions of this chapter must be construed to supplement the statutes relating to a specific board and the profession it regulates. The method for initiating and judging a disciplinary proceeding, specified in 37-1-307~~(1)(c)~~*(1)(d)*, must be used by a board in all disciplinary proceedings involving licensed professionals."

Section 41. Section 37-8-202, MCA, is amended to read:

"37-8-202. Organization — meetings — powers and duties. (1) The board shall:

(a) meet annually and elect from among the members a president and a secretary;

(b) hold other meetings when necessary to transact its business;

(c) prescribe standards for schools preparing persons for registration and licensure under this chapter;

(d) provide for surveys of schools at times the board considers necessary;

(e) approve programs that meet the requirements of this chapter and of the board;

(f) conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list;

(g) cause the prosecution of persons violating this chapter. The board may incur necessary expenses for prosecutions.

(h) adopt rules regarding authorization for prescriptive authority of ~~nurse specialists~~ *advanced practice registered nurses*. If considered appropriate for ~~a nurse specialist~~ *an advanced practice registered nurse* who applies to the board for authorization, prescriptive authority must be granted.

(i) establish a program to assist licensed nurses who are found to be physically or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other drug or substance. The program must provide for assistance to licensees in seeking treatment for substance abuse and monitor their efforts toward rehabilitation. For purposes of funding this

program, the board shall adjust the renewal fee to be commensurate with the cost of the program.

(2) The board may:

(a) participate in and pay fees to a national organization of state boards of nursing to ensure interstate endorsement of licenses;

(b) define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses. Advanced practice registered nurses are nurses who must have additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or the equivalent. The applicant must be certified or in the process of being certified by a certifying body for advanced practice registered nurses. Advanced practice registered nurses include nurse practitioners, nurse-midwives, nurse anesthetists, and clinical nurse specialists.

(c) establish qualifications for licensure of medication aides, including but not limited to educational requirements. The board may define levels of licensure of medication aides consistent with educational qualifications, responsibilities, and the level of acuity of the medication aides' patients. The board may limit the type of drugs that are allowed to be administered and the method of administration.

(d) adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons;

(e) adopt rules necessary to administer this chapter; and

(f) fund additional staff, hired by the department, to administer the provisions of this chapter."

Section 42. Section 37-27-302, MCA, is amended to read:

"37-27-302. Administration of prescription drugs prohibited — exceptions. A licensed direct-entry midwife may not dispense or administer prescription drugs other than newborn vitamin K (oral or intramuscular preparations), pitocin (intramuscular) postpartum, xylocaine (subcutaneous), and, in accordance with ~~ARM 16.24.215~~ *administrative rules adopted by the department of public health and human services*, prophylactic eye agents to newborn infants. These drugs may be administered only if prescribed by a physician."

Section 43. Section 37-31-331, MCA, is amended to read:

"37-31-331. Refusal, revocation, or suspension of licenses — grounds — notice and hearing. (1) The board may refuse to issue, may refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, corporation, or other legal entity operating a salon or shop or a school of barbering, cosmetology, electrology, esthetics, or manicuring to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of public health and human services for the regulation of salons or shops or schools of barbering, cosmetology, electrology, esthetics, or manicuring;

(c) gross malpractice;

(d) continued practice by a person who knowingly has an infectious or contagious disease;

(e) habitual drunkenness or habitual addiction to the use of any habit-forming drug;

(f) permitting a ~~certificate of registration or~~ license to be used when the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

(2) The board may not refuse to authorize the department to issue or renew a license or to revoke or suspend a license already issued until after notice and opportunity for a hearing."

Section 44. Section 37-73-216, MCA, is amended to read:

"37-73-216. Temporary elevator mechanic's license. (1) (a) If, in the case of an emergency or disaster as defined in 10-3-103, the department determines that the number of licensed elevator mechanics is insufficient to cope with the emergency or disaster, the department shall contact the licensed elevator contractors operating in the state and request that the elevator contractors certify to the department any persons in their employ who have an acceptable combination of education and experience to perform elevator work without direct supervision.

(b) As soon as practicable, the department shall issue to a person certified pursuant to subsection (1)(a) a temporary elevator mechanic's license. ~~The department may not charge a fee for a license issued under this section.~~

(c) The license may not be valid for more than 30 days. However, the department may renew the license for 30-day periods in the case of a continuing emergency or disaster.

(d) The department may limit a person's temporary license to certain equipment or to certain geographical areas.

(2) (a) An elevator contractor shall inform the department if there are not any licensed elevator mechanics available to perform elevator work on behalf of the elevator contractor.

(b) The elevator contractor may submit a list to the department of any persons that the elevator contractor certifies have an acceptable combination of documented education and experience to perform the work of an elevator mechanic without direct supervision.

(c) The department shall issue a temporary elevator mechanic's license to any person, certified by an elevator contractor, who applies for a license to the department on a form supplied by the department. The department may charge a fee for a temporary license issued under this subsection that is commensurate with the department's costs in administering this subsection (2).

(d) A temporary license issued under this subsection (2) is valid for a period of 30 days, and the department shall renew the license for additional 30-day periods as long as the shortage of licensed elevator mechanics exists and the licensee is employed by the certifying elevator contractor. However, the department may refuse to renew a temporary license for any temporary licensee that the department determines has had an adequate opportunity to obtain a license under the provisions of 37-73-203 and 37-73-204."

Section 45. Section 37-47-201, MCA, is amended to read:

"37-47-201. Powers and duties of board relating to outfitters, guides, and professional guides. The board shall:

(1) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(2) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

(3) establish outfitter standards, guide standards, and professional guide standards;

(4) adopt:

(a) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications for licensure as an outfitter, guide, or professional guide. Qualifications for outfitters must include training, testing, experience in activities similar to the service to be provided, knowledge of rules of governmental bodies pertaining to outfitting and condition and type of gear and equipment, and the filing of an operations plan.

(b) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public health, safety, and welfare, including evidence of qualification and licensure under this chapter for any person practicing or offering to practice as an outfitter, guide, or professional guide;

(c) rules specifying standards for review and approval of proposed new operations plans involving hunting use or the proposed expansion of net client hunter use, as set forth in 37-47-316 and 37-47-317, under an outfitter's existing operations plan. Approval is not required when part or all of an existing operations plan is transferred from one licensed outfitter to another licensed outfitter. Rules adopted pursuant to this section must provide for solicitation and consideration of comments from hunters and sportspersons in the area to be affected by the proposal who do not make use of outfitter services.

(d) rules establishing outfitter reporting requirements. The reports must be filed annually and report actual leased acreage actively used by clients during that year and actual leased acres unused by clients during that year, plus any other information designated by the board and developed in collaboration with the department of fish, wildlife, and parks or the review committee established in 87-1-269 that is considered necessary to evaluate the effectiveness of the hunter management and hunting access ~~management~~ *enhancement* programs.

(5) hold hearings and proceedings to suspend or revoke licenses of outfitters, guides, and professional guides for due cause;

(6) maintain records of actual clients served by all Montana outfitters that fulfill the requirements of subsection (4)(d)."

Section 46. Section 44-1-504, MCA, is amended to read:

"44-1-504. Special revenue account to partially fund highway patrol officers' salaries — statutory appropriation. (1) There is an account in the state special revenue fund provided for in 17-2-102.

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of justice to fund, pursuant to 2-18-303~~(10)~~*(9)*:

~~(a) an increase in the base salary for the number of highway patrol officer positions existing on June 30, 2006;~~

~~(b)~~*(a)* the base salary and associated operating costs for new highway patrol officer positions ~~created after June 30, 2006~~; and

~~(c)~~*(b)* biennial salary increases ~~after June 30, 2006,~~ for highway patrol officers."

Section 47. Section 45-5-209, MCA, is amended to read:

"45-5-209. Partner or family member assault — no contact order — notice — violation of order — penalty. (1) A court may issue a standing no contact order and direct law enforcement to serve the order on all defendants charged with a violation of 45-5-206. The court order may specify conditions necessary to enhance the safety of any protected person. The court-ordered conditions may include prohibiting the defendant from contacting the protected person in person, by a third party, by telephone, by electronic communication, as defined in 45-8-213, and in writing. The court may impose up to a 1,500-foot restriction on the defendant to stay away from the protected person's location.

(2) Notice of the no contact order must be given orally and in writing by a peace officer at the time that the offender is charged with a violation of 45-5-206. One copy of the order must be given to the defendant, and one copy must be filed with the court.

(3) The charge of a violation of 45-5-206 must be supported by a peace officer's affidavit of probable cause.

(4) The no contact order issued at the time that the defendant is charged with a violation of 45-5-206 is effective for 72 hours or until the defendant makes the first appearance in court.

(5) The court order must state:

"You have been charged with an assault on a partner or family member. You are not allowed to have contact with _____ (list names). You may not _____. Violation of this no contact order is a criminal offense under 45-5-209, MCA, and may result in your arrest. You may be arrested even if the person protected by the no contact order invites or allows you to violate the prohibitions. This order lasts 72 hours or until the court continues or changes the order."

(6) The court shall review and amend, if appropriate, the no contact order at the defendant's first appearance.

(7) A no contact order may be issued by a court with jurisdiction over violations of 45-5-206 at the time of the defendant's arraignment or at any other appearance of the defendant, including sentencing. The no contact order must be in writing. A copy of the no contact order must be given to the defendant when it is issued by the court. The court order shall specify protected persons and prohibited contact, including but not limited to the restriction mentioned in subsection (1).

(8) (a) A person commits the offense of violation of a no contact order if the person, with knowledge of the order, purposely or knowingly violates any provision of any order issued under this section.

(b) Each contact or attempt to make contact with each protected person, directly or indirectly, is a separate offense. Consent of the protected person to prohibited contact is not a defense. A protected person may not be charged with a violation of ~~this offense~~ *a no contact order*.

(c) An offender convicted of violation of a no contact order shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(9) As used in this section, the following definitions apply:

(a) "No contact order" means a court order that prohibits a defendant charged with or convicted of an assault on a partner or family member from contacting a protected person.

(b) "Partner" or "family member" has the meaning provided in 45-5-206.

(c) "Protected person" means a victim of a partner or family member assault listed in a no contact order."

Section 48. Section 50-60-115, MCA, is amended to read:

"50-60-115. Building codes council — purpose and structure. (1) There is a building codes council for the purpose of assisting the department with the application, implementation, and interpretation of the state building code and building codes adopted by counties, cities, or towns. The council shall work cooperatively with the department and with representatives of the construction industry, as well as members of the interested public, to harmonize building codes and related rules with both the needs of the construction industry and the public interest in efficiency, cost-effectiveness, and safety.

(2) The council consists of 12 members appointed by the governor, unless otherwise specified, as follows:

(a) a practicing architect licensed in Montana;

(b) a practicing professional engineer licensed in Montana;

(c) a representative from the building contractor industry;

(d) a county, city, or town building inspector;

(e) a representative of the manufactured housing industry;

(f) a member of the general public who does not hold public office and who does not represent the same industry or agency as another council member;

(g) the director of the department of *public* health and human services or the director's designee;

(h) a licensed electrician selected by the *state electrical* board ~~of electricians~~;

(i) a licensed plumber selected by the board of plumbers;

(j) a licensed elevator mechanic selected by the department;

(k) the state fire marshal or the fire marshal's designee; and

(l) a representative of the home building industry.

(3) The appointed council members serve at the pleasure of the governor for terms of 3 years.

(4) The council is allocated to the department for administrative purposes only as provided in 2-15-121.

(5) The council and its members are entitled to compensation as provided in 2-15-122."

Section 49. Section 50-60-705, MCA, is amended to read:

"50-60-705. Authority of department — rulemaking. (1) The department may consult with engineering authorities and organizations concerned with safety codes, rules, and regulations governing the design, construction, alteration, operation, maintenance, repair, inspection, installation, and testing of elevators, dumbwaiters, escalators, and other equipment subject to the provisions of this part.

(2) (a) The department shall adopt rules relating to the design, construction, alteration, operation, maintenance, repair, inspection, installation, and testing of elevators, dumbwaiters, escalators, and other equipment subject to the provisions of this part.

(b) The department may adopt by reference national standards for equipment subject to the provisions of this part, including national safety codes for elevators and escalators, safety standards for platform lifts and stairway ~~chairs~~ *chairlifts*, safety codes for existing elevators and escalators, and standards for automated people movers.

(3) The department may modify or grant exceptions to any provision of this part or any rule or standard adopted pursuant to this part if to do so would not jeopardize the public safety or welfare."

Section 50. Section 61-1-101, MCA, is amended to read:

"61-1-101. Definitions. As used in this title, unless the context indicates otherwise, the following definitions apply:

(1) (a) "Authorized agent" means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department's motor vehicle titling, registration, or driver records, using an approved automated interface, for specific functions or purposes upon behalf of a third party.

(b) For purposes of this subsection (1), "person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.

(2) "Authorized agent agreement" means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent ~~must~~ *is required to* operate in performing specific motor vehicle or driver-related record functions.

(3) "Bus" means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(4) (a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(b) The term does not include a truck canopy cover or topper.

(5) "Certificate of title" means the paper record issued by the department or by the appropriate agency of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons and the motor vehicle specifically described in the record and that provides notice of a perfected security interest in the motor vehicle.

(6) "Commercial driver's license" means:

(a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; and

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.

(7) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(i) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(iii) is designed to transport at least 16 passengers, including the driver;

(iv) is a school bus; or

(v) is of any size and is used in the transportation of hazardous materials as defined in 61-8-801.

(b) The following vehicles are not commercial motor vehicles:

(i) an authorized emergency service vehicle:

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) entitled to the exemptions granted under 61-8-107;

(ii) a vehicle:

(A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;

(B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and

(C) not used to transport goods for compensation or for hire; or

(iii) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in part-time national guard training, and national guard military technicians, or active duty United States coast guard personnel.

(c) For purposes of this subsection (7):

(i) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;

(ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle;

(iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; and

(iv) "school bus" has the meaning provided in 49 CFR 383.5.

(8) "Commission" means the state transportation commission.

(9) "County where ~~a~~ *the* vehicle is domiciled" means the county in which the vehicle owner permanently resides or, if a vehicle is owned by a corporation or is

leased or used for commercial purposes, the county in which the vehicle is permanently assigned or most frequently used, dispatched, or controlled.

(10) "Custom vehicle" means a motor vehicle other than a motorcycle that:

(a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or

(ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(11) (a) "Dealer" means a person, firm, association, or corporation that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker, as defined in 61-4-131, of new or used motor vehicles, trailers, semitrailers, or pole trailers that are not registered in the name of the person, firm, association, or corporation and that are required to be licensed under chapter 4 of this title.

(b) The term does not include the following:

(i) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(ii) employees of the persons included in subsection (11)(b)(i) when engaged in the specific performance of their duties as employees; or

(iii) public officers while performing or in the operation of their duties.

(12) "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.

(13) "Department" means the department of justice acting directly or through its duly authorized officers or agents.

(14) "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.

(15) "Driver" means a person who drives or is in actual physical control of a vehicle.

(16) "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

(a) any temporary license or instruction permit;

(b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;

(c) any nonresident's driving privilege;

(d) a motorcycle endorsement; or

(e) a commercial driver's license.

(17) "Electric personal assistive mobility device" means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour.

(18) "For hire" means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(19) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

(20) "Highway" or "public highway" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

(21) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(22) "Implement of husbandry" means a vehicle that is designed for agricultural purposes and exclusively used by the owner of the vehicle in the conduct of the owner's agricultural operations.

(23) "Kit vehicle" is a motor vehicle assembled from a manufactured kit either as:

(a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle; or

(b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain, commonly referred to as a donor vehicle.

(24) "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

(25) "Manufactured home" has the meaning provided in 15-1-101.

(26) "Manufacturer" includes any person, firm, corporation, or association engaged in the manufacture of motor vehicles, trailers, or semitrailers as a regular business.

(27) "Manufacturer's certificate of origin" means the original paper record produced and issued by the manufacturer of a vehicle or, if in a medium authorized by the department, an electronic record created and transmitted by the manufacturer of a vehicle to the manufacturer's agent or a licensed dealer. The record must establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of ownership of the vehicle to the person or persons named in the certificate.

(28) "Mobile home" or "housetrailer" has the meaning provided in 15-1-101.

(29) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

(30) (a) "Motor carrier" means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles upon a public highway in this state for the transportation of property for hire on a commercial basis.

(b) The term does not include motor carriers regulated under Title 69, chapter 12.

(31) (a) "Motorcycle" means a motor vehicle having not more than three wheels in contact with the ground and a saddle on which the operator sits or a platform on which the operator stands and a driving wheel in contact with the ground in addition to the wheels of the vehicle itself. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.

(b) The term does not include a tractor, a bicycle as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.

(32) (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.

(b) The term does not include a bicycle, as defined in 61-8-102, or a motorized nonstandard vehicle.

(33) "Motor home" means a motor vehicle:

(a) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

(b) containing permanently installed independent life support systems that meet the ANSIA/A119.2 standard; and

(c) providing at least four of the following types of facilities:

(i) cooking, refrigeration, or icebox;

(ii) self-contained toilet;

(iii) heating or air-conditioning, or both;

(iv) potable water supply, including a faucet and sink; or

(v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply; or both.

(34) (a) "Motorized nonstandard vehicle" means a vehicle, upon or by which a person may be transported, that:

(i) is propelled by its own power, using an internal combustion engine or an electric motor;

(ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(c) The term does not include an electric personal assistive mobility device or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(35) (a) "Motor vehicle" means a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state.

(b) The term does not include a bicycle as defined in 61-8-102 or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is

designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

(36) "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.

(37) "Nonresident" means a person who is not a resident of this state.

(38) (a) "Not used for general transportation purposes" means the operation of a motor vehicle, registered as a collector's item, a custom vehicle, or a street rod, to or from a car club activity or event or an exhibit, show, cruise night, or parade, or other occasional transportation activity.

(b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.

(39) (a) "Off-highway vehicle" means a self-propelled vehicle used for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) The term does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) vehicles otherwise issued a certificate of title and registered under the laws of the state, unless the vehicle is used for off-road recreation on public lands.

(40) "Operator" means a person who is in actual physical control of a motor vehicle.

(41) "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested the right of possession or control.

(42) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

(43) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

(44) "Pole trailer" means a vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or

structural members capable generally of sustaining themselves as beams between the supporting connections.

(45) "Police officer" means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(46) (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor capable of producing not more than 50 horsepower.

(b) The term does not include golf carts.

(47) "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

(48) (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated upon rails.

(b) The term does not include streetcars.

(49) "Recreational vehicle" includes self-propelled vehicles originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use.

(50) "Registration" or "register" means the act or process of creating an electronic record, maintained by the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records.

(51) "Registration decal" means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county treasurer to the owner of a motor vehicle, trailer, semitrailer, or pole trailer as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department under 61-3-101.

(52) "Registration receipt" means a paper record that is produced and issued or, if authorized by the department, an electronic record that is transmitted by the department, its authorized agent, or a county treasurer to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the vehicle for the registration period indicated in the receipt.

(53) "Retail sale" means the sale of a new motor vehicle or used motor vehicle, a recreational vehicle, a trailer, a travel trailer, a motorcycle, a quadricycle, or special mobile equipment by a dealer to a person for purposes other than resale.

(54) "Revocation" means that the driver's license and privilege to drive a motor vehicle on the public highways are terminated and may not be renewed or restored. An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.

(55) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways, the term refers to any roadway separately but not to all roadways collectively.

(56) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

(57) "Semitrailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.

(58) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, that is designed primarily for travel on snow or ice, that may be steered by skis or runners, and that is not otherwise registered or licensed under the laws of the state of Montana.

(59) "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this subsection is partial and does not exclude other vehicles that are within the general terms of this subsection.

(60) (a) "Specially constructed vehicle" means a motor vehicle, including a motorcycle, that:

(i) was not originally constructed under a distinctive make, model, or type by a generally recognized manufacturer of motor vehicles;

(ii) has been structurally modified so that it does not have the same appearance as similar vehicles from a generally recognized manufacturer of motor vehicles;

(iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from other vehicles;

(iv) has been constructed or assembled by using major component parts from one or more manufactured vehicles and that cannot be identified as a specific make or model; or

(v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.

(b) The term does not include a motor vehicle that has been repaired or restored to its original design by replacing parts.

(61) (a) "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use.

(b) The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.

(62) (a) "Stop", when required, means complete cessation from movement.

(b) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrol officer, or traffic control sign or signal.

(63) "Street" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

(64) "Street rod" means a motor vehicle, other than a motorcycle, that:

(a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949, including a kit vehicle intended to resemble a vehicle manufactured before 1949; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(65) "Suspension" means that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn, but only during the period of suspension.

(66) "Temporary registration permit" means a paper record:

(a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:

(i) required vehicle and owner information; and

(ii) the purpose for which the record was generated; and

(b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs.

(67) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

(68) (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

(69) "Transaction summary receipt" means an electronic record produced and issued by the department, its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain a unique transaction record number and summarize and verify the electronic filing of the transaction described in the receipt on the electronic record of title maintained under 61-3-101.

(70) "Travel trailer" means a vehicle:

(a) that is 40 feet or less in length;

(b) that is of a size or weight that does not require special permits when towed by a motor vehicle;

(c) with gross trailer area of less than 320 square feet; and

(d) that is designed to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.

(71) "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

(72) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

(73) "Under the influence" has the meaning provided in 61-8-401.

(74) "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, given away, or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as "secondhand" within the ordinary meaning of that term.

(75) "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.

(76) (a) "Vehicle" means a device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.

(b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

(77) "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the motor vehicle or a component part of the motor vehicle.

(78) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(79) "Wholesaler" means a person, firm, partnership, association, or corporation that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, recreational vehicle, trailer, semitrailer, pole trailer, special mobile equipment, motorcycle, or quadricycle only to vehicle dealers and auto auctions licensed under chapter 4, part 1."

Section 51. Section 61-3-101, MCA, is amended to read:

"61-3-101. Duties of department — records. (1) (a) The department shall create and maintain a central registry of electronic files that includes an electronic record of title as specified in this section for motor vehicles, trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, and snowmobiles for which:

(i) an application for a certificate of title has been received by the department, its authorized agent, or a county treasurer;

(ii) a certificate of title has been issued by the department; or

(iii) a registration, security interest, or lien transaction has been recorded by the department.

(b) The central registry of electronic files described in subsection (1) must include an electronic record of registration for each motor vehicle, trailer,

semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, and snowmobile registered in this state:

(i) for which the certificate of title was issued by another jurisdiction and that was registered in another jurisdiction; or

(ii) for which a certificate of title has not been issued or is not required.

(2) The electronic record of title for a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile must contain the following information:

(a) the name, residence, and mailing address of the owner and:

(i) if the owner is the holder of a driver's license or identification card issued by the department or by a motor vehicle agency of another jurisdiction, the owner's driver's license or identification card number and the issuing jurisdiction; or

(ii) if the owner is a corporation, the registered agent's name and, if the agent is the holder of a driver's license or identification card, the agent's driver's license or identification card number and the issuing jurisdiction;

(b) a description of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, including, as pertinent to the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile:

(i) the manufacturer of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile;

(ii) the manufacturer's designation of the style of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile;

(iii) the identifying number;

(iv) the manufacturer's designated model year of manufacture and the odometer reading, if applicable, at the time of the transfer of ownership;

(v) the character of the motive power and the shipping weight of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile as shown by the manufacturer;

(vi) the distinctive license number assigned to the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, if any;

(vii) the gross vehicle weight and gross vehicle weight rating, as determined by the manufacturer, or, for a trailer operating interstate, the declared weight;

(viii) the unique transaction record number, when available and assigned by the department, for each transaction pertaining to the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile and the date of each transaction;

(ix) any brand required under state law or any brand carried forward from a certificate of title surrendered from another jurisdiction;

(x) if the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile has been or is currently registered in this state, the distinctive license plate number or certificate number assigned to the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile and a record of all fees and local

option taxes, if applicable, paid for the current and preceding registration periods; and

(xi) other information that may be required for registration or may from time to time be found desirable.

(3) The electronic record of registration for a motor vehicle, trailer, semitrailer, pole trailer, *camper,* motorboat, personal watercraft, sailboat, or snowmobile must contain, at a minimum, the following information:

(a) the name, residence, and mailing address of the owner and the driver's license or identification card data required in subsections (2)(a)(i) and (2)(a)(ii);

(b) the same data that is required under subsection (2)(b) for the electronic record of title; and

(c) any other data considered to be pertinent by the department.

(4) In order to prevent an accumulation of unneeded records and files, regardless of any other statutory requirements, the department may destroy all records and files that relate to motor vehicles, trailers, semitrailers, pole trailers, *campers,* motorboats, personal watercraft, sailboats, or snowmobiles that have not been registered within the preceding 4 years and that do not have an active lien.

(5) Subject to the provisions of Title 61, chapter 11, part 5, motor vehicle records maintained by the department must be open to inspection during reasonable business hours, and the department shall furnish any information from the records, except personal information and highly restricted personal information, as defined in 61-11-503, upon payment by the applicant of the cost of the information requested. Prior to providing the information, the department shall require the applicant to provide identification. The department may not disclose personal information or highly restricted personal information except as permitted or required under 61-11-507, 61-11-508, or 61-11-509."

Section 52. Section 61-3-116, MCA, is amended to read:

"61-3-116. Services that may be performed by authorized agent. (1) The department may authorize a person to perform, on the department's behalf, specific motor vehicle titling, registration, or driver licensing functions assigned to or administered by the department under Title 23, chapter 2, parts 5, 6, and 8 or this title. The authorization must be evidenced by an authorized agent agreement.

(2) An authorized agent must meet all of the requirements established by the department.

(3) An authorized agent shall submit to the department or its designee all statutorily prescribed fees, taxes, or penalties the authorized agent collects.

(4) (a) Except when specifically prohibited by statute or the authorized agent agreement, in addition to statutorily prescribed fees, taxes, and penalties, an authorized agent may collect and retain a reasonable convenience fee for services provided.

(b) If an authorized agent is a municipal or county officer, the convenience fee may be charged and collected as permitted under 7-5-2133 or 7-5-4125.

(5) The department may provide an automated mechanism to ensure that any statutorily prescribed fee, tax, or penalty collected by an authorized agent or a county treasurer in a county other than the county where ~~a~~ *the* vehicle is

domiciled is transferred to the county treasurer of the county where the vehicle is domiciled.

(6) As used in this section, "person" has the meaning provided in 61-1-101(1)(b)."

Section 53. Section 61-3-217, MCA, is amended to read:

"61-3-217. Certificate of title — duties — examination of application — records check — incomplete application. (1) (a) Upon receipt of an application for a certificate of title and any supporting documents, an authorized agent of the department or a county treasurer shall:

(i) review the application and documents;

(ii) complete the records check required in subsection (2); and

(iii) if an authorized agent of the department or the county treasurer is satisfied as to the genuineness and regularity of the application and satisfied that the applicant is entitled to the issuance of a certificate of title, enter the transfer of interest on the electronic record of title.

(b) If an authorized agent of the department or the county treasurer is not satisfied as to the genuineness and regularity of the application or is not satisfied that the applicant is entitled to the issuance of a certificate of title, the authorized agent or the county treasurer may not enter the transfer of interest on the electronic record of title.

(c) If an authorized agent of the department or the county treasurer enters the transfer of interest on the electronic record of title, an authorized agent or the county treasurer shall:

(i) issue a transaction summary receipt to the applicant and, if requested, to any secured party or lienholder with a perfected security interest; and

(ii) as prescribed by the department, forward to the department the application, the assigned certificate of title, and any other documents provided in support of the application.

(2) The department, its authorized agent, or a county treasurer who first receives an application for a certificate of title shall check the vehicle identification number shown on the application against:

(a) the records of motor vehicles, trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, or snowmobiles maintained by the department under 61-3-101;

(b) the reported stolen motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile databases maintained on the state's criminal justice information network and by the national crime information center; and

(c) any other records or databases prescribed by the department.

(3) (a) Upon receipt of an application for a certificate of title and supporting documents that have been processed by an authorized agent of the department or a county treasurer, the department shall review the documents to determine if the application is complete. If the department determines that the application is incomplete, the department shall enter the incomplete status of the application on the ~~electric~~ *electronic* record of title for the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile and return to the applicant, by first-class mail, the application and all supporting documents. The department shall provide a statement with a

specific description of the additional information or documents that must be supplied by the applicant to complete the application process.

(b) The department may not complete the application process, remove the incomplete status notation on the electronic record of title, or issue a certificate of title until the applicant returns the completed application, including any supporting additional information or documents, to the department."

Section 54. Section 61-3-224, MCA, is amended to read:

"61-3-224. Temporary registration permit — issuance — placement — fees. (1) The department, an authorized agent, or a county treasurer may issue a temporary registration permit to:

(a) a Montana resident who acquires a new or used motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for operation of the vehicle or vessel prior to titling and registration of the vehicle *or vessel* under this chapter;

(b) the owner of a salvage vehicle for moving the vehicle to and from a designated inspection site prior to applying for a new certificate of title under 61-3-212;

(c) the owner of a motor vehicle, trailer, semitrailer, or pole trailer registered in this state for operation of the vehicle while awaiting production and receipt of special or duplicate license plates ordered for the vehicle under this chapter;

(d) a nonresident of this state who acquires a motor vehicle, trailer, semitrailer, or pole trailer in this state for operation of the vehicle prior to its titling and registration under the laws of the nonresident's jurisdiction of residence;

(e) a dealer licensed in another state who brings a motor vehicle or trailer designed and used to apply fertilizer to agricultural lands into the state for special demonstration in this state; or

(f) a financial institution located in Montana for a prospective purchaser to demonstrate a motor vehicle that the financial institution has obtained following repossession.

(2) A person, using a department-approved electronic interface, may issue a temporary registration permit for the specified purposes if the person is:

(a) a Montana resident who acquires a new or used motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for operation of the vehicle or vessel prior to titling and registration of the vehicle *or vessel* under this chapter;

(b) the owner of a salvage vehicle for moving the vehicle to and from a designated inspection site prior to applying for a new certificate of title under 61-3-212;

(c) a nonresident of this state who acquires a motor vehicle, trailer, semitrailer, or pole trailer in this state for operation of the vehicle prior to its titling and registration under the laws of the nonresident's jurisdiction of residence; or

(d) a financial institution located in Montana that intends to allow a prospective purchaser to demonstrate a motor vehicle that the financial institution has obtained following repossession.

(3) A temporary registration permit issued under this section must contain the following information:

(a) a temporary plate number, registration receipt number, or transaction record number, as prescribed by the department;

(b) the expiration date of the temporary registration permit; and

(c) if required by the department, a description of the motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile, including year, make, model, and vehicle identification number, the name of the person from whom ownership of the motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile was transferred, the name, mailing address, and residence address of the person to whom ownership of the motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile has been transferred, and the date of issuance.

(4) A temporary registration permit for:

(a) a motor vehicle, trailer, semitrailer, or pole trailer must be plainly visible and firmly attached to the rear exterior of the vehicle where a license plate is required to be displayed; and

(b) a motorboat, a sailboat that is 12 feet in length or longer, a snowmobile, or an off-highway vehicle must be plainly visible and firmly attached to the vehicle or vessel.

(5) (a) Except as provided in 61-3-431 and subsection (5)(b) of this section, a $3 fee is imposed upon issuance of a temporary registration permit by the department, an authorized agent, or a county treasurer. The fee must be paid by the owner of the vehicle or vessel and collected by the department, the authorized agent, or a county treasurer when the vehicle is registered.

(b) Except as provided in 61-3-431, a fee of $8 is imposed and must be paid upon issuance of a temporary registration permit by:

(i) the department, an authorized agent, or a county treasurer to a nonresident of this state who acquires a vehicle or vessel in this state; or

(ii) a person who issued a temporary registration permit using a department-approved electronic interface.

(6) The fees imposed under this section, upon collection, must be forwarded to the state and deposited in the motor vehicle electronic commerce operating account provided for in 61-3-118.

(7) If a temporary registration permit is issued under this section to a person to whom ownership of a vehicle or vessel has been transferred, the permitholder shall title and register the vehicle or vessel in this or another jurisdiction before the ownership of the vehicle or vessel may be transferred to another person."

Section 55. Section 61-3-301, MCA, is amended to read:

"61-3-301. Registration — license plate required — display. (1) (a) Except as provided in 61-4-120, 61-4-129, and subsection (1)(b) of this section, a person may not operate a motor vehicle, trailer, semitrailer, ~~or~~ pole trailer*, or travel trailer* upon the public highways of Montana unless the motor vehicle, trailer, semitrailer, ~~or~~ pole trailer*, or travel trailer* is properly registered and has the proper license plates conspicuously displayed~~, one on the front and one on the rear of~~ *on* the motor vehicle, trailer, semitrailer, ~~or~~ pole trailer, ~~each~~ *or travel trailer. A license plate must be* securely fastened to prevent it from swinging and ~~unobstructed~~ *may not be obstructed* from plain view.

(b) A motorcycle, quadricycle, trailer, semitrailer, pole trailer, or travel trailer must ~~display~~ *have* a single license plate *displayed* on the rear of the vehicle. A custom vehicle or street rod registered under 61-3-320(1)(b) or (1)(c)(iii) may display a single license plate firmly attached to the rear exterior of the custom vehicle or street rod. *All other motor vehicles must have one license plate displayed on the front and one licence plate displayed on the rear of the motor vehicle.*

(c) A person may not display on a motor vehicle, trailer, semitrailer, ~~or~~ pole trailer*, or travel trailer* at the same time a number assigned to it under any motor vehicle law except as provided in this chapter.

(2) A person may not purchase or display on a motor vehicle, trailer, semitrailer, ~~or~~ pole trailer*, or travel trailer* a license plate bearing the number assigned to any county, as provided in 61-3-332, other than the county where the ~~motor~~ vehicle~~,~~ *is domiciled or the county where the* trailer, semitrailer, ~~or~~ pole trailer*, or travel trailer* is domiciled at the time of application for registration.

(3) It is unlawful to:

(a) display license plates issued to one motor vehicle, trailer, semitrailer, ~~or~~ pole trailer*, or travel trailer* on any other motor vehicle, trailer, semitrailer, pole trailer, or travel trailer unless legally transferred as provided by statute;

(b) repaint old license plates to resemble current license plates; or

(c) display a prior design of standard license plates issued under 61-3-332(3)(a) or special license plates issued under 61-3-332(8) or 61-3-421 more than 18 months after a new design of standard license plates or special license plates has been issued, except as provided in 61-3-332(3)(c) and (3)(d), 61-3-448, or 61-3-468.

(4) For the purposes of this section, "conspicuously displayed" means that the required license plates are obviously visible and firmly attached to:

(a) the front *bumper* and the rear bumper of a motor vehicle~~, trailer, semitrailer, or pole trailer~~ equipped with front and rear bumpers*, except for a custom vehicle or street rod as provided in subsection (1)(b)*; or

(b) ~~other~~ *a* clearly visible ~~locations~~ *location* on the ~~front and the rear exteriors of a motor vehicle~~*, rear of a* trailer, semitrailer, ~~or~~ pole trailer*, or travel trailer*."

Section 56. Section 61-3-303, MCA, is amended to read:

"61-3-303. Original registration — process — fees. (1) Except as provided in 61-3-324, a Montana resident who owns a motor vehicle, trailer, semitrailer, or pole trailer operated or driven upon the public highways of this state shall register the motor vehicle, trailer, semitrailer, or pole trailer in the office of the county treasurer in the county where the owner permanently resides or, if the motor vehicle, trailer, semitrailer, or pole trailer is owned by a corporation or used primarily for commercial purposes, in the county where the ~~motor~~ vehicle~~,~~ *is domiciled or the county where the* trailer, semitrailer, or pole trailer is domiciled.

(2) Except as provided in subsection (3), the county treasurer shall register any vehicle for which:

(a) as of the date that the motor vehicle, trailer, semitrailer, or pole trailer is to be registered, the owner delivers an application for a certificate of title to the department, its authorized agent, or a county treasurer; or

(b) the county treasurer confirms that the department has an electronic record of title for the motor vehicle, trailer, semitrailer, or pole trailer as provided under 61-3-101.

(3) (a) A county treasurer may register a motor vehicle, trailer, semitrailer, or pole trailer for which a certificate of title and registration were issued in another jurisdiction and for which registration is required under 61-3-701 after the county treasurer examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in 61-3-701. The county treasurer may ask the motor vehicle, trailer, semitrailer, or pole trailer owner to provide additional information, prescribed by the department, to ensure that the electronic record of registration maintained by the department is complete.

(b) A county treasurer may register a motor vehicle, trailer, semitrailer, or pole trailer for which the new owner cannot, due to circumstances beyond the new owner's control, surrender a previously assigned certificate of title. The new owner may submit an application for certificate of title, subject to the registration renewal limitations of 61-3-312.

(4) Upon registering a motor vehicle, trailer, semitrailer, or pole trailer for the first time in this state, the county treasurer shall:

(a) update the electronic record of title, if any, maintained for the vehicle by the department under 61-3-101;

(b) assign a registration period for the vehicle under 61-3-311;

(c) determine the vehicle's age, if required, under 61-3-501;

(d) determine the amount of fees, including local option taxes or fees, to be paid under subsection (5); and

(e) assign and issue license plates for the vehicle under 61-3-331.

(5) Unless otherwise provided by law, a person registering a motor vehicle shall pay to the county treasurer:

(a) the fees in lieu of tax or registration fees as required for:

(i) a light vehicle under 61-3-321(2) or 61-3-562, in addition to, if applicable, any local option tax or fee under 61-3-537 or 61-3-570;

(ii) a motor home under 61-3-321;

(iii) a travel trailer under 61-3-321;

(iv) a motorcycle or quadricycle under 61-3-321;

(v) a bus, a truck having a manufacturer's rated capacity of more than 1 ton, or a truck tractor under 61-3-321 and 61-3-529; or

(vi) a trailer under 61-3-321;

(b) a donation of $1 or more if the person indicates that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts; and

(c) a donation of $1 or more if the person indicates that the person wishes to donate to promote education on, support for, and awareness of traumatic brain injury.

(6) The county treasurer may not issue a registration receipt or license plates for the motor vehicle, trailer, semitrailer, or pole trailer to the owner unless the owner makes the payments required by subsection (5).

(7) The department may make full and complete investigation of the registration status of the motor vehicle, trailer, semitrailer, or pole trailer. A person seeking to register a motor vehicle, trailer, semitrailer, or pole trailer under this section shall provide additional information to support the registration to the department if requested.

(8) Revenue that accrues from the voluntary donation provided in subsection (5)(b) must be forwarded by the respective county treasurer to the department of revenue for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

(9) (a) Except as provided in subsection (9)(b), the fees in lieu of tax, taxes, and fees imposed on or collected from the registration of a travel trailer, motorcycle, or quadricycle or a trailer, semitrailer, or pole trailer that has a declared weight of less than 26,000 pounds are required to be paid only once during the time that the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is owned by the same person who registered the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer. Once registered, a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is registered permanently unless ownership is transferred.

(b) Whenever ownership of a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is transferred, the new owner is required to register the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer as if it were being registered for the first time, including paying all of the required fees in lieu of tax, taxes, and fees.

(10) Revenue that accrues from the voluntary donation provided in subsection (5)(c) must be forwarded by the respective county treasurer to the department of revenue for deposit in the state special revenue fund to the credit of the account established in 2-15-2218 to support activities related to education regarding prevention of traumatic brain injury."

Section 57. Section 61-3-311, MCA, is amended to read:

"61-3-311. Registration — time periods. (1) Unless a motor vehicle, trailer, semitrailer, or pole trailer is subject to permanent registration under this title and except as provided in 61-3-313, 61-3-701, 61-3-721, and subsection (3) of this section, the department, an authorized agent, or a county treasurer shall, upon original registration of a motor vehicle in this state, assign each motor vehicle to a registration period, as provided in 61-3-316, based upon the calendar month in which the motor vehicle is first registered in this state and designate the calendar year in which the current registration will expire.

(2) Each registration period commences on the first day of the calendar month in the calendar year in which the motor vehicle is registered and the motor vehicle's registration expires on the earlier of:

(a) the last day of the month preceding the anniversary of the registration period for the year designated on the motor vehicle's registration decal if the motor vehicle is registered for a minimum 12-month period;

(b) the last day of the month preceding the anniversary of the registration period for the year designated on the motor vehicle's registration decal if the motor vehicle is registered for a period of at least 13 but less than 25 months; or

(c) the transfer of ownership of the motor vehicle, trailer, semitrailer, or pole trailer to another person.

(3) (a) Upon request of the motor vehicle owner, a county treasurer may assign a motor vehicle to a registration period, as provided in 61-3-316, other than *a registration period beginning in* the calendar month in which the motor vehicle is first registered in this state if at least 13 but less than 25 months will elapse between the first day of the calendar month in which the motor vehicle is registered and the last day of the month preceding the anniversary of the requested registration period in the year designated on the motor vehicle's registration decal.

(b) The county treasurer shall determine fees imposed for a motor vehicle registered for a period between 13 and 24 months. All registration fees, fees in lieu of tax, or local option taxes or fees that are imposed on an annual basis must be prorated based on the number of months in the requested registration period.

(c) A motor vehicle registered under the provisions of 61-3-303(3)(b) may not be registered under this subsection (3).

(4) If a motor vehicle, trailer, semitrailer, or pole trailer is permanently registered under the provisions of this chapter, the registration is not subject to expiration unless the registered owner of the motor vehicle, trailer, semitrailer, or pole trailer transfers ownership of the vehicle to another person."

Section 58. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles and vessels — certain vehicles exempt from registration fees — disposition of fees. (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, renewal of registration of motor vehicles, snowmobiles, watercraft, trailers, semitrailers, and pole trailers as provided in subsections (2) through (18):

(2) (a) Except as provided in subsection (2)(b), there is a registration fee imposed on light vehicles. The registration fee is in addition to other annual registration fees.

(b) The following vehicles are exempt from the registration fee imposed in this subsection (2):

(i) light vehicles that meet the description of property exempt from taxation under 15-6-201(1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j), (1)(l), or (1)(m), 15-6-203, or 15-6-215, except as provided in 61-3-520;

(ii) a light vehicle owned by a person eligible for a waiver of registration fees under 61-3-460;

(iii) a light vehicle registered under 61-3-456.

(c) The owner of a light vehicle subject to the provisions of 61-3-313 through 61-3-316 may register the light vehicle for a period not to exceed 24 months. The application for registration or reregistration must be accompanied by the registration fee and all other fees required in this chapter for each 12-month period of the 24-month period.

(d) The annual registration fee for light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton is as follows:

(i) if the vehicle is 4 or less years old, $217;

(ii) if the vehicle is 5 through 10 years old, $87; and

(iii) if the vehicle is 11 or more years old, $28;

(e) The owner of a light vehicle 11 years old or older may permanently register the light vehicle as provided in 61-3-562.

(3) (a) Except as provided in subsection (3)(c), the owner of a trailer, semitrailer, or pole trailer that has a declared weight of less than 6,000 pounds shall pay a one-time fee of $61.25.

(b) The owner of a trailer, semitrailer, or pole trailer with a declared weight of 6,000 pounds or more shall pay a one-time fee of $148.25.

(c) Except as provided in subsection (17), whenever a transfer of ownership of a trailer, semitrailer, or pole trailer described in subsection (3)(a) or (3)(b) occurs, the one-time fee required under subsection (3)(a) or (3)(b) must be paid by the new owner.

(4) The annual registration fee for motor vehicles owned and operated solely as collector's items pursuant to 61-3-411 that are for motor vehicles:

(a) 2,850 pounds and over, $10; and

(b) under 2,850 pounds, $5.

(5) (a) The registration fee for off-highway vehicles is $61.25. This fee is a one-time fee, except upon transfer of ownership of an off-highway vehicle. Except as provided in subsection (17), whenever a transfer of ownership of an off-highway vehicle occurs, the one-time fee required under this subsection must be paid by the new owner.

(b) The application for registration for an off-highway vehicle must be made to the county treasurer of the county in which the owner resides, on a form furnished by the department for that purpose. The application must contain:

(i) the name and home mailing address of the owner;

(ii) the certificate of title number;

(iii) the name of the manufacturer of the off-highway vehicle;

(iv) the model number or name;

(v) the year of manufacture;

(vi) a statement evidencing payment of the *registration* fee ~~in lieu of property tax~~; and

(vii) other information that the department may require.

(c) If the off-highway vehicle was previously registered, the application must be accompanied by the registration certificate for the most recent year in which it was registered. Upon payment of the registration fee, the county treasurer shall sign the application and issue a registration receipt containing the information considered necessary by the department. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(6) The annual registration fee for heavy trucks, buses, and logging trucks in excess of 1 ton is $22.75.

(7) (a) The owner of a motor home shall pay an annual fee based on the age of the motor home according to the following schedule:

(i) less than 2 years old, $282.50;

(ii) 2 years old and less than 5 years old, $224.25;

(iii) 5 years old and less than 8 years old, $132.50; and

(iv) 8 years old and older, $97.50.

(b) (i) Except as provided in subsection (7)(b)(ii), the age of a motor home is determined by subtracting the manufacturer's designated model year from the current calendar year.

(ii) If the purchase year of a motor home precedes the designated model year of the motor home and the motor home is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the *registration* fee ~~in lieu of tax~~.

(c) (i) The owner of a motor home 11 years old or older subject to the registration fee under subsection (7)(a) may permanently register the motor home upon payment of:

(A) a fee of $237.50; and

(B) if applicable, five times the personalized license plate fees under 61-3-406.

(ii) The following series of license plates may not be used for purposes of permanent registration of a motor home:

(A) Montana national guard license plates issued under 61-3-458(2)(b);

(B) reserve armed forces license plates issued under 61-3-458(2)(c);

(C) license plates bearing a wheelchair design as a symbol of a person with a disability issued under 61-3-332(9);

(D) amateur radio operator license plates issued under 61-3-422;

(E) collegiate license plates issued under 61-3-465; and

(F) generic specialty license plates issued under 61-3-479.

(iii) Except as provided in subsection (17), whenever a transfer of ownership of a permanently registered motor home occurs, the applicable fees required under this subsection (7) must be paid by the new owner.

(8) (a) The registration fee for motorcycles and quadricycles registered for use on public highways is $53.25, and the registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is $114.50.

(b) An additional fee of $5 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, an additional fee of $16 must be collected for the registration of each motorcycle or quadricycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(c) The registration fees in this subsection (8) are a one-time fee, except upon transfer of ownership of a motorcycle or quadricycle.

(9) (a) The registration fee for travel trailers under 16 feet in length is $72 and the registration fee for travel trailers 16 feet in length or longer is $152. This fee is a one-time fee, except upon transfer of ownership of a travel trailer.

(b) Except as provided in subsection (17), whenever a transfer of ownership of a travel trailer occurs, the one-time fee required under subsection (9)(a) must be paid by the new owner.

(10) (a) The owner of each motorboat, sailboat, personal watercraft, or motorized pontoon requiring numbering by this state shall file an application for number in the office of the county treasurer in the county where the motorboat,

sailboat, personal watercraft, or motorized pontoon is owned, on forms prepared and furnished by the department. The application must be signed by the owner of the motorboat, sailboat, personal watercraft, or motorized pontoon and be accompanied by the appropriate registration fee. The owner of a motorboat, sailboat, personal watercraft, or motorized pontoon shall pay a one-time fee as follows:

(i) for a personal watercraft or a motorboat, sailboat, or motorized pontoon less than 16 feet in length, $65.50;

(ii) for a motorboat, sailboat, or motorized pontoon at least 16 feet in length but less than 19 feet in length, $125.50; and

(iii) for a motorboat, sailboat, or motorized pontoon 19 feet in length or longer, $295.50.

(b) This fee is a one-time fee, except upon transfer of ownership of the motorboat, sailboat, personal watercraft, or motorized pontoon.

(11) (a) Except as provided in subsection (11)(b), the one-time registration fee for a snowmobile is $60.50.

(b) If a snowmobile is licensed by a Montana business and is owned exclusively for the purpose of daily rental to customers, the business is assessed:

(i) a fee of $40.50 in the first year of registration; and

(ii) if the business reregisters the snowmobile for a second year, a fee of $20. If the business reregisters the snowmobile for a third year, the snowmobile must be permanently registered and the business is assessed the *registration* fee ~~in lieu of tax~~ imposed in subsection (11)(a).

(c) Except as provided in subsection (17), whenever a transfer of ownership of a snowmobile occurs, the applicable fee required under this subsection (11) must be paid by the new owner.

(12) A fee of $5 must be collected when a new set of standard license plates or a new single standard license plate provided for under 61-3-332 is issued.

(13) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, snowmobiles, watercraft, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.

(14) When the license plates for a registered motor vehicle are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335, the owner of the motor vehicle shall pay a registration fee as follows:

(a) heavy trucks, buses, and logging trucks in excess of 1 ton, 75 cents;

(b) light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton:

(i) if the vehicle is 4 years old or less, $195.75;

(ii) if the vehicle is 5 years old through 10 years old, $65.75; and

(iii) if the vehicle is 11 years old or older, $6.75;

(c) motor homes:

(i) less than 2 years old, $250.50;

(ii) 2 years old and less than 5 years old, $192.25;

(iii) 5 years old and less than 8 years old, $100.50; and

(iv) 8 years old and older, $65.50;

(d) motorcycles and quadricycles registered for use on the public highways, $42, and motorcycles and quadricycles registered for both off-road use and for use on the public highways, $103.25. This fee is a one-time fee, except upon transfer of ownership.

(e) travel trailers under 16 feet in length, $50.50, and travel trailers 16 feet in length or longer, $130.50. This fee is a one-time fee, except upon transfer of ownership.

(f) trailers, semitrailers, or pole trailers with a declared weight of less than 6,000 pounds, $52. This fee is a one-time fee, except upon transfer of ownership.

(g) trailers, semitrailers, or pole trailers with a declared weight of 6,000 pounds or more, $139. This fee is a one-time fee, except upon transfer of ownership.

(15) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

(16) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

(17) The fees imposed by subsections (2) through (11) are not required to be paid by a dealer for the enumerated vehicles or vessels that constitute inventory of the dealership.

(18) (a) Unless a person exercises the option in subsection (18)(b), an additional fee of $4 must be collected for each light vehicle registered for licensing pursuant to this part. This fee must be accounted for and transmitted separately from the registration fee. The fee must be deposited in an account in the state special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities. Of the $4 fee, the department shall use $3.50 for state parks, 25 cents for fishing access sites, and 25 cents for the operation of state-owned facilities at Virginia City and Nevada City.

(b) A person who registers a light vehicle may, at the time of annual registration, certify that the person does not intend to use the vehicle to visit state parks and fishing access sites and may make a written election not to pay the additional $4 fee provided for in subsection (18)(a). If a written election is made, the fee may not be collected.

(19) For each light vehicle, trailer, semitrailer, pole trailer, heavy truck, motor home, motorcycle, quadricycle, and travel trailer subject to a registration fee under this section, an additional fee of $5 must be collected and forwarded to the state for deposit in the account established in 44-1-504.

(20) This section does not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is governed by 61-3-721."

Section 59. Section 61-3-461, MCA, is amended to read:

"61-3-461. Short title. Sections 61-3-461 through ~~61-3-467~~ *61-3-468* may be cited as the "Montana Collegiate License Plates Act"."

Section 60. Section 61-3-462, MCA, is amended to read:

"61-3-462. Definitions. As used in 61-3-461 through ~~61-3-467~~ *61-3-468*, the following definitions apply:

(1) "Collegiate license plates" means license plates bearing the colors, numerals, letters, and insignia provided in 61-3-463 and issued as provided in 61-3-464 through 61-3-466.

(2) "Institution" means:

(a) a unit of the Montana university system as designated in 20-25-201;

(b) a community college district as defined in 20-15-101; or

(c) a college or university located in Montana and accredited by a national or regional accrediting association for institutions of higher learning to grant baccalaureate degrees."

Section 61. Section 61-3-721, MCA, is amended to read:

"61-3-721. Proportional registration of motor fleet vehicles, registration periods, application, fee formula, and payment — permanent registration of trailer and semitrailer fleets — transfer of ownership — transfer of license plates. (1) An owner of one or more fleets may register and license each fleet for operation in this state by filing an application with the department of transportation. The application must contain the information pertinent to motor vehicle, trailer, semitrailer, or pole trailer registration that is required by the department of transportation. If an electronic record of title has not been created for or a certificate of title issued for an apportionable vehicle in the fleet, the department of transportation, as an authorized agent of the department of justice, may also process the application for certificate of title for the vehicle as provided in 61-3-203 and 61-3-217.

(2) Except as provided in 61-3-318(1) and subsection (6) of this section, each fleet subject to the provisions of 61-3-711 through 61-3-733 must be registered for an annual registration period based upon the date that the fleet is first registered in this state.

(3) There are four annual registration periods, each of which begins on the first day of a calendar quarter. As used in this subsection, "calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31. The periods are:

(a) January 1 through March 31.....1st period

(b) April 1 through June 30 .....2nd period

(c) July 1 through September 30 .....3rd period

(d) October 1 through December 31 .....4th period

(4) Registration of a fleet of apportionable motor vehicles under subsection (2) must be renewed on or before the last day of the month for the designated annual registration period unless a different registration period has been authorized pursuant to 61-3-716(2). The department shall provide for simultaneous registration of multiple fleets of apportionable motor vehicles in common ownership.

(5) Except as provided in subsection (6), the application for each fleet may be accompanied by a fee payment computed by:

(a) dividing in-state miles by total fleet miles as defined in the applicable agreement, arrangement, or declaration entered into pursuant to 61-3-711 through 61-3-733;

(b) determining the total amount necessary to register each motor vehicle, trailer, semitrailer, or pole trailer in the fleet for which registration is

requested, based on the regular annual registration fees prescribed by 61-3-321 and chapter 10, part 2, and the property taxes that are due on the fleet;

(c) multiplying the sum obtained under subsection (5)(b) by the fraction obtained under subsection (5)(a).

(6) Upon renewal or new registration, each trailer, semitrailer, or pole trailer fleet must be permanently registered and assessed a registration fee of $82.50. Each trailer, semitrailer, or pole trailer in the fleet must be issued a permanent license plate and ~~sticker~~ *registration decal*.

(7) The fee assessed in subsection (6) is a one-time fee except upon transfer of ownership of a trailer, semitrailer, or pole trailer.

(8) If the owner of a fleet removes a trailer, semitrailer, or pole trailer from the fleet, the owner shall surrender the registration and license plate assigned to the trailer, semitrailer, or pole trailer to the department of transportation. The owner may not transfer the license plate and ~~sticker~~ *registration decal* to a trailer, semitrailer, or pole trailer that is added to the fleet.

(9) Applications submitted with fees may be recomputed by the department of transportation. The department of transportation shall furnish a statement showing the overpayment or balance due.

(10) Applications submitted without fees must be computed by the department of transportation. The department of transportation shall furnish a statement showing the amount of fees due."

Section 62. Section 61-4-109, MCA, is amended to read:

"61-4-109. Privileges incident to license — withdrawal upon certain conditions. (1) The privileges of a dealer licensed under the provisions of this part to use and display a set of dealer plates or a demonstrator plate on a motor vehicle held for sale by the dealer and to issue a ~~20-day~~ *temporary registration* permit, under the authority of 61-4-111 or 61-4-112, upon the sale of a motor vehicle by the dealer are specifically conditioned on the dealer's satisfaction of the bond requirements of 61-4-101(7) and the general liability insurance coverage requirements of 61-4-123, without interruption or lapse.

(2) If the department is notified or determines that a dealer's bond or general liability insurance has lapsed or been canceled, all dealer plates, demonstrator plates, and ~~20-day~~ *temporary registration* permits assigned or issued to the dealer are subject to immediate withdrawal and confiscation, upon demand, by the department or by a compliance specialist on behalf of the department and may not be returned to the dealer until the bond and general liability insurance requirements have been satisfied.

(3) A dealer whose privileges are withdrawn under this section may otherwise engage in the dealer's business operations during the period of withdrawal.

(4) If the lapse of bond or general liability insurance is not corrected with 30 days, the department may initiate administrative action to suspend or revoke the dealer's license under 61-4-105(2)."

Section 63. Section 61-5-121, MCA, is amended to read:

"61-5-121. Disposition of fees. (1) Except as provided in subsection (3), the disposition of the fees from driver's licenses, motorcycle endorsements, commercial driver's licenses, and replacement driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 22.3% of each driver's license fee, 18.25% of each commercial driver's license fee, and 25% of each replacement driver's license fee must be deposited into an account in the state special revenue fund. Upon receiving an appropriation, the department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. The department shall report the amount deposited and transferred under this subsection (1)(a) to the legislative finance committee by October 31 of the year preceding each regular session of the legislature.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 2.5% of each driver's license fee, 2.5% of each commercial driver's license fee, and 3.75% of each replacement driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state general fund.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 3.34% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state general fund.

(d) The amount of 20.7% of each driver's license fee, 16.94% of each commercial driver's license fee, and 8.75% of each replacement driver's license fee must be deposited into the state traffic education account.

(e) In addition to the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii), the remainder of each driver's license fee, each commercial driver's license fee, and each replacement driver's license fee must be deposited into the state general fund.

(f) The amount of 63.46% of each motorcycle endorsement fee must be deposited into the state motorcycle safety account in the state special revenue fund, and the amount of 33.2% of each motorcycle endorsement fee must be deposited into the state general fund.

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and ~~duplicate~~ *replacement* driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. The county treasurer or agent shall then remit all remaining fees to the state for deposit as provided in subsections (1)(a) and (1)(d) through (1)(f).

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and ~~duplicate~~ *replacement* driver's licenses are collected by the department, it shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(f).

(3) The fee for a renewal notice, whether collected by a county treasurer, an authorized agent, or the department, must be remitted to the department for deposit in the state general fund."

Section 64. Section 61-8-715, MCA, is amended to read:

"61-8-715. Reckless driving — reckless endangerment of highway workers — penalty. (1) Except as provided in subsection (2), a person convicted of reckless driving under 61-8-301(1)(a) or (1)(b) or convicted of reckless endangerment of a highway worker under 61-8-301(4) shall be

punished upon a first conviction by imprisonment for a term of not more than 90 days, ~~by~~ a fine of not less than $25 or more than $300, or both. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 10 days or more than 6 months, ~~by~~ a fine of not less than $50 or more than $500, or both.

(2) A person who is convicted of reckless driving under 61-8-301 and whose offense results in the death or serious bodily injury of another person shall be punished by a fine in an amount not exceeding $10,000, ~~by~~ incarceration for a term not to exceed 1 year, or both. ~~Section 61-8-351(8) does not apply to a prosecution under 61-8-301(1)(b) that is punishable under this subsection.~~"

Section 65. Section 76-9-103, MCA, is amended to read:

"76-9-103. Planning — effect on shooting ranges. The laws of this state concerning planning~~, master plans, or comprehensive plans~~ *or growth policies, as defined in 76-1-103,* may not be construed to authorize an ordinance, resolution, or rule that would:

(1) prevent the operation of an existing shooting range as a nonconforming use;

(2) prohibit the establishment of new shooting ranges, but ~~it~~ *the ordinance, resolution, or rule* may regulate the construction of shooting ranges to specified zones; or

(3) prevent the erection or construction of safety improvements on existing shooting ranges."

Section 66. Section 76-14-103, MCA, is amended to read:

"76-14-103. Definitions. As used in this part, the following definitions apply:

(1) "Committee" means the Montana rangeland resources committee selected as provided in 2-15-3305(2).

(2) "Department" means the department of natural resources and conservation.

~~(3) "Grazeable woodlands" means forest land on which the understory includes, as an integral part of the forest plant community, plants that can be grazed without significantly impairing other forest values.~~

~~(4)~~*(3)* "Montana rangeland resource program" means the rangeland resource program administered by the conservation districts division of the department of natural resources and conservation in concert with the Montana conservation districts law and the Grass Conservation Act to maintain and enhance the rangeland resources of the state.

~~(5)~~*(4)* "Person" means any individual or association, partnership, corporation, or other business entity.

~~(6)~~*(5)* "Range condition" means the current condition of the vegetation on a range site in relation to the natural potential plant community for that site.

~~(7)~~*(6)* "Range management" means a distinct discipline founded on ecological principles and dealing with the husbandry of rangelands and range resources.

~~(8)~~*(7)* "Rangeland" means land on which the native vegetation (climax or natural potential) is predominantly grasses, grasslike plants, forbs, or shrubs suitable for grazing or browsing use.

~~(9)~~*(8)* "State coordinator" means the state coordinator for the Montana Rangeland Resources Act provided for in 2-15-3304.

~~(10)~~*(9)* "Tame ~~pasture~~ *pastureland*" means land that has been modified by mechanical cultivation and ~~whose~~ *that has* current vegetation ~~consists~~ *consisting* of native or introduced species, or both.

~~(11)~~*(10)* "Users of rangeland" means all persons, including but not limited to ranchers, farmers, ~~sportsmen~~ *hunters, anglers*, recreationists, and others appreciative of the functional, productive, aesthetic, and recreational uses of rangelands."

Section 67. Section 76-15-302, MCA, is amended to read:

"76-15-302. Nominations for supervisor. (1) Within 30 days after the date of issuance of a certificate of organization of a conservation district by the secretary of state, nominating petitions may be filed with the ~~registrar~~ *election administrator*, as defined in Title 13, to nominate candidates for supervisors of the district. A nominating petition may not be accepted by the ~~registrar~~ *election administrator* unless it is ~~subscribed~~ *signed* by 10 or more qualified electors within the boundaries of the district ~~wherein~~ *in which* the nominee resides. Qualified electors may sign more than one nominating petition to nominate more than one candidate for supervisor.

(2) If more than twice the number of candidates are nominated than the number to be elected at the general election, the ~~registrar~~ *election administrator* shall give due notice of a nominating election to be held for the selection of candidates for supervisor to appear on the next general election ballot. This nominating election may be held in conjunction with the state primary election."

Section 68. Section 82-4-127, MCA, is amended to read:

"82-4-127. Effect of siting permit on subsequent mining permits. When the department has sufficient information to approve or disapprove a mine-site location permit application on either the entire area being considered for a mine-site location permit or a portion ~~thereof~~ *of the area* on the grounds listed in 82-4-227(2) and ~~(4)~~ *(7)*, ~~it shall so state in a written statement~~ *the department shall provide written notification* to the operator *that the department has enough information to approve or disapprove the application.* ~~This~~ *The* decision is binding on the department with regard to strip-mining or underground-mining permit applications as specified in part 2 of this chapter unless:

(1) new information is submitted or obtained in compliance with part 2 of this chapter ~~which~~ *that* indicates a situation not existing or known at the time of the issuance of a permit under this part;

(2) an application under this part misrepresented information related to the criteria;

(3) a situation*,* ~~develops because of strip-mining or underground-mining operations~~ which was not in existence at the time of the issuance of a permit under this part*, develops because of strip mining or underground mining operations*."

Section 69. Section 82-4-222, MCA, is amended to read:

"82-4-222. Permit application — application revisions. (1) An operator desiring a permit shall file an application that must contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. The plan must reflect

thorough advance investigation and study by the operator, include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of use, and provide:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the area of land to be affected by the permit and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the affected area;

(c) the names and addresses of the present owners of record and any purchasers under contracts for deed of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this part and an identification of those permits;

(g) (i) whether the applicant is in compliance with 82-4-251 and, if known, whether each officer, partner, director, or any individual, owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant, is subject to any of the provisions of 82-4-251. If so, the applicant shall certify the fact.

(ii) whether any of the parties or persons specified in subsection (1)(g)(i) have ever had a strip-mining or underground-mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond. If so, a detailed explanation of the facts involved in each case must be attached.

(h) whether the applicant has a record of outstanding reclamation fees with the federal coal regulatory authority;

(i) the names and addresses of any persons who are engaged in strip-mining or underground-mining activities on behalf of the applicant;

(j) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(k) the results of any test borings or core samplings that the applicant or the applicant's agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of the minerals, including the acidity, sulfur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of the seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application must contain two copies each of two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set must depict subsurface conditions at intervals the department requires across the surface and must run at a 90-degree angle to the other set. The department may not require intervals of less than 500 feet. Each cross section must depict the thickness and geologic character of all known strata, beginning with the topsoil. In addition, each application for an

underground-mining permit must be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit period. These cross sections must also include all existing shafts, entries, and haulageways.

(l) the name and date of a daily newspaper of general circulation within the county in which the applicant will prominently publish at least once a week for 4 successive weeks after submission of the application an announcement of the applicant's application for a strip-mining or underground-mining permit and a detailed description of the area of land to be affected if a permit is granted;

(m) a determination of the probable hydrologic consequences of coal mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime~~,~~ *and* quantity and quality of water in surface water and ground water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas, so that cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability can be made. However, this determination is not required until hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit may not be approved until the information is available and is incorporated into the application. The determination of probable hydrologic consequences must include findings on:

(i) whether adverse impacts may occur to the hydrologic balance;

(ii) whether acid-forming or toxic-forming materials are present that could result in the contamination of ground water or surface water supplies;

(iii) whether the proposed operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas that is used for domestic, agricultural, industrial, or other beneficial use; and

(iv) what impact the operation will have on:

(A) sediment yields from the disturbed area;

(B) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

(C) flooding or streamflow alteration;

(D) ground water and surface water availability; and

(E) other characteristics required by the department that potentially affect beneficial uses of water in and adjacent to the permit area;

(n) a plan for monitoring ground water and surface water, based upon the determination of probable hydrologic consequences required under subsection (1)(m). The plan must provide for the monitoring of parameters that relate to the availability and suitability of ground water and surface water for current and approved postmining land uses and the objectives for protection of the hydrologic balance.

(o) a map depicting the projected postmining topography, using cross sections, range diagrams, or other methods approved by the department, showing the manner of spoil placement, showing removal of coal volume and overburden swell, and including:

(i) locations and elevations of tie-in points with adjacent unmined drainageways;

(ii) approximate locations of primary or highest order drainageways and associated drainage divides in the reclaimed topography; and

(iii) projected elevations of primary drainageways and associated drainage divides and generalized slopes with the level of detail appropriate to project the approximate original contour;

(p) the condition of the land to be covered by the permit prior to any mining, including:

(i) the land uses existing at the time of the application and, if the land has a history of previous mining, the uses that preceded any mining;

(ii) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil characteristics, topography, and vegetative cover; and

(iii) the productivity of the land prior to mining, including appropriate classification as prime farm land, as well as the average yield of food, fiber, forage, or wood products from land under high levels of management;

(q) a coal conservation plan; and

(r) other or further information as the department may require.

(2) The application for a permit must be accompanied by two copies of all maps meeting the requirements of subsections (2)(a) through ~~(2)(q)~~ *(2)(n)*. The maps must:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining, the boundaries of surface properties, and names of owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of the area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan must indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the proposed location of all facilities;

(j) show the location of test boring holes;

(k) show the surface location lines of any geologic cross sections that have been submitted;

(l) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the

area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs, and trees;

(m) be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification must be signed and notarized. The department may reject a map as incomplete if its accuracy is not attested.

(n) contain other or further information as the department may require.

(3) If the department finds that the probable total annual production at all locations of any strip-mining or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable hydrologic consequences that the department requires and the statement of result of test borings or core samplings must, upon written request of the operator, be performed by a qualified public or private laboratory designated by the department. The department shall assume the cost of the determination and statement to the extent that it has received funds for this purpose.

(4) In addition to the information and maps required by this section, each application for a permit must be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, and revegetating, and a reclamation plan for the area affected by the operation, which proposals must meet the requirements of this part and rules adopted under this part. The reclamation plan must address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is anticipated that individual permits will be sought.

(5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued by an insurance company authorized to do business in the state, certifying that the applicant has in force for the strip-mining or underground-mining and reclamation operations for which the permit is sought a public liability insurance policy or evidence that the applicant has satisfied other state or federal self-insurance requirements. This policy must provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of strip-mining or underground-coal-mining and reclamation operations, including use of explosives, and entitled to compensation under applicable provisions of state law. The permittee shall maintain the policy in full force and effect during the term of the permit and any renewal until all reclamation operations have been completed.

(6) An applicant may revise an application for a permit, a permit amendment, or a permit revision that is pending on January 1, 2004, in order to incorporate the provisions of this part.

(7) A permittee may apply to revise and the department may approve an application to incorporate the provisions of this part into a reclamation plan approved before January 1, 2004. The reclamation plan may be revised whether or not reclamation has been completed pursuant to the reclamation plan.

(8) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of the applicant's application for public inspection with the clerk and recorder at the courthouse of the county in which the major portion of mining is proposed to occur."

Section 70. Section 85-2-225, MCA, is amended to read:

"85-2-225. Filing fee — processing fee for remitted claims. (1) Each claim filed under 85-2-221 or 85-2-222 must be accompanied by a filing fee in the amount of $40, subject to the following exceptions:

(a) the total filing fees for all claims filed by one person in any one water court division may not exceed $480; and

(b) a filing fee is not required ~~accompanying~~ *to accompany* a claim of an existing right that is included in a decree of a court in the state of Montana and that is accompanied by a copy of that decree or pertinent portion of the decree.

(2) A claim that is exempt from the filing requirements of 85-2-221(1) but that is voluntarily filed must be accompanied by a filing fee in the amount of $40. Exempt claims for a single development with several uses if filed simultaneously may be accompanied by a filing fee in the amount of $40.

(3) (a) ~~Except as provided in subsection (3)(c), in~~ *In* addition to the filing fee set forth in subsection (1), each statement of claim filed under 85-2-221(3) must be accompanied by a processing fee in the amount of $150, which must be deposited in the general fund.

(b) The water judge shall assess against the late claimant all reasonable administrative costs and expenses that may be incurred by the court due to the filing of the late claim and the consideration of the objection, ~~which~~ *and the* assessment must be deposited in the general fund."

Section 71. Section 85-2-350, MCA, is amended to read:

"85-2-350. Clark Fork River basin task force — duties — water management plan. (1) The governor's office shall designate an appropriate entity to convene and coordinate a Clark Fork River basin task force to prepare proposed amendments to the state water plan provided for under 85-1-203 related to the Clark Fork River basin. The designated appropriate entity shall:

(a) identify the individuals and organizations, public, tribal, and private, that are interested in or affected by water management in the Clark Fork River basin;

(b) provide advice and assistance in selecting representatives to serve on the task force;

(c) develop, in consultation with the task force, appropriate opportunities for public participation in studies of water management in the Clark Fork River basin; and

(d) ensure that all watershed and viewpoints within the basin are adequately represented on the task force, including a representation from the following:

(i) the reach of the Clark Fork River in Montana below its confluence with the Flathead River;

(ii) the Flathead River basin, including Flathead Lake, from Flathead Lake to the confluence of the Flathead River and the Clark Fork River;

(iii) the Flathead River basin upstream from Flathead Lake;

(iv) the reach of the Clark Fork River between the confluence of the Blackfoot River and the Clark Fork River and the confluence of the Clark Fork River and the Flathead River;

(v) the Bitterroot River basin as defined in 85-2-344; and

(vi) the Upper Clark Fork River basin as defined in 85-2-335.

(2) Task force members shall serve 2-year terms and may serve more than one term. The Confederated Salish and Kootenai tribal government ~~must have~~ *has* the right to appoint a representative to the task force.

(3) The task force shall:

(a) identify short-term and long-term water management issues and problems and alternatives for resolving any issues or problems identified;

(b) identify data gaps regarding basin water resources, especially ground water;

(c) coordinate water management by local basin watershed groups, water user organizations, and individual water users to ensure long-term sustainable water use;

(d) provide a forum for all interests to communicate about water issues;

(e) advise government agencies about water management and permitting activities in the Clark Fork River basin;

(f) consult with local and tribal governments within the Clark Fork River basin;

(g) make recommendations, if recommendations are considered necessary, to the department for consideration as amendments to the state water plan provided for under 85-1-203 related to the Clark Fork River basin; and

(h) report to:

(i) the department on a periodic basis;

(ii) the environmental quality council annually; and

(iii) the *appropriations subcommittee that deals with* natural resources and commerce ~~appropriations subcommittee~~ each legislative session."

Section 72. Section 87-5-704, MCA, is amended to read:

"87-5-704. Rulemaking. (1) The commission may adopt rules to implement 87-5-701, 87-5-702, and 87-5-711 through 87-5-715. In implementing 87-5-713, the commission may adopt rules approving species of wildlife that may be introduced by the department. In implementing 87-5-715, the commission may adopt rules to authorize the control or extermination by the department of introduced wildlife species.

(2) The department may adopt rules to implement 87-5-713 and 87-5-715. In implementing 87-5-713 and 87-5-715, the department may not adopt rules in the subject areas reserved to the commission in subsection (1).

(3) (a) The commission may adopt rules to implement 87-5-705 through 87-5-709 and 87-5-712 regarding the importation, possession, and sale of exotic wildlife, including adoption of a list of controlled exotic wildlife and a list of prohibited exotic wildlife. The commission may by rule add to the list of noncontrolled exotic wildlife provided in 87-5-706. The department of livestock may not issue import permits for exotic wildlife on a list of controlled exotic wildlife or prohibited exotic wildlife without authorization from the department.

(b) The commission may adopt rules regarding the operation of the classification review committee established in 87-5-708.

(4) ~~(a)~~ The department may adopt rules regarding issuance of the authorization permit provided for in 87-5-705(2), including the establishment of a reasonable fee for the permit.

~~(b) The department may adopt rules regarding the amnesty program provided for in 87-5-709(2).~~"

Section 73. Section 14, Chapter 464, Laws of 2005, is amended to read:

"**Section 14. Termination.** The amendments to 19-6-709*, the insertion of the reference to [section 1] in 17-7-502,* and [section 1] terminate upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709."

Section 74. Section 5, Chapter 535, Laws of 2005, is amended to read:

"**Section 5. Contingent termination.** The voluntary income tax checkoff created in [section 1] ~~terminates~~ *and the end-stage renal disease program account in [section 2] terminate* on January 1 of the first tax year following the 2 immediately preceding tax years in which the voluntary checkoff raises less than $10,000 in each of those 2 tax years."

Section 75. Directions to code commissioner. The code commissioner is directed to implement 1-11-101(2)(g)(ii) by correcting any clearly inaccurate references to other sections of the Montana Code Annotated contained in material enacted by the 60th legislature.

Approved March 22, 2007

CHAPTER NO. 45

[HB 20]

AN ACT PROVIDING THAT INJUNCTIVE RELIEF IS AVAILABLE FOR ENFORCEMENT OF ALL WATER RIGHTS; PROVIDING THAT A PERSON TRYING TO ENFORCE A WATER RIGHT MUST BE AWARDED REASONABLE COSTS AND ATTORNEY FEES; AMENDING SECTION 85-2-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-125, MCA, is amended to read:

"85-2-125. Recovery of *costs and* attorney fees by prevailing party. (1) ~~In the Upper Clark Fork River basin, as defined in 85-2-335, the prevailing party in a hearing under 85-2-309 on an application for a permit or change approval may bring an action in district court for costs and attorney fees. The court shall award the prevailing party reasonable costs and attorney fees.~~

~~(2) (a) If a final decision of the department on an application for a change approval in the Upper Clark Fork River basin is appealed to a district court, the district court shall award the prevailing party reasonable costs and attorney fees.~~

~~(b)~~ If a final decision of the department on an application for a permit is appealed to district court, the district court shall award the prevailing party reasonable *costs and* attorney fees.

~~(3)~~*(2)* The party obtaining injunctive relief in an action to enforce a water right must be awarded reasonable costs and attorney fees. For the purposes of

this section, "enforce a water right" means an action by a party with a water right to enjoin the use of water by a person that does not have a water right."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 27, 2007

CHAPTER NO. 46

[HB 43]

AN ACT REVISING LAWS GOVERNING CANCELED AND DUPLICATE STATE WARRANTS; REVISING TERMS; ELIMINATING EXCEPTIONS FOR INDEMNIFICATION FOR REPLACEMENT WARRANTS; AND AMENDING SECTIONS 2-18-411, 17-8-303, 17-8-306, AND 39-3-213, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-411, MCA, is amended to read:

"2-18-411. Lost warrants — ~~duplicate~~ *replacement.* (1) Upon receipt of proof satisfactory to the treasurer that a payroll warrant issued by the state treasurer has been lost or destroyed prior to its delivery to the employee to whom it is payable, the state treasurer shall, upon certification by the payee's appointing power, issue a ~~duplicate~~ *replacement* warrant in payment of the same amount without requiring a bond from the payee. Any loss incurred in connection with the warrant must be charged against the account from which the payment was derived.

(2) A payroll warrant is considered to have been lost if it has been sent to the payee but not received by the payee within a reasonable time, consistent with the policy of prompt payment of employees, or if it has been sent to a state officer or employee for delivery to the payee or for forwarding to another state officer or employee for delivery and has not been received within a reasonable time."

Section 2. Section 17-8-303, MCA, is amended to read:

"17-8-303. Warrants — presentation and cancellation. (1) State warrants must be presented for payment within the time limits specified as follows:

(a) Except as provided in subsection (1)(b), all warrants drawn by the state treasurer on the state treasury must be presented for payment within 6 months after the date of issue.

(b) Warrants issued for the department of public health and human services that are funded to any extent with federal money must be presented for payment within 180 days after the date of issue.

(2) If the payee or legal holder of any warrant fails to present it for payment within the time specified in subsection (1), the state treasurer shall record the warrant as ~~canceled~~ *stale-dated* and the amount must be credited to a separate private purpose trust fund account administered by the treasurer. If the payee or legal owner of a ~~canceled~~ *stale-dated* warrant presents it for payment or presents a claim for payment within 4 years from the date of issue, the state

treasurer may, upon proper showing by affidavit, issue a new warrant in lieu of the ~~canceled~~ *stale-dated* warrant.

(3) Three years and 6 months after ~~cancellation~~ *being stale-dated*, the warrant must be classed as unclaimed property subject to the provisions of Title 70, chapter 9, part 8. If the payee or legal owner of a ~~canceled~~ *stale-dated* warrant presents it for payment or presents a claim for payment, the presentation must be to the department of revenue as provided in 70-9-815."

Section 3. Section 17-8-306, MCA, is amended to read:

"17-8-306. Issuance of ~~duplicate~~ *replacement* warrant. (1) The state treasurer may issue a ~~duplicate~~ *replacement* warrant whenever any warrant drawn by the state is lost or destroyed. This ~~duplicate~~ *replacement* warrant must be in the same form as the original~~, except that it must have plainly printed across its face the word "duplicate"~~.

(2) Whenever a ~~duplicate~~ *replacement* warrant is issued, the state treasurer ~~may~~ *shall* place a stop-payment order on the original warrant.

(3) Whenever the owner or custodian applies for the issuance of a ~~duplicate~~ *replacement* warrant, the application must include an agreement to indemnify *and hold harmless* the state and its officers and employees from any loss resulting from the issuance of a ~~duplicate~~ *replacement* warrant. ~~An indemnity agreement is not required if:~~

~~(a) the payee is:~~

~~(i) the United States government;~~

~~(ii) a state of the United States;~~

~~(iii) any agency, instrumentality, or officer of the United States government or of a state, county, city, consolidated government, town, district, or other political subdivision of a state or any officer thereof; or~~

~~(b) the owner or custodian is the state of Montana or any agency or officer of the state.~~

(4) Any loss incurred in connection with the issuance of a ~~duplicate~~ *replacement* warrant must be charged against the account from which the payment was derived."

Section 4. Section 39-3-213, MCA, is amended to read:

"39-3-213. Disposition of wages. (1) The commissioner of labor shall deposit wages collected under parts 2 and 4 of this chapter into the wage collection fund and shall attempt to make payment of wages to the entitled person. Wages deposited into the wage collection fund do not bear interest. The wage collection fund is an agency fund as provided in 17-2-102(3)(d). The payment of wages collected may be made by means of state warrants.

(2) A warrant issued pursuant to subsection (1) that remains unclaimed for more than 6 months from the date of issuance must be returned to the state treasurer ~~for cancellation~~ *to be stale-dated* in accordance with 17-8-303."

Approved March 27, 2007

CHAPTER NO. 47

[HB 62]

AN ACT PROVIDING THAT VACATION LEAVE MAY BE DONATED TO A NONREFUNDABLE SICK LEAVE FUND; PROVIDING THAT DONATED VACATION LEAVE IS NOT ELIGIBLE FOR CASH COMPENSATION UPON TERMINATION; AMENDING SECTIONS 2-18-617 AND 2-18-618, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-617, MCA, is amended to read:

"2-18-617. Accumulation of leave — cash for unused — transfer. (1) (a) Except as provided in subsection (1)(b), annual vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued.

(b) It is the responsibility of the head of an employing agency to provide reasonable opportunity for an employee to use rather than forfeit accumulated vacation leave. If an employee makes a reasonable written request to use excess vacation leave before the excess vacation leave must be forfeited under subsection (1)(a) and the employing agency denies the request, the excess vacation leave is not forfeited and the employing agency shall ensure that the employee may use the excess vacation leave before the end of the calendar year in which the leave would have been forfeited under subsection (1)(a).

(2) An employee who terminates employment for a reason not reflecting discredit on the employee is entitled upon the date of termination to cash compensation for unused vacation leave, assuming that the employee has worked the qualifying period set forth in 2-18-611. *Vacation leave contributed to the sick leave fund, provided for in 2-18-618, is nonrefundable and is not eligible for cash compensation upon termination.*

(3) ~~However, if~~ *If* an employee transfers between agencies of the same jurisdiction, cash compensation may not be paid for unused vacation leave. In a transfer, the receiving agency assumes the liability for the accrued vacation credits transferred with the employee.

(4) An employee may contribute accumulated vacation leave to a nonrefundable sick leave fund provided for in 2-18-618. The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, adopt rules to implement this subsection.

~~(4)~~*(5)* This section does not prohibit a school district from providing cash compensation for unused vacation leave in lieu of the accumulation of the leave, either through a collective bargaining agreement or, in the absence of a collective bargaining agreement, through a policy."

Section 2. Section 2-18-618, MCA, is amended to read:

"2-18-618. Sick leave. (1) A permanent full-time employee earns sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year. Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate of 12 working days for each year of service without restriction as to the number of

working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) A short-term worker may not earn sick leave credits.

(6) Except as otherwise provided in 2-18-1311, an employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave must be computed on the basis of the employee's salary or wage at the time the employee terminates employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any sick leave rights or benefits accrued prior to July 1, 1971. However, when an employee transfers between agencies within the same jurisdiction, the employee is not entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(7) An employee who receives a lump-sum payment pursuant to this section or who, pursuant to 2-18-1311, converts unused sick leave to employer contributions to a health care expense trust account and who is again employed by any agency may not be credited with sick leave for which the employee has previously been compensated or for which the employee has received an employer contribution to the health care expense trust account.

(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

(9) An employee of a state agency may contribute any portion of the employee's accumulated sick leave *or accumulated vacation leave* to a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an extensive illness or accident exhausts the employee's accumulated sick leave, irrespective of the employee's membership or nonmembership in the employee welfare benefit plan established pursuant to 2-18-1304. The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

(10) A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave *or vacation leave*."

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved March 27, 2007

CHAPTER NO. 48

[HB 65]

AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAW; CLARIFYING THE POWER OF THE DEPARTMENT TO ENTER ONTO CONSTRUCTION SITES FOR THE PURPOSE OF ENFORCING WORKERS' COMPENSATION LAWS; PROHIBITING INSURERS FROM INCLUDING CERTAIN REIMBURSED COSTS AS PART OF THE CALCULATION OF AN EMPLOYER'S EXPERIENCE MODIFICATION FACTOR; PROVIDING THAT CERTAIN INFORMATION REGARDING SUBSEQUENT INJURY CERTIFICATION IS PART OF THE WORKERS' COMPENSATION DATABASE SYSTEM AND MAY BE RELEASED UNDER SPECIFIED CONDITIONS TO AN INSURER; LIMITING LIABILITY OF INJURED EMPLOYEES TO THIRD-PARTY PROVIDERS AND PROVIDING FOR ACTIONS BY THIRD-PARTY PROVIDERS AGAINST UNINSURED EMPLOYERS FOR SERVICES TO AN EMPLOYEE THAT ARE NOT REIMBURSED BY THE UNINSURED EMPLOYERS' FUND; PROVIDING THAT THE UNINSURED EMPLOYERS' FUND MAY NOT PAY MEDICAL BENEFITS CLAIMS IN EXCESS OF $100,000 FOR EACH CLAIM; INCREASING THE MONETARY THRESHOLD FOR DEFERRAL OF THE SUBSEQUENT INJURY FUND ASSESSMENT; AMENDING SECTIONS 39-71-225, 39-71-503, 39-71-508, 39-71-510, 39-71-907, AND 39-71-915, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Inspection of construction sites — public policy — penalty. (1) In recognition of the benefit of fair competition among business competitors and the public policy of this state providing for enforcement of workers' compensation insurance coverage requirements, the legislature finds that it is reasonable to allow access by authorized employees of the department onto construction sites for the purpose of determining whether workers are appropriately covered by workers' compensation insurance or a valid exemption from insurance coverage.

(2) In order to determine if proper workers' compensation insurance coverage is in place or if a valid exemption is held by a worker present on a construction site, authorized employees of the department may enter onto any construction site for which a construction permit is required or has been issued.

(3) Upon presentation of proper credentials, department employees must be admitted to a construction site to:

(a) gather information relating to compliance with the coverage requirements of this chapter; and

(b) when appropriate, issue a notice of violation to a person who is in violation of 39-71-419.

(4) This section does not authorize the department's employees to engage in a breach of the peace. The department may request the assistance of appropriate local law enforcement agencies to peaceably enter a construction site.

(5) A person who purposely or knowingly restricts the access to a construction site by a credentialed department employee or who obstructs the employee in the performance of the employee's duties under this section commits the offense of obstruction of a public servant as provided in 45-7-302.

(6) As used in this section, the following definitions apply:

(a) "Construction permit" means any permit that can be issued pursuant to Title 50, chapter 60, and includes:

(i) a boiler permit;

(ii) a building permit;

(iii) an electrical permit;

(iv) an elevator permit;

(v) a mechanical permit; or

(vi) a plumbing permit.

(b) "Construction site" means any parcel of real property where work is being performed for which a construction permit is required or has been issued.

Section 2. Reimbursement of subsequent injury fund — effect on claims experience rating. An insurer that uses an employer's claims costs experience as a factor that influences the amount of premium charged to that particular employer by using an experience modification factor or similar rating technique may not base that factor on those claims costs that are reimbursed by the subsequent injury fund.

Section 3. Section 39-71-225, MCA, is amended to read:

"39-71-225. Workers' compensation database system. (1) The department shall develop a workers' compensation database system to generate management information about Montana's workers' compensation system. The database system must be used to collect and compile information from insurers, employers, medical providers, claimants, claims examiners, rehabilitation providers, and the legal profession.

(2) Data collected must be used to provide:

(a) management information to the legislative and executive branches for the purpose of making policy and management decisions, including but not limited to:

(i) performance information to enable the state to enact remedial efforts to ensure quality, control abuse, and enhance cost control;

(ii) information on medical, indemnity, and rehabilitation costs, utilization, and trends;

(iii) information on litigation and attorney involvement for the purpose of identifying trends, problem areas, and the costs of legal involvement;

(b) current and prior claim information to any insurer that is at risk on a claim, or that is alleged to be at risk in any administrative or judicial proceeding, to determine claims liability or for fraud investigation. The department may release information only upon written request by the insurer and may disclose only the claimant's name, claimant's identification number, prior claim number, date of injury, body part involved, and name and address of the insurer and claims examiner on each claim filed. Information obtained by an insurer pursuant to this section must remain confidential and may not be disclosed to a third party except to the extent necessary for determining claim liability or for fraud investigation~~; and~~.

(c) current and prior claim information to law enforcement agencies for purposes of fraud investigation or prosecution*; and*

(d) to any insurer that is at risk on a claim, information identifying whether the claimant has been certified by the department as a person with a disability. Information obtained by an insurer pursuant to this subsection (2)(d) must remain confidential and may not be disclosed to a third party except as necessary to implement the provisions of Title 39, chapter 71, part 9. An insurer may disclose to the employer that the claimant has been certified by the department and of the potential for a limit on the insurer's liability and of potential reimbursement by the subsequent injury fund.

(3) The department is authorized to collect from insurers, employers, medical providers, the legal profession, and others the information necessary to generate the workers' compensation database system.

(4) The workers' compensation database system must be designed in accordance with the following principles:

(a) avoidance of duplication and inconsistency;

(b) reasonable availability of data elements;

(c) value of information collected to be commensurate with the cost of retrieving the collected information;

(d) uniformity to permit efficiency of collection and to allow interstate comparisons;

(e) a workable mechanism to ensure the accuracy of the data collected and to protect the confidentiality of collected data;

(f) reasonable availability of the data at a fair cost to the user;

(g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;

(h) compatibility with electronic data reporting;

(i) reporting procedures that can be handled through private data collection systems that adhere to the provisions of subsections (4)(a) through (4)(h);

(j) implementation of reporting requirements that allow reasonable lead time for compliance.

(5) The department shall publish an annual report on the information compiled.

(6) Users of information obtained from the workers' compensation database under this section are liable for damages arising from misuse or unlawful dissemination of database information.

(7) An insurer or a third-party administrator who submitted 50 or more "first reports of injury" to the department in the preceding calendar year shall electronically submit the reports and any other reports related to the reported claims in a nationally recognized format specified by department rule.

(8) The department may adopt rules to implement this section."

Section 4. Section 39-71-503, MCA, is amended to read:

"39-71-503. Uninsured employers' fund — purpose and administration of fund — maintaining balance for administrative costs — appropriation. (1) There is created an uninsured employers' fund in the state special revenue account to pay:

(a) to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in subsection (3);

(b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015; and

(c) the expenses incurred by the department in administering the uninsured employers' fund.

(2) The department may refer to the workers' compensation fraud office, established in 2-15-2015, cases involving:

(a) false or fraudulent claims for benefits; and

(b) criminal violations of 45-7-501.

(3) (a) Except as provided in subsection (3)(b), surpluses and reserves may not be kept for the fund. The department shall make payments that it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes precedence over the payment of medical benefits. Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(b) The department shall maintain at least a 3-month balance based on projected budget costs for administration of the fund. The balance for administrative costs may be used by the department only in administering the fund.

(c) The maximum aggregate medical benefits expenditure that may be made from the fund may not exceed $100,000 for any single claim regardless of whether the claim arises from an injury or an occupational disease.

(4) The amounts necessary for ~~the administration of the fund and for~~ the payment of benefits from the fund are statutorily appropriated, as provided in 17-7-502, from the fund."

Section 5. Section 39-71-508, MCA, is amended to read:

"39-71-508. Coordination of remedies — *limitation of liability of employee to third-party providers — rights of third-party providers.* *(1)* An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer, as defined in 39-71-501, or an employee's beneficiaries in injuries resulting in death may pursue all remedies concurrently, including but not limited to:

~~(1)~~*(a)* a claim for benefits from the uninsured employers' fund;

~~(2)~~*(b)* a damage action against the employer in accordance with 39-71-509;

~~(3)~~*(c)* an independent action against an employer as provided in 39-71-515; or

~~(4)~~*(d)* any other civil remedy provided by law.

(2) An employee who is entitled to recover under this part is not liable to any third-party provider for services provided to the employee that are not reimbursed by the uninsured employers' fund.

(3) A third-party provider that is not fully reimbursed by the uninsured employers' fund for services provided to an injured employee may bring an action directly against the uninsured employer for the amount of services that were not paid by the uninsured employers' fund."

Section 6. Section 39-71-510, MCA, is amended to read:

"39-71-510. Limitation on benefit entitlement under fund. *(1)* Notwithstanding the provisions of 39-71-407, ~~and~~ 39-71-503, *and subsection (2) of this section,* injured employees or an employee's beneficiaries who pursue a claim for benefits from the uninsured employers' fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund must be paid in accordance with the ~~sums~~ *money* in the fund. If the department determines at any time that the ~~sums~~ *money* in the fund ~~are~~ *is* not adequate to fully pay all claims, the department may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future.

(2) The maximum medical benefits entitlement for any single claim against the fund is limited to an aggregate amount of $100,000."

Section 7. Section 39-71-907, MCA, is amended to read:

"39-71-907. Certified person with a disability to be compensated for injury as provided by chapter — insurer liability for compensation limited. *(1)* A person certified as having a physical or mental disability that constitutes or results in a substantial impediment to employment who receives an injury, as defined in 39-71-119, that results in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of death resulting from the injury, the compensation must be paid to the person's beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial are the liability of the fund.

(2) The liability of the fund for reimbursement under this section is limited to the amount currently in the fund at the time the reimbursement request is received by the fund and the amount collectible in the next assessment period pursuant to 39-71-915."

Section 8. Section 39-71-915, MCA, is amended to read:

"39-71-915. Assessment of insurer — employers — definition — collection. (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the application of any deductible, regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of $200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each employer insured by plan No. 3, the state fund. The assessment amount is the total amount paid by the fund in the preceding fiscal year and the expenses of administration less other realized income that is deposited in the fund. The total assessment amount to be collected must be allocated among plan No. 1 employers, plan No. 2 employers, plan No. 3, the state fund, and plan No. 3 employers, based on a proportionate

share of paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before May 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. The amount to be assessed against the state fund must separately identify the amount attributed to claims arising before July 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990. On or before April 30 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is the proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding calendar year bore to the total paid losses for all plans in the preceding calendar year. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the subsequent injury fund assessment that is attributable to claims arising before July 1, 1990.

(6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid by employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).

(7) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (6). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation subsequent injury fund surcharge". Each assessment premium surcharge must be shown as a percentage of the total workers' compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The assessment premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium. If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the

amount received by the insurer must be applied to the assessment premium surcharge first and the remaining amount applied to the premium due.

(8) (a) All assessments paid to the department must be deposited in the fund.

(b) Each plan No. 1 employer shall pay its assessment by July 1.

(c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter by not later than 20 days following the end of the quarter.

(d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1, 1990, by July 1.

(e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the fund.

(9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7) must be compared each year to the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator provided for by subsection (6) for the following year's assessment premium surcharge.

(10) If the total assessment is less than ~~$200,000~~ *$500,000* for any year, the department may defer the assessment amount for that year and add that amount to the assessment amount for the subsequent year."

Section 9. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 1 and 2].

Section 10. Effective date. [This act] is effective July 1, 2007.

Section 11. Applicability. [Sections 4 and 6] apply to injuries and occupational diseases occurring on or after July 1, 2007.

Approved March 27, 2007

CHAPTER NO. 49

[HB 84]

AN ACT CLARIFYING THE JURISDICTION OF COURTS CONCERNING MISDEMEANOR CRIMINAL ACTIONS PROSECUTED UNDER THE MONTANA ALCOHOLIC BEVERAGE CODE; AND AMENDING SECTION 16-6-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-6-201, MCA, is amended to read:

"16-6-201. Jurisdiction of courts. *(1)* As to misdemeanor actions, the district courts of this state ~~shall~~ have concurrent jurisdiction with justice of the peace courts in all prosecutions under ~~this code~~ *the Montana Alcoholic Beverage Code described in 16-1-101.*

(2) The jurisdiction provided for in subsection (1) is in addition to the jurisdiction of:

(a) justices' courts, as provided in 3-10-303;

(b) municipal courts, as provided in 3-6-103; and

(c) city courts, as provided in 3-11-102."

Approved March 27, 2007

CHAPTER NO. 50

[HB 90]

AN ACT INCREASING THE DEBT LIMIT UNDER THE MUNICIPAL FINANCE CONSOLIDATION ACT; INCREASING THE LOAN TO THE DEPARTMENT OF JUSTICE FOR THE MOTOR VEHICLE INFORMATION TECHNOLOGY SYSTEM; EXTENDING BY 5 YEARS THE TERM OF THE LOAN AND THE TEMPORARY INCREASE IN FEES FOR SECURITY INTEREST FILINGS AND CERTIFICATES OF TITLE TO REPAY THE LOAN; APPROPRIATING AN ADDITIONAL $6 MILLION FROM THE CAPITAL PROJECTS FUND TO THE DEPARTMENT OF JUSTICE FOR THE INFORMATION TECHNOLOGY SYSTEM; AUTHORIZING THE CREATION OF STATE DEBT; AMENDING SECTIONS 17-5-1608, 17-5-2001, 61-3-103, 61-3-203, 61-3-204, AND 61-3-550, MCA; REPEALING SECTION 15, CHAPTER 562, LAWS OF 2003, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-1608, MCA, is amended to read:

"17-5-1608. Limitations on amounts. The board may not issue any bonds or notes that cause the total outstanding indebtedness of the board under this part, except for bonds or notes issued to fund or refund other outstanding bonds or notes or to purchase registered warrants or tax or revenue anticipation notes of a local government as defined in 7-6-1101, to exceed ~~$120~~ *$126* million."

Section 2. Section 17-5-2001, MCA, is amended to read:

"17-5-2001. (Temporary) Loans to state agencies. (1) An agency responsible for the procurement and provision of vehicles, automated systems, and equipment using an enterprise fund or an internal service fund, as described in 17-2-102, is authorized to enter into contracts, loan agreements, or other forms of indebtedness payable over a term not to exceed 7 years for the purpose of financing the cost of the vehicles and equipment and to pledge to the repayment of the indebtedness the revenue of the enterprise fund or internal service fund if:

(a) the term of the indebtedness does not exceed the useful life of the items being financed; and

(b) at the time that the indebtedness is incurred, the projected revenue of the fund, based on the fees and charges approved by the legislature and other available fund revenue, will be sufficient to repay the indebtedness over the proposed term and to maintain the operation of the enterprise.

(2) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an

amount not to exceed ~~$22.5~~ *$28.5* million, payable over a term not to exceed ~~10~~ *15* years, for financing the cost of an information technology system for the production and maintenance of motor vehicle title and registration records and driver's license records.

(b) For purposes of the financing of the motor vehicle information technology system, loans are payable from the money in the motor vehicle information technology system account as provided in 61-3-550. The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the projected revenue of the motor vehicle information technology system account, based upon the fees approved by the legislature, must be sufficient to repay the indebtedness over the proposed term.

~~(3) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed $1,120,000, payable over a term not to exceed 7 years, for the acquisition of video gambling automated accounting and reporting system data collection units.~~

~~(b) The loan is payable from the department of justice's annual appropriation from the general fund.~~

~~(c) The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the department of justice's base budget appropriation from the general fund must be sufficient to repay the indebtedness with respect to the video gambling data collection units over the proposed term of the loan.~~

~~(d) The loan is subject to the risk of nonappropriation.~~

~~(4) (a)~~*(3) (a)* If bonds are not issued for the project authorized in 15-1-140, the department of revenue is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed $17 million, payable over a term not to exceed 7 years, for the acquisition of a replacement system for the process oriented integrated system (POINTS) computer system.

(b) The loan is payable from the department of revenue's appropriation.

(c) The loan is subject to the risk of nonappropriation. (Terminates June 30, 2011—sec. 18, Ch. 597, L. 2003.)

17-5-2001. (Effective July 1, 2011) Loans to state agencies. (1) An agency responsible for the procurement and provision of vehicles, automated systems, and equipment using an enterprise fund or an internal service fund, as described in 17-2-102, is authorized to enter into contracts, loan agreements, or other forms of indebtedness payable over a term not to exceed 7 years for the purpose of financing the cost of the vehicles and equipment and to pledge to the repayment of the indebtedness the revenue of the enterprise fund or internal service fund if:

(a) the term of the indebtedness does not exceed the useful life of the items being financed; and

(b) at the time that the indebtedness is incurred, the projected revenue of the fund, based on the fees and charges approved by the legislature and other available fund revenue, will be sufficient to repay the indebtedness over the proposed term and to maintain the operation of the enterprise.

(2) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an

amount not to exceed ~~$22.5~~ *$28.5* million, payable over a term not to exceed ~~10~~ *15* years, for financing the cost of an information technology system for the production and maintenance of motor vehicle title and registration records and driver's license records.

(b) For purposes of the financing of the motor vehicle information technology system, loans are payable from the money in the motor vehicle information technology system account as provided in 61-3-550. The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the projected revenue of the motor vehicle information technology system account, based upon the fees approved by the legislature, must be sufficient to repay the indebtedness over the proposed term.

~~(3) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed $1,120,000, payable over a term not to exceed 7 years, for the acquisition of video gambling automated accounting and reporting system data collection units.~~

~~(b) The loan is payable from the department of justice's annual appropriation from the general fund.~~

~~(c) The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the department of justice's base budget appropriation from the general fund must be sufficient to repay the indebtedness with respect to the video gambling data collection units over the proposed term of the loan.~~

~~(d) The loan is subject to the risk of nonappropriation. (Terminates June 30, 2013—sec. 15, Ch. 562, L. 2003.)~~

~~**17-5-2001. (Effective July 1, 2013) Loans to state agencies.** (1) An agency responsible for the procurement and provision of vehicles, automated systems, and equipment using an enterprise fund or an internal service fund, as described in 17-2-102, is authorized to enter into contracts, loan agreements, or other forms of indebtedness payable over a term not to exceed 7 years for the purpose of financing the cost of the vehicles and equipment and to pledge to the repayment of the indebtedness the revenue of the enterprise fund or internal service fund if:~~

~~(a) the term of the indebtedness does not exceed the useful life of the items being financed; and~~

~~(b) at the time that the indebtedness is incurred, the projected revenue of the fund, based on the fees and charges approved by the legislature and other available fund revenue, will be sufficient to repay the indebtedness over the proposed term and to maintain the operation of the enterprise.~~

~~(2) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed $4.5 million, payable over a term not to exceed 10 years, for financing the cost of an information technology system for the production and maintenance of motor vehicle title and registration records and driver's license records.~~

~~(b) For purposes of the financing of the motor vehicle information technology system, loans are payable from the money in the motor vehicle information technology system account as provided in 61-3-550. The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the projected revenue of the motor vehicle~~

~~information technology system account, based upon the fees approved by the legislature, must be sufficient to repay the indebtedness over the proposed term.~~

~~(3) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed $1,120,000, payable over a term not to exceed 7 years, for the acquisition of video gambling automated accounting and reporting system data collection units.~~

~~(b) The loan is payable from the department of justice's annual appropriation from the general fund.~~

~~(c) The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the department of justice's base budget appropriation from the general fund must be sufficient to repay the indebtedness with respect to the video gambling data collection units over the proposed term of the loan.~~

~~(d) The loan is subject to the risk of nonappropriation.~~"

Section 3. Section 61-3-103, MCA, is amended to read:

"61-3-103. Filing of security interests — perfection — rights — procedure — fees. (1) (a) Except as provided in subsection (2), the department, its authorized agent, or a county treasurer shall, upon payment of the fee required by subsection (8), enter a voluntary security interest or lien against the electronic record of title for a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile upon receipt of a written acknowledgment by a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile owner of a voluntary security interest or lien on a form required by the department. The entry may be made if:

(i) the person is applying for a certificate of title and the manufacturer's certificate of origin or a certificate of title is being surrendered; or

(ii) a transfer of ownership is not sought.

(b) After the voluntary security interest or lien has been entered on the electronic record of title for the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, the department, its authorized agent, or a county treasurer shall issue a transaction summary receipt to the owner and, if requested, to the secured party or lienholder, showing the date that the security interest or lien was perfected.

(c) A voluntary security interest or lien is perfected on the date that the department, its authorized agent, or a county treasurer receives the written acknowledgment of the voluntary security interest or lien from the owner of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile.

(d) Unless a person applying for a certificate of title requests issuance of a certificate of title under 61-3-201, the department may not record a voluntary security interest or lien on the face of a certificate of title.

(2) A security interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile held as inventory by a dealer licensed under Title 23, chapter 2, part 5, 6, or 8, or chapter 4 of this title must be perfected in accordance with Title 30, chapter 9A.

(3) Whenever a security interest or lien is filed against the electronic record of title for a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile that is subject to two security interests previously perfected under this section and the applicant has requested issuance of a certificate of title under 61-3-201, the department shall endorse on the face of the certificate of title, "NOTICE. This vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests is not required to be endorsed on the certificate.

(4) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles, trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, or snowmobiles, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(5) A secured party or lienholder who has a perfected security interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile and who fails to file a satisfaction of the security interest or lien within 21 days after receiving final payment is required to pay the department $25 for each day that the secured party or lienholder fails to file the satisfaction.

(6) Within 24 hours after receiving notice of any involuntary liens or attachments against the record of any motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile registered in this state, the department shall mail to the owner or any secured party or lienholder of record a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court and the action and the names of the attorneys for the plaintiff and attaching creditor.

(7) (a) This section does not prevent a secured party or lienholder from assigning the secured party's or lienholder's interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, for which a certificate of title is issued under this chapter, to any other person without the consent of and without affecting the interest of the holder of the certificate of title.

(b) If a secured party assigns all or part of the party's interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile for which a certificate of title is issued under this chapter, the secured party assigning the interest shall file a copy of the assignment with the department and the department shall record the assignment in the department's records.

(8) (a) A fee must be paid to the department to file any security interest or other lien against a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile. The fee covers the cost of entering and, upon the subsequent satisfaction or release, of removing the security interest or lien from the electronic record of title.

(b) Beginning January 1, 2002, and ending June 30, ~~2011~~ *2016*, the fee is $8. Of the $8 fee, $4 must be deposited in the state general fund in accordance with

15-1-504. The remaining $4 must be forwarded to the state for deposit in the motor vehicle information technology system account provided for in 61-3-550.

(c) Beginning July 1, ~~2011~~ *2016*, the fee is $4 and must be deposited in the state general fund.

(9) *(a)* ~~A~~ *Until June 30, 2018, a* fee of $10 must be paid to the department by a vehicle owner if, following satisfaction or release of a security interest and its removal from the department's records, the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile owner requests issuance of a new certificate of title without the security interest or lien shown on the face of the title. *Beginning July 1, 2018, the fee for a new certificate of title under this subsection is $5.*

(b) ~~The~~ *Until June 30, 2018, the* $10 fee must be deposited in the motor vehicle information technology system account provided for in 61-3-550.

(c) Beginning July 1, 2018, the $5 fee must be deposited in the state general fund. ~~(Subsection (9) terminates June 30, 2013—sec. 15, Ch. 562, L. 2003.)~~"

Section 4. Section 61-3-203, MCA, is amended to read:

"61-3-203. Fee for original certificate of title — disposition. (1) ~~A~~ *(a) Until June 30, 2018, a* person applying for a certificate of title shall pay the department, its authorized agent, or a county treasurer a fee of:

~~(a)~~*(i)* $10 if the vehicle for which a certificate of title is sought is not a light vehicle or a truck or bus that weighs less than 1 ton; or

~~(b)~~*(ii)* $12 if the vehicle for which application is made is a light vehicle or a truck or bus that weighs less than 1 ton.

~~(2)~~*(b)* The amount of $5 of the fee imposed pursuant to subsection ~~(1)~~ *(1)(a)* must be forwarded to the department for deposit in the motor vehicle information technology system account provided for in 61-3-550, and the remaining amount must be deposited in the state general fund.

(2) Beginning July 1, 2018, the fee imposed in subsection (1)(a)(i) is $5 and the fee imposed in subsection (1)(a)(ii) is $7 and all fees paid pursuant to this section must be deposited in the state general fund."

Section 5. Section 61-3-204, MCA, is amended to read:

"61-3-204. Replacement certificate of title — application. (1) *(a)* If a certificate of title is lost, stolen, destroyed, mutilated, or becomes illegible or if the owner wants to update personal information on the electronic record of title or have a replacement certificate of title issued with updated information, the owner, as shown on the electronic record of title, may apply for and request the department to issue a replacement certificate of title. The application must include satisfactory evidence of the facts requiring the replacement certificate of title and be accompanied by a fee of $10.

(b) ~~Of the $10 fee~~ *Until June 30, 2018*, $5 *of the fee* must be deposited in the state general fund in accordance with 15-1-504, and the remaining $5 must be deposited in the motor vehicle information technology system account provided for in 61-3-550.

(c) Beginning July 1, 2018, the fee for a replacement certificate of title is $5 and the entire fee must be deposited in the state general fund.

(2) Each replacement certificate of title issued by the department must contain the following statement: "This replacement voids any previously issued title.""

Section 6. Section 61-3-550, MCA, is amended to read:

"61-3-550. ~~(Temporary)~~ Motor vehicle information technology system account. (1) There is a motor vehicle information technology system account in the state special revenue fund provided for in 17-2-102.

(2) *(a) Until June 30, 2016, $4 of the fee received by the department pursuant to 61-3-103(8) for a security interest or other lien must be deposited in the account.*

(b) ~~Fees~~ *Until June 30, 2018, fees* received by the department pursuant to ~~61-3-103~~ *61-3-103(9)* and $5 of each fee received under 61-3-203 or 61-3-204 for a certificate of title must be deposited in the account.

(3) The money in the motor vehicle information technology system account must be appropriated by the legislature to the department of justice and must be used by the department for the purpose of:

(a) repaying any indebtedness or loan incurred for the creation of a new information technology system for motor vehicles; or

(b) payment of costs directly incurred in the creation and support of the new motor vehicle information technology system. ~~(Terminates June 30, 2013—sec. 15, Ch. 562, L. 2003.)~~

~~**61-3-550. (Effective July 1, 2013) Motor vehicle information technology system account.** (1) There is a motor vehicle information technology system account in the state special revenue fund provided for in 17-2-102.~~

~~(2) Fees received by the department of revenue pursuant to 61-3-103 must be deposited in the account.~~

~~(3) The money in the motor vehicle information technology system account must be appropriated by the legislature to the department of justice and must be used by the department for the purpose of:~~

~~(a) repaying any indebtedness or loan incurred for the creation of a new information technology system for motor vehicles; or~~

~~(b) payment of costs directly incurred in the creation and support of the new motor vehicle information technology system.~~"

Section 7. Appropriation. There is appropriated from the capital projects fund to the department of justice $6 million for the motor vehicle information technology system described in 17-5-2001.

Section 8. Repealer. Section 15, Chapter 562, Laws of 2003, is repealed.

Section 9. Two-thirds vote required. Because [section 2] increases the amount that the department of justice can borrow from the board of investments to finance the cost of the motor vehicle technology system, authorizing the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 10. Effective date. [This act] is effective July 1, 2007.

Approved March 27, 2007

CHAPTER NO. 51

[HB 94]

AN ACT REVISING THE UNDERGROUND STORAGE TANK ADMINISTRATIVE PENALTY LAWS; ELIMINATING DEPARTMENT OF ENVIRONMENTAL QUALITY RULEMAKING AUTHORITY FOR A PENALTY SCHEDULE; MODIFYING THE ADMINISTRATIVE PENALTY NOTICE REQUIREMENTS; ALLOWING A PERSON ASSESSED A PENALTY TO REQUEST A HEARING BEFORE THE BOARD OF ENVIRONMENTAL REVIEW INSTEAD OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY ESTABLISH A FIXED SCHEDULE OF MAXIMUM AND MINIMUM PENALTIES FOR SPECIFIC VIOLATIONS; AMENDING SECTIONS 75-11-505, 75-11-512, AND 75-11-525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-11-505, MCA, is amended to read:

"75-11-505. Administrative rules. The department may adopt, amend, or repeal rules for the prevention and correction of leakage from underground storage tanks, including:

(1) reporting by owners and operators;

(2) financial responsibility;

(3) release detection, prevention, and corrective action;

(4) procedures and standards for the issuance, nonissuance, renewal, nonrenewal, modification, revocation, suspension, and enforcement of permits authorizing the operation of underground storage tanks;

(5) standards for design, construction, installation, and closure;

(6) development of a schedule of annual fees, not to exceed $108 for a tank over 1,100 gallons and not to exceed $36 for a tank 1,100 gallons or less, for each tank, for tank registration to defray state and local costs of implementing an underground storage tank program. The department may prorate fees to cover periods not equal to 12 months in order to provide staggered scheduling of renewal dates.

(7) a ~~penalty schedule and a~~ system for assessment of administrative penalties, notice, and appeals under 75-11-525; and

(8) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks."

Section 2. Section 75-11-512, MCA, is amended to read:

"75-11-512. Administrative enforcement. (1) When the department believes that a violation of this part or a rule adopted under this part has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part or the rule alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes

final unless, within 30 days after the notice is served, the person named requests, in writing, a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of ~~mailing~~ *receipt*.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board or department, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or to provide information regarding the alleged violation or its actual or potential impact on the public health and welfare or the environment;

(b) initiate action under 75-11-513, 75-11-514, or 75-11-516; or

(c) assess administrative penalties and issue corrective action orders under 75-11-525.

(4) In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which the witness may be interrogated in a hearing or investigation before the board or the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district court.

(5) If a person fails to comply with an order issued pursuant to subsection (1) or (3) within the time allowed in the order, the department may enter the property on which the underground storage tank that is in violation is located and temporarily close the tank. If the department finds that permanent closure is necessary to prevent substantial environmental harm or because the owner or operator is unlikely to comply with the order, it may permanently close the tank.

(6) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means."

Section 3. Section 75-11-525, MCA, is amended to read:

"75-11-525. Administrative penalties for violations — appeals — venue. (1) (a) A person who violates any of the provisions of this part or any rules promulgated under the authority of this part may be assessed and ordered by the department to pay an administrative penalty not to exceed $500 for each violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each occurrence of the violation and each day that it remains uncorrected constitutes a separate violation. The department may suspend a portion of the administrative penalty assessed under this section if the condition that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty under this section may

be made in conjunction with any order or other administrative action authorized by this chapter.

(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in 75-1-1001.

(2) When the department assesses an administrative penalty under this section, it must have written notice served personally or by certified mail on the alleged violator or the violator's agent. For purposes of this chapter, service by mail is complete on the day of ~~receipt~~ *receipt*. The notice must state:

(a) the provision alleged to be violated;

(b) the facts alleged to constitute the violation;

(c) the amount of the administrative penalty assessed under this section;

(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused the assessment of the penalty;

(e) the nature of any corrective action that the department requires, whether or not a portion of the penalty is to be suspended;

(f) as applicable, the time within which the corrective action is to be taken and the time within which the administrative penalty is to be paid; *and*

(g) the right to appeal or to a hearing to mitigate the penalty assessed ~~and the time, place, and nature of any hearing; and~~

~~(h) that a formal proceeding may be waived~~.

(3) ~~The department shall provide each~~ *A* person assessed a penalty under this section ~~an opportunity for~~ *may request* a hearing *before the board* to either contest the alleged violation or request mitigation of the penalty. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis and Clark County or the county in which the alleged violation occurred. ~~This subsection does not apply until the department gives written notice, served personally or by certified mail, to the alleged violator or the violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:~~

~~(a) the provision allegedly violated;~~

~~(b) the facts that constitute the alleged violation;~~

~~(c) the specific nature of any corrective action that the department requires, estimated costs of compliance with the action, and where to receive help to correct the alleged violation; and~~

~~(d) a timetable that a reasonable person would consider appropriate for compliance with the alleged violations.~~

~~(4) The department shall publish a schedule of maximum and minimum penalties for specific violations. In determining appropriate penalties for violations, the department shall consider the gravity of the violations and the potential for significant harm to the public health or the environment. In determining the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the penalty assessment, the department shall consider the cooperation and the degree of care exercised by the person assessed the penalty, how expeditiously the violation was corrected, and~~

~~whether significant harm resulted to the public health or the environment from the violation.~~

~~(5)~~*(4)* If the department is unable to collect an administrative penalty assessed under this section or if a person fails to pay all or any portion of an administrative penalty assessed under this section, the department may take action in district court to recover the penalty amount and any additional amounts assessed or sought under this chapter. The action must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.

~~(6)~~*(5)* Action under this section does not bar action under this chapter or any other remedy available to the department for violations of underground storage tank laws or rules promulgated under those laws.

~~(7)~~*(6)* Administrative penalties collected under this section must be deposited in the state general fund."

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved March 27, 2007

CHAPTER NO. 52

[HB 111]

AN ACT REVISING UNEMPLOYMENT INSURANCE LAWS; CLARIFYING THE TREATMENT OF LIMITED LIABILITY COMPANIES; DEFINING THE TERM "LICENSED AND PRACTICING HEALTH CARE PROVIDER"; CLARIFYING EMERGENCY PROVISIONS; REMOVING BONDING REQUIREMENTS; CLARIFYING PROVISIONS FOR TAX APPEALS; RELIEVING CERTAIN EMPLOYERS OF BENEFIT CHARGES ASSOCIATED WITH REHIRING RETURNING MILITARY PERSONNEL; REVISING CONTRIBUTION RATE SCHEDULES; REVISING DISABILITY DISQUALIFICATION; REVISING THE FORMULA FOR EXTENDED BENEFIT AMOUNTS; AMENDING SECTIONS 39-51-201, 39-51-203, 39-51-204, 39-51-301, 39-51-405, 39-51-406, 39-51-1105, 39-51-1109, 39-51-1214, 39-51-1218, 39-51-2302, 39-51-2304, 39-51-2306, AND 39-51-2510, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Treatment of limited liability companies. For the purposes of this chapter, a limited liability company is treated as follows:

(1) as a sole proprietorship if it is a single-member limited liability company;

(2) as a partnership if it consists of more than a single member and it is not established as a corporation pursuant to the provisions of the Internal Revenue Code for income tax purposes; or

(3) as a corporation if it is classified as a corporation for income tax purposes pursuant to the Internal Revenue Code.

Section 2. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the base period means the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which the individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404.

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) (a) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work.

(b) The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(10) "Employing unit" means any individual or organization, including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit, partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person in whose employ one or more individuals perform or performed services within this state, except

as provided under 39-51-204(1)(a) and (1)(q). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions must be paid and from which all benefits provided under this chapter must be paid.

(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of a fellow employee or the employer.

(14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(15) "Independent contractor" means an individual working under an independent contractor exemption certificate provided for in 39-71-417.

(16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

(17) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which the institution awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) All universities in this state are institutions of higher education for purposes of this part.

(18) "Licensed and practicing health care provider" means a health care provider who is primarily responsible for the treatment of a person seeking unemployment insurance benefits and who is:

(a) licensed to practice in this state as:

(i) a physician under Title 37, chapter 3;

(ii) a dentist under Title 37, chapter 4;

(iii) an advanced practice registered nurse under Title 37, chapter 8, and recognized as a nurse practitioner or certified nurse specialist by the board of nursing, established in 2-15-1734;

(iv) a physical therapist under Title 37, chapter 11;

(v) a chiropractor under Title 37, chapter 12;

(vi) a clinical psychologist under Title 37, chapter 17; or

(vii) a physician assistant under Title 37, chapter 20; or

(b) with respect to a person seeking unemployment insurance benefits who resides outside of this state, a health care provider licensed or certified as a member of one of the professions listed in subsection (18)(a) in the jurisdiction where the person seeking the benefit lives.

~~(18)~~*(19)* "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

~~(19)~~*(20)* "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

~~(20)~~*(21)* "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

~~(21)~~*(22)* "Tribal unit" means an Indian tribe and any tribal subdivision or subsidiary or any business enterprise that is wholly owned by that tribe.

~~(22)~~*(23)* "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

~~(23)~~*(24)* (a) "Wages", unless specifically exempted under subsection ~~(23)(b)~~ *(24)(b)*, means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules;

(iii) a no-additional-cost service; or

(iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers program, 19 U.S.C. 2318.

~~(24)~~*(25)* "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

~~(25)~~*(26)* "Weekly benefit amount" means the amount of benefits that an individual would be entitled to receive for 1 week of total unemployment."

Section 3. Section 39-51-203, MCA, is amended to read:

"39-51-203. Employment defined. (1) "Employment", subject to other provisions of this section, means service by an individual, by a manager or member of a ~~manager-managed~~ limited liability company ~~that has filed with the secretary of state~~ *treated as a corporation pursuant to [section 1]*, or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" includes an individual's entire service performed within or both within and outside this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some of the service is performed in this state and:

(A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state; or

(B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) Service is considered to be localized within a state if:

(i) the service is performed entirely within the state; or

(ii) the service is performed both within and outside the state, but the service performed outside the state is incidental to the individual's service within the state; for example, the out-of-state service is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) and performed entirely outside the state and on which contributions are neither required nor paid under an unemployment insurance law of any other state or of the federal government is considered to be employment subject to this chapter if the individual performing the services is a resident of this state and the department approves the election of the employing unit for whom the services are performed in order that the entire service of the individual is considered to be employment subject to this chapter.

(4) Service performed by an individual for wages is considered to be employment subject to this chapter until it is shown to the satisfaction of the department that the individual is an independent contractor.

(5) The term "employment" includes service performed by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. The term "employment" includes service performed by all individuals, including those individuals who work for the state of Montana, its universities, public schools, components or units of universities or public schools, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

(6) The term "employment" includes service performed by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(7) (a) The term "employment" includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, in the employ of an American employer, other than service that is considered employment under the provisions of subsection (2) or the parallel provisions of another state's law, if:

(i) the employer's principal place of business in the United States is located in this state;

(ii) the employer has no place of business in the United States, but:

(A) the employer is an individual who is a resident of this state;

(B) the employer is a corporation that is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of subsections (7)(a)(i) and (7)(a)(ii) are met, but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on the service under the law of this state.

(b) An "American employer", for purposes of this subsection (7), means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United States;

(iii) a trust if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state."

Section 4. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has

domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist or barber who is licensed under Title 37, chapter 31, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a salon or shop, as defined in 37-31-101, and the contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the salon or shop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership, members of a ~~member-managed~~ limited liability company ~~that has filed with the secretary of state~~ *treated as a partnership or sole proprietorship pursuant to [section 1]*, or partners in a limited liability partnership that has filed with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed as a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in 5 U.S.C. 8501(1)(I) and section 3306(c)(6) of the Federal Unemployment Tax Act;

(s) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(t) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(u) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(w) service performed by an alien as identified in 8 U.S.C. 1101(a)(15)(F), (a)(15)(H)(ii)(a), (a)(15)(J), (a)(15)(M), or (a)(15)(Q);

(x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873;

(y) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(z) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an amateur athletic event; or

(aa) services performed by an election judge appointed pursuant to 13-4-101 if the remuneration received for those services is less than $1,000 in the calendar year.

(2) An individual found to be an independent contractor by the department under the terms of 39-71-417 is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act."

Section 5. Section 39-51-301, MCA, is amended to read:

"39-51-301. Administration — duties and powers of department — *emergency provisions.* (1) It is the duty of the department to administer this chapter ~~and it~~. *The department* may adopt, amend, or rescind rules to employ persons, make expenditures, require reports, make investigations, and take action that it considers necessary or suitable in administering this chapter.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and must have an official seal, which is judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates ~~will become~~ *is* necessary to protect the solvency of the fund, it shall promptly inform the governor and the legislature and make recommendations with respect to the change.

(4) The department and the board may issue subpoenas and compel testimony and the production of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

(5) (a) In the aftermath of a disaster, as defined in 10-3-103, the department may waive, suspend, or modify its rules concerning the filing of a claim for benefits, filing continued claims, registration for work, or work search if all of the following conditions are met:

(i) the president of the United States declares a disaster pursuant to 42 U.S.C. 5170, et seq.; and

(ii) the governor issues an executive order directing the department to waive, suspend, or modify rules relating to claims.

(b) In a disaster declared under subsection (5)(a), the department may waive, suspend, or modify its rules relating to claims in portions of the state named by the department as appropriate to address the nature of the disaster and the purposes of unemployment insurance laws.

~~(5)~~*(6)* Employees transferring from the department of revenue to the department as a result of the termination of the delegation of duties associated with unemployment insurance contribution functions are entitled to all rights, including those under 2-15-131, possessed as a state officer or employee before transferring, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy including the State Employee Protection Act. Employees transferring must be considered internal applicants by the department of revenue for recruitment purposes for 1 year from the date of the termination of the delegation of duties associated with unemployment insurance contribution functions.

~~(6)~~*(7)* The department shall succeed the department of revenue in its rights to property relating to the termination of the delegation of duties associated with unemployment insurance contribution functions to the extent that is consistent with federal property transfer policy. The property includes real property, records, office equipment, forms, supplies, and contracts other than the program budget plan with the United States department of labor.

~~(7)~~*(8)* (a) The termination of the delegation of duties associated with unemployment insurance contribution functions does not affect the validity of any pending judicial or administrative proceeding.

(b) All appeals that have not been heard prior to the termination of the delegation of duties associated with unemployment insurance contribution functions must be made in accordance with the procedures identified in 39-51-1109.

(c) The department must be substituted for the department of revenue and succeed to all audits, determinations, and other actions following the date of the termination of the delegation of duties associated with unemployment insurance contribution functions.

~~(8)~~*(9)* The rights, privileges, and duties of the holders of bonds and other obligations issued and of the parties to contracts, leases, indentures, and other transactions entered into before the termination of the delegation of duties associated with unemployment insurance contribution functions remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the delegation of duties. The department is substituted for the department of revenue and succeeds to the rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions. The provisions of this subsection do not apply to the program budget plan agreement between the department and the United States department of labor."

Section 6. Section 39-51-405, MCA, is amended to read:

"39-51-405. Signatures required on warrants. All warrants issued ~~by the treasurer~~ for payment pursuant to 39-51-403 or 39-51-404 shall bear the signature of the treasurer and the countersignature of ~~a member of the department or its duly authorized agent for that purpose~~ *the commissioner of labor and industry or an agent authorized for that purpose*."

Section 7. Section 39-51-406, MCA, is amended to read:

"39-51-406. Unemployment insurance administration account. (1) There is an account in the federal special revenue fund to be known as the unemployment insurance administration account. All money that is deposited,

appropriated, or paid into this account is appropriated and made available to the department. All money in the account must be expended solely for the purpose of defraying the costs of administration of this chapter and costs of administration of other legislation specifically delegated by the legislature to the department for administration.

(2) All money received and deposited in the account from the United States or any agency of the United States pursuant to section 302, Title III, of the Social Security Act, ~~(~~42 U.S.C. 502~~)~~, must be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter.

(3) The account consists of:

(a) all money received from the United States or any agency of the United States pursuant to section 302, Title III, of the Social Security Act, ~~(~~42 U.S.C. 502~~)~~, as amended; *and*

~~(b) all money appropriated by the state from the general fund for the purpose of administering this chapter; and~~

~~(c)~~*(b)* all money, trust funds, supplies, facilities, or services furnished, deposited, paid, and received from~~:~~

~~(i)~~ the United States or any agency of the United States~~;~~.

~~(ii) this state or any agency of the state;~~

~~(iii) any other state or any of its agencies;~~

~~(iv) political subdivisions of the state; or~~

~~(v) any other source for administrative expense and purpose.~~

(4) Notwithstanding any provisions of this section, all money requisitioned and deposited in this account pursuant to 39-51-403 through 39-51-405 must remain part of the unemployment insurance fund and must be used only in accordance with the conditions specified in 39-51-403 through 39-51-405.

(5) All money in this account must be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other accounts. The balance in this account may not lapse at any time but must be continuously available to the department for expenditure consistent with this chapter.

~~(6) The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of the treasurer's duties in connection with the unemployment insurance administration account in an amount to be fixed by the department and in a form prescribed by law or approved by the attorney general. The premiums for the bond must be paid from the money in the unemployment insurance administration account.~~

~~(7)~~*(6)* Any reference to the unemployment insurance administration fund in this code means the unemployment insurance administration account in the federal special revenue fund."

Section 8. Section 39-51-1105, MCA, is amended to read:

"39-51-1105. Liability ~~of corporate officers~~ for taxes, penalties, and interest owed ~~by corporation~~. (1) The officer of a corporation whose responsibility it is to pay the taxes, penalties, and interest, as provided by 39-51-1103(1) and (2) and 39-51-1125(1) and (2), is liable for the taxes, penalties, and interest due.

(2) (a) The department shall consider the officer of the corporation individually liable with the corporation for filing reports and unpaid taxes, penalties, and interest upon a determination that the corporate officer:

(i) possessed the responsibility to file reports and pay taxes on behalf of the corporation; and

(ii) possessed the responsibility on behalf of the corporation to direct the filing of reports or payment of other corporate obligations and exercised the responsibility that resulted in failure to file reports or pay taxes due.

(b) The department is not limited to considering the elements set forth in subsection (2)(a) to establish individual liability and may consider any other available information.

(3) ~~In the case of a corporate bankruptcy, the~~ *The* liability ~~of the~~ *imposed upon an* individual *by this section* remains unaffected by the *bankruptcy of a business entity to which a* discharge ~~of penalty and interest against the corporation~~ *cannot be granted under 11 U.S.C. 727.* The individual is liable for ~~any~~ *the unpaid* amount of taxes, penalties, and interest ~~unpaid by the corporation~~.

(4) ~~For determining~~ *In the case of a limited liability company treated as a partnership pursuant to [section 1], the* liability for unemployment insurance taxes, penalties, and interest owed~~, a member-managed limited liability company must be treated as a partnership, with liability for taxes, penalties, and interest owed extending~~ *extends jointly and severally* to each member.

(5) ~~For determining~~ *In the case of a limited liability company that is not treated as a partnership pursuant to [section 1],* liability for unemployment insurance taxes, penalties, and interest owed ~~by a manager-managed limited liability company,~~ *extends jointly and severally to* the managers of the limited liability company ~~are jointly and severally liable for any taxes, penalties, and interest owed~~."

Section 9. Section 39-51-1109, MCA, is amended to read:

"39-51-1109. Tax appeals — procedure. (1) A decision, determination, or redetermination of the department involving an employer-employee relationship ~~or the charging of benefit payments to employers~~ is final unless an interested party entitled to notification submits a written appeal of the decision, determination, or redetermination. The appeal must be made in the same manner as provided in 39-71-415.

(2) A decision, determination, or redetermination involving contribution liability, contribution rate, application for refund, subject wages, *the charging of benefit payments to employers,* or other contribution-related issues must be issued by the department and is final unless an interested party entitled to notification submits a written appeal of the decision, determination, or redetermination. An appeal must be made in the same manner as provided in 39-51-2402 for the appeal of a decision relating to a claim for unemployment insurance benefits. Statutory rules of evidence and civil procedure do not apply to a hearing on the appeal. A hearing may be conducted by telephone or by videoconference. The decision of the appeals referee and any subsequent appeal must be made in the same manner as provided in 39-51-2403 through 39-51-2410."

Section 10. Section 39-51-1214, MCA, is amended to read:

"39-51-1214. Benefit payments chargeable to employer experience rating accounts. (1) Except for cost reimbursement, benefits paid must be charged to the account of each of the claimant's base period employers. The benefit charged must be based on the percentage of wages paid by the employer as compared to the total wages paid by all employers in the claimant's base period.

(2) A charge may not be made to the account of a covered employer with respect to benefits paid under the following situations:

(a) if paid to a worker who terminated services voluntarily without good cause attributable to a covered employer or who had been discharged for misconduct in connection with services;

(b) if paid in accordance with the extended benefit program triggered by either national or state indicators;

(c) if the base period employer continues to provide employment with no reduction in hours or wages;

(d) if benefits are paid to claimants who are in training approved under 39-51-2307; ~~or~~

(e) if the base period employer is ordered to military service, as defined in 10-1-1003*; or*

(f) if benefits are paid to an employee laid off as the result of the return to work of a permanent employee who:

(i) was called to military service, as defined in 10-1-1003; and

(ii) had completed 4 or more weeks of military service and exercised reemployment rights under Title 10, chapter 1, part 10."

Section 11. Section 39-51-1218, MCA, is amended to read:

"39-51-1218. Rate schedules.

SCHEDULES OF CONTRIBUTION RATES - Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
Minimum Ratio of Fund to Total Wages	(.0245)	(.0225)	(.0200)	(.0170)
Average Tax Rate	1.37	1.57	1.77	1.97
Rate Class	Contribution Rates for Eligible Employers			
1	0.00%	0.07%	0.27%	0.47%
2	0.07	0.27	0.47	0.67
3	0.27	0.47	0.67	0.87
4	0.47	0.67	0.87	1.07
5	0.67	0.87	1.07	1.27
6	0.87	1.07	1.27	1.47
7	1.07	1.27	1.47	1.67
8	1.27	1.47	1.67	1.87
9	1.47	1.67	1.87	2.07
10	1.67	1.87	2.07	2.27

Rate Class	Contribution Rates for Deficit Employers			
1	3.17%	3.37%	3.57%	3.77%
2	3.37	3.57	3.77	3.97
3	3.57	3.77	3.97	4.17
4	3.77	3.97	4.17	4.37
5	3.97	4.17	4.37	4.57
6	4.17	4.37	4.57	4.77
7	4.37	4.57	4.77	4.97
8	4.57	4.77	4.97	5.17
9	4.77	4.97	5.17	5.37
10	6.37	6.37	6.37	6.37

SCHEDULES OF CONTRIBUTION RATES - Part II

Sched. V	Sched. VI	Sched. VII	Sched. VIII	Sched. IX	Sched. X
(.0135)	(.0095)	(.0075)	(.0050)	~~(....)~~ *(.0025)*	(....)
2.17	2.37	2.57	2.77	2.97	3.17
Contribution Rates for Eligible Employers					
0.67%	0.87%	1.07%	1.27%	1.47%	1.67%
0.87	1.07	1.27	1.47	1.67	1.87
1.07	1.27	1.47	1.67	1.87	2.07
1.27	1.47	1.67	1.87	2.07	2.27
1.47	1.67	1.87	2.07	2.27	2.47
1.67	1.87	2.07	2.27	2.47	2.67
1.87	2.07	2.27	2.47	2.67	2.87
2.07	2.27	2.47	2.67	2.87	3.07
2.27	2.47	2.67	2.87	3.07	3.27
2.47	2.67	2.87	3.07	3.27	3.47
Contribution Rates for Deficit Employers					
3.97%	4.17%	4.37%	4.57%	4.77%	4.97%
4.17	4.37	4.57	4.77	4.97	5.17
4.37	4.57	4.77	4.97	5.17	5.37
4.57	4.77	4.97	5.17	5.37	5.57
4.77	4.97	5.17	5.37	5.57	5.77
4.97	5.17	5.37	5.57	5.77	5.97
5.17	5.37	5.57	5.77	5.97	6.17
5.37	5.57	5.77	5.97	6.17	6.37
5.57	5.77	5.97	6.17	6.37	6.37
6.37	6.37	6.37	6.37	6.37	6.37"

Section 12. Section 39-51-2302, MCA, is amended to read:

"39-51-2302. Disqualification for leaving work without good cause. (1) An individual must be disqualified for benefits if the individual has left work without good cause attributable to the individual's employment.

(2) The individual may not be disqualified if the individual leaves:

(a) employment because of personal illness or injury not associated with misconduct upon the advice of a licensed and practicing ~~physician~~ *health care provider* and, after recovering from the illness or injury when recovery is certified by a licensed and practicing ~~physician~~ *health care provider*, the individual returned to and offered service to the individual's employer and the individual's regular or comparable suitable work was not available, as determined by the department, provided the individual is otherwise eligible;

(b) temporary work accepted during a period of unemployment caused by a lack of work with the individual's regular employer if upon leaving the temporary work the individual returned immediately to work for the individual's regular employer, provided that the individual is unemployed for nondisqualifying reasons; or

(c) employment because of being ordered to military service, as defined in 10-1-1003, for a period of less than 6 weeks and the individual upon checking with the employer finds that the individual's prior employment has terminated due to the military service or for other nondisqualifying reasons. Any benefits paid under this subsection (2)(c) are not chargeable to the employer's account.

(3) To requalify for benefits, an individual shall perform services for which remuneration is received equal to or in excess of six times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless the individual has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of the act that caused the disqualification. The services must constitute employment as defined in 39-51-203 and 39-51-204."

Section 13. Section 39-51-2304, MCA, is amended to read:

"39-51-2304. Disqualification for failure to apply for or to accept suitable work. (1) *(a)* An individual is disqualified for benefits if the individual fails without good cause ~~either~~ to*:*

(i) apply for available and suitable work when directed to do so by the employment office or the department ~~or to~~*;*

(ii) accept an offer *from a former employer or a new employer* of suitable work ~~which~~ *that* the individual is physically able and mentally qualified to perform*;* or ~~to~~

(iii) return to customary self-employment, if any, when directed to do so by the department.

(b) The disqualification continues for the week in which the failure occurs and until the individual has performed services for which remuneration is received equal to or in excess of six times that individual's weekly benefit amount subsequent to the week the act causing the disqualification occurred, with a reduction in the individual's maximum benefit amount equal to six times the weekly benefit amount, as determined by the department, provided the individual has not left this work under disqualifying circumstances. The services must constitute employment as defined in 39-51-203 and 39-51-204.

(2) In determining whether or not any work is suitable for an individual, the department shall consider:

(a) the degree of risk involved to the individual's health, safety, and morals;

(b) the individual's physical fitness and prior training;

(c) the individual's experience and previous earnings;

(d) the individual's length of unemployment and prospects for securing local work in the customary occupation; and

(e) the distance of the available work from the individual's residence.

(3) Notwithstanding any other provisions of this chapter, including subsection (4), ~~no~~ work may *not* be considered suitable and benefits may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) Subject to subsection (3), after 13 weeks of unemployment, suitable work is work that meets the criteria in this section and that offers 75% of the individual's earnings in previous insured work in the individual's customary occupation. ~~No~~ *An* individual, however, is *not* required to accept a job paying less than the federal minimum wage."

Section 14. Section 39-51-2306, MCA, is amended to read:

"39-51-2306. Disqualification because of receipt of certain other wages, compensation, or benefits. (1) ~~Effective April 1, 1977, an~~ *An* individual ~~shall be~~ *is* disqualified for benefits for any week with respect to which ~~he is receiving or has received~~ *the individual receives* payment in the form of:

(a) compensation for disability under the workers' compensation law or the occupational disease law of this or any other state or under a similar law of the United States ~~or under the social security disability law~~. However, when an injured claimant ~~has ceased~~ *ceases* to draw compensation benefits and ~~shall have returned~~ *returns* to the labor market, ~~he~~ *the claimant* ~~shall then be~~ *is* entitled to receive unemployment compensation benefits under this chapter if ~~he shall be~~ *the claimant is* otherwise qualified. Compensation ~~which is~~ received as a payment for a permanent partial disability ~~shall~~ *may* not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving unemployment compensation benefits under this chapter~~,~~ ~~provided~~ *if* the recipient has returned to the labor market and is otherwise qualified.

(b) benefits under the Railroad Unemployment Insurance Act*, 45 U.S.C. 351, et seq.,* or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual ~~is receiving or has received~~ *receives* benefits under an unemployment compensation law of another state or of the United States if ~~such~~ *the* benefits are paid pursuant to 39-51-504.

(2) ~~Receipt of any~~ *If an individual receives* wages, compensation, or benefits as set forth in subsection (1) ~~of this section~~ after payment of unemployment benefits ~~and~~ with respect to the same week for which unemployment benefits

were received ~~will thereupon require such individual to~~*, the individual shall* repay ~~such~~ *the* unemployment benefits, and the department may collect ~~such~~ *the* unemployment benefits in the same manner as provided for collection of benefits under 39-51-3206."

Section 15. Section 39-51-2510, MCA, is amended to read:

"39-51-2510. Total extended benefit amount. The total extended benefit amount payable to ~~any~~ *an* eligible individual with respect to ~~his~~ *that individual's* applicable benefit year ~~shall~~ *must* be the least of the following amounts:

(1) 50% of the total amount of regular benefits ~~which~~ *that* were payable to ~~him~~ *the individual* under this chapter in ~~his~~ *the individual's* applicable benefit year;

(2) 13 times ~~his~~ *the individual's* weekly benefit amount ~~which~~ *that* was payable to ~~him~~ *the individual* under this chapter for a week of total unemployment in the *individual's* applicable benefit year*; or*

(3) 39 times the individual's weekly benefit amount, less the amount of regular benefits paid or considered paid during the individual's applicable benefit year."

Section 16. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 17. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 39, chapter 51, part 2, and the provisions of Title 39, chapter 51, part 2, apply to [section 1].

Section 18. Effective dates. (1) [Sections 10, 16, and 17 and this section] are effective July 1, 2007.

(2) [Sections 2, 5 through 7, 9, and 11 through 15] are effective October 1, 2007.

(3) [Sections 1, 3, 4, and 8] are effective January 1, 2008.

Approved March 27, 2007

CHAPTER NO. 53

[HB 143]

AN ACT REVISING THE QUARTERLY REPORTING REQUIREMENT LAWS FOR MOTOR VEHICLE WRECKING FACILITIES; TRANSFERRING FROM THE MOTOR VEHICLE WRECKING LAWS TO THE MOTOR VEHICLE LAWS ENFORCEMENT OF THE REQUIREMENT THAT MOTOR VEHICLE WRECKING FACILITIES SEND QUARTERLY REPORTS TO THE DEPARTMENT OF JUSTICE; AND AMENDING SECTIONS 61-3-211, 61-12-402, 75-10-513, AND 75-10-541, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-211, MCA, is amended to read:

"61-3-211. Surrender of certificate of title — issuance of salvage certificate — salvage retitling requirements. (1) An insurer acquiring ownership of a motor vehicle that is less than 5 years of age and that the insurer determines to be a salvage vehicle shall surrender the certificate of title to the

department within 15 days after acquiring the certificate of title. If the insurer has not sold the salvage vehicle prior to the time of surrendering the certificate of title, the insurer shall apply for a salvage certificate on a form prescribed by the department. If the certificate of title names one or more holders of a perfected security interest in the motor vehicle, the insurer shall secure and deliver to the department a release from each secured party of the secured interest.

(2) Upon receipt of a properly executed certificate of title and a salvage certificate application from an insurer, the department shall issue a salvage certificate to the insurer within 5 working days of the date of receipt of the application. Upon receipt of a salvage certificate issued by the department, an insurer may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. The salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(3) If the insurer sells a salvage vehicle within the 15-day period established in subsection (1) prior to surrendering the certificate of title, the insurer shall complete a salvage receipt on a form prescribed by the department. The insurer shall deliver the original salvage receipt to the salvage vehicle purchaser only after obtaining a clear title and lien release. Prior to disposing of the salvage vehicle, the salvage vehicle purchaser shall apply for a salvage certificate by completing the salvage receipt and submitting it to the department. The insurer shall deliver a copy of the salvage receipt with the surrendered certificate of title to the department. Upon receipt of the certificate of title from the insurer and the application from the salvage vehicle purchaser, the department shall issue a salvage certificate to the salvage vehicle purchaser that is prima facie evidence of ownership.

(4) If an insurer determines that a salvage vehicle will remain with the owner after an agreed settlement, the insurer shall notify the department of the settlement on a form prescribed by the department. Upon receipt of the notice, the department may require the owner to surrender the certificate of title in compliance with this part, regardless of whether ownership of the salvage vehicle was obtained in a jurisdiction not requiring the surrender of the certificate of title or a comparable ownership document.

(5) At the time of surrender of a certificate of title for a salvage vehicle not acquired by an insurer, the department shall issue a salvage certificate to the owner. Upon receipt of a salvage certificate issued by the department to a noninsurer, the owner may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. A salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(6) A fee of $5 must be paid to the department for the issuance of a salvage certificate.

(7) A salvage vehicle owned by or in the inventory of a motor vehicle wrecking facility on October 1, 1991, is exempt from the provisions of this section if the owner of the facility has complied with the provisions of ~~75-10-513(2)~~ *[section 5]*."

Section 2. Section 61-12-402, MCA, is amended to read:

"61-12-402. Notice to owner. (1) Within 72 hours after a vehicle is removed and held by or at the direction of the Montana highway patrol, the highway patrol shall notify the sheriff of the county or the chief of police of the city in which the vehicle is being stored of where and when the vehicle was taken

into custody and of where the vehicle is being stored. In addition, the Montana highway patrol shall furnish the sheriff or the chief of police:

(a) a complete description of the vehicle, including year, make, model, serial number, and license number if available;

(b) any costs incurred to that date in the removal, storage, and custody of the vehicle; and

(c) any available information concerning the vehicle's ownership.

(2) The highway patrol shall notify the sheriff of the county or the chief of police of the city in which the vehicle was taken into custody of the location at which the vehicle is being stored if the vehicle was removed to a different county.

(3) The sheriff or the city police in the jurisdiction where the vehicle is being stored shall make reasonable efforts to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle taken into custody under 61-12-401. If a name and address are ascertained, the sheriff or the city police shall notify the owner, lienholder, or person of the location of the vehicle.

(4) If the vehicle is registered in the office of the department, notice is considered to have been given when a certified letter addressed to the registered owner of the vehicle and lienholder, if any, at the latest address shown by the records in the office of the department, return receipt requested and postage prepaid, is mailed at least 30 days before the vehicle is sold.

(5) If the identity of the last-registered owner cannot be determined, if the registration does not contain an address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the county where the motor vehicle is being stored is sufficient to meet all requirements of notice pursuant to this part. The notice by publication may contain multiple listings of abandoned vehicles. The notice must be provided in the same manner as prescribed in 25-13-701(1)(b).

(6) If the abandoned vehicle is in the possession of a motor vehicle wrecking facility licensed under 75-10-511, the wrecking facility may make the required search to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall give the notices required in subsections (3) through (5). The wrecking facility shall deliver to the sheriff or the city police a certificate describing the efforts made to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall deliver to the sheriff or the city police proof of the notice given.

(7) (a) A vehicle found by law enforcement officials to be a junk vehicle, as defined by 75-10-501, and that has a value of $500 or less may be directly submitted for disposal in accordance with the provisions of Title 75, chapter 10, part 5, upon a release given by the sheriff or the city police. The county representative designated to implement the county motor vehicle recycling and disposal program pursuant to 75-10-521 for the county where the vehicle is being stored shall determine the value of the vehicle. In the release, the sheriff or the city police shall include a description of the vehicle, including year, make, model, serial number, and license number if available. If the vehicle is being stored by a motor vehicle wrecking facility, the sheriff or the city police shall transmit the release to the motor vehicle wrecking facility and the facility shall consider the release to meet the requirements for records under *[section 5] and* 75-10-512 ~~and 75-10-513~~. If the vehicle is being stored by a qualified tow truck

operator, as defined in 61-8-903, the sheriff or the city police shall transmit the release to the operator. Vehicles described in this section may be submitted for disposal without notice and without a required holding period.

(b) A licensed vehicle that otherwise meets the definition of a junk vehicle, as defined in 75-10-501, and that has a value of $500 or less may be directly submitted for disposal as provided in subsection (7)(a)."

Section 3. Section 75-10-513, MCA, is amended to read:

"75-10-513. Disposal of junk vehicles — records. (1) ~~When~~ *If* a *person owning or operating a* motor vehicle wrecking facility submits a junk vehicle to the disposal program, the vehicle is then the property of the state.

~~(2) Quarterly, each motor vehicle wrecking facility shall mail to the department of justice, on a form approved by the department of justice, a list of all junk vehicles received by the motor vehicle wrecking facility during the quarter, stating the year, make, and complete identification number of each vehicle. If a certificate of title is received for a junk vehicle on the list, that certificate of title must accompany the list. The department of justice shall issue a receipt for the certificate of title if requested by the licensed facility, and the receipt may serve as an instrument for reclaiming the certificate of title if the vehicle is rebuilt.~~

~~(3)~~*(2)* A *person owning or operating a* motor vehicle graveyard shall submit to the department the records, documents, and other information concerning junk vehicles received by ~~it~~ *that person* that are required by rules of the department."

Section 4. Section 75-10-541, MCA, is amended to read:

"75-10-541. Injunction — action to collect civil penalty — authority of department of justice. (1) The department may sue to enjoin the operation or maintenance of a motor vehicle wrecking facility or graveyard either permanently or until compliance with this part, the rules of the department, or an order issued pursuant to this part has been demonstrated.

(2) The department may sue in district court to collect a civil penalty as provided in 75-10-542.

(3) Upon request of the department, the attorney general or the county attorney of the county in which a motor vehicle wrecking facility or graveyard is located may petition the district court to enjoin further operation or maintenance of a motor vehicle wrecking facility or graveyard or to impose, assess, and recover a civil penalty, as appropriate.

(4) The department of justice, through the attorney general or the county attorney of the county in which a facility is located, may sue in district court to collect a civil penalty as provided in 75-10-542 for violations of 75-10-512 ~~or 75-10-513(2)~~ discovered during department of justice inspections."

Section 5. Motor vehicle wrecking facility quarterly reports. Quarterly, the owner or operator of a motor vehicle wrecking facility, as defined in 75-10-501, shall mail to the department, on a form approved by the department, a list of all junk vehicles, as defined in 75-10-501, received by the owner or operator of the motor vehicle wrecking facility during the quarter, stating the year, make, and complete identification number of each vehicle. If the owner or operator of a motor vehicle wrecking facility received a certificate of title when the owner or operator of the facility received a junk vehicle on the list, that certificate of title must accompany the list. The department shall issue a

receipt for the certificate of title if requested by the owner or operator of the facility, and the receipt may serve as an instrument for reclaiming the certificate of title if the vehicle is rebuilt.

Section 6. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 61, chapter 3, part 2, and the provisions of Title 61, chapter 3, part 2, apply to [section 5].

Approved March 27, 2007

CHAPTER NO. 54

[HB 167]

AN ACT REVISING THE INTEGRATED WASTE MANAGEMENT AND SOLID WASTE MANAGEMENT LAWS; REVISING THE PROCESS FOR ADOPTING THE STATE SOLID WASTE MANAGEMENT AND RESOURCE RECOVERY PLAN; TRANSFERRING THE AUTHORITY TO ADOPT THE PLAN FROM THE BOARD OF ENVIRONMENTAL REVIEW TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AND AMENDING SECTIONS 75-10-104, 75-10-106, 75-10-111, 75-10-807, AND 75-10-920, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-104, MCA, is amended to read:

"75-10-104. Duties of department. The department shall:

(1) prepare*, adopt, and implement* a state solid waste management and resource recovery plan as required by 75-10-807 *and 75-10-111* ~~for submission to the board~~;

(2) prepare rules necessary for the implementation of this part for submission to the board, including but not limited to rules:

(a) governing the submission of plans for a solid waste management system;

(b) establishing, for the purpose of determining the tonnage or volume-based solid waste management fee that a facility is subject to under 75-10-115(1)(c), methods for determining or estimating the amount of solid waste incinerated or disposed of at a facility;

(c) establishing the license application fee that a facility is subject to under 75-10-115(1)(a);

(d) establishing the flat annual license renewal fee that a facility is subject to under 75-10-115(1)(b);

(e) establishing the tonnage or volume-based annual renewal fee that a facility is subject to under 75-10-115(1)(c); *and*

(f) providing procedures for the quarterly collection of the solid waste management fee provided for in 75-10-204(6); ~~and~~

~~(g) providing guidelines for integrated waste management;~~

(3) provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating:

(a) a solid waste management system in order to ensure that the system conforms to the state plan;

(b) integrated waste management programs; and

(c) collection, disposal, reduction, and educational programs for household hazardous waste and small quantities of hazardous waste that are exempt from regulation under Title 75, chapter 10, part 4;

(4) enforce and administer the provisions of this part;

(5) approve plans for a proposed solid waste management system submitted by a local government; and

(6) serve as a clearinghouse for information on waste reduction and reuse, recycling technology and markets, composting, and household hazardous waste disposal, including chemical compatibility."

Section 2. Section 75-10-106, MCA, is amended to read:

"75-10-106. Duties of board. The board shall:

~~(1) adopt a state solid waste management and resource recovery plan after complying with the procedures outlined in 75-10-111; and~~

~~(2)~~ adopt rules necessary for the implementation of this part, including but not limited to rules governing the following:

~~(a)~~*(1)* submission of plans for a solid waste management system; and

~~(b)~~*(2)* the application fee, flat annual license renewal fee, and tonnage or volume-based renewal fee for solid waste management systems prepared by the department pursuant to 75-10-104 and 75-10-115."

Section 3. Section 75-10-111, MCA, is amended to read:

"75-10-111. State solid waste management *and resource recovery* plan — hearings ~~and action~~. ~~(1) A proposed~~ *The department shall adopt the* solid waste management *and resource recovery* plan ~~shall be prepared by the department~~ *required in 75-10-104 and 75-10-807 according to the rulemaking procedures of the Montana Administrative Procedure Act under Title 2, chapter 4, part 3. The department shall prepare the plan* in conjunction with local governments in the state ~~and any other interested person~~*, citizens, solid waste and recycling industries, environmental organizations, and others involved or interested in the management of solid waste*. ~~After a draft of a proposed solid waste management plan has been prepared,~~ *Within 3 days after the notice of proposed rulemaking to adopt the plan is published pursuant to Title 2, chapter 4, part 3,* the department shall ~~circulate~~ *mail* a copy of the *notice and the* proposed plan to the board of county commissioners in each county in the state, the governing body of every incorporated city or town in the state, any person responsible for the operation of a solid waste management system under the provisions of *Title 75, chapter 10,* parts 1 and 2, ~~chapter 10 of this title,~~ the governor, the environmental quality council, and any other interested person. ~~for at least 90 days prior to submission of a final proposed solid waste management plan to the board.~~ During the ~~90-day~~ period for receipt of comments on the ~~draft~~ *proposed rulemaking concerning the* plan, the department shall hold at least ~~three public hearings around the state on the draft plan~~ *one public hearing*.

~~(2) A final proposed plan shall be prepared based on the comments and objections received at the public hearings and from the persons who have submitted comments on the draft solid waste management plan. The final plan submitted to the board shall include a discussion of all comments and objections received and the reasons why recommendations for changes or amendments to the proposed plan were accepted or rejected. The board shall consider the final proposed solid waste management plan after giving notice and holding at least~~

~~one public hearing pursuant to the rulemaking procedures outlined in the Montana Administrative Procedure Act.~~"

Section 4. Section 75-10-807, MCA, is amended to read:

"75-10-807. Requirement to prepare and implement state solid waste management *and resource recovery* plan. (1) As a basis for developing an integrated waste management program and ensuring adequate disposal capacity, the department shall prepare*, adopt,* and implement a state solid waste management *and resource recovery* plan in accordance with *75-10-111 and* this part.

(2) The plan must be comprehensive and integrated and must include at least the following elements:

(a) a capacity assurance element that identifies existing disposal capacity, estimates waste generation rates, and determines the disposal capacity needed for the future and that assesses the potential effect of interstate disposal on capacity;

(b) an element that incorporates federal regulations 40 CFR, parts 257 and 258;

(c) an element that identifies the role of each of the components of the integrated waste management priorities contained in 75-10-804;

(d) a technology assessment element that assesses the availability and practicality of alternative technologies for solid waste management;

(e) an education and public information element that identifies existing education and information programs and describes how the state will increase the awareness and cooperation of the public in environmentally safe solid waste management;

(f) a special waste and household hazardous waste element that identifies types and quantities of wastes that create special disposal problems and recommends methods for reducing, handling, collecting, transporting, and disposing of those wastes and that identifies existing and future strategies for managing those wastes;

(g) an element that identifies the needs of rural communities and management strategies to address those needs;

(h) an element that identifies mechanisms to ensure proper training of landfill operators; and

(i) a timeline and implementation strategy for each of the plan elements.

~~(3) The plan must be developed with the involvement of local officials, citizens, solid waste and recycling industries, environmental organizations, and others involved in the management of solid waste.~~

~~(4) The department shall conduct hearings as provided in 75-10-111.~~

~~(5)~~*(3)* The plan must be evaluated every 5 years and updated as necessary."

Section 5. Section 75-10-920, MCA, is amended to read:

"75-10-920. Environmental, social, and economic factors evaluated during certification. In evaluating applications for a certificate of site acceptability, the department shall give consideration to the following list of factors and regulations, where applicable, and may by rule add to the factors enumerated in this section:

(1) siting criteria for municipal solid waste landfills consistent with federal requirements as described in 40 CFR part 258;

(2) siting criteria described under the Montana Solid Waste Management Act, Title 75, chapter 10, part 2, and rules adopted under that part;

(3) the ~~Montana~~ *state* solid waste management *and resource recovery* plan;

(4) solid waste disposal needs, including:

(a) availability and desirability of alternative methods of solid waste disposal in lieu of the proposed facility;

(b) promotional activities of the applicant that may have given rise to the need for the facility;

(c) social changes resulting from the facility, including protection of public health and environmental quality; and

(d) integrated waste management activities that could reduce the need for additional solid waste disposal capacity;

(5) land use impacts, including:

(a) the area of land required and its ultimate use;

(b) consistency with state and regional solid waste plans;

(c) consistency with existing and projected nearby land use;

(d) alternative uses of the site;

(e) the impact on the population already in the area and the population attracted by construction or operation of the facility;

(f) the impact of availability of solid waste disposal at the facility on growth patterns and population dispersal;

(g) construction materials and practices, including quality control and quality assurance plans to be followed during construction of all phases of the proposed facility;

(h) scenic impacts;

(i) the effects on natural systems, wildlife, and plant life;

(j) the impacts on important historic, architectural, archaeological, and cultural areas and features;

(k) the impacts on public facilities and accommodations;

(l) opportunities for joint use with solid waste disposal-intensive industries; and

(m) the economic impact on the local area, local government infrastructure, and existing industry;

(6) water resources impacts, including:

(a) hydrologic studies of the adequacy of water supply and the impact of the facility on streamflow, lakes, and reservoirs;

(b) hydrologic studies of the impact of the facility on ground water, including vadose zone studies describing the potential for leachate to migrate from the facility to ground water;

(c) an inventory of effluents, including physical, chemical, and biological characteristics;

(d) hydrologic studies of effects of effluents on receiving waters;

(e) the effect of the facility on water quality;

(f) the facility's projected water uses;

(g) the effects on plant and animal life, including algae, macroinvertebrates, and fish population;

(h) effects on unique or otherwise significant ecosystems, such as wetlands; and

(i) ground water, vadose zone, and methane gas monitoring systems and programs;

(7) characteristics of solid wastes that will be disposed of at the facility, including:

(a) the rate of solid waste disposal;

(b) the solid waste handling practices proposed to be used;

(c) the present and expected future physical and chemical characteristics of the solid waste; and

(d) inspection practices for preventing the illegal dumping of hazardous waste into the facility;

(8) transportation practices, including:

(a) route and mode of transporting waste;

(b) environmental, social, and economic impacts of transportation facilities; and

(c) transfer facilities."

Approved March 27, 2007

CHAPTER NO. 55

[HB 264]

AN ACT ALLOWING A LICENSED ANGLER FISHING FROM A BOAT OR THE SHORE IN A LAKE OR RESERVOIR TO FISH BY HOOK AND TWO LINES OR TWO RODS; AMENDING SECTION 87-2-120, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-120, MCA, is amended to read:

"87-2-120. Lawful means of angling or fishing. *(1)* ~~The~~ *Except as provided in subsection (2), the* only lawful means of angling or fishing is by hook and single line or single rod, in hand or within immediate control. All other methods of angling or fishing, unless authorized by commission rule *or authorized in subsection (2)*, are unlawful.

(2) A licensed angler fishing from a boat or the shore in a lake or reservoir may fish by hook and two lines or two rods, in hand or within immediate control, in accordance with rules that the commission shall adopt."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 27, 2007

CHAPTER NO. 56

[HB 334]

AN ACT REMOVING THE TIME RESTRICTIONS ON THE DESIGN-BUILD HIGHWAY CONTRACT PROCESS FOR HIGHWAY CONSTRUCTION PROJECTS; AMENDING SECTIONS 18-8-204, 18-8-205, 60-2-111, 60-2-112, 60-2-134, AND 60-2-137, MCA; REPEALING SECTIONS 60-2-135 AND 60-2-136, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-8-204, MCA, is amended to read:

"18-8-204. Procedures for selection. (1) In the procurement of architectural, engineering, and land surveying services, the agency may encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

(2) (a) The agency shall then select, based on criteria established under agency procedures and guidelines and the law, the firm considered most qualified to provide the services required for the proposed project.

(b) The agency procedures and guidelines must be available to the public and include at a minimum the following criteria as they relate to each firm:

(i) the qualifications of professional personnel to be assigned to the project;

(ii) capability to meet time and project budget requirements;

(iii) location;

(iv) present and projected workloads;

(v) related experience on similar projects; and

(vi) recent and current work for the agency.

(c) The agency shall follow the minimum criteria of this part if no other agency procedures are specifically adopted.

(3) The provisions of this section do not apply to procurement of architectural, engineering, and land surveying services for projects that the department of transportation has determined are part of the design-build contracting ~~pilot~~ program authorized in ~~60-2-135 through~~ 60-2-137."

Section 2. Section 18-8-205, MCA, is amended to read:

"18-8-205. Negotiation of contract for services. (1) The agency shall negotiate a contract with the most qualified firm for architectural, engineering, and land surveying services at a price that the agency determines to be fair and reasonable. In making its determination, the agency shall take into account the estimated value of the services to be rendered, as well as the scope, complexity, and professional nature of the services.

(2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the agency determines to be fair and reasonable, negotiations with that firm must be formally terminated and the agency shall select other

firms in accordance with 18-8-204 and continue as directed in this section until an agreement is reached or the process is terminated.

(3) The provisions of this section do not apply to the negotiation of contracts for projects that the department of transportation has determined are part of the design-build contracting ~~pilot~~ program authorized in ~~60-2-135 through~~ 60-2-137."

Section 3. Section 60-2-111, MCA, is amended to read:

"60-2-111. Letting of contracts on state and federal-aid highways. (1) Except as provided in subsection (2), all contracts for the construction or reconstruction of the highways and streets located on highway systems and state highways as defined in 60-2-125, including portions in cities and towns, and all contracts entered into under 7-14-4108 must be let by the commission. Except as otherwise specifically provided, the commission may enter the types of contracts and upon terms that it may decide. All contracts must meet the requirements of Title 18, chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract.

(2) The commission may delegate the authority, with all applicable statutory restrictions, to award any contract covered by this section to the department or to a unit of local government.

(3) The commission may award contracts for projects that the department has determined are part of the design-build contracting ~~pilot~~ program authorized in ~~60-2-135 through~~ 60-2-137."

Section 4. Section 60-2-112, MCA, is amended to read:

"60-2-112. Competitive bidding — reciprocity. (1) Except as provided in subsections (2) through (6), if the estimated cost of any work exceeds $50,000, the commission shall award the contract by competitive bidding to the lowest responsible and responsive bidder. The award must be made upon the notice and terms that the commission prescribes by its rules. However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102.

(2) The commission may award a contract by means other than competitive bidding if it determines that special circumstances so require. The commission shall specify the special circumstances in writing.

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting services, administrative costs, and reasonable estimates of other costs attributable to the project.

(4) The commission may delegate to the department the authority to enter, without competitive bidding, agreed-upon price contracts for projects costing $50,000 or less.

(5) The commission may award a design-build contract under the design-build contracting ~~pilot~~ program if the provisions of ~~60-2-135 through~~ 60-2-137 have been met.

(6) The commission or the department may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:

(a) the foreign country, or province or other political subdivision of that country, in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country, or province or other political subdivision of that country; and

(b) the department has entered into a reciprocity agreement with or has exchanged letters of information with the foreign country, or province or other political subdivision of that country, that addresses:

(i) the equal and fair treatment of bids originating in the United States and in the foreign country, or province or other political subdivision of that country;

(ii) specific ownership requirements and tax policies in the United States and in the foreign country, or province or other political subdivision of that country, that may result in the unequal treatment of all bids received, regardless of their origin;

(iii) the means by which contractors from both the United States and the foreign country, or province or other political subdivision of that country, are notified of highway projects and construction projects available for bid; and

(iv) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country, or province or other political subdivision of that country, for projects located in either the United States or the foreign country, or province or other political subdivision of that country.

(7) For the purposes of subsection (6), "construction" has the meaning provided in 18-2-101."

Section 5. Section 60-2-134, MCA, is amended to read:

"60-2-134. Definitions. For the purposes of 18-8-204, 18-8-205, 60-2-111, 60-2-112, ~~60-2-135 through~~ 60-2-137, and this section, the following definitions apply:

(1) "Design-build contracting" means the process of entering into a single contract between the commission and a design-build contractor in which the design-build contractor agrees to design and build a highway, structure, or facility or any other items required in a request for proposals.

(2) "Design-build contractor" means an individual, partnership, corporation, joint venture, or other legally recognized entity that is appropriately licensed in Montana and that provides the necessary design and construction services, including contract administration.

(3) "Design-build criteria package" means the document provided by the department that contains the information necessary to guide a prospective design-build contractor in the preparation and submission of a proposal for a design-build project.

(4) "Request for proposals" means a part of the design-build criteria package that contains a detailed scope of work, including design concepts, technical requirements and specifications, the time allowed for design and construction, the department's estimated cost of the project, the deadline for submitting a proposal, the selection criteria, and a copy of the contract.

(5) "Request for qualifications" means a part of the design-build criteria package that contains the desired minimum qualifications of the design-build contractor, a scope of work statement, the project requirements, the amount of

reimbursement that the commission has determined will be paid to prospective design-build contractors who qualify for the short list but are not awarded a contract, and the selection criteria that the department will use in compiling the short list of prospective design-build contractors to consider."

Section 6. Section 60-2-137, MCA, is amended to read:

"60-2-137. Design-build contracting process — submission of proposals — department's duties. (1) ~~In accordance with recommendations of the design-build contracting board, once~~ *Once* the department has identified a project for which the design-build contracting process will be used, the department shall prepare and advertise a request for qualifications.

(2) From the responders to the request for qualifications, the department shall prepare a short list of the responders that it believes are most qualified, not to exceed five responders on any single project.

(3) (a) The department shall announce the short list and issue a request for proposals to each of the prospective design-build contractors on the short list, who may then submit a technical *and price* proposal to the department.

(b) A technical *and price* proposal submitted in response to a request for proposals must contain detailed descriptions of the prospective design-build contractor's approach to designing, constructing, and managing the project in accordance with the design-build criteria package. The technical *and price* proposal must also include the prospective design-build contractor's conceptual design and construction sequence and schedule *and the lump-sum price to complete the project*.

(4) The department shall evaluate the technical *and price* proposals and make a written recommendation to the commission regarding the department's selection of the design-build contractor to be awarded the contract.

(5) The prospective design-build contractors who appeared on the department's short list but are not awarded the contract may be paid a stipend, in an amount determined by the commission, for costs incurred in submitting the response to the department's request for proposals."

Section 7. Repealer. Sections 60-2-135 and 60-2-136, MCA, are repealed.

Section 8. Effective date. [This act] is effective July 1, 2007.

Approved March 27, 2007

CHAPTER NO. 57

[SB 19]

AN ACT REVISING LAWS GOVERNING OIL AND GAS OPERATIONS; REQUIRING A SEISMIC ACTIVITY PERMITHOLDER TO FURNISH INFORMATION TO A SURFACE OWNER; REQUIRING AN OIL OR GAS DEVELOPER OR OPERATOR TO PROVIDE INFORMATION TO A SURFACE OWNER; REQUIRING THE SURFACE OWNER TO PROVIDE INFORMATION; INCREASING THE TIME PERIODS FOR NOTICE OF DRILLING OPERATIONS; CLARIFYING THAT A SURFACE OWNER AND OIL AND GAS DEVELOPER OR OPERATOR MAY USE DISPUTE RESOLUTION PROCESSES; CLARIFYING THE PENALTY FOR VIOLATING NOTICE REQUIREMENTS; AMENDING SECTIONS 82-1-107,

82-10-503, 82-10-504, AND 82-10-505, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-1-107, MCA, is amended to read:

"82-1-107. Permitholder to furnish information to surface ~~user~~ *owner*. (1) Before commencing seismic activity, the person, firm, or corporation shall notify the surface ~~user~~ *owner, as defined in 82-10-502,* as to the approximate time schedule of the planned activity~~, and upon~~ *and shall provide copies of Title 82, chapter 10, part 5, this part, and, if available, a current publication produced by the environmental quality council entitled "A Guide to Split Estates in Oil and Gas Development". Upon* request, the following information ~~shall~~ *must* also be furnished:

(a) the name and permanent address of the seismic exploration firm, along with the name and address of the firm's designated agent for the state if different from that of the firm;

(b) evidence of a valid permit to engage in seismic exploration;

(c) *the* name and address of the company insuring the seismic firm or, if self-insured, evidence of ~~such~~ *the* self-insurance;

(d) the number of the bond required in 82-1-104;

(e) a description of the planned seismic activity and where it will take place;

(f) *the* anticipated need, if any, to obtain water from the surface ~~user~~ *owner* during planned seismic activity.

(2) The surface ~~user~~ *owner* is responsible for providing the permitholder with the name and permanent address of a responsible person with whom communication may be maintained.

(3) The surface owner is responsible for providing the name and address of the permitholder to any lessees, tenants, or other parties responsible for surface operations on the property."

Section 2. Section 82-10-503, MCA, is amended to read:

"82-10-503. Notice of drilling operations. *(1)* In addition to the requirements for geophysical exploration activities governed by Title 82, chapter 1, part 1, the oil and gas developer or operator shall give the surface owner and any purchaser under contract for deed written notice of the drilling operations that ~~he~~ *the oil and gas developer or operator* plans to undertake. ~~This~~ *The* notice ~~shall~~ *must* be given to the record surface owner and any purchaser under contract for deed at their addresses as shown by the records of the county clerk and recorder at the time the notice is given. *The notice must include a copy of this part and, if available, a current publication produced by the environmental quality council entitled "A Guide to Split Estates in Oil and Gas Development".* ~~This~~ *The* notice ~~shall~~ *must* sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property. The notice ~~shall~~ must be given no more than ~~90~~ *180* days and no fewer than ~~10~~ *20* days before ~~commencement of any activity on~~ *any activity that disturbs* the land surface. *The surface owner may waive the notice requirement.*

(2) The surface owner is responsible for providing the name and address of the oil and gas developer or operator to any lessees, tenants, or other parties responsible for surface operations on the property.

(3) Prior to the oil and gas developer or operator providing the notice required in subsection (1), a person qualified under 70-16-111 may enter the land to investigate and use boundary evidence and perform boundary, well site location, and access road surveys if the notice requirements of 70-16-111 are met. However, the oil and gas developer or operator shall provide the notice required pursuant to subsection (1) prior to any activity that disturbs the land surface."

Section 3. Section 82-10-504, MCA, is amended to read:

"82-10-504. Surface damage and disruption payments — *dispute resolution* — penalty for late payment. (1) (a) *The surface owner and the oil and gas developer or operator shall attempt to negotiate an agreement on damages.* The oil and gas developer or operator shall pay the surface owner a sum of money or other compensation equal to the amount of damages sustained by the surface owner for loss of agricultural production and income, lost land value, and lost value of improvements caused by ~~drilling~~ *oil and gas* operations.

(b) The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer or operator. When determining damages, consideration ~~shall~~ *must* be given to the period of time during which the loss occurs.

(c) At any time during the negotiation, at the request of either party and upon mutual agreement, the surface owner and the oil and gas developer or operator may enter into a dispute resolution process, including mediation.

~~(c)~~*(d)* The surface owner may elect to receive annual damage payments over a period of time, except that the surface owner ~~shall~~ *must* be compensated by a single sum payment for harm caused by exploration only.

~~(d)~~*(e)* The payments contemplated by this subsection (1) may ~~only~~ cover *only* land directly affected by ~~drilling~~ *oil and gas* operations and production. Payments under this subsection (1) are intended to compensate the surface owner for damage and disruption~~;~~. ~~no~~ *A* person may *not* reserve or assign ~~that~~ *damage and disruption* compensation apart from the surface estate except to a tenant of the surface estate.

(2) An oil and gas developer or operator who fails to timely pay an installment under any annual damage agreement negotiated with a surface owner is liable for payment to the surface owner of twice the amount of the unpaid installment if the installment payment is not paid within 60 days of receipt of notice of failure to pay from the surface owner."

Section 4. Section 82-10-505, MCA, is amended to read:

"82-10-505. Liability for damages to property. The oil and gas developer or operator is responsible for all damages to *real or personal* property~~, real or personal,~~ resulting from the lack of ordinary care by the oil and gas developer or operator. The oil and gas developer or operator is responsible for damages to ~~property,~~ real or personal~~,~~ *property* caused by ~~drilling~~ *oil and gas* operations and production."

Section 5. Penalty for notice violation. Failure to comply with the notice requirements of 82-10-503 subjects the oil and gas developer or operator to the provisions of 82-11-122 and 82-11-147 through 82-11-149.

Section 6. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 82, chapter 10, part 5, and the provisions of Title 82, chapter 10, part 5, apply to [section 5].

Section 7. Applicability. [This act] applies to proceedings begun on or after October 1, 2007.

Approved March 27, 2007

CHAPTER NO. 58

[SB 29]

AN ACT ESTABLISHING THE ROBERT E. EWING JR. MEMORIAL HIGHWAY ON INTERSTATE 90 BETWEEN COLUMBUS AND PARK CITY; DIRECTING THE DEPARTMENT OF TRANSPORTATION TO ERECT SIGNS; REQUIRING THAT MAPS BE UPDATED WITH THE DESIGNATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Robert E. Ewing Jr. was an exceptional individual who dedicated his entire life's work to building the highway system in Montana; and

WHEREAS, Robert E. Ewing Jr. worked nearly 50 years to construct and improve roads in Montana; and

WHEREAS, Robert E. Ewing Jr. had a lifetime commitment to do the best job possible for the Montana Department of Transportation and the people of Montana; and

WHEREAS, Robert E. Ewing Jr. was the resident engineer during construction of Interstate 90 from Columbus to Park City, which in 1971 won the first place construction award from the Montana Highway Commission for new interstate highway construction; and

WHEREAS, Robert E. Ewing Jr. was a man of the highest personal integrity who was a dedicated public servant with an outstanding record of accomplishment and service.

Be it enacted by the Legislature of the State of Montana:

Section 1. Robert E. Ewing Jr. memorial highway. (1) There is established the Robert E. Ewing Jr. memorial highway composed of the existing Montana interstate 90 from reference marker 410 to reference marker 424, between Columbus and Park City.

(2) When existing road signs between reference marker 410 and reference marker 424 need replacement, the department shall erect road signs reflecting the memorial designation in subsection (1).

(3) Maps that identify roadways in Montana must reflect the memorial designation in subsection (1) when maps are updated or replaced.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 27, 2007

CHAPTER NO. 59

[SB 30]

AN ACT ALLOWING A QUALIFIED VETERAN TO BE ISSUED SPECIAL COMBINATION DISABLED VETERAN AND PURPLE HEART LICENSE PLATES; AND AMENDING SECTIONS 49-4-302, 49-4-304, AND 61-3-458, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-4-302, MCA, is amended to read:

"49-4-302. Privileges of permitholder — privilege for disabled veteran — exemptions from time limits — requirements for special parking spaces. (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in a special parking space reserved for a person with a disability, whether on public property or on private property available for public use, when the person for whom the permit was issued is using the special parking space to enter or exit the vehicle.

(2) A vehicle may not be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by a person with a disability unless:

(a) the vehicle is lawfully displaying a parking permit issued under this part, a distinguishing license plate or placard for a person with a disability that was issued by a foreign jurisdiction conferring parking privileges similar to those conferred in subsection (1), or a specially inscribed license plate displaying the letters "DV" issued under 61-3-458(3)(b) *or (3)(i)* or displaying a wheelchair as provided in 61-3-332(9); and

(b) the reserved parking space is being used by the person for whom the permit, plate, or placard was issued to enter or exit the vehicle.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates displaying the letters "DV" issued under 61-3-458(3)(b) *or (3)(i)* or displaying a wheelchair as provided in 61-3-332(9) and parked in public places along public streets from any time limitation imposed upon parking, except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

(4) In accordance with subsection (2), the governing body of a city, town, or county or appropriate state agency may impose all, but not less than all, of the following requirements with respect to any special parking space constructed after September 30, 1985, and reserved for a person with a disability or a permitholder on ways of this state open to the public, as defined in 61-8-101:

(a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheelchairs.

(b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.

(c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and each other angle parking space designated for a person with a disability must be at least 13 feet wide.

(d) A parking space reserved for a person with a disability must be designated by a sign showing the international symbol of accessibility, indicating that a permit is required, and stating the penalty for a violation. In order to meet the penalty statement requirement, signs existing on October 1, 1993, must have attached a decal stating the penalty for a violation. The sign must be attached to a wall or post in a way that it is not obscured by a vehicle parked in the space."

Section 2. Section 49-4-304, MCA, is amended to read:

"49-4-304. Special license plate or card to be provided and displayed — additional cards allowed for owners of more than one vehicle. (1) Except as authorized in 49-4-303, unless the department of justice issued a special license plate under 61-3-332(9) or 61-3-458(3)(b) *or (3)(i)* indicating a special parking privilege, the department shall provide a card to be displayed on or in a motor vehicle to indicate a parking privilege granted under this part. The special license plate must be affixed to the vehicle according to 61-3-301, or the card must be prominently displayed in the windshield of a vehicle when the parking privilege is being used by the person with a disability in a vehicle other than the one to which a special license plate is affixed.

(2) Subject to the provisions of 49-4-301 through 49-4-305, a person who is eligible to receive a special parking permit and who owns more than one motor vehicle may request and the department of justice shall provide additional cards described in subsection (1) to equal the number of motor vehicles, other than commercial vehicles, owned by the person.

(3) Upon application under 49-4-301, a person with a disability who does not hold a driver's license or does not own a vehicle may receive a card described in subsection (1) to be displayed in a vehicle in which the person with a disability is being conveyed when the parking privilege is being used.

(4) The card must bear a representation of a wheelchair as the symbol of a person with a disability."

Section 3. Section 61-3-458, MCA, is amended to read:

"61-3-458. Special plates for military personnel, veterans, and spouses. (1) (a) Active military personnel, veterans, or the surviving spouse of an eligible veteran, if the spouse has not remarried, may be issued special military or veteran license plates as provided in this section.

(b) Subject to the provisions of 61-3-332 and except as otherwise provided in this chapter, special license plates issued pursuant to this section must be numbered in sets of two with a different number on each set and must be properly displayed as provided in 61-3-301. Special military or veteran license plates may not be issued for a motorcycle, quadricycle, travel trailer, trailer, semitrailer, or pole trailer. Special military or veteran license plates bearing a wheelchair as the symbol of a person with a disability may be issued to a person who meets the qualifications under 61-3-332(9) and this section.

(2) (a) Upon application, after paying all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees and special license plate fees and providing an official certificate from the applicant's unit commander verifying the individual's eligibility and authorizing the department to issue the plates to

the individual, eligible military personnel may be issued one set of special military license plates as provided in this subsection (2).

(b) A member of the Montana national guard who is a state resident may be issued special license plates with a design or decal displaying the letters "NG". However, the member shall surrender the plates to the department when the member becomes ineligible.

(c) A member of the reserve armed forces of the United States who is a state resident may be issued special license plates according to the member's branch of service verified in the application with a design or decal displaying one of the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); or United States marine corps reserve, MCR (globe and anchor). However, the member shall surrender the plates to the department when the member becomes ineligible.

(d) An active member of the regular armed forces of the United States who is a state resident may be issued special license plates inscribed with a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the member's branch of service verified in the application. However, the member shall surrender the plates to the department upon becoming ineligible.

(3) (a) Upon application, after presenting proper identification and a department of defense form 214 (DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment verifying the applicant's eligibility and paying the veterans' cemetery fee specified in 61-3-459 and all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees under this chapter, subject to the provisions of 61-3-460, an eligible veteran must be issued any set and more than one set of the special license plates provided for in this subsection (3) that the member requests and is eligible to receive.

(b) A veteran may be issued special license plates displaying the letters "DV", which entitles the veteran to the parking privileges allowed to a person with a special parking permit issued under Title 49, chapter 4, part 3, if the veteran:

(i) has been awarded the purple heart and has been rated by the U.S. department of veterans affairs as 50% or more disabled because of a service-connected injury; or

(ii) is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability.

(c) A veteran who has been awarded the purple heart may be issued special license plates with the purple heart decal displaying the words "combat wounded".

(d) A veteran who was captured and held prisoner by the military force of a foreign nation may be issued special license plates with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(e) If the veteran was a member of the United States armed forces on December 7, 1941, and during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) was on station at Pearl Harbor on the island of Oahu or was offshore from Pearl Harbor at a distance of not more than 3 miles, the veteran may be issued special

license plates designed to show that the veteran is a survivor of the Pearl Harbor attack.

(f) A person who is a member of the legion of valor may be issued special plates displaying a design or decal depicting the recognized legion of valor medallion.

(g) A veteran may be issued special license plates displaying the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the veteran's service record verified in the application.

(h) A member or a former member of the Montana national guard eligible to receive a military retirement may be issued special license plates displaying the Montana national guard insignia and the words "National Guard veteran".

(i) A veteran who qualifies under subsections (3)(b) and (3)(c) may be issued special combination license plates displaying the letters "DV" and displaying a purple heart decal with the words "combat wounded". A person who receives the combination plates is entitled to the same parking privileges as provided in subsection (3)(b).

(4) Upon request, after paying the veterans' cemetery fee provided in 61-3-459 and all applicable vehicle registration fees under this chapter, subject to the provisions of 61-3-460, the surviving spouse of an eligible veteran, if the spouse has not remarried, may retain the special license plates issued to the deceased veteran, except the special "DV" plates provided for under subsection (3)(b) *or the combination plates provided for in subsection (3)(i).*

(5) For purposes of this section, "veteran" has the meaning provided in 10-2-101."

Approved March 27, 2007

CHAPTER NO. 60

[SB 32]

AN ACT ALLOWING THE LOCAL OMBUDSMAN ACCESS TO A LONG-TERM CARE FACILITY AFTER NORMAL VISITING HOURS WITH THE APPROVAL OF THE LONG-TERM CARE OMBUDSMAN TO PERFORM THE OMBUDSMAN'S DUTIES; AND AMENDING SECTION 52-3-604, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-3-604, MCA, is amended to read:

"52-3-604. Access to long-term care facilities. (1) ~~The~~ *Subject to subsection (2), the* long-term care ombudsman or local ombudsman ~~shall~~ *must* have access without advance notice to any long-term care facility, including private access to any resident, for the purpose of meeting with residents, investigating and resolving complaints, and advising residents on their rights.

(2) Access must be granted to the long-term care ombudsman or local ombudsman ~~during normal visiting hours (9 a.m. to 6 p.m.) and to the long-term care ombudsman~~ *during normal visiting hours and to the long-term care ombudsman* at any time ~~he considers~~. *A local ombudsman may have access after normal visiting hours with approval, directions, and oversight of the long-term care ombudsman when* necessary to perform the duties described in 52-3-603.

(3) The ombudsman shall carry out the duties described in 52-3-603 in a manner that is least disruptive to resident care and activities."

Approved March 27, 2007

CHAPTER NO. 61

[SB 40]

AN ACT GENDER NEUTRALIZING AND CONFORMING TITLES 1 THROUGH 7 OF THE MONTANA CODE ANNOTATED TO CURRENT BILL DRAFTING STANDARDS; AND AMENDING SECTIONS 1-1-107, 1-1-201, 1-1-202, 1-1-203, 1-1-204, 1-1-217, 1-1-219, 1-1-224, 1-1-226, 1-1-512, 1-1-515, 1-1-516, 1-3-203, 1-3-204, 1-3-205, 1-3-206, 1-3-208, 1-3-209, 1-3-210, 1-3-212, 1-3-217, 1-3-220, 1-3-234, 1-4-102, 1-5-302, 1-5-303, 1-5-305, 1-5-406, 1-5-407, 1-5-419, 1-5-420, 1-6-102, 1-6-104, 2-1-302, 2-2-205, 2-2-207, 2-2-304, 2-3-105, 2-3-221, 2-4-104, 2-4-202, 2-4-506, 2-4-604, 2-4-613, 2-4-621, 2-6-106, 2-6-108, 2-6-111, 2-6-303, 2-6-304, 2-7-103, 2-7-511, 2-8-105, 2-9-101, 2-9-103, 2-9-112, 2-9-305, 2-9-314, 2-9-504, 2-9-507, 2-9-511, 2-9-512, 2-9-513, 2-9-514, 2-9-515, 2-9-516, 2-9-523, 2-9-524, 2-9-527, 2-9-528, 2-15-111, 2-15-122, 2-15-124, 2-15-131, 2-15-132, 2-15-201, 2-15-221, 2-15-302, 2-15-502, 2-15-602, 2-15-1202, 2-15-1203, 2-15-1515, 2-15-1521, 2-15-1701, 2-15-1742, 2-15-1744, 2-15-1748, 2-15-1814, 2-15-3002, 2-15-3003, 2-15-3104, 2-15-3305, 2-15-3331, 2-15-3402, 2-16-102, 2-16-114, 2-16-115, 2-16-202, 2-16-212, 2-16-213, 2-16-303, 2-16-406, 2-16-504, 2-16-505, 2-16-507, 2-16-513, 2-16-521, 2-16-603, 2-16-612, 2-16-613, 2-16-616, 2-16-617, 2-16-620, 2-16-621, 2-16-622, 2-16-633, 2-16-635, 2-17-816, 2-18-106, 2-18-107, 2-18-512, 2-18-612, 2-18-616, 2-18-619, 2-18-621, 2-18-902, 2-18-1001, 2-18-1011, 3-1-402, 3-1-404, 3-1-405, 3-1-504, 3-1-514, 3-1-515, 3-1-516, 3-1-517, 3-1-522, 3-1-601, 3-1-602, 3-1-603, 3-1-604, 3-1-605, 3-1-606, 3-1-607, 3-1-701, 3-1-1003, 3-1-1009, 3-1-1010, 3-1-1103, 3-1-1104, 3-1-1106, 3-1-1108, 3-1-1109, 3-1-1110, 3-1-1111, 3-1-1122, 3-1-1502, 3-1-1503, 3-2-102, 3-2-212, 3-2-301, 3-2-401, 3-2-406, 3-2-502, 3-5-115, 3-5-201, 3-5-202, 3-5-213, 3-5-214, 3-5-215, 3-5-216, 3-5-311, 3-5-401, 3-5-405, 3-5-503, 3-5-504, 3-5-505, 3-5-508, 3-5-509, 3-5-611, 3-6-101, 3-6-203, 3-6-303, 3-7-201, 3-7-203, 3-7-224, 3-10-201, 3-10-202, 3-10-204, 3-10-209, 3-10-233, 3-10-234, 3-10-401, 3-10-405, 3-10-502, 3-10-514, 3-10-602, 3-10-706, 3-10-1005, 3-11-202, 3-11-203, 3-11-204, 3-11-205, 3-12-203, 3-15-201, 3-15-203, 3-15-401, 3-15-504, 3-15-601, 3-15-602, 3-15-604, 3-15-701, 3-15-801, 5-1-105, 5-2-102, 5-2-104, 5-2-105, 5-2-211, 5-2-213, 5-2-216, 5-2-302, 5-2-405, 5-4-204, 5-4-302, 5-4-303, 5-4-304, 5-4-305, 5-4-306, 5-5-101, 5-5-102, 5-5-103, 5-5-105, 5-5-301, 5-5-302, 5-5-413, 5-5-415, 5-5-418, 5-5-419, 5-5-420, 5-5-421, 5-5-431, 5-6-109, 5-7-101, 5-7-201, 5-7-203, 5-7-210, 5-7-301, 5-11-104, 5-11-204, 5-12-202, 5-12-203, 5-13-303, 5-13-306, 5-13-307, 5-13-309, 5-13-402, 5-15-102, 5-15-103, 5-15-105, 5-15-201, 5-16-105, 7-1-4121, 7-2-101, 7-2-2206, 7-2-2207, 7-2-2223, 7-2-2227, 7-2-2228, 7-2-2242, 7-2-2255, 7-2-2405, 7-2-2411, 7-2-2412, 7-2-2423, 7-2-2502, 7-2-2503, 7-2-2504, 7-2-2603, 7-2-2702, 7-2-2703, 7-2-2705, 7-2-2706, 7-2-2712, 7-2-2750, 7-2-2756, 7-2-2757, 7-2-4107, 7-2-4807, 7-2-4913, 7-3-102, 7-3-151, 7-3-179, 7-3-183, 7-3-193, 7-3-203, 7-3-212, 7-3-220, 7-3-221, 7-3-301, 7-3-304, 7-3-305, 7-3-312, 7-3-315, 7-3-403, 7-3-414, 7-3-432, 7-3-433, 7-3-434, 7-3-435, 7-3-436, 7-3-437, 7-3-438, 7-3-439, 7-3-440, 7-3-441, 7-3-442, 7-3-501, 7-3-503, 7-3-514, 7-3-601, 7-3-603, 7-3-605, 7-3-606, 7-3-607, 7-3-612, 7-3-613, 7-3-705, 7-3-1215, 7-3-1219, 7-3-1220, 7-3-1221, 7-3-1228, 7-3-1241, 7-3-1242, 7-3-1244, 7-3-1245, 7-3-1246, 7-3-1249, 7-3-1253, 7-3-1254, 7-3-1255, 7-3-1257, 7-3-1259, 7-3-1304, 7-3-1305,

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-1-107, MCA, is amended to read:

"1-1-107. Unwritten law defined. Unwritten law is the law *that is* not promulgated and recorded, as mentioned in 1-1-104, but ~~which~~ *that* is, nevertheless, observed and administered in the courts of the country. It has no certain repository but is collected from the reports of the decisions of the courts and treatises of learned ~~men~~ *people*."

Section 2. Section 1-1-201, MCA, is amended to read:

"1-1-201. Terms of wide applicability. (1) Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(a) "Oath" includes an affirmation or declaration.

(b) "Person" includes a corporation *or other entity* as well as a natural person.

(c) "Several" means two or more.

(d) "State", when applied to the different parts of the United States, includes the District of Columbia and the territories.

(e) "United States" includes the District of Columbia and the territories.

(2) Wherever the word "man" or "men" or a word ~~which~~ *that* includes the syllable "man" or "men" in combination with other syllables, such as "workman", appears in this code, ~~such~~ *the* word or syllable ~~shall be deemed to include~~ *includes* "woman" or "women" unless the context clearly indicates a contrary intent and unless the subject matter of the statute relates clearly and necessarily to ~~the male~~ *a specific* sex only.

(3) Whenever the term "heretofore" occurs in any statute, it ~~shall~~ *must* be construed to mean any time previous to the day ~~such~~ *the* statute ~~shall take~~ *takes* effect. Whenever the word "hereafter" occurs, it ~~shall~~ *must* be construed to mean the time after the statute containing the term ~~shall take~~ *takes* effect."

Section 3. Section 1-1-202, MCA, is amended to read:

"1-1-202. Terms relating to procedure and the judiciary. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) ~~A "deposition"~~ *"Deposition"* means a written declaration under oath or affirmation, made upon notice to the adverse party for the purpose of enabling ~~him~~ *the adverse party* to attend and cross-examine.

(2) "Judicial officers" means justices of the supreme court, judges of the district courts, justices of the peace, municipal judges, and city judges.

(3) ~~A "judicial~~ *"Judicial* record" means the record of official entry of the proceedings in a court of justice or of the official act of a judicial officer in an action or special proceeding.

(4) ~~An "oral~~ *"Oral* examination" means an examination in the presence of the jury or tribunal that is to decide the fact or act upon it or the *spoken* testimony *of the witness* being heard by the jury or tribunal ~~from the lips of the witness~~.

(5) "Process" means a writ or summons issued in the course of judicial proceedings.

(6) ~~For~~ *"Registered mail", for* purposes of legal notification, ~~the term "registered mail"~~ means registered or certified mail.

(7) "Testify" means every mode of oral statement under oath or affirmation.

(8) "Writ" means an order in writing issued in the name of the state or of a court or judicial officer."

Section 4. Section 1-1-203, MCA, is amended to read:

"1-1-203. Terms relating to instruments and other writings. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) ~~The "execution"~~ *"Execution"* of an instrument ~~is the~~ *means* subscribing and delivering it, with or without affixing a seal.

(2) ~~The term "folio"~~ *"Folio"*, when used as a measure for computing fees, means 100 words, counting every two ~~figures~~ *letters or numbers* necessarily used as a word. Any portion of a folio, when in the whole paper there is not a complete folio and when there is an excess over the last folio exceeding one-half, may be computed as a folio.

(3) "Printing" ~~is~~ *means* the act of reproducing a design on a surface by any process.

(4) "Signature" or "subscription" includes the mark of a person who cannot write if the person's name is written near the mark by another person who also signs ~~his~~ *that person's* own name as a witness.

(5) ~~A "subscribing witness" is one~~ *"Subscribing witness" means a person* who sees a writing executed or hears it acknowledged and at the request of the party ~~thereupon~~ signs ~~his~~ *the person's* name as a witness.

(6) "Writing" includes printing."

Section 5. Section 1-1-204, MCA, is amended to read:

"1-1-204. Terms denoting state of mind. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Corruptly" ~~denotes~~ *means* a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to or to some other person.

(2) "Knowingly" ~~denotes~~ *means* only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of the act or omission.

(3) "Malice" and "maliciously" ~~denote~~ *mean* a wish to vex, annoy, or injure another person or an intent to do a wrongful act, established either by proof or presumption of law.

(4) "Neglect", "negligence", "negligent", and "negligently" ~~denote~~ *mean* a want of the attention to the nature or probable consequences of the act or omission that a prudent ~~man~~ *person* would ordinarily give in acting in ~~his~~ *the person's* own concerns.

(5) "Willfully", when applied to the intent with which an act is done or omitted, ~~denotes~~ *means* a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate the law, to injure another, or to acquire any advantage."

Section 6. Section 1-1-217, MCA, is amended to read:

"1-1-217. Notice — actual and constructive. (1) Notice is:

(a) actual whenever it consists of express information of a fact;

(b) constructive whenever it is imputed by law.

(2) ~~Every~~ *Each* person who has actual notice of circumstances sufficient to put a prudent ~~man~~ *person* upon inquiry as to a particular fact has constructive notice of the fact itself in all cases in which, by prosecuting ~~such~~ *the* inquiry, ~~he~~ *the person* might have learned ~~such~~ *the* facts."

Section 7. Section 1-1-219, MCA, is amended to read:

"1-1-219. Relationship by affinity. (1) Unless the context requires otherwise, in this code "affinity" means the relation ~~which~~ *that* one spouse has, by virtue of the marriage, to blood relatives of the other. Therefore, a person has the same relation by affinity to ~~his~~ *that person's* spouse's blood relatives as ~~his~~ *that person's* spouse has to them by consanguinity and vice versa.

(2) Degrees of relationship by affinity are computed in the same manner as degrees of relationship by consanguinity.

(3) Notwithstanding subsection (1), the term "affinity" includes the relation of husband and wife. Husband and wife are considered to be related by affinity in the first degree."

Section 8. Section 1-1-224, MCA, is amended to read:

"1-1-224. Observance of right to keep and bear arms. The week beginning the first Monday in March is an official week of observance to commemorate Montana's valued heritage of the right of each person to keep and bear arms in the defense of ~~his~~ *the person's* home, person, or property or in aid of civil power. During this week, all Montanans are urged to reflect on their right to keep and bear arms and to celebrate this right in lawful ways."

Section 9. Section 1-1-226, MCA, is amended to read:

"1-1-226. Official observance of Montana's hunting heritage. The week beginning the third Monday in September is an official week of observance in Montana to commemorate this state's valued heritage of hunting game animals. During this week, all Montanans are urged to:

(1) reflect on hunting as an expression of our culture and heritage;

(2) acknowledge that it is our community of ~~sportsmen, sportswomen, and~~ hunters who have made the greatest contributions to the establishment of current game animal populations; and

(3) celebrate this culture and heritage in all lawful ways."

Section 10. Section 1-1-512, MCA, is amended to read:

"1-1-512. State Vietnam veterans' memorial. (1) The memorial located in Rose Park, Missoula, Montana, dedicated to the ~~men and women~~ *individuals* who served the United States in the Republic of Vietnam, is the official state Vietnam veterans' memorial.

(2) The department of commerce *and the department of transportation* ~~in the production of highway maps of the state of Montana is~~ *are* directed to reference the location of the official state Vietnam veterans' memorial in Rose Park, Missoula, Montana, on ~~such~~ *official state* maps."

Section 11. Section 1-1-515, MCA, is amended to read:

"1-1-515. Montana medal of valor established. (1) The governor is authorized to present, in the name of the people of Montana, a medal to be known as the Montana medal of valor, bearing a suitable inscription and ribbon,

to any citizen of the state who displays extraordinary courage in a situation threatening the lives of one or more people.

(2) The governor ~~shall~~ *may* award the Montana medal of valor to anyone whose behavior, in ~~his~~ *the governor's* judgment, merits ~~such~~ *the* recognition. The award must be made in a public ceremony at the recipient's city or town of residence or at a city or town designated by the recipient, except under the circumstances indicated in subsection (3).

(3) If the recipient of the medal of valor dies before the medal is awarded, the governor shall present the medal to the recipient's spouse, eldest surviving child, eldest surviving sibling, or either parent or to a person designated by one of these. If the medal is presented to a person who is not a resident of Montana, the award ceremony must be held at the state capitol in Helena."

Section 12. Section 1-1-516, MCA, is amended to read:

"1-1-516. State Korean war veterans' memorial — Butte. (1) The Korean war veterans' memorial located in Stodden Park, Butte, Montana, dedicated to the ~~men and women~~ *individuals* who served the United States in the Republic of Korea, is an official state Korean war veterans' memorial.

(2) The department of commerce and the department of transportation are directed to reference the location of ~~a~~ *the* state Korean war veterans' memorial on official state maps."

Section 13. Section 1-3-203, MCA, is amended to read:

"1-3-203. Change in purpose. ~~One must~~ *A person may* not change ~~his~~ *the person's* purpose to the injury of another."

Section 14. Section 1-3-204, MCA, is amended to read:

"1-3-204. Waiver of benefit of a law. ~~Anyone~~ *Any person* may waive the advantage of a law intended solely for ~~his~~ *that person's* benefit. ~~But a~~ *A* law established for a public reason cannot be contravened by a private agreement."

Section 15. Section 1-3-205, MCA, is amended to read:

"1-3-205. Limit on rights. ~~One~~ *A person* ~~must~~ *shall* so use ~~his~~ *that person's* own rights as not to infringe upon the rights of another."

Section 16. Section 1-3-206, MCA, is amended to read:

"1-3-206. Consent. ~~He~~ *A person* who consents to an act is not wronged by it."

Section 17. Section 1-3-208, MCA, is amended to read:

"1-3-208. Own wrong — no advantage. ~~No one can~~ *A person may not* take advantage of ~~his~~ *the person's* own wrong."

Section 18. Section 1-3-209, MCA, is amended to read:

"1-3-209. Fraudulent dispossession. ~~He~~ *A person* who has fraudulently dispossessed ~~himself~~ *oneself* of a thing may be treated as if ~~he~~ *the person* still had possession."

Section 19. Section 1-3-210, MCA, is amended to read:

"1-3-210. Acts on one's behalf. ~~He~~ *A person* who can and does not forbid that which is done on ~~his~~ *that person's* behalf is ~~deemed~~ *considered* to have ~~bidden~~ *authorized* it."

Section 20. Section 1-3-212, MCA, is amended to read:

"1-3-212. Benefit — burden. ~~He~~ *A person* who takes the benefit ~~must~~ *shall* bear the burden."

Section 21. Section 1-3-217, MCA, is amended to read:

"1-3-217. Beyond ~~man's~~ control. ~~No man~~ *A person* is *not* responsible for that which ~~no man can~~ *a person cannot* control."

Section 22. Section 1-3-220, MCA, is amended to read:

"1-3-220. What ought to have been done. That which ought to have been done is to be regarded as done, in favor of ~~him~~ *a person* to whom and against ~~him~~ *a person* from whom performance is due."

Section 23. Section 1-3-234, MCA, is amended to read:

"1-3-234. Third parties — who suffers. ~~Where~~ *When* one of two innocent persons ~~must suffer~~ *suffers* by the act of a third, ~~he~~ *the person* by whose negligence it happened must be the sufferer."

Section 24. Section 1-4-102, MCA, is amended to read:

"1-4-102. Consideration of circumstances surrounding execution. For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject of the instrument and of the parties to it, may also be shown so that the judge ~~be~~ *is* placed in the position of those whose language ~~he~~ *the judge* is to interpret."

Section 25. Section 1-5-302, MCA, is amended to read:

"1-5-302. When execution may be proved by handwriting. The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

(1) when the parties and all the subscribing witnesses are dead;

(2) when the parties and all the subscribing witnesses are nonresidents of the state;

(3) when the place of their residence is unknown to the party desiring the proof and cannot be ascertained by the exercise of due diligence;

(4) when the subscribing witness ~~conceals himself~~ *hides* or cannot be found by the officer by the exercise of due diligence in attempting to serve the subpoena or attachment; or

(5) in case of the continued failure or refusal of the witness to testify for the ~~space~~ *period* of 1 hour after ~~his~~ *the witness's* appearance."

Section 26. Section 1-5-303, MCA, is amended to read:

"1-5-303. Facts ~~which~~ *that* must be shown when offering proof of handwriting. The evidence taken under 1-5-302 must satisfactorily prove to the officer the following facts:

(1) the existence of one or more of the conditions mentioned in 1-5-302;

(2) that the witness testifying knew the person whose name purports to be subscribed to the instrument as a party and is well acquainted with ~~his~~ *that person's* signature;

(3) that the witness testifying personally knew the person who subscribed the instrument as a witness and is well acquainted with ~~his~~ *that person's* signature;

(4) that the signature or signatures in question are genuine; and

(5) the place of residence of the witness."

Section 27. Section 1-5-305, MCA, is amended to read:

"1-5-305. Contents of certificate of proof. An officer taking proof of the execution of ~~any~~ *an* instrument ~~must~~ *shall*, in ~~his~~ *the* certificate endorsed ~~thereon~~ *upon* or attached ~~thereto~~ *to the instrument*, set forth all the matters required by law to be done or known by ~~him~~ *the officer* or proved before ~~him~~ *the officer* on the proceeding, together with the names of all the witnesses examined before ~~him~~ *the officer*, their places of residence ~~respectively~~, and the substance of their testimony."

Section 28. Section 1-5-406, MCA, is amended to read:

"1-5-406. Liabilities on official bond. For the official misconduct or neglect of a notary public, ~~he~~ *the notary public* and the sureties on ~~his~~ *the notary public's* official bond are liable to the parties injured ~~thereby~~ *by the misconduct or neglect* for all damages sustained."

Section 29. Section 1-5-407, MCA, is amended to read:

"1-5-407. Certifying ~~the~~ official character of ~~a~~ notary. The secretary of state may certify to the official character of ~~such~~ *a* notary public. ~~Any~~ *A* notary public may file a copy of ~~his~~ *the notary public's* commission in the office of any county clerk of any county in the state, and ~~thereafter said~~ *the* county clerk may certify to the official character of ~~such~~ *the* notary public."

Section 30. Section 1-5-419, MCA, is amended to read:

"1-5-419. Transfer of records upon termination of office. It is the duty of ~~every~~ *each* notary public ~~on his~~ *upon* resignation or removal from office or at the expiration of ~~his~~ *the notary public's* term and, in case of ~~his~~ death, of ~~his~~ *the notary public's* legal representative to ~~forthwith~~ deposit *in a timely manner* all the records kept by ~~him~~ *the notary public* in the office of the county clerk *and recorder* of the county in which ~~he~~ *the notary public* was *a* resident. On failure to do so, the *offending* person ~~so offending~~ is liable ~~to~~ *for* damages to any person injured ~~thereby~~ *by the failure*."

Section 31. Section 1-5-420, MCA, is amended to read:

"1-5-420. Powers and duties of *county* clerk *and recorder* with whom records deposited. It is the duty of each *county* clerk *and recorder* ~~aforesaid~~ to receive and safely keep all ~~such~~ records and papers of the notary in the case ~~above named~~ *described in 1-5-419* and to give attested copies of them under ~~his~~ *a* seal~~;~~. ~~for which he may demand such~~ *The county clerk and recorder may charge the* fees ~~as by law may be~~ allowed *by law* to the notaries, and ~~such~~ *the* copies ~~shall~~ have the same effect as if certified by the notary."

Section 32. Section 1-6-102, MCA, is amended to read:

"1-6-102. Form of ordinary oath. An oath or affirmation in an action or proceeding may be administered ~~as follows:~~ *by* the person who swears or affirms expressing ~~his~~ *that person's* assent when addressed ~~in the following form,~~ *with* "You do solemnly swear (or affirm, as the case may be) that the evidence you ~~shall~~ *will* give in this issue (or matter), pending between .... and ...., ~~shall be~~ *is* the truth, the whole truth, and nothing but the truth, so help you God"."

Section 33. Section 1-6-104, MCA, is amended to read:

"1-6-104. Affirmation or declaration in lieu of oath. Any person who desires it may~~, at his option,~~ instead of taking an oath make ~~his~~ *a* solemn

affirmation or declaration by assenting when addressed ~~in the following form:~~ *with* "You do solemnly affirm (or declare), etc.", as *provided* in 1-6-102."

Section 34. Section 2-1-302, MCA, is amended to read:

"2-1-302. Resolution of Indian tribes requesting state jurisdiction — governor's proclamation — consent of county commissioners. (1) Whenever the governor of this state receives from the tribal council or other governing body of the Confederated Salish and Kootenai Indian tribes or any other community, band, or group of Indians in this state, a resolution expressing its desire that its people and lands be subject to the criminal or civil jurisdiction, or both, of the state to the extent authorized by federal law and regulation, ~~he~~ *the governor* shall issue within 60 days a proclamation to the effect that ~~such~~ *the specified* jurisdiction applies to those Indians and their territory or reservation in accordance with the provisions of this part.

(2) The governor may not issue the proclamation until the resolution has been approved in the manner provided for by the charter, constitution, or other fundamental law of the tribe ~~or tribes~~, if ~~said~~ *the* document provides for ~~such~~ approval, and there has been first obtained the consent of the board of county commissioners of each county ~~which~~ *that* encompasses any portion of the reservation of ~~such~~ *the* tribe ~~or tribes~~."

Section 35. Section 2-2-205, MCA, is amended to read:

"2-2-205. Affidavit to be required by auditing officers. ~~Every~~ *Each* officer whose duty it is to audit and allow the accounts of other state, county, city, township, or town officers ~~must~~ *shall*, before allowing ~~such~~ *the* accounts, require each of ~~such~~ *the* officers to make and file with ~~him~~ *the auditing officer* an affidavit that ~~he~~ *the affiant* has not violated any of the provisions of this part."

Section 36. Section 2-2-207, MCA, is amended to read:

"2-2-207. Settlements to be withheld on affidavit. (1) ~~Every~~ *Each* officer charged with the disbursement of public ~~moneys~~ *money* who is informed by affidavit establishing probable cause that ~~any~~ *an* officer whose account is about to be settled, audited, or paid ~~by him~~ has violated any of the provisions of this part ~~must~~ *shall* suspend ~~such~~ *the* settlement or payment and cause ~~such~~ *the* officer to be prosecuted for ~~such~~ *the* violation by the county attorney ~~of the county~~.

(2) ~~In case there be~~ *If there is a* judgment for the defendant upon ~~such~~ prosecution, the proper officer may proceed to settle, audit, or pay ~~such~~ *the* account as if ~~no such~~ *an* affidavit had *not* been filed."

Section 37. Section 2-2-304, MCA, is amended to read:

"2-2-304. Penalty for violation of nepotism law. ~~Any~~ *A* public officer or employee or ~~any~~ *a* member of any board, bureau, or commission of this state or any political subdivision ~~thereof~~ who ~~shall~~, by virtue of ~~his~~ *the person's* office, ~~have~~ *has* the right to make or appoint any person to render services to this state or any subdivision ~~thereof~~ *of this state* and who ~~shall make or appoint~~ *makes or appoints a person* to ~~such~~ *the* services or ~~enter~~ *enters* into any agreement or promise with any other person or employee or any member of any board, bureau, or commission of any other department of this state or any of its subdivisions to appoint to any position any person or persons related to ~~him~~ *the person making the appointment* ~~or them~~ or connected with ~~him~~ *the person making the appointment* ~~or them~~ by consanguinity within the fourth degree or by affinity within the second degree ~~shall thereby be~~ *is* guilty of a misdemeanor and upon conviction ~~thereof~~ shall be punished by a fine not less than $50 or more than

$1,000, ~~or~~ by imprisonment in the county jail for not more than 6 months, or ~~by~~ both ~~such fine and imprisonment~~."

Section 38. Section 2-3-105, MCA, is amended to read:

"2-3-105. Supplemental notice by radio or television. (1) ~~Any~~ *An* official of the state or any of its political subdivisions who is required by law to publish ~~any~~ *a* notice required by law may supplement ~~such~~ *the* publication by a radio or television broadcast of a summary of ~~such~~ *the* notice or by both ~~of such broadcasts~~ when in ~~his~~ *the official's* judgment the public interest will be served.

(2) The summary of ~~such~~ *the* notice ~~shall only~~ *must* be read ~~with no~~ *without a* reference to any person by name *who is* then a candidate for political office.

(3) ~~Such~~ *The* announcements ~~shall~~ *may* be made only by duly employed personnel of the station from which ~~such~~ *the* broadcast emanates.

(4) Announcements by political subdivisions may be made only by stations situated within the county of origin of the legal notice unless ~~no~~ *a* broadcast station ~~exists~~ *does not exist* in ~~such~~ *that* county, in which case announcements may be made by a station or stations situated in any county other than the county of origin of the legal notice."

Section 39. Section 2-3-221, MCA, is amended to read:

"2-3-221. Costs to plaintiff in certain actions to enforce constitutional right to know. A plaintiff who prevails in an action brought in district court to enforce ~~his~~ *the plaintiff's* rights under Article II, section 9, of the Montana constitution may be awarded ~~his~~ costs and reasonable ~~attorneys'~~ *attorney* fees."

Section 40. Section 2-4-104, MCA, is amended to read:

"2-4-104. Subpoenas and enforcement — compelling testimony. (1) An agency conducting any proceeding subject to this chapter ~~shall have the power to~~ *may* require the furnishing of ~~such~~ information, the attendance of ~~such~~ witnesses, and the production of ~~such~~ books, records, papers, documents, and other objects ~~as~~ *that* may be necessary and proper for the purposes of the proceeding. In furtherance of this power, an agency upon its own motion may and, upon request of any party appearing in a contested case, shall issue subpoenas for witnesses or subpoenas duces tecum. The method for service of subpoenas, witness fees, and mileage ~~shall~~ *must* be the same as required in civil actions in the district courts of the state. Except as otherwise provided by statute, witness fees and mileage ~~shall~~ *must* be paid by the party at whose request the subpoena was issued.

(2) In case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which ~~he~~ *the witness* may be interrogated in a proceeding before the agency, the agency may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. If the agency fails or refuses to seek enforcement of a subpoena issued at the request of a party or to compel the giving of testimony considered material by a party, the party may make ~~such~~ *an* application *to the district court*. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of ~~such~~ *the* order ~~shall~~ *must* be punishable by contempt of court in the same manner and by the same procedures as is provided for ~~like~~ *similar* conduct committed in the course of civil actions in district courts. If another method of

subpoena enforcement or compelling testimony is provided by statute, it may be used as an alternative to the method provided for in this section."

Section 41. Section 2-4-202, MCA, is amended to read:

"2-4-202. Model rules. (1) The attorney general shall prepare a model form for a rule describing the organization of agencies and model rules of practice for agencies to use as a guide in fulfilling the requirements of 2-4-201. The attorney general shall add to, amend, or revise the model rules from time to time as ~~he~~ *the attorney general* considers necessary for the proper guidance of agencies.

(2) The model rules and additions, amendments, or revisions ~~thereto shall~~ *to the model rules must* be appropriate for the use of as many agencies as is practicable and ~~shall~~ *must* be filed with the secretary of state and provided to any agency upon request. The adoption by an agency of all or part of the model rules does not relieve the agency from following the rulemaking procedures required by this chapter."

Section 42. Section 2-4-506, MCA, is amended to read:

"2-4-506. Declaratory judgments on validity or application of rules. (1) A rule may be declared invalid or inapplicable in an action for declaratory judgment if it is found that the rule or its threatened application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the plaintiff.

(2) A rule may also be declared invalid in ~~such an~~ *the* action on the grounds that the rule was adopted with an arbitrary or capricious disregard for the purpose of the authorizing statute as evidenced by documented legislative intent.

(3) A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

(4) The action may be brought in the district court for the county in which the plaintiff resides or has ~~his~~ *a* principal place of business or in which the agency maintains its principal office. The agency ~~shall~~ *must* be made a party to the action."

Section 43. Section 2-4-604, MCA, is amended to read:

"2-4-604. Informal proceedings. (1) In proceedings under this section, the agency shall, in accordance with procedures adopted under 2-4-201:

(a) give affected persons or parties or their counsel an opportunity, at a convenient time and place, to present to the agency or hearing examiner:

(i) written or oral evidence in opposition to the agency's action or refusal to act;

(ii) a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction; or

(iii) other written or oral evidence relating to the contested case;

(b) if the objections of the persons or parties are overruled, provide a written explanation within 7 days.

(2) The record must consist of:

(a) the notice and summary of grounds of the opposition;

(b) evidence offered or considered;

(c) any objections and rulings ~~thereon~~ *on the objections*;

(d) all matters placed on the record after ex parte communication pursuant to 2-4-613;

(e) a recording of any hearing held, together with a statement of the substance of the evidence received or considered, the written or oral statements of the parties or other persons, and the proceedings. A party may object in writing to the statement or may order at ~~his~~ *that party's* cost a transcription of the recording, or both. Objections ~~shall~~ become a part of the record.

(3) Agencies shall give effect to the rules of privilege recognized by law.

(4) In agency proceedings under this section, irrelevant, immaterial, or unduly repetitious evidence must be excluded but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not ~~such~~ *the* evidence is admissible in a trial in the courts of Montana. Any part of the evidence may be received in written form, and all testimony of parties and witnesses must be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it is not sufficient in itself to support a finding unless it is admissible over objection in civil actions.

(5) A party may petition for review of an informal agency decision pursuant to part 7 of this chapter."

Section 44. Section 2-4-613, MCA, is amended to read:

"2-4-613. Ex parte consultations. Unless required for disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or to make findings of fact and conclusions of law in a contested case, after issuance of notice of hearing, ~~shall~~ *may* not communicate with any party or ~~his~~ *a party's* representative in connection with any issue of fact or law in ~~such~~ *the* case except upon notice and opportunity for all parties to participate."

Section 45. Section 2-4-621, MCA, is amended to read:

"2-4-621. When absent members render decision — proposal for decision and opportunity to submit findings and conclusions — modification by agency. (1) When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case, the decision, if adverse to a party to the proceeding other than the agency itself, may not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision.

(2) The proposal for decision must contain a statement of the reasons ~~therefor~~ *for the decision* and of each issue of fact or law necessary to the proposed decision~~,~~ *and must be* prepared by the person who conducted the hearing unless ~~he~~ *that person* becomes unavailable to the agency.

(3) The agency may adopt the proposal for decision as the agency's final order. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the proposal for decision but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential

requirements of law. The agency may accept or reduce the recommended penalty in a proposal for decision but may not increase it without a review of the complete record.

(4) A hearings officer who is a member of an agency adjudicative body may participate in the formulation of the agency's final order, provided ~~he~~ *that the hearings officer* has completed all ~~his~~ duties as *the* hearings officer."

Section 46. Section 2-6-106, MCA, is amended to read:

"2-6-106. Possession of records. ~~Every~~ *Each* public officer is entitled to the possession of all books and papers pertaining to ~~his~~ *that* office or in the custody of a former incumbent by virtue of ~~his~~ *that* office."

Section 47. Section 2-6-108, MCA, is amended to read:

"2-6-108. Attachment and warrant to enforce. The execution of the order and delivery of the books and papers may be enforced by attachment as for a witness and also, at the request of the plaintiff, by a warrant directed to the sheriff or a constable of the county, commanding ~~him~~ *the sheriff or constable* to search for ~~such~~ *the* books and papers and to take and deliver them to the plaintiff."

Section 48. Section 2-6-111, MCA, is amended to read:

"2-6-111. Custody and reproduction of records by secretary of state. (1) The secretary of state is charged with the custody of:

(a) the enrolled copy of the constitution;

(b) all the acts and resolutions passed by the legislature;

(c) the journals of the legislature;

(d) the great seal;

(e) all books, records, parchments, maps, and papers kept or deposited in ~~his~~ *the secretary of state's* office pursuant to law.

(2) All records included in subsection (1) may be kept and reproduced in accordance with rules adopted by the secretary of state in consultation with the state records committee provided for in 2-15-1013.

(3) The state records committee created by 2-15-1013 may approve the disposal of original records once those records are reproduced as provided for in subsection (2), unless disposal takes the form of transfer of records~~;. in that case, reproduction will~~ *Reproduction is* not ~~be~~ necessary *for transferred records*. The reproduction or certified copy of a record may be used in place of the original for all purposes, including as evidence in any court or proceeding, and has the same force and effect as the original record.

(4) The secretary of state shall prepare enlarged typed or photographic copies of the records whenever their production is required by law.

(5) At least two copies ~~shall~~ *must* be made of all records reproduced as provided for in subsection (2). The secretary of state shall place one copy in a fireproof storage place and shall retain the other copy in ~~his~~ *the* office with suitable equipment for displaying a record by projection to not less than its original size and for preparing~~, for persons entitled thereto,~~ copies of the record *for persons entitled to copies*.

(6) All duplicates of ~~all~~ records ~~shall~~ *must* be identified and indexed."

Section 49. Section 2-6-303, MCA, is amended to read:

"2-6-303. Ownership of records — transfer. (1) All official records ~~shall~~ remain the property of the state. They ~~shall~~ *must* be delivered by outgoing officials to their successors and ~~shall~~ *must* be preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the provisions of this part.

(2) A public officer may, with the concurrence of the Montana historical society, transfer to the state archives official records that ~~he~~ *the officer* has been specifically directed by statute to preserve or keep in ~~his~~ *that* office."

Section 50. Section 2-6-304, MCA, is amended to read:

"2-6-304. Outgoing officials — records management duties. (1) Within 2 years after the completion of the final term of office of a constitutionally designated and elected official of the executive branch of government, all of the official records not necessary to the current operation of that office ~~shall be~~ *are* subject to storage, disposal, or transfer in accordance with the provisions of this part.

(2) All official records of a retiring constitutionally designated and elected official not necessary to the current operation of that office and considered worthy of preservation by the Montana historical society ~~shall~~ *must* be transferred to the custody of the state archives within that 2-year period.

(3) An outgoing official, in consultation with staff members of the Montana historical society, shall review ~~his~~ official records and isolate any items of a purely personal nature. ~~Such~~ *The* personal papers are not subject to this part, but they may be deposited with the official papers at the official's discretion.

(4) An outgoing official, in consultation with staff members of the Montana historical society, may restrict access to certain segments of ~~his~~ official records. ~~No restrictions~~ *Restrictions* may *not* be longer than the lifetime of the depositing official. Restricted access may be imposed only to protect the confidentiality of personal information contained in the records. Restricted access may not be imposed unless the demand of individual privacy clearly exceeds the merits of public disclosure.

(5) Any question concerning the transfer or other status of official records arising between the state archives and an elected official's office ~~shall~~ *must* be decided by a four-fifths vote of the members of the state records committee."

Section 51. Section 2-7-103, MCA, is amended to read:

"2-7-103. Review ~~by governor~~ of executive branch *by governor*. The office of the governor shall continuously study and evaluate the organizational structure, management practices, and functions of the executive branch and of each agency. The governor shall, by executive order or other means within the authority granted to ~~him~~ *the governor*, take action to improve the manageability of the executive branch."

Section 52. Section 2-7-511, MCA, is amended to read:

"2-7-511. Access to public accounts — suspension of officer in case of discrepancy. (1) The independent auditor may count the cash, verify the bank accounts, and verify all accounts of a public officer whose accounts the independent auditor is examining under law.

(2) If an officer of any county, city, town, school, or other local government entity refuses to provide the independent auditor access during an audit of the officer's accounts to ~~his~~ cash, bank accounts, or any of the papers, vouchers, or records of ~~his~~ *that* office or if the independent auditor finds a shortage of cash,

the independent auditor shall immediately file a preliminary report showing the refusal of that officer or the existence of the shortage and the approximate amount of the shortage with the respective county, city, or town attorney and the governing body of the local government entity.

(3) Upon filing of the statement, the officer of the local government entity shall after notice and the opportunity for a hearing be suspended from the duties and emoluments of ~~his~~ office and the governing body of the local government entity shall appoint ~~some~~ *a* qualified person to the office pending completion of the audit.

(4) Upon the completion of the audit by the independent auditor, if a shortage of cash existed in the accounts of the officer, the independent auditor shall notify the governing body of the local government entity of the shortage.

(5) If the governing body finds that a shortage exists and that the officer suspended is, by act or omission, responsible for the shortage, the officer's right to the office is forfeited and the report of the audit ~~shall~~ *must* be referred to the county attorney."

Section 53. Section 2-8-105, MCA, is amended to read:

"2-8-105. Determination of agencies and programs to be reviewed. (1) Before September 1 of each even-numbered year, the governor may furnish the legislative audit committee with a list of ~~his~~ recommendations for agencies and programs to be terminated and subject to a performance audit during the next biennium pursuant to the provisions of this chapter. The list must be prioritized and must set forth the governor's reasons for recommending each agency or program for review.

(2) The legislative audit committee shall review the list submitted by the governor, suggestions from legislators and legislative committees, staff recommendations, and any other relevant information and compile recommendations of agencies and programs to be terminated and subject to a performance audit. The committee shall submit its recommendations to the next legislature in the form of a bill terminating those designated agencies and programs at the times specified in the bill and requiring a performance audit of each agency and program under the provisions of Title 2, chapter 8, within the time specified and prior to termination."

Section 54. Section 2-9-101, MCA, is amended to read:

"2-9-101. Definitions. As used in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Claim" means any claim against a governmental entity, for money damages only, ~~which~~ *that* any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of ~~his~~ employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for ~~such~~ *the* damages under the laws of the state. For purposes of this section and the limit of liability contained in 2-9-108, all claims ~~which~~ *that* arise or derive from personal injury to or death of a single person, or damage to property of a person, regardless of the number of persons or entities claiming damages ~~thereby~~, are considered one claim.

(2) *(a)* "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of

the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation~~,~~.

(b) ~~but the~~ *The* term ~~employee shall~~ *does* not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which parts 1 through 3 apply in the event of a claim.

(3) "Governmental entity" means ~~and includes~~ the state and political subdivisions ~~as herein defined~~.

(4) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false arrest~~,~~ *and* any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence for which the state may be held liable.

(5) "Political subdivision" means any county, city, municipal corporation, school district, special improvement or taxing district, or ~~any~~ other political subdivision or public corporation.

(6) "Property damage" means injury or destruction to tangible property, including loss of use ~~thereof~~ *of the property*, caused by an occurrence for which the state may be held liable.

(7) "State" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality ~~thereof~~ *of the state*."

Section 55. Section 2-9-103, MCA, is amended to read:

"2-9-103. Actions under invalid law or rule — same as if valid — when. (1) If an officer, agent, or employee of a governmental entity acts in good faith, without malice or corruption, and under the authority of law and that law is subsequently declared invalid as in conflict with the constitution of Montana or the constitution of the United States, ~~neither he~~ *that officer, agent, or employee,* ~~nor~~ any other officer*, agent,* or employee of the *represented* governmental entity*,* ~~he represents nor~~ *or* the governmental entity ~~he represents~~ is *not* civilly liable in any action in which ~~he, such other officer,~~ *the individuals* or ~~such~~ governmental entity would not have been liable ~~had~~ *if* the law *had* been valid.

(2) If an officer, agent, or employee of a governmental entity acts in good faith, without malice or corruption, and under the authority of a duly promulgated rule or ordinance and that rule or ordinance is subsequently declared invalid, ~~neither he~~ *that officer, agent, or employee,* ~~nor~~ any other officer, agent, or employee of the *represented* governmental entity*,* ~~he represents nor~~ *or* the governmental entity ~~he represents~~ is *not* civilly liable in any action in which ~~no~~ liability would *not* attach ~~had~~ *if* the rule or ordinance *had* been valid."

Section 56. Section 2-9-112, MCA, is amended to read:

"2-9-112. Immunity from suit for judicial acts and omissions. (1) The state and other governmental units are immune from suit for acts or omissions of the judiciary.

(2) A member, officer, or agent of the judiciary is immune from suit for damages arising from ~~his~~ *the* lawful discharge of an official duty associated with judicial actions of the court.

(3) The judiciary includes those courts established in accordance with Article VII of The Constitution of the State of Montana."

Section 57. Section 2-9-305, MCA, is amended to read:

"2-9-305. Immunization, defense, and indemnification of employees. (1) It is the purpose of this section to provide for the immunization, defense, and indemnification of public officers and employees civilly sued for their actions taken within the course and scope of their employment.

(2) In any noncriminal action brought against any employee of a state, county, city, town, or other governmental entity for a negligent act, error, or omission, including alleged violations of civil rights pursuant to 42 U.S.C. 1983, or other actionable conduct of the employee committed while acting within the course and scope of the employee's office or employment, the governmental entity employer, except as provided in subsection (6), shall defend the action on behalf of the employee and indemnify the employee.

(3) Upon receiving service of a summons and complaint in a noncriminal action against ~~him~~ *an employee*, the employee shall give written notice to ~~his~~ *the employee's* supervisor requesting that a defense to the action be provided by the governmental entity employer. If the employee is an elected state official or other employee ~~having no~~ *who does not have a* supervisor, the employee shall give notice of the action to the legal officer or agency of the governmental entity defending the entity in legal actions of that type. Except as provided in subsection (6), the employer shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the employer. The employer shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the employer refuses or is unable to provide a direct defense, the defendant employee may retain other counsel. Except as provided in subsection (6), the employer shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may be otherwise payable under this section.

(4) In any noncriminal action in which a governmental entity employee is a party defendant, the employee ~~shall~~ *must* be indemnified by the employer for any money judgments or legal expenses, including attorney fees either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as a result of the suit unless the employee's conduct falls within the exclusions provided in subsection (6).

(5) Recovery against a governmental entity under the provisions of parts 1 through 3 of this chapter constitutes a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, ~~or~~ omission, or other actionable conduct gave rise to the claim. In ~~any such~~ *an* action against a governmental entity, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment, unless the claim constitutes an exclusion provided in ~~(b) through (d) of subsection (6)~~ *subsections (6)(b) through (6)(d)*.

(6) In a noncriminal action in which a governmental entity employee is a party defendant, the employee may not be defended or indemnified by the employer for any money judgments or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:

(a) the conduct upon which the claim is based constitutes oppression, fraud, or malice~~,~~ or for any other reason does not arise out of the course and scope of the employee's employment;

(b) the conduct of the employee constitutes a criminal offense as defined in Title 45, chapters 4 through 7;

(c) the employee compromised or settled the claim without the consent of the government entity employer; or

(d) the employee failed or refused to cooperate reasonably in the defense of the case.

(7) If ~~no~~ *a* judicial determination has *not* been made applying the exclusions provided in subsection (6), the governmental entity employer may determine whether those exclusions apply. However, if there is a dispute as to whether the exclusions of subsection (6) apply and the governmental entity employer concludes *that* it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action, the employer is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in ~~such~~ *that* action holding that the employer ~~had no~~ *did not have an* obligation to defend the employee. The governmental entity employer ~~has no~~ *does not have an* obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the employer under this subsection."

Section 58. Section 2-9-314, MCA, is amended to read:

"2-9-314. Court approval of ~~attorney's fee~~ *attorney fees.* (1) When an attorney represents or acts on behalf of a claimant or any other party on a tort claim against the state or a political subdivision ~~thereof~~ *of the state*, the attorney shall file with the claim a copy of the contract of employment showing specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The district court may regulate the amount of the ~~attorney's fee~~ *attorney fees* in any tort claim against the state or a political subdivision ~~thereof~~ *of the state*. In regulating the amount of the ~~fee~~ *fees*, the court shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the court may consider appropriate.

(3) ~~Attorneys'~~ *Attorney* fees regulated under this section ~~shall~~ *must* be made a part of the court record and are open to the public.

(4) If an attorney violates a provision of this section, a rule of court adopted under this section, or an order fixing ~~attorney's~~ *attorney* fees under this section, ~~he~~ *the attorney* forfeits the right to any ~~fee which he~~ *fees that the attorney* may have collected or been entitled to collect."

Section 59. Section 2-9-504, MCA, is amended to read:

"2-9-504. Conditions, form, and signatures. (1) The condition of ~~every~~ *an* official bond must be that the principal shall well, truly, and faithfully perform all official duties ~~then~~ required of ~~him~~ *the principal* by law and also ~~such~~ *any* additional duties ~~as~~ *that* may be imposed on ~~him~~ *the principal* by any law of the state subsequently enacted and that ~~he~~ *the principal* will account for*,* ~~and~~ pay over*,* and deliver to the person or officer entitled to receive ~~the same~~ all ~~moneys~~ *money* or other property that ~~may come into his hands~~ *the principal receives* as ~~such~~ *an* officer.

(2) The principal and sureties upon ~~any~~ *an* official bond are ~~also in all cases~~ liable for the neglect, default, or misconduct in office of any deputy, clerk, or employee appointed or employed by ~~such~~ *the* principal.

(3) ~~All official~~ *Official* bonds must be signed and executed by the principal and two or more sureties or by the principal and one or more surety companies organized ~~as such~~ under the laws of this state or licensed to do business ~~herein~~ *in this state*.

(4) ~~All official~~ *Official* bonds must be ~~in form~~ joint and several and made payable to the state of Montana in ~~such penalty~~ *the amount* and with ~~such~~ *the* conditions ~~as~~ required by this part or the law creating or regulating the duties of the office."

Section 60. Section 2-9-507, MCA, is amended to read:

"2-9-507. Sureties' qualifications. (1) The individual sureties on all official bonds ~~must~~ *shall* justify, before an officer authorized to administer oaths, by an affidavit to the effect that they are residents and householders or freeholders within the state and that each is worth the sum for which ~~he~~ *the individual* becomes surety in ~~said~~ *the* bond over and above ~~his~~ *the individual's* just debts and liabilities, exclusive of property exempt from execution.

(2) ~~No~~ *A* surety company or corporation organized under or that has complied with the laws of this state and *that* has been duly licensed to do business ~~as such herein shall~~ *in this state may not* be required to justify as a surety. ~~No such~~ *A* company or corporation ~~shall~~ *may not* be accepted as a surety in ~~any~~ *a* case when its liabilities exceed its assets, as ascertained in the manner provided by law.

(3) ~~No~~ *A* member of the board of county commissioners ~~can~~ *may not* be accepted as a surety upon the official bond of any county, township, or school district officer in ~~his~~ *the commissioner's* county, ~~nor must any~~ *and a* county officer ~~become~~ *may not be* a surety upon the official bond of any other county officer."

Section 61. Section 2-9-511, MCA, is amended to read:

"2-9-511. Extent of sureties' liability — when less than full. (1) ~~Every~~ *An* official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties ~~therein~~ for any and all breaches of the conditions ~~thereof~~ *of the bond* committed during the time ~~such~~ *the* officer continues to discharge any of the duties of or hold the office and whether ~~such~~ *the* breaches are committed or suffered by the principal officer~~, his~~ *or the officer's* deputy~~,~~ or clerk.

(2) ~~Every such~~ *A surety* bond is in force and obligatory upon the principal and sureties ~~therein~~ for the faithful discharge of all duties ~~which~~ *that* may be required of ~~such~~ *the* officer by any law enacted subsequently to the execution of ~~such~~ *the* bond, and ~~such~~ *that* condition must be expressed ~~therein~~ *in the bond*.

(3) When the penal sum of ~~any~~ *a* bond required to be given amounts to more than $1,000, the sureties may become severally liable for portions not less than $500, making in the aggregate a liability of double the amount named as the penal sum of the bond. If ~~any such~~ *a* bond ~~becomes~~ *is* forfeited, an action may be brought ~~thereon~~ *on the bond* against any or all of the obligors and judgment *may be* entered against them, either jointly or severally, as they may be liable. The judgment ~~must~~ *may* not be entered against a surety severally bound for a greater sum than that for which ~~he~~ *the surety* is specially liable by the terms of

the bond. Each surety is liable to contribute to ~~his~~ *the* cosureties in proportion to the amount for which ~~he~~ *the surety* is liable."

Section 62. Section 2-9-512, MCA, is amended to read:

"2-9-512. Defects not to affect liability. (1) ~~Whenever~~ *If* an official bond does not contain the substantial matter or conditions required by law or there are any defects in the approval or filing ~~thereof~~ *of the bond*, it is not void so as to discharge ~~such~~ *the* officer and sureties~~;~~. ~~but they~~ *The sureties* are equitably bound to the state or party interested, and the state or ~~such~~ *the* party may, by action in any court of competent jurisdiction, suggest the defect in the bond, approval, or filing and recover the proper and equitable demand or damages from ~~such~~ *the* officer and the persons who intended to become and were included as sureties in ~~such~~ *the* bond.

(2) ~~No~~ *An* official bond entered into by ~~any~~ *an* officer or ~~any~~ *a* bond, recognizance, or written undertaking taken by ~~any~~ *an* officer in the discharge of the duties of ~~his~~ office ~~shall be~~ *is not* void for want of form, substance, recital, or condition or the principal or surety be discharged. The principal and surety ~~shall~~ *must* be bound by ~~such~~ *the* bond, recognizance, or written undertaking to the full extent contemplated by the law requiring the ~~same~~ *bond* and the sureties to the amount specified in the bond, ~~or~~ recognizance, or written undertaking. In all actions on a defective bond, recognizance, or written undertaking, the plaintiff or relator may suggest the defect in ~~his~~ *the* complaint and recover to the same extent as if ~~such~~ *the* bond, recognizance, or written undertaking were perfect in all respects."

Section 63. Section 2-9-513, MCA, is amended to read:

"2-9-513. Insufficiency of sureties — action to vacate office. (1) Whenever it is shown by the affidavit of a credible witness or otherwise comes to the knowledge of the court, judge, board, person, or body whose duty it is to approve the official bond of any officer that ~~the~~ *one or more* sureties on ~~any~~ *a* bond given pursuant to the provisions of this part ~~or any one of them~~ have, since ~~such~~ *the* bond was approved, died, ~~removed from~~ *left* the state, become insolvent, or from any other cause have become incompetent or insufficient sureties on ~~such~~ *the* bond, the court, judge, board, officer, or other person may issue a citation to ~~such~~ *the* officer requiring ~~him~~ *the officer* on a day ~~therein~~ named *in the citation*, not less than 5 or more than 10 days after ~~date~~ *the citation was issued*, to appear and show cause why ~~such~~ *the* office should not be vacated~~, which~~. *The* citation must be served and *the* return ~~thereof~~ *of the citation must be* made as in other cases.

(2) If the officer fails to appear and show good cause why ~~such~~ *the* office should not be vacated on the day named or fails to give ample additional security, the court, judge, board, officer, or other person ~~must~~ *shall* make an order vacating the office. The ~~same~~ *office* must be filled as ~~approved~~ *provided* by law."

Section 64. Section 2-9-514, MCA, is amended to read:

"2-9-514. Additional security. (1) The additional bond given pursuant to 2-9-513(2) must be in ~~such~~ *the* penalty ~~as~~ directed by the court, judge, board, officer, or other person and in all other respects similar to the original bond and approved by and filed with the same officer as required in case of the approval and filing of the original bond.

(2) ~~Every such~~ *Each* additional bond ~~so~~ filed and approved is of like force and obligation upon the principal and sureties ~~therein,~~ from the time of its

execution~~,~~ and subjects the officer and ~~his~~ *the* sureties to the same liabilities, suits, and actions ~~as~~ *that* are prescribed respecting the original bonds of officers.

(3) ~~In no case is the~~ *The* original bond *is not* discharged or affected when an additional bond has been given, but the ~~same~~ *original bond* remains of ~~like~~ *the same* force and obligation as if ~~such~~ *the* additional bond had not been given."

Section 65. Section 2-9-515, MCA, is amended to read:

"2-9-515. Additional security — liability of officers and sureties. The officer and ~~his~~ *the officer's* sureties are liable to any party injured by the breach of any condition of an official bond, after the execution of the additional bond, upon either or both bonds. ~~Such~~ *The injured* party may bring ~~his~~ *an* action upon either bond~~,~~ or ~~he~~ may bring separate actions on the bonds respectively. ~~He~~ *The injured party* may allege the same cause of action and *may* recover judgment ~~therefor~~ in each suit."

Section 66. Section 2-9-516, MCA, is amended to read:

"2-9-516. Separate judgments. If separate judgments are recovered on the *surety* bonds by ~~such~~ *an injured* party for the same cause of action, ~~he~~ *the injured party* is entitled to have execution issued on ~~such~~ *the* judgments respectively but ~~he must~~ *the injured party may* ~~only~~ collect, by execution or otherwise, *only* the amount actually adjudged ~~to him~~ on the same causes of action in one of the suits, together with the costs of both suits."

Section 67. Section 2-9-523, MCA, is amended to read:

"2-9-523. Proceedings to obtain release. (1) ~~Any~~ *A* surety desiring to be released from liability on the bond of any county or township officer shall file a statement in writing, duly subscribed by ~~himself~~ *the surety* or someone ~~in his~~ *on the surety's* behalf setting forth the name and office of the *bonded* person ~~for whom he is surety~~, the amount for which ~~he~~ *the surety* is liable ~~as such~~, and ~~his~~ *the surety's* desire to be released from further liability on account ~~thereof~~ *of the bond*.

(2) A notice containing the object of ~~such~~ *the* statement ~~shall~~ *must* be served personally on the principal unless ~~he shall have~~ *the principal has* left the state or ~~his~~ *the principal's* whereabouts cannot after due and diligent search and inquiry be ascertained, in which case the ~~same~~ *notice* may be served by publication once a week for four successive publications in ~~some~~ *a* newspaper of general circulation published in the county where the bond is filed on record. The statement, except when the county clerk *and recorder* or county commissioners are principals, ~~shall~~ *must* be filed with the county clerk *and recorder*. When the county clerk *and recorder* or county commissioners are principals, the statement ~~shall~~ *must* be filed with the district *court* judge.

(3) ~~Any~~ *A* surety desiring to be released from liability on the bond of any city or town officer shall file and serve a similar statement with the city or town clerk or mayor.

(4) ~~Any~~ *A* surety desiring to be released from an executor's, administrator's, or guardian's bond or undertaking shall file and serve a similar statement with the proper officer, person, or authority ~~where~~ *with whom* the bond is filed on record.

(5) All statements provided for in this section must be served personally on the principal as *provided* in this section ~~provided~~ if ~~he~~ *the principal* can be found for service in the state~~;~~. ~~if not, he~~ *If the principal cannot be found in the state, the principal* may be served by publication in a newspaper ~~at the county seat~~ as

~~hereinbefore~~ provided *in subsection (2),* ~~,~~ or, if ~~no~~ *a* newspaper ~~be~~ *is not* published ~~thereat~~ *in that county*, then in *a newspaper published in* an adjoining county, without any order from any court or other authority. In all cases for which publication is provided, a printed or written notice posted in at least 10 conspicuous places in the county for the time specified for publication of ~~said~~ *the* notice ~~shall be deemed~~ *is considered* legal notice ~~thereof~~."

Section 68. Section 2-9-524, MCA, is amended to read:

"2-9-524. Amount of new bond — failure to file. (1) Whenever a statement is filed or filed and served as ~~herein~~ provided *in this part*, the proper authority shall prescribe the penalty or amount in which a new or additional bond or undertaking ~~shall~~ *must* be filed unless already provided by statute. If ~~no such~~ *an* order ~~be~~ *is not* made, ~~then such~~ *the* new or additional bond or undertaking ~~shall~~ *must* be executed for the same amount as the original.

(2) If ~~any~~ *an* officer or person ~~shall fail~~ *fails* to file *a new or additional bond or undertaking* within 20 days from the date of personal service or within 40 days from the date of the first publication or ~~of~~ posting *of* notice~~,~~ as provided ~~herein~~ *in this part*, ~~a new or additional bond or undertaking,~~ the office or appointment of the person or officer ~~so failing shall become~~ *becomes* vacant and ~~such~~ *the* officer or person ~~shall forfeit his~~ *forfeits the* office or appointment. The ~~same shall~~ *office or position must* be filled as in other cases of vacancy and in the manner provided by law.

(3) The person applying to be released from liability on ~~such~~ *the* bond or undertaking ~~shall~~ *may* not be ~~holden or~~ *held* liable ~~thereon~~ *on the bond* after the date ~~herein~~ provided for ~~the~~ vacating and forfeiting of ~~such~~ *the* office or appointment."

Section 69. Section 2-9-527, MCA, is amended to read:

"2-9-527. Suit on bonds. (1) ~~Every~~ *An* official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties ~~therein~~ to and for the state and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of ~~such~~ *the* officer in ~~his~~ *the officer's* official capacity. ~~Any~~ *A* person ~~so~~ injured or aggrieved may bring suit on ~~such~~ *the* bond~~,~~ in ~~his~~ *the person's* own name~~, without an assignment thereof~~.

(2) ~~No such~~ *A* bond is *not* void on the first recovery of a judgment ~~thereon~~ *on the bond*. Suit may be ~~afterwards~~ brought~~,~~ from time to time~~,~~ and judgment recovered ~~thereon~~ *on the bond* by the state or by any person to whom a right of action has accrued against ~~such~~ *the* officer and ~~his~~ *the* sureties until the whole penalty of the bond is exhausted."

Section 70. Section 2-9-528, MCA, is amended to read:

"2-9-528. Lien on real estate of surety — action to compel specific performance. (1) When an action is commenced in any court in this state, for the benefit to the state, to enforce the penalty of or to recover money upon an official bond or obligation or any bond or obligation executed in favor of the state of Montana or of the people of this state, the attorney or other person prosecuting the action may file with the clerk of the court in which the action is commenced an affidavit stating either positively or on information and belief that ~~such~~ *the* bond or obligation was executed by the defendant or one or more of the defendants (designating whom) and made payable to the people of the state or to the state and that the defendant or defendants have real estate or some interest in ~~lands~~ *land* (designating the county or counties in which the ~~same~~

land is situated) and that the action is prosecuted for the benefit of the state. The clerk of the court receiving ~~such~~ *the* affidavit ~~must~~ *shall* certify to the county clerk *and recorder of the county* in which ~~such~~ *the* real estate is situated the names of the parties to the action, the name of the court in which the action is pending, and the amount claimed in the complaint, *along* with the date of the commencement of the suit.

(2) Upon receiving ~~such~~ *the* certificate, the county clerk *and recorder* ~~must~~ *shall* endorse upon ~~it~~ *the certificate* the time of its ~~reception~~ *receipt*. ~~Such~~ *The* certificate must be filed in the same manner as notices of the pendency of action affecting real estate. Any judgment recovered in ~~such~~ *the* action is a lien upon all real estate belonging to the defendant situated in any county in which ~~such~~ *the* certificate is ~~so~~ filed or to one or more of ~~such~~ *the* defendants, for the amount the owner ~~thereof~~ *of the real estate* is or may be liable upon the judgment, from the filing of this certificate.

(3) In any action to compel the specific performance of an agreement to sell real estate affected by the lien created by the filing of the certificate ~~mentioned~~ *referred to* in subsection (2), which agreement was made prior to the filing of ~~such~~ *the* certificate~~,~~ but the purchase price ~~thereof~~ *of the real estate* is not due until after the filing of ~~said~~ *the* certificate, the judge of the district court in which ~~said~~ *the* action for specific performance is tried ~~must~~ *shall*, if the purchaser is otherwise entitled to specific performance of ~~such~~ *the* agreement, order the ~~said~~ purchaser to pay the purchase price~~,~~ or ~~so~~ *as* much ~~thereof as~~ *of the purchase price that* may be due~~,~~ to the state treasurer, taking ~~his~~ *the state treasurer's* receipt ~~therefor~~ *for the payment*. Upon ~~such~~ payment, the purchaser is entitled to enforce the specific performance of the agreement and take ~~said~~ *the* real estate free from the liens created by the filing of ~~said~~ *the* certificate. The ~~moneys so~~ *money* paid to the state treasurer must be held ~~by him,~~ pending the litigation mentioned in ~~said~~ *the* certificate and subject to the lien created by the filing of ~~said~~ *the* certificate. If judgment is recovered against the defendant, the state treasurer in ~~his~~ *the treasurer's* settlement ~~must~~ *shall* pay to the county treasurer ~~entitled to the same~~ the amount due the county."

Section 71. Section 2-15-111, MCA, is amended to read:

"2-15-111. Appointment and qualifications of department heads. (1) ~~The~~ *At the beginning of each gubernatorial term, the* governor shall appoint ~~at the beginning of each gubernatorial term~~ each department head who ~~is~~ *serves as* a director *as provided* in this chapter.

(2) An appointment of a director by the governor is subject to the confirmation of the senate, except that the governor may appoint a director to assume office before the senate meets in its next regular session to consider the appointment. A director so appointed is vested with all the functions of the office upon assuming the office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a director, the governor shall make a new appointment.

(3) A director serves at the pleasure of the governor. The governor may remove a director at any time and appoint a new director to the office.

(4) The governor shall select a director on the basis of ~~his~~ *the person's* professional and administrative knowledge and experience and ~~such~~ additional qualifications ~~as~~ *that* are provided by law.

(5) If a vacancy occurs in the office of a director, the governor shall appoint a new director to serve at the pleasure of the governor.

(6) Heads of departments who are not directors ~~shall~~ *must* be elected or appointed and serve~~,~~ and *have* their vacancies filled~~,~~ as provided by law."

Section 72. Section 2-15-122, MCA, is amended to read:

"2-15-122. Creation of advisory councils. (1) (a) A department head or the governor may create advisory councils.

(b) An agency or an official of the executive branch of state government other than a department head or the governor, including the superintendents of the state's institutions and the presidents of the units of the state's university system, may also create advisory councils but only if federal law or regulation requires that ~~such~~ *the* official or agency create the advisory council as a condition to the receipt of federal funds.

(c) The board of public education, the board of regents of higher education, the state board of education, the attorney general, the state auditor, the secretary of state, and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. ~~They must~~ *The creating authority shall* file a record of each council created by them in the office of the governor and the office of the secretary of state in accordance with subsection (9) ~~of this section~~.

(2) Each advisory council created under this section ~~shall~~ *must* be known as the ".... advisory council".

(3) The creating authority shall*:*

(a) prescribe the composition and advisory functions of each advisory council created;

(b) appoint its members, who shall serve at the pleasure of the ~~governor~~ *creating authority*; and

(c) specify a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity as defined in 2-15-102.

(5) Unless ~~he~~ *a member* is a full-time salaried officer or employee of this state or of any political subdivision of this state, each member is entitled to be paid in an amount to be determined by the department head, not to exceed $25 for each day in which ~~he~~ *the member* is actually and necessarily engaged in the performance of council duties, and ~~he~~ *the member* is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of council duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(6) Unless otherwise specified by the creating authority, at its first meeting in each year ~~each~~ *an* advisory council shall elect a ~~chairman~~ *presiding officer* and ~~such~~ other officers ~~as~~ *that* it considers necessary.

(7) Unless otherwise specified by the creating authority, ~~each~~ *an* advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor and may meet at other times on the call of the ~~chairman~~ *presiding officer* or a majority of its members. An advisory council may not meet outside the city of Helena without the express prior authorization of the creating authority.

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (1)(c) ~~of this section~~, an advisory council may not be created or appointed by a department head or any other official without the approval of the governor. In order for the creation or approval of the creation of an advisory council to be effective, the governor ~~must~~ *shall* file in ~~his~~ *the governor's* office and in the office of the secretary of state a record of the council created showing the council's:

(a) name, in accordance with subsection (2) ~~of this section~~;

(b) composition;

(c) ~~names and addresses of the~~ appointed members*, including names and addresses*;

(d) purpose; *and*

(e) term of existence, in accordance with subsection (10) ~~of this section~~.

(10) An advisory council may not be created to remain in existence longer than 2 years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs later, unless extended by the governor or by the board of public education, the board of regents of higher education, the state board of education, the attorney general, the state auditor, the secretary of state, or the superintendent of public instruction for those advisory councils created in the manner set forth in subsection (1)(c) ~~of this section~~. If the existence of an advisory council is extended, ~~they~~ *the creating authority* shall specify a new date, not more than 2 years later, when the existence of the advisory council ends and file a record of the order in the office of the governor and the office of the secretary of state. The existence of any advisory council may be extended as many times as necessary."

Section 73. Section 2-15-124, MCA, is amended to read:

"2-15-124. Quasi-judicial boards. If an agency is designated by law as a quasi-judicial board for the purposes of this section, the following requirements apply:

(1) The number of and qualifications of its members are as prescribed by law. In addition to those qualifications, unless otherwise provided by law, at least one member ~~shall~~ *must* be an attorney licensed to practice law in this state.

(2) The governor shall appoint the members. A majority of the members ~~shall~~ *must* be appointed to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining members ~~shall~~ *must* be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term and until their successors are appointed. It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of ~~his~~ *the governor's* term and the remaining members in the middle of ~~his~~ *the governor's* term. As used in this subsection, "majority" means the next whole number greater than half.

(3) The appointment of each member is subject to the confirmation of the senate then meeting in regular session or next meeting in regular session following the appointment. A member so appointed has all the powers of the office upon assuming that office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term.

(4) A vacancy ~~shall~~ *must* be filled in the same manner as regular appointments, and the member appointed to fill a vacancy shall serve for the unexpired term to which ~~he~~ *the member* is appointed.

(5) The governor shall designate the ~~chairman~~ *presiding officer*. The ~~chairman~~ *presiding officer* may make and second motions and vote.

(6) Members may be removed by the governor only for cause.

(7) Unless otherwise provided by law, each member is entitled to be paid $50 for each day in which ~~he~~ *the member* is actually and necessarily engaged in the performance of board duties~~,~~ and ~~he~~ is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members except when they perform their board duties outside their regular working hours or during time charged against their ~~annual~~ leave, but ~~such~~ *those* members are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. Ex officio board members may not receive compensation but ~~shall~~ *must* receive travel expenses.

(8) A majority of the membership constitutes a quorum to do business. A favorable vote of at least a majority of all members of a board is required to adopt any resolution, motion, or other decision, unless otherwise provided by law."

Section 74. Section 2-15-131, MCA, is amended to read:

"2-15-131. Rights of state personnel. Unless otherwise provided in this chapter, each state officer or employee affected by ~~the~~ *a* reorganization of the executive branch of state government under this chapter is entitled to all rights ~~which he~~ *that the officer or employee* possessed as a state officer or employee before the effective date of the applicable ~~part of this chapter~~ *reorganization law*, including rights to tenure in office and of rank or grade, rights to vacation *pay,* ~~and~~ sick pay, and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy. This section is not intended to create any new rights for any state officer or employee but to continue only those rights in effect before the effective date of the applicable part of ~~this chapter or an amendment to this chapter~~ *the reorganization law*."

Section 75. Section 2-15-132, MCA, is amended to read:

"2-15-132. Rights to property. The department or unit ~~thereof~~ *of a department* that succeeds to all or part of the functions of an agency under a reorganization within the executive branch also succeeds to the rights to all real and personal property of that agency relating to the functions or parts of functions transferred. The property includes real property, records, office equipment, supplies, contracts, books, papers, documents, maps, appropriations, accounts within and ~~without~~ *outside of* the state treasury, funds, vehicles, and all other similar property. However, the department or unit may not use or divert ~~moneys~~ *money* in a fund or account for a purpose other than provided by law. The governor shall resolve any conflict as to the proper disposition of the property, and ~~his~~ *the governor's* decision is final. This section does not apply to property owned by the federal government."

Section 76. Section 2-15-201, MCA, is amended to read:

"2-15-201. Powers and duties of governor. *(1)* In addition to the duties prescribed by the constitution, the governor shall ~~perform the following duties~~:

~~(1)~~*(a)* ~~He shall~~ supervise the official conduct of all executive and ministerial officers~~.~~*;*

~~(2)~~*(b)* ~~He shall see~~ *ensure* that all offices are filled and *that* the duties ~~thereof~~ *of the offices are* performed or, in default ~~thereof~~ *of the performance*, apply ~~such~~ *a* remedy ~~as~~ *that* the law allows. If the remedy is imperfect, ~~he~~ *the governor* shall acquaint the legislature ~~therewith~~ *with the issue* at its next session.

~~(3)~~*(2)* (a) ~~He~~ *The governor* shall make the appointments and ~~supply~~ *fill* the vacancies as required by law. When a vacancy in a position on a council, board, commission, or committee has occurred or is expected to occur and must be filled by gubernatorial appointment, the governor shall have posted in a conspicuous place in the state capitol a notice:

(i) announcing the actual or anticipated vacancy in the position;

(ii) describing the qualifications for the position, if any; and

(iii) describing the procedure for applying for appointment to the position.

(b) A copy of the notice required under subsection ~~(3)(a)~~ *(2)(a)* must be sent to the lieutenant governor who may publish the notice in an appropriate publication.

~~(4)~~*(3)* ~~He~~ *The governor* is the sole official organ of communication between the government of this state and the government of any other state or of the United States.

~~(5)~~*(4)* Whenever any suit or legal proceeding is pending against this state ~~or which~~ *that* may affect the title of this state to any property or ~~which~~ *that* may result in any claim against the state, ~~he~~ *the governor* may direct the attorney general to appear on behalf of the state and may employ ~~such~~ additional counsel ~~as he~~ *that the governor* may judge expedient.

~~(6)~~*(5)* ~~He~~ *The governor* may require the attorney general or *the* county attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.

~~(7)~~*(6)* ~~He~~ *The governor* may require the attorney general to aid the county attorney in the discharge of ~~his~~ *the county attorney's* duties.

~~(8)~~*(7)* ~~He~~ *The governor* may offer rewards not exceeding $1,000 each, payable out of the general fund, for the apprehension of any convict who has escaped from the state prison or any person who has committed or is charged with an offense punishable by death.

~~(9)~~*(8)* ~~He~~ *The governor* shall perform ~~such~~ *the* duties respecting fugitives from justice ~~as~~ *that* are prescribed by Title 46, chapter 30.

~~(10)~~*(9)* ~~He~~ *The governor* shall issue land warrants and patents, as prescribed in 77-2-342.

~~(11)~~*(10)* ~~He~~ *The governor* may require any officer or board to make special reports ~~to him~~, upon demand, in writing.

~~(12)~~*(11)* ~~He~~ *The governor* shall discharge the duties of *a* member of the board of examiners, of *a* nonvoting ex officio member of the state board of education, and of *a* member of the board of land commissioners.

~~(13)~~*(12)* ~~He~~ *The governor* has the other powers and ~~must~~ *shall* perform the other duties ~~as~~ *that* are devolved upon ~~him~~ *the governor* by this ~~code~~ *section* or any other law of this state."

Section 77. Section 2-15-221, MCA, is amended to read:

"2-15-221. Governor-elect — staff and services provided. (1) As used in this section, unless the context clearly indicates otherwise, "governor-elect" means the person elected at a general election to the office of governor who is not the incumbent governor.

(2) The department of administration shall provide the governor-elect and ~~his~~ *the governor-elect's* necessary staff with suitable office space in the capitol building, together with furnishings, supplies, equipment, and telephone service for the period between the general election and the inauguration.

(3) The governor-elect may obtain the assistance of persons of ~~his~~ *the governor-elect's* own choosing, between the general election and inauguration, and they ~~shall~~ *must* receive reasonable compensation for their services. These persons ~~shall be~~ *are* state employees, but they ~~shall~~ *are* not ~~be~~ subject to any civil service or personnel laws or rules of the state.

(4) In addition, the governor-elect may request that the department of administration assign one or more employees of the department of administration to assist the governor-elect and ~~his~~ *the governor-elect's* staff in the study and interpretation of information. Employees of the department of administration ~~shall~~ *must* be assigned for the time necessary between the general election and the inauguration.

(5) The funds necessary to carry out the provisions of this section ~~shall~~ *must* be included in the appropriation request of the department of administration to the legislature meeting in regular session immediately prior to a general election when a governor will be chosen."

Section 78. Section 2-15-302, MCA, is amended to read:

"2-15-302. Powers and duties of lieutenant governor. (1) The lieutenant governor may:

(a) prescribe rules for the administration of the office;

(b) hire personnel for the office and establish policy to be followed by ~~such~~ *the* personnel; and

(c) compile and submit a budget for the office.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to ~~him~~ *the lieutenant governor* by the governor."

Section 79. Section 2-15-502, MCA, is amended to read:

"2-15-502. Qualification of assistants. Each assistant attorney general must be duly licensed to practice law in the state of Montana at the time of ~~his~~ appointment."

Section 80. Section 2-15-602, MCA, is amended to read:

"2-15-602. Deputy state auditor. (1) The state auditor shall appoint a deputy who in the absence of the principal or in the case of vacancy in ~~his~~ *the* office *of state auditor* shall perform all the duties of *the* office until ~~such~~ *the* disability ~~be~~ *is* removed or *the* vacancy ~~be~~ *is* filled.

(2) ~~Such~~ *The* deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of ~~his~~ *the* duties."

Section 81. Section 2-15-1202, MCA, is amended to read:

"2-15-1202. Adjutant general — qualifications — salary. (1) The adjutant general ~~shall~~ *must*:

(a) have the rank of major general;

(b) be selected from the active list of the national guard of this state;

(c) be federally recognized in the rank of lieutenant colonel or higher, immediately preceding ~~his~~ appointment;

(d) have ~~had~~ at least 10 years of service as an officer of the active national guard of this state during the 15 years immediately preceding ~~his~~ appointment.

(2) A salary may not be paid to the adjutant general by the state when ~~he~~ *the adjutant general* is on extended active duty in federal service or is receiving pay as a civilian employee of the federal government.

(3) If, by reason of call or draft of officers of the Montana national guard into federal service, there is no officer having the qualifications ~~as~~ set forth in this section for adjutant general, then any officer of the national guard may be appointed as acting adjutant general."

Section 82. Section 2-15-1203, MCA, is amended to read:

"2-15-1203. Assistant adjutant generals. (1) The adjutant general shall appoint, with the approval of the governor, an assistant adjutant general for the army national guard to be selected from the active list of the army national guard and an assistant adjutant general for the air national guard to be selected from the active list of the air national guard.

(2) Each assistant adjutant general ~~shall~~ *must* have the qualifications set forth in 2-15-1202 for appointment as adjutant general. However, ~~he shall~~ *each assistant adjutant general must* have the rank of brigadier general."

Section 83. Section 2-15-1515, MCA, is amended to read:

"2-15-1515. Commission on federal higher education programs. (1) There is a commission on federal higher education programs that may be called into existence by the board of regents of higher education from time to time as the need arises. Whenever the commission is called into existence, the board shall request *that* the governor ~~to~~ appoint members pursuant to subsection (2)(b).

(2) The commission consists of:

(a) ex officio, the appointed members of the board of regents of higher education; and

(b) a representative of each accredited private college or university in this state appointed by the governor from the board of trustees of each private college or university upon the request of the board of regents of higher education.

(3) The commission members appointed pursuant to subsection (2)(b) shall serve for the period of existence of the commission~~; however, such~~. *However, the* period of service may not exceed 4 years and is contingent upon continued status as a trustee. If a vacancy occurs in a position held by an individual appointed pursuant to subsection (2)(b), the governor shall appoint a replacement.

(4) The ~~chairman~~ *presiding officer* of the board of regents of higher education is ~~chairman~~ *the presiding officer* of the commission.

(5) The commissioner of higher education is the administrative officer of the commission.

(6) The commission is allocated to the board of regents of higher education for administrative purposes only as provided in 2-15-121.

(7) The commission members are entitled to compensation as provided in 2-15-124(7).

(8) The board of regents of higher education may terminate the commission from time to time when there is no need for its existence."

Section 84. Section 2-15-1521, MCA, is amended to read:

"2-15-1521. Cultural and aesthetic projects advisory committee — ~~terms and compensation~~. (1) There is a cultural and aesthetic projects advisory committee.

(2) The committee consists of 16 members, appointed as follows:

(a) eight members appointed by the Montana historical society board of trustees; and

(b) eight members appointed by the Montana arts council.

(3) Members ~~shall hold office for~~ *serve terms of* 4 years beginning January 1 following their appointment.

(4) A member may be removed by the appointing authority.

(5) All vacancies ~~shall~~ *must* be filled by the original appointing authority.

(6) The committee shall elect a ~~chairman and vice-chairman~~ *presiding officer and a vice presiding officer*.

(7) Members of the committee are entitled to compensation of $25 a day and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day in attendance at a committee meeting."

Section 85. Section 2-15-1701, MCA, is amended to read:

"2-15-1701. Department of labor and industry — head. (1) There is a department of labor and industry. As prescribed in Article XII, section 2, of the Montana constitution, the department head is the commissioner of labor and industry.

(2) The commissioner ~~shall~~ *must* be appointed and serve as provided ~~for directors~~ in 2-15-111.

(3) The commissioner ~~shall~~ *must* receive an annual salary in ~~such~~ *an* amount ~~as may be specified by the legislature in the appropriation to the department of labor and industry~~ *equal to other department directors.*

(4) Before entering on the duties of ~~his~~ *the* office, ~~he~~ *the commissioner shall* ~~must~~ take and subscribe to the oath of office prescribed by the Montana constitution."

Section 86. Section 2-15-1742, MCA, is amended to read:

"2-15-1742. Board of veterinary medicine. (1) There is a board of veterinary medicine.

(2) The board consists of six members appointed by the governor with the consent of the senate, five of whom must be licensed veterinarians and one of whom must be a public member who is a consumer of veterinary services and who may not be a licensee of the board or of any other board under the department of labor and industry.

(3) Each veterinarian member must be a reputable licensed veterinarian who has graduated from a college *that is* authorized by law to confer degrees and ~~have~~ *that has* educational standards equal to those approved by the American veterinary medical association. Each veterinarian member ~~shall~~ *must* have

actually and legally practiced veterinary medicine in either private practice or public service in this state for at least 5 years immediately before ~~his~~ appointment.

(4) Each member shall serve for a term of 5 years. The governor may, after notice and hearing, remove a member for misconduct, incapacity, or neglect of duty.

(5) The board is allocated to the department for administrative purposes only as ~~prescribed~~ *provided* in 2-15-121."

Section 87. Section 2-15-1744, MCA, is amended to read:

"2-15-1744. Board of social work examiners and professional counselors. (1) (a) The governor shall appoint a board of social work examiners and professional counselors consisting of seven members.

(b) Three members must be licensed social workers, and three must be licensed professional counselors.

(c) One member must be appointed from and represent the general public and may not be engaged in social work.

(d) The board is allocated to the department for administrative purposes only as ~~prescribed~~ *provided* in 2-15-121.

(e) The board is designated *as* a quasi-judicial board. Members are appointed, serve, and are subject to removal in accordance with 2-15-124.

(2) Notwithstanding the qualifications for appointment contained in subsection (1), a person may be appointed to the board without being licensed as a professional counselor if ~~he~~ *the person* is issued a license under Title 37, chapter 23, within 30 days after ~~his~~ appointment."

Section 88. Section 2-15-1748, MCA, is amended to read:

"2-15-1748. Board of physical therapy examiners. (1) There is a board of physical therapy examiners.

(2) The board consists of five members appointed by the governor with the consent of the senate for ~~a term~~ *terms* of 3 years. The members are:

(a) three physical therapists licensed under Title 37, chapter 11, who have been actively engaged in the practice of physical therapy for the 3 years preceding appointment to the board;

(b) one physician licensed under Title 37, chapter 3, who has been actively engaged in the practice of medicine for the 3 years preceding appointment to the board; and

(c) one member of the general public who is not a physician or a physical therapist.

(3) Each member must have been a resident of Montana for the 3 years preceding appointment to the board.

(4) The Montana medical association may submit names of nominees under subsection (2)(b) to the governor as provided in 37-1-132.

(5) A vacancy on the board must be filled in the same manner as the original appointment. These appointments may ~~only~~ be made *only* for the unexpired portions of the term.

(6) ~~No~~ *A* member may *not* be appointed for more than two consecutive terms.

(7) The governor may remove any board member for negligence in performance of any duty required by law and for incompetence or unprofessional or dishonorable conduct.

(8) A board member is not liable to civil action for any act performed in good faith in the execution of the duties required by Title 37, chapter 11.

(9) The board shall provide for its organizational structure by rule, which ~~shall~~ *must* include a ~~chairman, vice-chairman,~~ *presiding officer, vice presiding officer,* and secretary-treasurer.

(10) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 89. Section 2-15-1814, MCA, is amended to read:

"2-15-1814. Board of housing — allocation — composition — quasi-judicial. (1) There is a board of housing.

(2) The board consists of seven members appointed by the governor as provided in 2-15-124. The members ~~shall~~ *must* be informed and experienced in housing, economics, or finance.

(3) The board shall elect a ~~chairman~~ *presiding officer* and other necessary officers.

(4) The board is designated *as* a quasi-judicial board for purposes of 2-15-124.

(5) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121.

(6) In compliance with the state pay plan, the department shall provide all staff and services to the board ~~as~~ *that* are determined by the board in conjunction with the department to be necessary for the purposes of carrying out the board's programs. The department shall assess the board for reasonable costs.

(7) A member of the board ~~shall~~ *may* not be ~~deemed~~ *considered* to have a conflict of interest under the provisions of 2-2-201 merely because the member is a stockholder, officer, or employee of a lending institution ~~who~~ *that* may participate in the board's programs."

Section 90. Section 2-15-3002, MCA, is amended to read:

"2-15-3002. Montana wheat and barley committee — ~~composition — allocation~~. (1) There is a Montana wheat and barley committee.

(2) The committee consists of seven members and three ex officio, nonvoting members.

(3) The governor shall appoint one member from each of the following districts:

(a) District I, consisting of Daniels, Sheridan, and Roosevelt Counties;

(b) District II, consisting of Valley, Phillips, Blaine, and Hill Counties;

(c) District III, consisting of Liberty, Toole, Glacier, and Pondera Counties;

(d) District IV, consisting of Chouteau and Teton Counties;

(e) District V, consisting of Lewis and Clark, Cascade, Judith Basin, Fergus, Petroleum, Meagher, Broadwater, Wheatland, Golden Valley, and Musselshell Counties;

(f) District VI, consisting of Big Horn, Yellowstone, Stillwater, Carbon, Sweet Grass, Park, Gallatin, Madison, Jefferson, Silver Bow, Beaverhead, and all counties west of the continental divide;

(g) District VII, consisting of Garfield, McCone, Rosebud, Richland, Dawson, Wibaux, Prairie, Carter, Custer, Fallon, Powder River, and Treasure Counties.

(4) The ex officio members are:

(a) the director of the department of agriculture;

(b) the dean of agriculture of Montana state university-Bozeman;

(c) a representative of the grain trade in Montana elected by a majority of the appointed members.

(5) Each of the appointed members must be a citizen of Montana, derive a substantial portion of ~~his~~ *the member's* income from growing wheat or barley in this state, and be a resident of and have farming operations in the district from which appointed. No more than four of the appointed members may be of the same political party.

(6) A list of nominees for appointment may be submitted to the governor by the Montana farmers union, Montana farm bureau, Montana grange, Montana women involved in farm economics, and the Montana grain growers association. Names of nominees must be submitted not more than 90 days but not less than 30 days before the expiration of a ~~committeeman's~~ *member's* term.

(7) The appointed members shall serve staggered terms of 3 years. A member may not serve more than three consecutive 3-year terms.

(8) A member may be removed by the governor, after a full public hearing before the governor, for malfeasance, misfeasance, or neglect of duty. Removal proceedings may not be started except upon duly verified written charges. The member must be given a copy of the written charges at least 10 days in advance of the hearing. At the hearing, the member may be represented by an attorney and may present witnesses ~~in his~~ *on the member's* behalf.

(9) A member who ceases to reside in the state or in the district from which ~~he~~ *the member* was appointed or who ceases to grow wheat or barley in the state or district is disqualified from membership, and ~~his~~ *the* office becomes vacant. If the member refuses to recognize ~~his~~ *the member's* disqualification, the refusal is cause for removal.

(10) The committee is allocated to the department for administrative purposes only as ~~prescribed~~ *provided* in 2-15-121."

Section 91. Section 2-15-3003, MCA, is amended to read:

"2-15-3003. Board of hail insurance. (1) There is a board of hail insurance of five members consisting of the state auditor, the director of agriculture, who is secretary of the board, and three other members to be appointed by the governor and confirmed by the senate.

(2) The governor shall designate one of the appointive members to act as ~~chairman~~ *presiding officer* of the board.

(3) Whenever the term of any member expires, either by death, resignation, removal for cause, or expiration of ~~his~~ *the member's* term of office, the governor shall appoint ~~his~~ *a* successor and shall also appoint one of the board ~~for chairman~~ *as presiding officer* in case of a vacancy in that office.

(4) Each appointive member of the board ~~shall~~ *must* be appointed for 3 years, except when ~~such~~ *an* appointment is made to fill a vacancy on the board, in which ~~event such~~ *case the* appointee shall fill out the unexpired term of the member whose place ~~he~~ *the appointee* fills.

(5) All members of the board ~~shall be~~ *are* subject to removal for cause by the governor.

(6) The board is allocated to the department of agriculture for administrative purposes only as ~~prescribed~~ *provided* in 2-15-121. The department may charge the board for services provided by the department pursuant to 2-15-121. The costs charged by the department must be commensurate with the cost of the services provided."

Section 92. Section 2-15-3305, MCA, is amended to read:

"2-15-3305. Rangeland resources committee. (1) The governor may select a committee of six members in accordance with subsection (2) ~~which~~ *that* is composed ~~as follows~~ *of*:

(a) a ~~chairman~~ *presiding officer* who is a rancher;

(b) a ~~vice-chairman~~ *vice presiding officer* who is a rancher;

(c) a rancher from the eastern area of the state;

(d) a rancher from the northern area of the state;

(e) a rancher from the area of the state west of the continental divide;

(f) a rancher from the southern area of the state.

(2) The governor shall select the members described in ~~subsections (1)(a) through (1)(f)~~ *subsection (1)* from a list submitted by the executive committee of the association of conservation districts and the board of directors of the Montana association of state grazing districts.

(3) The committee members shall serve without compensation.

(4) All persons appointed to the committee shall serve at the pleasure of the governor.

(5) The committee is allocated to the department for administrative purposes only as ~~prescribed~~ *provided* in 2-15-121."

Section 93. Section 2-15-3104, MCA, is amended to read:

"2-15-3104. Livestock crimestoppers commission. (1) There is a livestock crimestoppers commission.

(2) The commission consists of five members appointed by the ~~chairman~~ *presiding officer* of the board of livestock. The members are:

(a) the administrator of the brands enforcement division, or ~~his~~ *the administrator's* designee;

(b) a member of the board of livestock, or ~~his~~ *the member's* designee;

(c) a law enforcement official; and

(d) two members of the public, appointed at large.

(3) The commission shall elect a ~~chairman~~ *presiding officer* from its members.

(4) A member must be appointed for a term of 2 years and may be reappointed.

(5) (a) A vacancy must be filled within 14 days of occurrence in the same manner as the original appointment.

(b) A vacancy does not impair the right of the remaining members to exercise the powers of the commission.

(6) The commission is allocated to the department of livestock for administrative purposes only as provided in 2-15-121."

Section 94. Section 2-15-3331, MCA, is amended to read:

"2-15-3331. Flathead basin commission ~~— term of appointment — quorum — vacancy — chairman — vote~~. (1) The commission members shall serve staggered 4-year terms.

(2) A majority of the membership, other than ex officio members, constitutes a quorum of the commission.

(3) A vacancy on the commission must be filled in the same manner as regular appointments, and the member so appointed shall serve for the unexpired term to which ~~he~~ *the member* is appointed.

(4) The commission shall select a ~~chairman~~ *presiding officer* from among its members. The ~~chairman~~ *presiding officer* may make motions and vote.

(5) A favorable vote of at least a majority of all members, except ex officio members, of the commission is required to adopt any resolution, motion, or other decision of the commission."

Section 95. Section 2-15-3402, MCA, is amended to read:

"2-15-3402. Fish, wildlife, and parks commission ~~— composition — qualifications — quasi-judicial~~. (1) There is a fish, wildlife, and parks commission.

(2) The commission consists of five members. At least one member must be experienced in the breeding and management of domestic livestock. The governor shall appoint one member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark Counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweet Grass Counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland Counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux Counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie Counties.

(3) Appointments must be made without regard to political affiliation and must be made solely for the wise management of ~~the~~ fish, wildlife, and state parks and other outdoor recreational resources of this state. A person may not be appointed to the commission unless ~~he~~ *the person* is informed or interested and experienced in the subject of ~~wildlife,~~ fish, *wildlife,* parks, and outdoor recreation and the requirements for the conservation and protection of ~~wildlife,~~ fish, *wildlife,* parks, and outdoor recreational resources.

(4) A vacancy occurring on the commission must be filled by the governor in the same manner and from the district in which the vacancy occurs.

(5) The fish, wildlife, and parks commission is designated as a quasi-judicial board for purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the commission."

Section 96. Section 2-16-102, MCA, is amended to read:

"2-16-102. Qualifications generally — age and citizenship. (1) Provisions respecting disqualifications for particular offices are contained in the constitution and in the provisions of the ~~codes~~ *laws* concerning the various offices.

(2) ~~No~~ *A* person is *not* eligible to hold civil office in this state who at the time of ~~his~~ election or appointment is not ~~of the age of~~ 18 years *of age* or older and a citizen of this state."

Section 97. Section 2-16-114, MCA, is amended to read:

"2-16-114. Facsimile signatures and seals. (1) As used in this section, the following definitions apply:

(a) "Authorized officer" means any official of this state or any of its departments, agencies, public bodies, or other instrumentalities or any of its political subdivisions whose signature to a public security or instrument of payment is required or permitted.

(b) "Facsimile signature" means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

(c) "Instrument of payment" means a check, draft, warrant, or order for the payment, delivery, or transfer of funds.

(d) "Public security" means a bond, note, certificate of indebtedness, or other obligation for the payment of money issued by this state or by any of its departments, agencies, public bodies, or other instrumentalities or by any of its political subdivisions.

(2) ~~Any~~ *An* authorized officer, after filing with the secretary of state or, in the case of officers of any city, town, county, school district, or other political subdivision, with the clerk of ~~such~~ *the* subdivision, ~~his~~ *the officer's* manual signature certified by ~~him~~ *the officer* under oath, may execute or cause to be executed with a facsimile signature in lieu of ~~his~~ *the* manual signature:

(a) any public security, provided that at least one signature required or permitted to be placed ~~thereon shall~~ *on the security must* be manually subscribed, but ~~no such~~ manual subscription ~~shall be~~ *is not* required ~~as to~~ *for* interest coupons attached to ~~such~~ *the* security; and

(b) any instrument of payment.

(3) Upon compliance with this section by the authorized officer, ~~his~~ *the* facsimile signature has the same legal effect as ~~his~~ *a* manual signature.

(4) When the seal of this state or any of its departments, agencies, public bodies, or other instrumentalities or of any of its political subdivisions is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped, or otherwise placed in facsimile ~~thereon~~ *on the security or instrument*. The facsimile seal has the same legal effect as the impression of the seal.

(5) ~~Any~~ *A* person who with intent to defraud uses on a public security or an instrument of payment a facsimile signature or any reproduction of it of any authorized officer or any facsimile seal or any reproduction of it of this state or any of its departments, agencies, public bodies, or other instrumentalities or of any of its political subdivisions is guilty of a felony."

Section 98. Section 2-16-115, MCA, is amended to read:

"2-16-115. Signature of officer acting ex officio. When an officer discharges ex officio the duties of ~~another~~ *an* office *other* than that to which ~~he~~ *the officer* is elected or appointed, ~~his~~ *the officer's* official signature and attestation, except as otherwise provided by law, must be in the name of the office ~~the duties~~ of which ~~he~~ *the officer* discharges *the duties*."

Section 99. Section 2-16-202, MCA, is amended to read:

"2-16-202. Title contested — salary withheld. (1) When the title of the incumbent of any office in this state is contested by proceedings instituted in any court for that purpose, ~~no~~ *a* warrant ~~can thereafter~~ *may not* be drawn or paid for any part of ~~his~~ *the incumbent's* salary until ~~such~~ *the* proceedings have been finally determined.

(2) As soon as ~~such~~ *the* proceedings are instituted, the clerk of the court in which they are pending ~~must~~ *shall* certify the facts to the officers whose duty it would otherwise be to draw ~~such~~ *the* warrant or pay ~~such~~ *the* salary."

Section 100. Section 2-16-212, MCA, is amended to read:

"2-16-212. Filing. (1) ~~Whenever~~ *Unless* a different time is ~~not~~ prescribed by law, the oath of office must be taken, subscribed, and filed within 30 days after the officer has notice of ~~his~~ election or appointment or before the expiration of 15 days from the commencement of ~~his~~ *the* term of office when ~~no such~~ *a* notice *of election or appointment* has *not* been given.

(2) ~~Every~~ *An* oath of office, certified by the officer before whom the ~~same~~ *oath* was taken, must be filed within the time required by law, except when otherwise specially provided, as follows:

(a) the oath of all officers whose authority is not limited to any particular county, in the office of the secretary of state;

(b) the oath of all officers, elected or appointed for any county and of all officers whose duties are local or whose residence in any particular county is prescribed by law and of the clerks of the district courts, in the offices of the clerks of the respective counties."

Section 101. Section 2-16-213, MCA, is amended to read:

"2-16-213. Term of office — holdover — assumption of office. (1) ~~Every~~ *An* office ~~of~~ *for* which the duration is not fixed by law is held at the pleasure of the appointing ~~power~~ *authority*.

(2) ~~Every~~ *An* officer ~~must~~ *shall* continue to discharge the duties of ~~his~~ *the* office, although ~~his~~ *the* term has expired, until ~~his~~ *a* successor has qualified.

(3) Notwithstanding *the provisions of* subsection (2), an appointee who is by law subject to confirmation by the senate may, upon expiration of or vacancy in the previous term, assume the office to which appointed and is a de jure officer~~, notwithstanding the fact that~~ *even though* the senate has not yet confirmed the appointment. If the senate rejects the appointment, the office becomes vacant."

Section 102. Section 2-16-303, MCA, is amended to read:

"2-16-303. Powers. In all cases not otherwise provided for, each deputy possesses the powers and may perform the duties attached by law to the office of ~~his~~ *the* principal."

Section 103. Section 2-16-406, MCA, is amended to read:

"2-16-406. Salary for all services — how paid. (1) The salary of each ~~such~~ officer ~~shall be~~ *is* for all services *that are* required of ~~him~~ *the officer* or ~~which~~ *that* may ~~hereafter devolve upon him~~ *be assigned to the office* by law, including all services rendered ex officio as a member of any board, commission, or committee, but ~~shall~~ *may* not include actual necessary travel, lodging, and subsistence expenses incidental to ~~his~~ official duties.

(2) Unless otherwise provided by law, the salaries of officers must be paid out of the general fund in the state treasury monthly on the last day of the month."

Section 104. Section 2-16-504, MCA, is amended to read:

"2-16-504. Elective officers' inability to perform — filling vacancy — notice. (1) When an incumbent in the office of lieutenant governor, secretary of state, attorney general, auditor, or superintendent of public instruction is found to be permanently unable to perform the functions of ~~his~~ *the* position, a vacancy exists.

(2) When a written declaration, made as ~~hereinafter~~ provided *in subsection (4)*, is transmitted to the legislature that any ~~such~~ officer *enumerated in subsection (1)* is unable to discharge the powers and duties of ~~this~~ office, the legislature may convene in the manner provided for the convening of special sessions to determine whether ~~such~~ *the* disability exists or it may defer ~~such~~ *a* determination to the next regular session of the legislature.

(3) If the legislature within 21 days after convening, whether in regular or special session, determines by two-thirds vote of its members that ~~such~~ *the* officer is unable to discharge the powers and duties of ~~his~~ office, ~~this~~ *the* office ~~shall be~~ *is* declared to be vacant and ~~shall~~ *must* be filled as provided by the constitution of Montana or laws enacted pursuant ~~thereto~~ *to the constitution*.

(4) The written declaration required ~~hereunder shall~~ *under this section must* be made and transmitted by the lieutenant governor and attorney general unless one of them is the officer whose disability is in question. If the lieutenant governor is the subject of the declaration, the declaration ~~shall~~ *must* be made by the governor and attorney general~~;~~*, and* if the attorney general is the subject of the declaration, the declaration ~~shall~~ *must* be made by the governor and secretary of state."

Section 105. Section 2-16-505, MCA, is amended to read:

"2-16-505. Filling vacancies in certain elective offices. A vacancy in the office of ~~either~~ the secretary of state, state auditor, attorney general, clerk of the supreme court, or superintendent of public instruction must be filled by a person appointed by the governor~~;~~. ~~who~~ *The appointee* holds ~~his~~ office until the first Monday in January ~~next~~ after ~~a~~ *the next* general election. At ~~such~~ *that* election, the office must be filled by election for the unexpired term."

Section 106. Section 2-16-507, MCA, is amended to read:

"2-16-507. Powers and duties of officer filling unexpired term. ~~Any~~ *A* person elected or appointed to fill a vacancy, after filing ~~his~~ *the* official oath and bond, possesses all the rights and powers and is subject to all the liabilities,

duties, and obligations as if ~~he~~ *the person* had been elected to the office for a full term."

Section 107. Section 2-16-513, MCA, is amended to read:

"2-16-513. Succession in case of termination or incapacitation of primary successors. (1) If, because of an enemy attack upon the United States, the governor, lieutenant governor, president pro tempore of the senate, and speaker of the house are killed or rendered unable to serve as governor, the senior member of the legislature shall act as governor.

(2) ~~He~~ *The senior member of the legislature* shall call an emergency session of the legislature at a safe location within the state. The legislature meeting in joint session shall elect a governor.

(3) For the purposes of this section, the member with seniority is the member who has served in the legislature for the longest continuous period of time up to and including ~~his~~ *the member's* current term. If two or more members of the legislature have equal seniority, the line of succession among them is from eldest to youngest in age."

Section 108. Section 2-16-521, MCA, is amended to read:

"2-16-521. Powers of acting governor. (1) Every provision of the laws of this state in relation to the powers and duties of the governor and in relation to acts and duties to be performed by others toward ~~him~~ *the governor* extends to the persons performing for the time being the duties of governor.

(2) An acting governor ~~shall have~~ *has* all the rights, duties, and emoluments of the office of governor while ~~he is so~~ acting *as governor*."

Section 109. Section 2-16-603, MCA, is amended to read:

"2-16-603. Officers subject to recall — grounds for recall. (1) ~~Every~~ *Any* person holding a public office of the state or any of its political subdivisions, either by election or appointment, is subject to recall from ~~such~~ office.

(2) A public officer holding an elective office may be recalled by the qualified electors entitled to vote for ~~his~~ *the elective officer's* successor. A public officer holding an appointive office may be recalled by the qualified electors entitled to vote for the successor or successors of the elective officer or officers who have the authority to appoint a person to that position.

(3) Physical or mental lack of fitness, incompetence, violation of ~~his~~ *the* oath of office, official misconduct, or conviction of a felony offense enumerated in Title 45 ~~is~~ *are* the only ~~basis~~ *grounds* for recall. ~~No~~ *A* person may *not* be recalled for performing a mandatory duty of the office ~~he~~ *that the person* holds or for not performing any act that, if performed, would subject ~~him~~ *the person* to prosecution for official misconduct."

Section 110. Section 2-16-612, MCA, is amended to read:

"2-16-612. Persons qualified to petition — penalty for false signatures. (1) ~~Every~~ *A* person who is a qualified elector of this state may sign a petition for recall of a state officer.

(2) ~~Every~~ *A* person who is a qualified elector of a district of the state from which a state-district officer is elected may sign a petition for recall of a state-district officer of that district or appointed by an officer or the officers of that election district.

(3) ~~Every~~ *A* person who is a qualified elector of a political subdivision of this state may sign a petition for recall of an officer of that political subdivision.

However, if a political subdivision is divided into election districts, a person must be a qualified elector in the election district to be eligible to sign a petition to recall an officer elected from that election district.

(4) ~~Any~~ *A* person signing any name other than ~~his~~ *the person's* own to any petition or knowingly signing ~~his name~~ more than once for the recall or who is not at the time of the signing a qualified elector or ~~any~~ *a* person who knowingly makes a false entry upon an affidavit required in connection with the filing of a petition for the recall of an officer is guilty of unsworn falsification or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-203 or 45-7-208, as applicable."

Section 111. Section 2-16-613, MCA, is amended to read:

"2-16-613. Limitations on recall petitions. (1) A recall petition may not name more than one officer to be recalled.

(2) ~~No~~ *A* recall petition against an officer may *not* be approved for circulation, as required in 2-16-617(3), until ~~he~~ *an officer* has held office for 2 months.

(3) ~~No~~ *A* recall petition may *not* be filed against an officer for whom a recall election has been held for a period of 2 years during ~~his~~ *the officer's* term of office unless the state or political subdivision or subdivisions financing ~~such~~ *the* recall election ~~is~~ *are* first reimbursed for all expenses of the preceding recall election."

Section 112. Section 2-16-616, MCA, is amended to read:

"2-16-616. Form of recall petition. (1) The form of the recall petition ~~shall~~ *must* be substantially as follows:

WARNING

A person who knowingly signs a name other than ~~his~~ *the person's* own to this petition, ~~or~~ who signs ~~his~~ *the person's* name more than once upon a petition to recall the same officer at one election, or who is not, at the time ~~he signs~~ *of signing* this petition, a qualified elector of the state of Montana entitled to vote for the successor of the elected officer to be recalled or the successor or successors of the officer or officers who have the authority to appoint a person to the position held by the appointed officer to be recalled is punishable by a fine of no more than $500 or imprisonment in the county jail for a term not to exceed 6 months, or both, or *a fine of $500 or* imprisonment in the state prison for a term not to exceed 10 years, or both.

RECALL PETITION

To the Honorable ....., Secretary of State of the State of Montana (or name and office of other filing officer): We, the undersigned qualified electors of the State of Montana (or name of appropriate state-district or political subdivision) respectfully petition that an election be held as provided by law on the question of whether ....., holding the office of ....., should be recalled for the following reasons: (Setting out a general statement of the reasons for recall in not more than 200 words). ~~By his signature each~~ *Each* signer certifies: I have personally signed this petition; I am a qualified elector of the state of Montana and (name of appropriate political subdivision); and my residence and post-office address are correctly written after my name to the best of my knowledge and belief.

(2) Numbered lines ~~shall~~ *must* follow the ~~above heading~~ *language in subsection (1).* Each numbered line ~~shall~~ *must* contain spaces for the signature, post-office address, and printed last name of the signer. Each separate sheet of

the petition ~~shall~~ *must* contain the heading and reasons for the proposed recall as prescribed ~~above~~ *in subsection (1)*."

Section 113. Section 2-16-617, MCA, is amended to read:

"2-16-617. Form of circulation sheets. (1) The signatures on each petition ~~shall~~ *must* be placed on sheets of paper known as circulation sheets. Each circulation sheet ~~shall~~ *must* be substantially 8 1/2 x 14 inches or a continuous sheet may be folded so as to meet this size limitation. ~~Such~~ *The* circulation sheets ~~shall~~ *must* be ruled with a horizontal line 1 1/2 inches from the top ~~thereof~~ *of the sheet*. The space above ~~such~~ *the* line ~~shall~~ *must* remain blank and ~~shall~~ *must* be for the purpose of binding.

(2) The petition, for purposes of circulation, may be divided into sections, each section to contain not more than 25 circulation sheets.

(3) Before a petition may be circulated for signatures, a sample circulation sheet must be submitted to the officer with whom the petition must be filed in the form in which it will be circulated. The filing officer shall review the petition for sufficiency as to form and approve or reject the form of the petition, stating ~~his~~ *the* reasons ~~therefor~~ *for rejection*, within 1 week of receiving the sheet.

(4) The petition form submitted must be accompanied by a written statement containing the reasons for the desired recall as stated on the petition. The truth of purported facts contained in the statement ~~shall~~ *must* be sworn to by at least one of the petitioners before a person authorized to administer oaths.

(5) The filing officer shall serially number all approved petitions continuously from year to year."

Section 114. Section 2-16-620, MCA, is amended to read:

"2-16-620. County clerk to verify signatures. (1) The county clerk in each county in which ~~such~~ a *recall* petition is signed shall verify and compare the signatures of each person who has signed the petition to ~~assure~~ *ensure* that ~~he~~ *the person* is an elector in ~~such~~ *that* county and, if satisfied *that* the signatures are genuine, *shall* certify that fact to the officer with whom the recall petition is to be filed, in substantially the following form:

To the Honorable ....., Secretary of State of the State of Montana (or name and title of other officer):

I, ..., ... (title) of ..... County, certify that I have compared the signatures on ..... sheets (specifying number of sheets) of the petition for recall No. ..... attached, in the manner prescribed by law, and I believe ..... (number) signatures are valid for the purpose of the petition. I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and that the post-office address is completed for each valid signature.

Signed: ..... (Date) ..... (Signature)

Seal ..... (Title)

(2) ~~Such~~ *The* certificate is prima facie evidence of the facts stated ~~therein~~ *in the certificate*, and the secretary of state or other officer receiving the recall petition may consider and count only ~~such~~ *the* signatures ~~as~~ *that* are certified. However, the officer with whom the recall petition is filed shall consider and count any remaining signatures of the registered voters ~~which~~ *that* prove to be genuine, and ~~such~~ *those* signatures ~~shall~~ *must* be considered and counted if they are attested to in the manner and form ~~as~~ provided for initiative and referendum petitions.

(3) The county clerk *and recorder* may not retain any portion of a petition for more than 30 days following the receipt of that portion. At the expiration of ~~such~~ *that* period, the county clerk *and recorder* shall certify the valid signatures on that portion of the petition and deliver the same to the person with whom the petition is required to be filed."

Section 115. Section 2-16-621, MCA, is amended to read:

"2-16-621. Notification to officer — statement of justification. Upon filing the petition or a portion of the petition containing the number of valid signatures required under 2-16-614, the official with whom it is filed shall immediately give written notice to the officer named in the petition. The notice ~~shall~~ *must* state that a recall petition has been filed, ~~shall~~ *must* set forth the reasons contained ~~therein~~ *in the petition*, and ~~shall~~ *must* notify the officer named in the recall petition that ~~he~~ *the officer* has the right to prepare and have printed on the ballot a statement containing not more than 200 words giving reasons why ~~he~~ *the officer* should not be recalled. ~~No such~~ *A* statement of justification ~~shall~~ *may not* be printed on the ballot unless it is delivered to the filing official within 10 days of the date notice is given."

Section 116. Section 2-16-622, MCA, is amended to read:

"2-16-622. Resignation of officer — proclamation of election. (1) If the officer named in the petition for recall submits ~~his~~ *a* resignation in writing, it ~~shall~~ *must* be accepted and become effective the day it is offered. The vacancy created by ~~such~~ *the* resignation ~~shall~~ *must* be filled as provided by law~~, provided that~~. *However,* the officer named in the petition for recall may not be appointed to fill ~~such~~ *the* vacancy. If the officer named in the petition for recall refuses to resign or does not resign within 5 days after the petition is filed, a special election ~~shall~~ *must* be called unless the filing is within 90 days of a general election, in which case the question ~~shall~~ *must* be placed on a separate ballot at the same time as the general election.

(2) The call of a special election ~~shall~~ *must* be made by the governor in the case of a state or state-district officer or by the board or officer empowered by law to call special elections for a political subdivision in the case of any officer of a political subdivision of the state."

Section 117. Section 2-16-633, MCA, is amended to read:

"2-16-633. Form of ballot. (1) The ballot at ~~such~~ *a* recall election ~~shall~~ *must* set forth the statement contained in the recall petition stating the reasons for demanding the recall of ~~such~~ *the* officer and the officer's statement of reasons why ~~he~~ *the officer* should not be recalled. ~~Then the~~ *The* question of whether the officer should be recalled ~~shall~~ *must* be placed on the ballot in a form similar to the following:

☐ FOR recalling ..... who holds the office of .....

☐ AGAINST recalling ..... who holds the office of .....

(2) The form of the ballot ~~shall~~ *must* be approved as provided in the election laws of this state."

Section 118. Section 2-16-635, MCA, is amended to read:

"2-16-635. Officer to remain in office until results declared — filling of vacancy. The officer named in the recall petition continues in office until ~~he~~ *the officer* resigns or the results of the recall election are officially declared. If a majority of those voting on the question vote to remove the officer, the office becomes vacant and the vacancy ~~shall~~ *must* be filled as provided by law~~,~~.

~~provided that~~ *However,* the officer recalled may ~~in no event~~ *not* be appointed to fill the vacancy."

Section 119. Section 2-17-816, MCA, is amended to read:

"2-17-816. Parking citations within capitol complex. The director of the department of administration may ~~in his discretion~~ enter into an agreement with the city of Helena, Montana, to authorize capitol security guards employed by the department to issue citations for parking violations as defined by state or municipal laws ~~which~~ *that* occur within the boundaries of the capitol complex or on streets or alleys contiguous ~~thereto~~ *to the capitol complex*. All ~~such~~ citations must be considered within the jurisdiction of the city of Helena, Montana, and must be handled in the same manner as citations issued by peace officers ~~thereof~~ *of the city*."

Section 120. Section 2-18-106, MCA, is amended to read:

"2-18-106. No limitation on legislative authority — transfer of funds. (1) Parts 1~~, 2, and~~ *through* 3 do not limit the authority of the legislature relative to appropriations for salary and wages. The budget director shall adjust ~~his~~ determinations in accordance with legislative appropriations.

(2) Unexpended agency appropriation balances in the first year of the biennium may be transferred to the second year of the biennium to offset the costs of pay increases."

Section 121. Section 2-18-107, MCA, is amended to read:

"2-18-107. Job-sharing positions — benefits. (1) Job sharing may be used, to the extent practicable, by each agency as a means of promoting increased productivity and employment opportunities. ~~However, job~~ *Job* sharing may be actively pursued to fill vacated or new positions ~~and~~ *but* may not be actively pursued to replace current full-time employees. However, on request of a current employee, ~~his~~ *that employee's* position may be considered for job sharing. A position may be filled by more than one incumbent currently in a full-time position.

(2) Employees in a job-sharing status are entitled to holiday pay, annual leave, sick leave, and health benefits on the same basis as permanent part-time employees provided for in 2-18-603, 2-18-611, 2-18-618, and 2-18-703.

(3) Employees classified in a part-time status may not be reclassified to a job-sharing status while employed in the position classified as part-time."

Section 122. Section 2-18-512, MCA, is amended to read:

"2-18-512. Prohibition on travel expenses for conventions — exception. ~~Hereafter, no~~ *A* state officer or employee of the state ~~shall~~ *may not* receive payment from any public funds for traveling expenses or other expenses ~~of any sort or kind~~ for attendance ~~upon~~ *at* any convention, meeting, or other gathering of public officers except for attendance ~~upon such~~ *at a* convention, meeting, or other gatherings ~~as said~~ *that the* officer or employee may by virtue of ~~his~~ *the* office *or employment* find it necessary to attend."

Section 123. Section 2-18-612, MCA, is amended to read:

"2-18-612. Rate earned. (1) Vacation leave credits are earned at a yearly rate calculated in accordance with the following schedule, which applies to the total years of an employee's employment with any agency whether the employment is continuous or not:

Years of employment	Working days credit
1 day through 10 years	15
10 years through 15 years	18
15 years through 20 years	21
20 years ~~on~~ *or more*	24

(2) (a) For the purpose of determining years of employment under this section, an employee eligible to earn vacation credits under 2-18-611 must be credited with 1 year of employment for each period of:

(i) 2,080 hours of service following ~~his~~ *the* date of employment~~; an~~. *An* employee must be credited with 80 hours of service for each biweekly pay period in which ~~he~~ *the employee* is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period~~; or~~.

(ii) 12 calendar months in which ~~he~~ *the employee* was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any ~~one~~ *1* month. An employee of a school district, a school at a state institution, or the university system must be credited with 1 year of service if ~~he~~ *the employee* is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, ~~must~~ *shall* use the method provided in subsection (2)(a)(i) to calculate years of service under this section."

Section 124. Section 2-18-616, MCA, is amended to read:

"2-18-616. Determination of vacation dates. The dates when employees' annual vacation leaves ~~shall be~~ *are* granted ~~shall~~ *must* be determined by agreement between each employee and ~~his~~ *the* employing agency with regard to the best interest of the state~~,~~ *or* any county or city ~~thereof~~ *of the state* as well as the best interests of each employee."

Section 125. Section 2-18-619, MCA, is amended to read:

"2-18-619. Jury duty — service as witness. (1) Each employee who is under proper summons as a juror shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Juror fees ~~shall~~ *must* be applied against the amount due the employee from ~~his~~ *the* employer. However, if an employee elects to ~~charge his juror time off against his~~ *use* annual leave *to serve on a jury*, ~~he shall~~ *the employee may* not be required to remit ~~his~~ *the* juror fees to ~~his~~ *the* employer. ~~In no instance is an~~ *An* employee *is not* required to remit to ~~his~~ *the* employer any expense or mileage allowance paid ~~him~~ by the court.

(2) An employee subpoenaed to serve as a witness shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Witness fees ~~shall~~ *must* be applied against the amount due the employee from ~~his~~ *the* employer. However, if an employee elects to ~~charge his witness time off against his~~ *use* annual leave *to serve as a witness*, ~~he shall~~ *the employee may* not be required to remit ~~his~~ *the* witness fees to ~~his~~ *the* employer. ~~In no instance is an~~ *An* employee *is not* required to remit to ~~his~~ *the* employer any expense or mileage allowances paid ~~him~~ by the court.

(3) Employers may request the court to excuse their employees from jury duty if they are needed for the proper operation of a unit of state or local government."

Section 126. Section 2-18-621, MCA, is amended to read:

"2-18-621. Unlawful termination. It ~~shall be~~ *is* unlawful for an employer to terminate or separate an employee from ~~his~~ employment in an attempt to circumvent the provisions of 2-18-611, 2-18-612, and 2-18-614. ~~Should~~ *If* a question ~~arise~~ *arises* under this section, it ~~shall~~ *must* be submitted to arbitration as provided in Title 27, chapter 5, as if an agreement described in 27-5-114 is in effect, unless there is ~~a~~ *an applicable* collective bargaining agreement to the contrary ~~applicable~~."

Section 127. Section 2-18-902, MCA, is amended to read:

"2-18-902. Notice — shared costs of third-party action — limitation. (1) If an insured intends to institute an action for damages against a third party, the insured shall give the insurer reasonable notice of ~~his~~ *the* intention to institute the action.

(2) The insured may request that the insurer pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

(3) An insurer may elect not to participate in the cost of the action. If ~~such~~ an election is made, the insurer waives 50% of any subrogation rights granted to it by 2-18-901.

(4) The insurer's right of subrogation granted in 2-18-901 may not be enforced until the injured insured has been fully compensated for ~~his~~ *the insured's* injuries."

Section 128. Section 2-18-1001, MCA, is amended to read:

"2-18-1001. ~~Transportation department~~ *Department of transportation* personnel grievances — hearing. (1) An employee of the department of transportation *who is* aggrieved by a serious matter of ~~his~~ employment based upon work conditions, supervision, or the result of an administrative action and who has exhausted all other administrative remedies is entitled to a hearing before the board of personnel appeals, under the provisions of a grievance procedure to be prescribed by the board, for resolution of the grievance.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the department of transportation against an aggrieved employee because the employee has filed or attempted to file a grievance with the board ~~shall~~ *is* also ~~be~~ *a* basis for a grievance and ~~shall entitle~~ *entitles* the employee to a hearing before the board for resolution.

(3) A grievance under this part must be filed with the board of personnel appeals within 180 days after the alleged incident or action occurred. Failure to file the grievance within this period is a bar to proceeding with the grievance."

Section 129. Section 2-18-1011, MCA, is amended to read:

"2-18-1011. Classification or compensation grievance — retaliation — hearing on complaint. (1) An employee or ~~his~~ *an employee's* representative affected by the ~~operation~~ *implementation* of parts 1 through 3 of this chapter is entitled to file a complaint with the board of personnel appeals provided for in 2-15-1705 and to be heard under the provisions of a grievance procedure to be prescribed by the board.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the agency for which the employee works or by any other agency of state government against an employee because the employee has filed or attempted to file a complaint with the board ~~shall~~ *is* also ~~be~~ *a* basis for a complaint and ~~shall entitle~~ *entitles* the employee to file a complaint with the

board and to be heard under the provisions of the grievance procedure prescribed by the board.

(3) An action attempting to revise the class specifications of or series of class specifications involving an employee exercising a right conferred by 2-18-1011 through 2-18-1013 in a way ~~which~~ *that* would adversely affect the employee prior to final resolution or entry of a final order with respect ~~thereto~~ *to the action* is presumed to be ~~an~~ interference, restraint, coercion, or retaliation prohibited by subsection (2) ~~of this section~~ unless ~~such~~ *the* review was commenced or scheduled prior to filing of the appeal and was not prompted by the grievance appealed from. The presumption is rebuttable."

Section 130. Section 3-1-402, MCA, is amended to read:

"3-1-402. Powers of judicial officers as to conduct of proceedings. ~~Every~~ *A* judicial officer has *the* power to:

(1) preserve and enforce order in ~~his~~ *the officer's* immediate presence and in proceedings before ~~him~~ *the officer* when ~~he~~ *the officer* is engaged in the performance of official ~~duty~~ *duties*;

(2) compel obedience to ~~his~~ *the officer's* official orders, as provided in this code;

(3) compel the attendance of persons to testify in a proceeding before ~~him~~ *the officer* in the cases and manner provided in this code;

(4) administer oaths to persons in a proceeding pending before ~~him~~ *the officer* and in all other cases ~~where~~ *in which* it may be necessary in the exercise of ~~his~~ *the officer's* powers and duties."

Section 131. Section 3-1-404, MCA, is amended to read:

"3-1-404. Taking acknowledgments and affidavits. Each of the justices of the supreme court and judges of the district courts ~~has power~~ *may* in any part of the state~~,~~ and ~~every~~ *each* justice of the peace *may* within ~~his~~ *the justice's* county~~, to~~ take and certify:

(1) the proof and acknowledgment of a conveyance of real property or of any other written instrument;

(2) the acknowledgment of satisfaction of a judgment of any court;

(3) an affidavit or deposition to be used in this state."

Section 132. Section 3-1-405, MCA, is amended to read:

"3-1-405. Certificate of authenticity of justice's court's certificate of acknowledgment. The certificate of proof or acknowledgment~~, if~~ made before a justice of the peace, when used in any county other than that in which ~~he~~ *the justice* resides, must be accompanied by a certificate, under the hand and seal of the clerk *and recorder* of the county in which the justice resides, setting forth that ~~such~~ *the* justice, at the time of taking ~~such~~ *the* proof or acknowledgment, was authorized to take the ~~same~~ *proof or acknowledgment* and that the clerk *and recorder* is acquainted with ~~his~~ *the justice's* handwriting and believes that the signature to the original certificate is genuine."

Section 133. Section 3-1-504, MCA, is amended to read:

"3-1-504. Reentry on property after eviction. ~~Every~~ *A* person *who is* dispossessed of or ejected from or out of any real property by the judgment or process of ~~any~~ *a* court of competent jurisdiction and who, not having *the* right so to do, reenters into or upon or takes possession of ~~any such~~ *the* real property or

induces or procures any person not having a right so to do or aids or abets ~~him therein~~ *that person to enter into or upon or take possession of the real property* is guilty of a contempt of the court ~~by which such judgment was~~ *that* rendered *the judgment* or ~~from which such~~ *that issued the* process ~~issued~~. Upon conviction for ~~such~~ contempt, the court or justice of the peace ~~must~~ *shall* immediately issue an alias process directed to the proper officer ~~and~~ requiring ~~him~~ *that officer* to restore the party entitled to the possession of ~~such~~ *that* property, under the original judgment or process, to ~~such~~ possession."

Section 134. Section 3-1-514, MCA, is amended to read:

"3-1-514. Endorsement allowing bail on warrant. Whenever a warrant of attachment is issued pursuant to this part, the court or judge ~~must~~ *shall* direct, by an endorsement on ~~such~~ *the* warrant, that the person charged may be left to bail for ~~his~~ *the person's* appearance in an amount to be specified in ~~such~~ *the* endorsement."

Section 135. Section 3-1-515, MCA, is amended to read:

"3-1-515. Arrest and detention by sheriff. Upon executing the warrant of attachment, the sheriff ~~must~~ *shall* keep the person in custody, bring ~~him~~ *the person* before the court or judge, and detain ~~him~~ *the person* until an order ~~be~~ *is* made in the ~~premises~~ *proceeding* unless the person arrested ~~entitle himself~~ *is entitled* to be discharged as provided in 3-1-516."

Section 136. Section 3-1-516, MCA, is amended to read:

"3-1-516. Bail bond — form and conditions of. When a direction to ~~let~~ *release* the person arrested ~~to~~ *on* bail is contained in the warrant of attachment or endorsed ~~thereon~~ *on the warrant*, ~~he~~ *the arrested person* must be discharged from the arrest upon executing and delivering to the officer, at any time before the return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on the return of the warrant and abide the order of the court or judge ~~thereupon~~ or ~~they~~ *the sureties* will pay, as may be directed, the sum specified in the warrant or ordered by *the* court or *the* judge."

Section 137. Section 3-1-517, MCA, is amended to read:

"3-1-517. Return of warrant and undertaking. The officer ~~must~~ *shall* return the warrant of arrest and undertaking, if any, received by ~~him~~ *the officer* from the person arrested by the return day specified ~~therein~~ *in the warrant*."

Section 138. Section 3-1-522, MCA, is amended to read:

"3-1-522. Illness sufficient excuse — confinement under arrest. (1) Whenever ~~by the provisions of this part~~ an officer is required to keep a person arrested on a warrant of attachment in custody and to bring ~~him~~ *the person* before a court or judge, the inability, from illness or otherwise, of the person to attend is sufficient excuse for not bringing ~~him up~~ *the person before the court or judge.*

(2) The officer ~~must~~ *may* not confine a person arrested upon a warrant in a prison or otherwise restrain ~~him~~ *the person* of personal liberty, except ~~so far as may be~~ *to the extent* necessary to secure ~~his~~ *the person's* personal attendance."

Section 139. Section 3-1-601, MCA, is amended to read:

"3-1-601. Certain officers not to practice law or administer estates. (1) Except as provided in 3-1-604 and except for a judge pro tempore, ~~no~~ *a* justice or judge of a court of record or clerk of any court may *not* practice law in any court

in this state or act as attorney, agent, or solicitor in the prosecution of any claim or application for lands, pensions, or patent rights or other proceedings before any department of the state or general government or any court of the United States during ~~his~~ *the justice's or judge's* continuance in office.

(2) ~~Neither the~~ *The* court administrator ~~nor any~~ *or an* assistant may *not* practice law in any of the courts of this state while holding ~~his~~ *that* position.

(3) ~~No~~ *A* justice or judge of a court of record, except a judge pro tempore, may *not* act as administrator or executor of any estate for compensation."

Section 140. Section 3-1-602, MCA, is amended to read:

"3-1-602. Restrictions on justices of the peace practicing law or taking claims for collection. (1) Except as provided in subsection (2), a justice of the peace may not:

(a) practice law;

(b) draw contracts, conveyances, or other legal instruments or documents;

(c) take any claim or bill for collection or act as a collection agent in any sense; or

(d) perform any legal duties other than those prescribed by law as ~~his~~ *the justice's* official duties in the conduct of cases and proceedings in ~~his~~ *the justice's* court.

(2) A justice of the peace who is an attorney and who is admitted to practice law before the supreme court of the state of Montana may engage in the general practice of law and practice law in all courts in the state of Montana, except that ~~such a~~ *the* justice, ~~his~~ *the justice's* law partner or associate, or a member, associate, or employee of a firm of which ~~he~~ *the justice* is a member may not represent a party involved in a case ~~which~~ *that* is filed or tried in ~~his~~ *the justice's* court or in any justice's court located in the same county as ~~his~~ *the justice's* court or ~~which~~ *that* is appealed from ~~such~~ a *justice's* court *in that county*.

(3) A justice of the peace who violates any of the provisions of this section is guilty of malfeasance in office and ~~shall~~ *must* be removed from ~~his~~ *the* office of justice of the peace and ~~thereafter be~~ *is* disqualified from holding ~~such~~ *that* office."

Section 141. Section 3-1-603, MCA, is amended to read:

"3-1-603. ~~No judicial~~ *Judicial* officer of court of record *not* to have partner practicing law. (1) Except as provided in subsection (2), ~~no~~ *a* judicial officer of a court of record may *not* have a partner acting as attorney or counsel in any court of this state.

(2) A partner of either a municipal court judge or a judge pro tempore may act as attorney or counsel in any court of this state except the court of ~~his~~ *the* partner *who is a judicial officer*."

Section 142. Section 3-1-604, MCA, is amended to read:

"3-1-604. Restrictions on municipal court judges. ~~No~~ *A* municipal court judge may *not* practice law before ~~his~~ *the judge's* own municipal court or hold office in a political party during ~~his~~ *the judge's* term of office."

Section 143. Section 3-1-605, MCA, is amended to read:

"3-1-605. Restrictions on judicial officers after term has expired. A judicial officer, as defined in 1-1-202, after the expiration of ~~his~~ *the officer's* term of office, may not act as attorney or counsel in any action or special proceeding

~~which~~ *that* has been before ~~him~~ *the officer* in ~~his~~ *the officer's* official ~~character~~ *capacity*."

Section 144. Section 3-1-606, MCA, is amended to read:

"3-1-606. Justice of the peace or constable not to purchase judgment. (1) A justice of the peace may not purchase or be interested in the purchase of any judgment or part ~~thereof~~ *of a judgment* on ~~his~~ *the justice's* docket or on any docket in ~~his~~ *the justice's* possession. A constable may not purchase or be interested in the purchase of any judgment or part ~~thereof~~ *of a judgment* on the docket of a justice of the peace of the county of which ~~he~~ *the person* is a constable or on a docket in the possession of ~~such~~ a justice *of the peace in that county*.

(2) ~~Violation~~ *A violation* of subsection (1) is a misdemeanor."

Section 145. Section 3-1-607, MCA, is amended to read:

"3-1-607. Supreme court justice or district court judge candidacy for nonjudicial office — resignation required. (1) If a person occupying the office of chief justice or associate justice of the supreme court or judge of a district court of the state of Montana becomes a candidate for election to any elective office under the laws of the state of Montana other than a judicial position, ~~he~~ *the person* shall immediately, ~~and~~ *or* in any event at or before the time when ~~he must~~ *the person is required to* file as a candidate for ~~such~~ *the* office in any primary, ~~or~~ special, or general election, resign from ~~his~~ *the* office of chief justice, associate justice, or district *court* judge.

(2) The resignation becomes effective immediately upon its delivery to the proper officer or superior.

(3) The resignation requirement ~~applies except~~ *does not apply* when the person is a bona fide candidate for reelection to the identical office ~~then~~ *currently* occupied by ~~him~~ *the person* or for another judicial position."

Section 146. Section 3-1-701, MCA, is amended to read:

"3-1-701. Office of court administrator — appointment and term of office. There is established the office of court administrator. The supreme court shall appoint a court administrator. The court administrator ~~shall hold his~~ *holds the* position at the pleasure of the court."

Section 147. Section 3-1-1003, MCA, is amended to read:

"3-1-1003. Vacancies. (1) In the event *that* a vacancy on the commission occurs, the governor shall appoint a replacement for the remainder of the term. ~~Such~~ *The* replacement ~~shall~~ *must* be a member of the same group as the member ~~he replaces~~ *being replaced*.

(2) ~~Appointments~~ *An appointment* provided for in this section ~~shall~~ *must* be made within 30 days of the occurrence of ~~any~~ *the* vacancy."

Section 148. Section 3-1-1009, MCA, is amended to read:

"3-1-1009. Investigation by commission — application for consideration. (1) The commission and each member are authorized to make investigations concerning the qualifications of eligible persons.

(2) Any lawyer in good standing who has the qualifications set forth by law for holding judicial office may be a candidate and may ~~make application~~ *apply* to the commission for consideration, or application may be made by any person on ~~his~~ *the lawyer's* behalf."

Section 149. Section 3-1-1010, MCA, is amended to read:

"3-1-1010. Lists submitted to governor and chief justice — report on proceedings. (1) If a supreme court justice, a district *court* judge, the workers' compensation judge, or the chief water judge gives notice of ~~his~~ *the judge's* resignation to take effect on a specific date, the commission shall meet as soon as possible after the justice's or judge's proposed resignation date has been verified by the chief justice of the supreme court. If ~~no~~ notice is *not* given, the commission shall meet as soon as possible after a vacancy occurs. The meeting must be held in compliance with 3-1-1007. The commission shall submit to the governor or chief justice, within the time period established under 3-1-1007, a list of not less than three or more than five nominees for appointment to the vacant position.

(2) ~~Any~~ *The* list must be accompanied by a written report indicating the vote on each nominee, the content of the application submitted by each nominee, letters and public comments received regarding ~~the~~ *each* nominee, and the commission's reasons for recommending each nominee for appointment. The report must give specific reasons for recommending each nominee."

Section 150. Section 3-1-1103, MCA, is amended to read:

"3-1-1103. Terminated membership — vacancies. (1) Commission membership terminates if a member ceases to hold the position that qualified ~~him~~ *the person* for appointment.

(2) ~~In the event~~ *If* a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor."

Section 151. Section 3-1-1104, MCA, is amended to read:

"3-1-1104. No compensation — travel expenses. A commission member is not entitled to compensation for ~~his~~ *the member's* services but is entitled to travel expenses, as provided for in 2-18-501 through 2-18-503, ~~as amended,~~ incurred in the performance of ~~his~~ *the member's* duties."

Section 152. Section 3-1-1106, MCA, is amended to read:

"3-1-1106. Investigation of judicial officers — complaint — hearing — recommendations. (1) (a) The commission, upon the filing of a written complaint by any citizen of the state, may initiate an investigation of any judicial officer in the state to determine if there are grounds for conducting additional proceedings before the commission. If the commission's investigation indicates that additional proceedings before the commission may be justified, the commission shall require the citizen who filed the original written complaint to sign a verified written complaint before conducting ~~such~~ additional proceedings.

(b) The commission shall give the judicial officer written notice of the citizen's complaint and of the initiation of an investigation. Notice must also be given if a verified written complaint is filed and must include the charges made, the grounds for the charges, and a statement that the judicial officer may file an answer. The notice must be signed by the commission.

(2) The commission, after ~~such~~ *an* investigation ~~as~~ *that* it considers necessary and upon a finding of good cause, may:

(a) order a hearing to be held before it concerning the censure, suspension, removal, or retirement of a judicial officer;

(b) confidentially advise the judicial officer and the supreme court, in writing, that the complaint will be dismissed if the judicial officer files with the

commission a letter stating that ~~he~~ *the officer* will take corrective action satisfactory to the commission; or

(c) request *that* the supreme court ~~to~~ appoint one or more special masters who are judges of courts of record to hear and take evidence and to report to the commission.

(3) If after *a* hearing or after considering the record and *the* report of the masters the commission finds the charges true, it shall recommend to the supreme court the censure, suspension, removal, or disability retirement of the judicial officer."

Section 153. Section 3-1-1108, MCA, is amended to read:

"3-1-1108. Nonparticipation of interested judicial officer. A judicial officer who is a member of the commission or of the supreme court may not participate in any proceeding involving ~~his~~ *the officer's* own censure, suspension, removal, or retirement or that of ~~his~~ *the officer's* spouse, a relative within the sixth degree of consanguinity, or the spouse of ~~such~~ a relative *related within the sixth degree*."

Section 154. Section 3-1-1109, MCA, is amended to read:

"3-1-1109. Interim disqualification of judicial officer. (1) A judicial officer must be disqualified from serving as a judicial officer, without loss of salary, while there is pending an indictment or an information charging ~~him~~ *the officer* with a crime punishable as a felony under Montana or federal law.

(2) When the commission files with the supreme court a recommendation that a judicial officer be removed or retired, the judicial officer must be disqualified from serving as a judicial officer, without loss of salary, pending the supreme court's review of the record and proceedings."

Section 155. Section 3-1-1110, MCA, is amended to read:

"3-1-1110. Procedure when convicted of crime. (1) On recommendation of the commission, the supreme court may suspend a judicial officer from office without salary when ~~he~~ *the officer* pleads guilty or no contest or is found guilty of a crime punishable as a felony under Montana or federal law or of any other crime involving moral turpitude.

(2) If ~~his~~ *the judicial officer's* conviction is reversed, suspension terminates and ~~he shall~~ *the officer must* be paid ~~his~~ *the officer's* salary for the period of suspension.

(3) If ~~he~~ *the judicial officer* is suspended and ~~his~~ *a* conviction becomes final, the supreme court shall remove ~~him~~ *the officer* from office."

Section 156. Section 3-1-1111, MCA, is amended to read:

"3-1-1111. Orders for retirement or removal. (1) Upon an order for retirement, the judicial officer ~~shall~~ *must* be retired with the same rights and privileges as if ~~he~~ *the officer* retired pursuant to statute.

(2) Upon an order for removal, the judicial officer ~~shall~~ *must* be removed from office and ~~his~~ *the officer's* salary ~~shall~~ *must* cease from the date of the order. ~~He shall be~~ *The officer is* ineligible for any other judicial office and pending *a* further order of the court is suspended from practicing law."

Section 157. Section 3-1-1122, MCA, is amended to read:

"3-1-1122. Judge's waiver of confidentiality — hearing made public. In addition to the public disclosure required under 3-1-1107, 3-1-1121, and

3-1-1123 through 3-1-1126, the commission ~~must~~ *shall* allow public access to all papers filed with and testimony and hearings before the commission or masters in a given case if the judge against whom a complaint has been filed waives ~~his~~ *the* right of confidentiality and requests in writing that the proceedings be accessible to the public. Public disclosure of information required under 3-1-1107, 3-1-1121, and 3-1-1123 through 3-1-1126 is not contingent upon a waiver under this section."

Section 158. Section 3-1-1502, MCA, is amended to read:

"3-1-1502. Training and certification of judges. Except as provided in 3-1-1503, ~~no~~ *a* judge selected for a term of office may *not* assume the functions of ~~his~~ *the* office unless ~~he~~ *the judge* has filed with the county clerk and recorder in ~~his~~ *the* jurisdiction a certificate of completion of a course of education and training prescribed by the commission."

Section 159. Section 3-1-1503, MCA, is amended to read:

"3-1-1503. Exception — temporary certificate. (1) Section 3-1-1502 does not apply to a judge who has received a temporary certificate issued by the commission as provided for in subsection (2).

(2) The commission may issue a temporary certificate enabling a judge to assume the functions of ~~his~~ *the* office pending completion of a course as required by 3-1-1502. The temporary certificate must be in a form and subject to the terms and conditions prescribed by the commission.

(3) The commission may issue a temporary certificate only if:

(a) the judge is appointed or elected after the course is offered; or

(b) the commission grants an excuse because of a personal illness, a death in the family, or other good cause.

(4) The appointing authority for an appointed judge shall notify the commission of the person appointed, and the person appointed must be certified as provided in 3-1-1502 or this section prior to assuming office."

Section 160. Section 3-2-102, MCA, is amended to read:

"3-2-102. Qualifications and residence. (1) ~~No~~ *A* person is *not* eligible for the office of justice of the supreme court unless ~~he~~ *the person* is a citizen of the United States, has resided in the state 2 years immediately before taking office, and has been admitted to practice law in Montana for at least 5 years prior to the date of appointment or election.

(2) Justices of the supreme court must reside within the state during their terms of office."

Section 161. Section 3-2-212, MCA, is amended to read:

"3-2-212. Powers of justices individually — certiorari and habeas corpus. (1) Each of the justices of the supreme court ~~shall have power to~~ *may* issue writs of habeas corpus to any part of the state upon petition by or on behalf of any person held in actual custody and may make ~~such~~ *the* writs returnable before ~~himself~~ *the issuing justice*, the supreme court, or *any* justice ~~thereof~~ *of the supreme court* or before any district court of the state or any *district court* judge ~~thereof~~. ~~Such~~ *The* writs may be heard and determined by the justice, court, or judge before whom they are made returnable.

(2) Each of the justices of the supreme court may also issue and hear and determine writs of certiorari in proceedings for contempt in the district court."

Section 162. Section 3-2-301, MCA, is amended to read:

"3-2-301. Who shall preside. The chief justice presides at all sessions of the supreme court, and in case of ~~his~~ *the chief justice's* absence, the associate justice having the shortest term to serve presides ~~in his stead~~."

Section 163. Section 3-2-401, MCA, is amended to read:

"3-2-401. Election and term of office. There must be a clerk of the supreme court who must be elected by the electors at large of the state and hold ~~his~~ office for the term of 6 years from the first Monday of January ~~next succeeding his~~ *following the clerk's* election."

Section 164. Section 3-2-406, MCA, is amended to read:

"3-2-406. Deputy clerk. The clerk of the supreme court shall appoint a deputy who, in the absence of the principal or in the case of vacancy in ~~his~~ *the* office, shall perform all the duties of office until ~~such~~ *the* disability ~~be~~ *is* removed or *the* vacancy ~~be~~ *is* filled. ~~Such~~ *The* deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of ~~his~~ *the* duties."

Section 165. Section 3-2-502, MCA, is amended to read:

"3-2-502. Duties of marshal. (1) It ~~shall be~~ *is* the duty of the marshal to ~~attend upon~~ *be present and to assist* the supreme court and the justices ~~thereof~~ *of the supreme court* at each term of court. ~~He shall be~~ *The marshal is* the executive officer of the court and *shall* act as crier ~~thereof~~ *of the court*.

(2) ~~He must~~ *The marshal shall* serve within the state all returns and processes issuing from the supreme court and ~~shall have~~ *has* all the powers and *shall* exercise all the duties *that* ~~pertaining to~~ sheriffs ~~as~~ *have* to the district courts ~~so far as the same~~ *to the extent that the duties* are applicable.

(3) ~~He~~ *The marshal* shall act as a law clerk for the supreme court justices."

Section 166. Section 3-5-115, MCA, is amended to read:

"3-5-115. (Temporary) Agreement, petition, and appointment of judge pro tempore — waiver of jury trial. (1) Prior to trial and upon written agreement of all the parties to a civil action, the parties may petition for the appointment of a judge pro tempore. If the district court judge having jurisdiction over the case where the action was filed finds that the appointment is in the best interest of the parties and serves justice, ~~he~~ *the district court judge* may appoint the judge pro tempore nominated by the parties to preside over the whole *action* or any aspect of the action as if the regular district court judge were presiding.

(2) An appointment of a judge pro tempore constitutes a waiver of the right to trial by jury by any party having the right.

3-5-115. (Effective on occurrence of contingency) Agreement, petition, and appointment of judge pro tempore — waiver of jury trial. (1) Prior to trial and upon written agreement of all the parties to a civil action, the parties may petition for the appointment of a judge pro tempore. Except as provided in 3-20-102, if the district court judge having jurisdiction over the case where the action was filed finds that the appointment is in the best interest of the parties and serves justice, the district court judge may appoint the judge pro tempore nominated by the parties to preside over the whole *action* or any aspect of the action as if the regular district court judge were presiding.

(2) Except as provided in 3-20-102, an appointment of a judge pro tempore constitutes a waiver of the right to trial by jury by any party having the right.

(3) The supreme court shall appoint the asbestos claims judge as provided in 3-20-102."

Section 167. Section 3-5-201, MCA, is amended to read:

"3-5-201. Election and oath of office. (1) The judges of the district court, except judges pro tempore, must be elected by the qualified voters of the district.

(2) Except as provided in subsection (1), each judge of a district court ~~must~~ *shall*, as soon as ~~he~~ *the judge* has taken and subscribed ~~his~~ *the* official oath, file the ~~same~~ *official oath* in the office of the secretary of state."

Section 168. Section 3-5-202, MCA, is amended to read:

"3-5-202. Qualifications and residence. (1) ~~No~~ *A* person is *not* eligible for the office of judge of a district court unless ~~he~~ *the person* is a citizen of the United States, has resided in the state 2 years immediately before taking office, and has been admitted to practice law in Montana for at least 5 years prior to the date of appointment or election.

(2) A judge of a district court need not be a resident of the district for which ~~he~~ *the judge* is elected or appointed at the time of ~~his~~ election or appointment, but after ~~his~~ election or appointment, ~~he~~ *the judge* must reside in the district for which ~~he~~ *the judge* is elected or appointed during ~~his~~ *the judge's* term of office."

Section 169. Section 3-5-213, MCA, is amended to read:

"3-5-213. Expenses when out of district. A *district court* judge who sits in the place of another judge in the trial or hearing of an action or proceeding in a district other than ~~his~~ *the judge's* own or in the supreme court or who attends a conference of judges in Helena called by the chief justice of the supreme court ~~shall~~ *must* be paid ~~his~~ *the judge's* actual and necessary travel expenses, as ~~defined and~~ provided in 2-18-501 through 2-18-503, while engaged in that service as follows:

(1) ~~his~~ travel expenses ~~in going~~ from the county seat *of the county in* which ~~he makes his place of residence~~ *the judge resides* to the place of trial, hearing, or conference and return; and

(2) ~~his~~ board and lodging while engaged in the trial, hearing, or conference."

Section 170. Section 3-5-214, MCA, is amended to read:

"3-5-214. Certification and filing of expense claim. As soon as ~~his~~ *a district court judge's* services in connection with the trial, hearing, or conference *referred to in 3-5-213* are concluded, the judge shall certify in detail ~~his~~ *the judge's* actual and necessary travel expenses as specified in 3-5-213~~,~~ and shall file the claim with the state to be processed as provided by law."

Section 171. Section 3-5-215, MCA, is amended to read:

"3-5-215. Expenses when not in county of residence. A district *court* judge of a judicial district composed of more than one county who, for the purpose of holding court and disposing of judicial business, goes to a county of ~~his~~ *that* judicial district other than the county in which ~~he~~ *the judge* resides and ~~therein~~ holds court or transacts judicial business ~~shall~~ *must* be paid ~~his~~ *the* actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred on account ~~thereof~~ *of the business* from the time ~~he~~ *the judge* leaves ~~his~~ *the judge's* place of residence until ~~he~~ *the judge* returns ~~thereto~~ *to the place of residence*."

Section 172. Section 3-5-216, MCA, is amended to read:

"3-5-216. Itemized statements — verification — filing. (1) On the first of each month or within 3 days ~~thereafter~~ *after that date*, ~~such~~ *a* district *court* judge who ~~may desire to avail himself of the provisions of~~ *has a claim pursuant to* 3-5-215 shall ~~make out~~ *complete* an itemized claim against the state of Montana showing with dates and particulars ~~his~~ *the* actual and necessary travel expenses for the preceding month.

(2) ~~He~~ *The district court judge* shall verify ~~such~~ *the* claim by certifying that the items of the claim are true and correct and are wholly unpaid and that the expenditures ~~therein~~ enumerated *in the claim* were made in the discharge of official business while away from home.

(3) ~~He~~ *The district court judge* shall ~~then~~ file ~~such~~ *the* claim with the state to be processed as provided by law."

Section 173. Section 3-5-311, MCA, is amended to read:

"3-5-311. Powers of judges at chambers. (1) The judge of the district court may at chambers:

(a) issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, and injunction, other original and remedial writs, and all writs of habeas corpus on petition by or on behalf of any person held in actual custody in ~~his~~ *the judicial* district;

(b) grant all orders and writs ~~which~~ *that* are usually granted in the first instance upon an ex parte application and hear and dispose of ~~such~~ *those* orders and writs;

(c) hear and determine any matter necessary in the exercise of ~~his~~ *the judge's* powers in matters of probate or in any action or proceeding provided by law and any action in which all party defendants have made default;

(d) issue any process, make any order, and make and enter any default judgment.

(2) When default judgments are entered in default cases, ~~as herein provided,~~ the judge shall forward to the clerk of the court of the county in which the action is pending the judgment ~~so made~~, together with a minute *entry* of the proceedings. ~~had thereon, which shall be by said~~ *The* clerk ~~incorporated~~ *shall incorporate the judgment and minute entry* into the minutes of the court.

(3) If a jury is necessary, the judge may open court and obtain a jury as in other cases."

Section 174. Section 3-5-401, MCA, is amended to read:

"3-5-401. Terms of court. (1) The district court of each county ~~which~~ *that* is a *separate* judicial district ~~by itself has no~~ *does not have* terms and must always be open for the transaction of business~~,~~ except on legal holidays and nonjudicial days.

(2) (a) In each district ~~where~~ *that is located in* two or more counties ~~are united~~, the *district court* judge ~~thereof must~~ *shall* fix the term of court in each county in ~~his~~ *the* district and there must be at least four terms a year in each county. Any order of the judge ~~of such district~~ fixing terms of court ~~shall~~ *must* be filed in the office of the clerk of the district court in each county of ~~his~~ *the* district, and ~~shall remain~~ *the order remains* in effect until further order of the judge.

(b) ~~Nothing in this section shall~~ *This section may not* be construed to prevent the calling of a special term of court, with or without a jury, when in the opinion of the presiding judge the ~~same~~ *special term* is necessary.

(c) The district *court* judge may adjourn a term of district court in one county to a future day certain and in the meantime hold court in another county."

Section 175. Section 3-5-405, MCA, is amended to read:

"3-5-405. Change of place of holding court in emergency. (1) The judge of the district court authorized to hold or preside at a court appointed to be held at a particular place may, by an order filed with the clerk *of the district court* and published as ~~he~~ *the judge* may prescribe, direct that the court be held or continued at any place in the county other than that appointed when war, insurrection, pestilence, or other public calamity, ~~or~~ the danger ~~thereof~~ *of such a calamity*, or the destruction or danger of the public building appointed for the holding the court may render it necessary.

(2) ~~He~~ *The district court judge* may, in the same manner, revoke the order and~~, in his discretion,~~ *may* appoint another place in the same county for holding the court."

Section 176. Section 3-5-503, MCA, is amended to read:

"3-5-503. Duties concerning indexes. ~~Said~~ *The* clerk *of the district court* shall cause to be made in each index correct entries, under the appropriate headings, of each ~~and every~~ action begun in the court of which ~~he~~ *the person* is clerk~~,~~. ~~entering them~~ *The entries must be made* alphabetically by the name of the plaintiff in the General Index—Plaintiffs and alphabetically by the name of the defendants in the General Index—Defendants."

Section 177. Section 3-5-504, MCA, is amended to read:

"3-5-504. Register of actions. The clerk ~~must~~ *of the district court shall* keep among the records of the court a register of actions. ~~He must~~ *The clerk shall* enter ~~therein~~ *in the register* the title of the action with brief notes under it, from time to time, of all papers filed and proceedings had ~~therein~~ *in the action*. The register must also state the names of the attorneys and all fees charged in each action."

Section 178. Section 3-5-505, MCA, is amended to read:

"3-5-505. Register of criminal actions. The clerk of the district court shall keep a book called *the* "Register of Criminal Actions", which must have a proper index and in which must be entered the title and number of the action with a memorandum of every paper filed and order or proceeding had ~~therein~~ *in the action*, *along* with the date ~~thereof~~ *of the filing, order, or proceeding*, and a memorandum of the name of every witness, the number of days ~~he~~ *that the witness* attended, and ~~his~~ *the person's* witness fees."

Section 179. Section 3-5-508, MCA, is amended to read:

"3-5-508. Docket. The docket is a book ~~which~~ *that* the clerk *of the district court* keeps in ~~his~~ *the clerk's* office, with each page divided into eight columns and headed as follows: judgment debtors; judgment creditors; judgment, time of entry; where entered in judgment book; appeals, when taken; judgment of appellate court; *and* satisfaction of judgment, when entered. If *a* judgment ~~be~~ *is* for the recovery of money or damages, the amount must be stated in the docket under the ~~head~~ *heading* of judgment. If the judgment ~~be~~ *is* for any other relief, a memorandum of the general character of the relief granted must be stated. The names of the defendants must be entered in alphabetical order."

Section 180. Section 3-5-509, MCA, is amended to read:

"3-5-509. Docket to be available for inspection. The docket kept by the clerk *of the district court* is open at all times during office hours for the inspection of the public, without charge. The clerk ~~must~~ *shall* arrange the several dockets kept by ~~him~~ *the clerk* in ~~such~~ a manner ~~as to facilitate~~ *that facilitates* their inspection."

Section 181. Section 3-5-611, MCA, is amended to read:

"3-5-611. Reporter pro tempore. (1) The reporter of any district court ~~must attend~~ *shall perform* ~~to~~ the duties of ~~his~~ *the* office in person except when excused for good and sufficient reason by order of the court~~,~~. ~~which~~ *The* order must be entered upon the minutes of the court. Employment in ~~his~~ *the reporter's* professional capacity elsewhere is not a good and sufficient reason for ~~such~~ *the* excuse.

(2) When the reporter of any court has been excused in the manner provided in this section, the court may appoint a reporter pro tempore, who ~~must~~ *shall* take the same oath and perform the same duties and receive the same compensation during the time of ~~his~~ employment as the regular reporter."

Section 182. Section 3-6-101, MCA, is amended to read:

"3-6-101. Establishment of court. (1) A city with a population of 4,000 or more, according to the last federal census, may have a court, known as the municipal court of the city of (designating the name of the city) of the state of Montana. The court must be a court of record. The municipal court shall assume continuing jurisdiction over all pending city court cases in the city in which the municipal court is established.

(2) A city may have a municipal court only if the governing body of the city elects by a two-thirds majority vote to adopt the provisions of this chapter by ordinance and, in the ordinance, provides the manner in which and time when the municipal court is to be established and is to assume continuing jurisdiction over all pending city court cases. If a city judge is not an attorney and ~~his~~ *the* office is abolished because a municipal court is established, the ordinance must provide that the time when the establishment of the municipal court takes effect is the date on which the municipal court judge elected at the next election held under 3-6-201 begins ~~his~~ *the municipal court judge's* term of office. The ordinance must be consistent with the provisions of this chapter."

Section 183. Section 3-6-203, MCA, is amended to read:

"3-6-203. Salary. The salary of the municipal court judge must be set by ordinance or resolution and is payable monthly by the city treasurer. Actual and necessary expenses for the municipal court judge are expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of ~~his~~ official duties."

Section 184. Section 3-6-303, MCA, is amended to read:

"3-6-303. Officers of ~~the~~ court. (1) The chief of police of the city ~~shall be~~ *is* the executive officer of ~~such~~ *the municipal* court. ~~He~~ *The chief of police* shall serve all process and execute all orders of the court, either in person or by subordinate police officer, who shall execute process in ~~his~~ *the chief's* name.

(2) The chief of police, with the approval of the judge, shall appoint one or more ~~policemen~~ *police officers* as court officers, one of whom shall attend the sessions of the court and perform all duties in connection ~~therewith which~~ *with the court that* the judge may require."

Section 185. Section 3-7-201, MCA, is amended to read:

"3-7-201. Designation of water judge. (1) A water judge ~~shall~~ *must* be designated ~~within 30 days after May 11, 1979,~~ for each water division by a majority vote of a committee composed of the district *court* judge from each ~~single judge~~ *single-judge* judicial district and the chief district judge from each ~~multiple judge~~ *multijudge* judicial district, wholly or partly within the division. Except as provided in subsection (2), a water judge must be a district *court* judge or retired district *court* judge of a judicial district wholly or partly within the water division.

(2) A district *court* judge or retired district *court* judge may sit as a water judge in more than one division if requested by the chief justice of the supreme court or the water judge of the division in which ~~he~~ *the judge* is requested to sit.

(3) A water judge, when presiding over a water division, presides as district *court* judge in and for each judicial district wholly or partly within the water division."

Section 186. Section 3-7-203, MCA, is amended to read:

"3-7-203. Vacancies. If a vacancy *in the office of water judge* occurs, it ~~shall~~ *must* be filled in the manner provided in 3-7-201 for the initial designation of a water judge. A vacancy is created when a water judge dies, resigns, retires, is not elected to a subsequent term, forfeits ~~his~~ *the* judicial position, is removed, or is otherwise unable to complete ~~his~~ *the* term as a water judge."

Section 187. Section 3-7-224, MCA, is amended to read:

"3-7-224. Jurisdiction of chief water judge. (1) The chief water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as water judge for one of the water divisions.

(2) The chief water judge has jurisdiction over cases certified to the district court under 85-2-309 and all matters relating to the determination of existing water rights within the boundaries of the state of Montana.

(3) With regard to the consideration of a matter within ~~his~~ *the chief water judge's* jurisdiction, the chief water judge has the same powers as a district *court* judge. ~~He~~ *The chief water judge* may issue ~~such~~ orders, on the motion of an interested party or on ~~his~~ *the judge's* own motion, ~~as~~ *that* may reasonably be required to allow ~~him~~ *the judge* to fulfill ~~his~~ *the judge's* responsibilities including, but not limited to, requiring the joinder of persons not parties to the administrative hearing being conducted by the department pursuant to 85-2-309 or 85-2-402 as ~~deemed~~ *considered* necessary to resolve any factual or legal issue certified pursuant to 85-2-309(2)."

Section 188. Section 3-10-201, MCA, is amended to read:

"3-10-201. Election. (1) Each justice of the peace must be elected by the qualified electors of the county at the general state election ~~next~~ *immediately* preceding the expiration of the term of office of ~~his~~ *the justice of the peace's* predecessor.

(2) A justice of the peace ~~shall~~ *must* be nominated and elected on the nonpartisan judicial ballot in the same manner as ~~are~~ judges of the district court.

(3) Each judicial office ~~shall~~ *must* be a separate and independent office for election purposes, ~~and~~ each office ~~shall~~ *must* be numbered by the county commissioners, and each candidate for justice of the peace shall specify the

number of the office for which ~~he~~ *the candidate* seeks to be elected. A candidate may not file for more than one office.

(4) Section 13-35-231, prohibiting political party endorsement for judicial officers, ~~shall also apply~~ *applies* to justices of the peace."

Section 189. Section 3-10-202, MCA, is amended to read:

"3-10-202. Oath — proof of certification. (1) Each justice of the peace, elected or appointed, after ~~he has received his~~ *receipt of the* certificate of election or appointment, shall, before entering upon the duties of ~~his~~ office, take the constitutional oath of office, which must be filed with the county clerk.

(2) Before the county clerk may file the oath, the elected or appointed justice ~~must~~ *shall* satisfy the clerk that ~~he~~ *the justice* is certified as provided in 3-1-1502 or 3-1-1503."

Section 190. Section 3-10-204, MCA, is amended to read:

"3-10-204. Residence requirements. (1) ~~Every~~ *A* justice of the peace must reside in the county in which ~~his~~ *the justice's* court is held.

(2) ~~No~~ *A* person is *not* eligible ~~to~~ *for* the office of justice of the peace unless ~~he shall have been~~ *the person is* a citizen of the United States and *has been* a resident of the county in which ~~he~~ *the person* is to serve for 1 year ~~next~~ preceding ~~his~~ election or appointment."

Section 191. Section 3-10-209, MCA, is amended to read:

"3-10-209. Expenses. All actual and necessary travel expenses, as ~~defined and~~ provided in 2-18-501 through 2-18-503, incurred by the justice of the peace in the performance of ~~his~~ official duties are a legal charge against the county."

Section 192. Section 3-10-233, MCA, is amended to read:

"3-10-233. Jurisdiction of acting justice. When called in to preside over a justice's court, the visiting justice of the peace or other qualified person while acting as justice of the peace is vested with all the power of the justice for whom ~~he~~ *the person* holds court."

Section 193. Section 3-10-234, MCA, is amended to read:

"3-10-234. Expenses of acting justice. Whenever a justice of the peace or another person is called in to preside over the court of a justice under 3-10-231, the visiting justice or other person ~~shall~~ *must* be paid ~~his~~ actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503. If the acting justice is not a justice of the peace receiving a salary, ~~he shall~~ *the acting justice must* also receive ~~such~~ compensation ~~as~~ *that* is proper for the time involved. The cost of implementing this section is a proper charge against the county where the court is held."

Section 194. Section 3-10-401, MCA, is amended to read:

"3-10-401. Contempts ~~a~~ *for which* justice *of the peace* may punish ~~for~~. A justice *of the peace* may punish for contempt persons guilty of *only* the following acts ~~and no other~~:

(1) disorderly, contemptuous, or insolent behavior toward the justice while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

(2) a breach of the peace, boisterous conduct, or violent disturbance in the presence of the justice or in the immediate vicinity of the court held by ~~him~~ *the justice* tending to interrupt the due course of a trial or other judicial proceeding;

(3) disobedience or resistance to the execution of a lawful order or process made or issued by the justice;

(4) disobedience to a subpoena duly served or refusal to be sworn or to answer as a witness;

(5) rescuing any person or property in the custody of an officer by virtue of an order or process of the court."

Section 195. Section 3-10-405, MCA, is amended to read:

"3-10-405. Conviction in docket. The conviction, specifying particularly the offense and the judgment ~~thereon~~ *on the conviction*, must be entered by the justice *of the peace* in ~~his~~ *the* docket."

Section 196. Section 3-10-502, MCA, is amended to read:

"3-10-502. How entries made — prima facie evidence. (1) The items listed in 3-10-501 must be entered in the docket under the title of the action to which they relate and, unless otherwise provided, at the time when they occur.

(2) ~~Such~~ *The* entries in a ~~justice's~~ *justice of the peace's* docket or a transcript ~~thereof~~ *of the entries* certified by the justice or ~~his~~ *the justice's* successor in office are prima facie evidence of the facts ~~so~~ stated."

Section 197. Section 3-10-514, MCA, is amended to read:

"3-10-514. Docket of predecessor. ~~Any~~ *A* justice *of the peace* with whom the docket of ~~his~~ *the justice's* predecessor or of any other justice is deposited has and may exercise over all actions and proceedings entered in ~~such~~ *the* docket the same jurisdiction as if *the actions and proceedings were* originally commenced before ~~him~~ *the justice*. In the case of the creation of a new county or the change of the boundary between two counties, any justice into whose hands the docket of a justice formerly acting as ~~such~~ *justice* within ~~the same~~ *that* territory ~~may come~~ is, for the purpose of this section, considered the successor of ~~such~~ *the* former justice."

Section 198. Section 3-10-602, MCA, is amended to read:

"3-10-602. Penalty. ~~Any~~ *A* justice of the peace violating 3-10-601 ~~shall be deemed~~ *is* guilty of a misdemeanor, punishable by a fine not exceeding $1,000 or imprisonment not exceeding 6 months in the county jail, or both. ~~He shall~~ *The violator is* also ~~be deemed~~ guilty of malfeasance in office and, in the discretion of the court, may be removed from office~~,~~. ~~in which latter case he shall thereafter be~~ *A person removed from office is* disqualified from holding ~~such~~ *the* office *of justice of the peace*."

Section 199. Section 3-10-706, MCA, is amended to read:

"3-10-706. Execution of process by retiring constable. A constable, notwithstanding the expiration of ~~his~~ *the constable's* term of office, may proceed and complete the execution of all final process ~~which he~~ *that the constable* has begun to execute, in the same manner as if ~~he~~ *the constable* were still in office, and ~~his~~ *the* sureties ~~shall be~~ *are* liable to the same extent."

Section 200. Section 3-10-1005, MCA, is amended to read:

"3-10-1005. Docket entries. The justice *of the peace* shall enter in the docket kept by ~~him~~ *the justice* for small claims cases the following:

(1) the title of each action;

(2) the amount claimed;

(3) the date the order of court/notice to defendant was signed and the date of the trial as stated in the order;

(4) the date the parties appeared or the date on which default was entered;

(5) each adjournment, stating on whose application and to what time;

(6) the judgment of the court;

(7) a statement of any money paid to the justice, when, and by whom;

(8) the date of the issuance of any abstract of the judgment; and

(9) the date of the receipt of the notice of appeal, if any is given, and of the appeal bond, if any is filed."

Section 201. Section 3-11-202, MCA, is amended to read:

"3-11-202. Salary — qualifications. (1) A city judge, at the time of election or appointment~~, shall~~ *must*:

(a) meet the qualifications of a justice of the peace under 3-10-202;

(b) be a resident of the county in which the city or town is located; and

(c) satisfy any additional qualifications prescribed by ordinance.

(2) The annual salary and compensation of city judges must be fixed by ordinance or resolution.

(3) Each city judge shall receive ~~his~~ actual and necessary travel expenses, as ~~defined and~~ provided in 2-18-501 through 2-18-503, incurred in the performance of ~~his~~ official duties."

Section 202. Section 3-11-203, MCA, is amended to read:

"3-11-203. When substitute for judge called in. (1) The city judge or mayor may call in a city judge, a justice of the peace, or some qualified person to act in the judge's place whenever the judge is:

(a) a party in a case;

(b) interested in a case;

(c) the spouse of or related to either party in a case by consanguinity or affinity within the sixth degree; or

(d) sick, absent, or unable to act.

(2) The city judge may call in a city judge, justice of the peace, or some qualified person to act in ~~his stead~~ *the city judge's place* when a disqualifying affidavit is filed against ~~him~~ *the judge* pursuant to the supreme court's rules on disqualification and substitution of judges.

(3) A city judge of any city or a justice of the peace of any county may sit as city judge at the city judge's request."

Section 203. Section 3-11-204, MCA, is amended to read:

"3-11-204. Training sessions for judges. (1) There ~~shall~~ *must* be two mandatory annual training sessions supervised by the supreme court for all elected and appointed city judges. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as ~~defined and~~ provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials ~~shall~~ *must* be paid to the elected or appointed judge for attending the sessions. Whenever the office of city judge is held by a justice of the peace, the costs imposed by this subsection are the joint responsibility of the county and the municipality, with

the costs to be allocated and charged in proportion to the work done for each governmental entity. In all other cases, the costs ~~shall~~ *must* be paid by the city or town in which ~~he~~ *the judge* holds or will hold court and ~~shall~~ *must* be charged against that city or town.

(2) Each city judge shall attend the training sessions. Failure to attend disqualifies ~~him~~ *the judge* from office and creates a vacancy in the office. However, the supreme court may excuse a city judge from attendance because of illness, a death in the family, or any other good cause."

Section 204. Section 3-11-205, MCA, is amended to read:

"3-11-205. Justice of the peace or judge of another city as city judge. (1) In a town or third-class city, the council may designate a justice of the peace or the city judge of another city or town to act as city judge. The justice of the peace or city judge ~~shall~~ *must* reside in the county in which the town or city is situated. The city or town may by ordinance fix the funding for ~~such~~ *the* judge and enter into an agreement with the county, the other city or town, or the justice of the peace or the judge for payment of salaries and training expenses. The justice of the peace or other city judge shall, after agreeing to the designation and after approval by the board of county commissioners or governing body of the city or town, act in that capacity and ~~shall be~~ *is* the city judge in all cases arising out of violations of statutes or ordinances. If the justice of the peace or city judge of another city or town ~~must~~ *is required to* travel from ~~his~~ *the justice's or judge's* place of residence to hold court, ~~he shall~~ *the justice or judge must* be paid ~~his~~ *the* actual and necessary travel expenses, as ~~defined and~~ provided in 2-18-501 through 2-18-503, by the town or city in which the court is held.

(2) The offices of city judge and justice of the peace may be combined if a justice of the peace is authorized in a city pursuant to 3-10-101."

Section 205. Section 3-12-203, MCA, is amended to read:

"3-12-203. Judge in multicounty district. (1) ~~Where~~ *When* there is more than one county in the judicial district and the county commissioners of more than one county in that district create small claims courts, the district *court* judges may provide that the same judge of small claims court may preside over more than one of the small claims courts in the judicial district.

(2) In ~~such~~ *the* cases *described in subsection (1),* the salary of the small claims court judge ~~shall~~ *must* be prorated among the counties in which ~~he~~ *the judge* presides.

(3) The judge ~~shall be~~ *is* entitled to collect mileage for the distance actually traveled when required to convene small claims court in more than one county, pursuant to 2-18-503."

Section 206. Section 3-15-201, MCA, is amended to read:

"3-15-201. Fees in courts of record. (1) A grand or trial jury panel member ~~shall~~ *must* receive $12 per day for attendance before any court of record and a mileage allowance, as provided in 2-18-503, for traveling each way between ~~his~~ *the member's* residence and the county seat. Those jurors selected from the panel for a case ~~shall~~ *must* receive an additional $13 a day while serving.

(2) A juror who is excused from attendance upon ~~his~~ *the juror's* own motion on the first day of ~~his~~ appearance in obedience to *a* notice or who has been

summoned as a special juror and not sworn in the trial of the case shall forfeit per diem and mileage."

Section 207. Section 3-15-203, MCA, is amended to read:

"3-15-203. Fees in courts not of record and coroner inquests. (1) A jury panel member in civil actions, criminal actions, and coroner inquests is entitled to a fee of $12 per day for attendance before a court not of record and a mileage allowance, as provided in 2-18-503, for traveling each way between ~~his~~ *the member's* residence and the court. A jury panel member selected for a case is entitled to an additional $13 per day while serving.

(2) In civil actions, the jurors' fees must be paid by the party demanding the jury and taxed as costs against the losing party.

(3) A juror who is excused from attendance upon ~~his~~ *the juror's* own motion on the first day of ~~his~~ appearance in obedience to *a* notice or who has been summoned as a special juror and not sworn in the trial of the case shall forfeit per diem and mileage."

Section 208. Section 3-15-401, MCA, is amended to read:

"3-15-401. Jury lists — by whom and when made. The ~~chairman~~ *presiding officer* or, in ~~his~~ *the presiding officer's* absence, any member of the board of county commissioners and the county clerk and recorder of each county ~~must~~ *shall* meet at the county seat of each county at the office of the county clerk and recorder on the second Monday of June of each year for the purpose of making a list of persons to serve as trial jurors for the ensuing year. If they fail to meet on the day specified in this section, they ~~must~~ *shall* meet as soon thereafter as practicable."

Section 209. Section 3-15-504, MCA, is amended to read:

"3-15-504. Drawing by two or more judges in same district. In districts where there are two or more judges, each judge may order jurors drawn and summoned to attend the session or term over which ~~he~~ *that judge* presides, as provided in this part."

Section 210. Section 3-15-601, MCA, is amended to read:

"3-15-601. When and how drawn and summoned. (1) Whenever in the opinion of the district *court* judge a grand jury is necessary, ~~he must~~ *the judge shall* make an order directing a grand jury to be drawn and summoned to attend before the court. The order must specify the number of jurors to be drawn, which may not be less than 15 or more than 20.

(2) The jurors must be drawn from the jury box or the computer database provided for in 3-15-404. If jurors are selected from the computer database, it must be through a computerized random selection process that the judges of the district court of the county have approved in writing as the requirements for the drawing of grand juries. A copy of the latest jury list and a description of the approved computer process employed in the selection must be kept in the office of the clerk of court and *must* be available for public inspection during normal business hours.

(3) The list of names ~~shall~~ *must* be certified and the jurors summoned in the same manner as for trial jurors. The names or numbers of any persons drawn who are not impaneled on the grand jury must be returned to the jury box or reinstated on the computer database."

Section 211. Section 3-15-602, MCA, is amended to read:

"3-15-602. Who constitutes jury. (1) When 11 of the persons summoned as grand jurors who are competent and not excused are present, they constitute the grand jury.

(2) When more than 11 are present, the jury commissioner shall write their names on separate ballots and place the ballots in black capsules. The capsules ~~shall~~ *must* be deposited in a box large enough to hold all of the capsules without crowding. The box ~~shall~~ *must* be ~~so~~ arranged *so* that the jury commissioner drawing the capsules from the box is unable to see the capsule ~~he~~ *that the commissioner* is about to draw. The jury commissioner shall draw 11 capsules. The persons whose names are on the ballots so drawn shall constitute the grand jury.

(3) When less than 11 are present, the court shall order a sufficient number to be immediately drawn as provided in 3-15-601(2) and summoned to attend the court."

Section 212. Section 3-15-604, MCA, is amended to read:

"3-15-604. Drawing and summoning in multijudge districts. In districts where there are two or more judges, each judge may order a grand jury to be drawn and summoned to attend the session or term over which ~~he~~ *that judge* presides, as provided in this part, but ~~no~~ more than one grand jury ~~must ever~~ *may not* be in attendance upon any district court at the same time."

Section 213. Section 3-15-701, MCA, is amended to read:

"3-15-701. When and by whom jurors summoned. When jurors are required in any court of limited jurisdiction, they:

(1) must, upon the order of the judge ~~thereof~~, be summoned by ~~the~~ *a* sheriff, constable, marshal, or ~~policeman~~ *police officer* of the jurisdiction; or

(2) may be summoned by the judge of the court of limited jurisdiction or by the clerk of that court."

Section 214. Section 3-15-801, MCA, is amended to read:

"3-15-801. Summoning ~~the~~ juries. Juries of inquest ~~shall~~ *must* be summoned by the officer before whom the proceedings in which they are to sit are to be ~~had~~ *held* or by ~~any~~ *a* sheriff, constable, or ~~policeman~~ *police officer* from the ~~persons~~ *residents of the county who are* competent to serve as jurors~~, residents of the county,~~ by notifying them orally that they are ~~so~~ summoned and of the time and place at which their attendance is required."

Section 215. Section 5-1-105, MCA, is amended to read:

"5-1-105. Restriction on commissioners seeking election to legislature. A member of the commission may not run for election to a legislative seat within 2 years after the districting and apportionment plan in which ~~he~~ *the commissioner* participated becomes effective."

Section 216. Section 5-2-102, MCA, is amended to read:

"5-2-102. Term of office. The term of office of a senator is 4 years or until ~~his~~ *a* successor is elected and qualified, and *the term of office* of a representative *is* 2 years or until ~~his~~ *a* successor is elected and qualified. The term of service ~~shall begin~~ *begins* on the first Monday of January ~~next succeeding his~~ *following the* election. If a senator is elected to fill a vacancy, ~~his~~ *the* term of service ~~shall begin~~ *begins* on the ~~next~~ day after ~~his~~ *the* election."

Section 217. Section 5-2-104, MCA, is amended to read:

"5-2-104. Appointment to or candidacy for other offices. (1) ~~No~~ *A* member of the legislature may *not*, during the term for which ~~he~~ *the member* was elected, be appointed to any civil office under the state. A member of the legislature may become a candidate for public office during ~~his~~ *the legislator's* term.

(2) A member of the legislature who is elected to ~~other~~ *another* public office shall resign from the legislature prior to assuming the office to which ~~he was~~ *the member is* newly elected."

Section 218. Section 5-2-105, MCA, is amended to read:

"5-2-105. Facsimile signatures authorized. (1) As used in this section, "facsimile signature" means a reproduction of the manual signature of a legislator by engraving, imprinting, stamping, facsimile transmission, or other means.

(2) On state documents requiring a signature, a legislator may use a facsimile signature in lieu of ~~his~~ *a* manual signature. Before using a facsimile signature, the legislator shall file a copy of ~~his~~ *the legislator's* manual or facsimile signature, certified by ~~him~~ *the legislator* under oath, with the presiding officer of the house of which ~~he~~ *the legislator* is a member."

Section 219. Section 5-2-211, MCA, is amended to read:

"5-2-211. Certified rosters. The secretary of state shall prepare certified rosters from the official election records on file in ~~his~~ *the secretary of state's* office for use in the organization of the senate and house of representatives."

Section 220. Section 5-2-213, MCA, is amended to read:

"5-2-213. Organization of house of representatives. At the time specified in 5-2-212, the secretary of state~~,~~ or*,* in case of ~~his~~ *the secretary of state's* absence or inability*,* ~~then~~ the senior member-elect present~~, must~~ *shall* take the chair, call the members-elect of the house of representatives to order, and then, from the certified roster prepared by the secretary of state, call over the roll of counties and districts. After the ~~same~~ *names* are called*,* the members-elect ~~must~~ *shall* take the constitutional oath of office and assume their seats. The house of representatives may ~~thereupon~~ *at that time*, if a quorum is present, proceed to elect its officers."

Section 221. Section 5-2-216, MCA, is amended to read:

"5-2-216. Tie vote. ~~In the event~~ *If* there is a tie vote for the purposes of organizing the senate or the house of representatives then, for the purposes of organization, the political party's candidate for president of the senate or speaker of the house then having a member of ~~his~~ *that candidate's* party as the governor of Montana ~~shall be deemed to be~~ *is* elected."

Section 222. Section 5-2-302, MCA, is amended to read:

"5-2-302. Compensation and expenses when legislature not in session. When the legislature is not in session, a member of the legislature, while engaged in legislative business with prior authorization of the appropriate funding authority, is entitled to:

(1) a mileage allowance as provided in 2-18-503;

(2) expenses as provided in 2-18-501 and 2-18-502; and

(3) a salary equal to one full day's pay at the rate of a classified state employee, described in 5-2-301(1)*,* for each 24-hour period of time (from midnight to midnight), or portion ~~thereof~~ *of that time*, spent away from home on

authorized legislative business. However, if time spent for business other than authorized legislative business results in lengthening a legislator's stay away from home into an additional 24-hour period, ~~he~~ *the legislator* may not be compensated for the additional day."

Section 223. Section 5-2-405, MCA, is amended to read:

"5-2-405. Term of appointee. (1) Whenever ~~the~~ *a* vacancy occurs in the house of representatives, the appointee shall serve until the end of the term to which ~~his~~ *the* predecessor was elected.

(2) Whenever ~~the~~ *a* vacancy occurs in the senate, the appointee shall serve until a successor can be elected as provided in 5-2-406."

Section 224. Section 5-4-204, MCA, is amended to read:

"5-4-204. Submission of fiscal note — sponsor's fiscal note — distribution to legislators. (1) A completed fiscal note ~~shall~~ *must* be submitted by the budget director to the presiding officer who requested it. Upon receipt of the completed fiscal note, the presiding officer shall notify the sponsor of the bill for which the fiscal note was prepared that the fiscal note has been completed and is available for review. Within 24 hours following notification, the sponsor ~~must~~ *shall*:

(a) notify the presiding officer that ~~he~~ *the sponsor* concurs with the completed fiscal note;

(b) request additional time, not to exceed 24 hours, to consult with the budget director on the fiscal note; or

(c) elect to prepare a sponsor's fiscal note as provided in subsection (4).

(2) (a) If the sponsor concurs with the completed fiscal note prepared by the budget director or elects to prepare a sponsor's fiscal note, the presiding officer shall refer the completed fiscal note prepared by the budget director to the committee considering the bill. If the bill is printed, the note ~~shall~~ *must* be reproduced and placed on the members' desks.

(b) If the sponsor requests additional time to consult with the budget director, the presiding officer shall notify the sponsor and the budget director of the time, not to extend beyond the time limitation specified in subsection (1)(b), by which:

(i) the budget director shall submit a revised completed fiscal note to the presiding officer;

(ii) the sponsor shall notify the presiding officer that ~~he~~ *the sponsor* concurs with the original completed fiscal note; or

(iii) the sponsor shall elect to prepare a sponsor's fiscal note as provided in subsection (4).

(3) At the time specified as provided in subsection (2)(b), the presiding officer shall refer the original or, if revised, the revised fiscal note to the committee considering the bill. If the bill is printed, the note ~~shall~~ *must* be reproduced and placed on the members' desks.

(4) (a) If a sponsor elects to prepare a sponsor's fiscal note, ~~he~~ *the sponsor* shall prepare the fiscal note, as provided in 5-4-205, and return the completed sponsor's fiscal note to the presiding officer within 4 days of ~~his~~ *the* election to prepare a sponsor's fiscal note.

(b) The presiding officer may grant additional time to the sponsor to prepare the sponsor's fiscal note.

(c) Upon receipt of the completed sponsor's fiscal note, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the note must be identified as a sponsor's fiscal note, reproduced, and placed on the members' desks."

Section 225. Section 5-4-302, MCA, is amended to read:

"5-4-302. Approval of bills. When the governor approves a bill, ~~he must set his name thereto~~ *the governor shall sign the bill* with the date of ~~his~~ approval and deposit the ~~same~~ *bill* in the office of the secretary of state."

Section 226. Section 5-4-303, MCA, is amended to read:

"5-4-303. Line item veto. If ~~any~~ *a* bill presented to the governor contains several distinct items of appropriation of money, ~~he~~ *the governor* may disapprove one or more items while approving other portions of the bill. ~~In such case he~~ *If an item is disapproved, the governor* shall append to the bill, at the time of signing it, a statement of the items *objected* to ~~which he objects~~ and ~~his objections thereto~~ *the reasons for the objection*. The governor ~~must~~ *shall* transmit to the house in which the bill originated, ~~(~~or to the secretary of state if the legislature is not in session~~)~~, a copy of ~~such~~ *the* statement, and the items ~~so~~ objected to must be separately reconsidered in the same manner as bills ~~which~~ *that* have been disapproved by the governor."

Section 227. Section 5-4-304, MCA, is amended to read:

"5-4-304. Amendatory veto. The governor may return any bill to the originating house with ~~his~~ *the governor's* recommendations for amendment. ~~Such~~ *The originating* house shall reconsider the bill under its rules relating to *an* amendment offered in committee of the whole. The bill is then subject to the following procedures:

(1) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in committee of the whole, the bill and the originating house's approval or disapproval of the governor's recommendations.

(2) If both houses approve the governor's recommendations, the bill ~~shall~~ *must* be returned to the governor for ~~his~~ reconsideration.

(3) If both houses disapprove the governor's recommendations, the bill ~~shall~~ *must* be returned to the governor for ~~his~~ reconsideration.

(4) If one house disapproves the governor's recommendations and the other house approves, then either house may request a conference committee, which may be a free conference committee:

(a) If both houses adopt a conference committee report, the bill, in accordance with the report, ~~shall~~ *must* be returned to the governor for ~~his~~ reconsideration.

(b) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the governor's recommendations ~~shall be~~ *are* considered not approved and the bill ~~shall~~ *must* be returned to the governor for further consideration.

(5) The governor may not return the bill for amendment a second time."

Section 228. Section 5-4-305, MCA, is amended to read:

"5-4-305. Bills returned without approval. (1) A bill or item or items of an appropriations bill become law whenever:

(a) the bill passes both houses of the legislature;

(b) the bill is returned by the governor without ~~his~~ signature and with objections ~~thereto~~ *to the bill* or, if it is a bill containing several items of appropriation of money, with objections to one or more items; and

(c) upon reconsideration the bill or item or items pass both houses by the constitutional majority.

(2) The bill or item or items ~~shall~~ *must* be authenticated by a certificate endorsed on or attached to the bill or the copy of the statement of objections. The form of the certificate ~~shall~~ *must* be: "This bill having been returned by the governor with ~~his~~ objections ~~thereto~~ and, after reconsideration, having passed both houses by the constitutional majority has become a law this .... day of ...., A.D. ...." or "The following items in the within statement (naming them) having, after reconsideration, passed both houses by the constitutional majority have become a law this .... day of ...., A.D. ...". The endorsement, signed by the president of the senate and the speaker of the house, is sufficient authentication of the bill or item or items.

(3) The authenticated bill or statement ~~shall~~ *must* be delivered to the governor, who shall deposit it with the laws in the office of the secretary of state."

Section 229. Section 5-4-306, MCA, is amended to read:

"5-4-306. Return when legislature not in session. (1) If, on the day the governor desires to return a bill without ~~his~~ approval and with ~~his~~ objections to the bill to the house in which it originated, that house has adjourned for the day, ~~(~~but not for the session~~)~~, ~~he~~ *the governor* may deliver the bill with ~~his~~ *the* message to the presiding officer, secretary, clerk, or any member of ~~such~~ *that* house. The delivery is as effectual as though returned in open session if the governor, on the first day the house is again in session, by message, notifies it of the delivery and of the time when and the person to whom the delivery was made.

(2) If the legislature is not in session when the governor vetoes a bill, ~~he~~ *the governor* shall return the bill with ~~his~~ *the* reasons for the veto to the secretary of state. If the bill was not approved by two-thirds of the members voting on the final vote on the bill, the secretary of state shall within 5 working days of receipt of the bill and veto message mail a copy of the title of the bill and the veto message to each member of the legislature. If the bill was approved by two-thirds of the members voting on the final vote on the bill, the secretary of state shall poll the members of the legislature. The secretary of state shall within 5 working days of receipt of the bill and veto message send by certified mail to each legislator, at an address provided by the legislator, a copy of the bill and the veto message, instructions for casting a vote, and notice of the date by which each legislator shall return ~~his~~ *a* vote. The date for return must be within 30 days after the date on which the bill, veto message, and voting instructions are sent. A legislator may cast and return a vote by delivering it in person, mailing it, or sending a facsimile transmission of it to the office of the secretary of state. The secretary of state shall tally the votes within 1 working day after the date for return of the votes. If two-thirds or more of the members of each house vote to override the veto, the bill ~~shall become~~ *becomes* law.

(3) The legislature may reconvene to reconsider any bill vetoed by the governor when the legislature is not in session by using the statutory procedure provided for convening in special session."

Section 230. Section 5-5-101, MCA, is amended to read:

"5-5-101. Subpoenas. (1) A subpoena requiring the attendance of any witness before either house of the legislature or a committee ~~thereof~~ *of either house* may be issued by the president of the senate, *the* speaker of the house, or the ~~chairman~~ *presiding officer* of any committee before whom the attendance of the witness is desired.

(2) ~~It~~ *A subpoena* is sufficient if:

(a) it states whether the proceeding is before the house of representatives, the senate, or a committee;

(b) it is addressed to the witness;

(c) it requires the attendance of ~~such~~ *the* witness at a time and place certain;

(d) it is signed by the president of the senate, speaker of the house, or ~~chairman~~ *presiding officer* of a committee."

Section 231. Section 5-5-102, MCA, is amended to read:

"5-5-102. Service of subpoenas. The subpoena may be served by any elector of the state, and ~~his~~ *the elector's* affidavit that ~~he~~ *the elector* delivered a copy to the witness is evidence of service."

Section 232. Section 5-5-103, MCA, is amended to read:

"5-5-103. Contempt. If ~~any~~ *a* witness neglects or refuses to obey ~~such~~ *a* subpoena or, appearing, neglects or refuses to testify, the senate or house may, by resolution entered on the journal, commit ~~him~~ *the witness* for contempt."

Section 233. Section 5-5-105, MCA, is amended to read:

"5-5-105. Immunity of witness. (1) ~~No~~ *A* person sworn and examined before either house of the legislature or any committee ~~thereof can~~ *of the legislature may not* be held to answer criminally or be subject to any penalty or forfeiture for any fact or act ~~touching which he is required to testify~~ *relating to the required testimony*. ~~No~~ *A* statement made or paper produced by ~~any such~~ *the* witness is *not* competent evidence in any criminal proceeding against ~~such~~ *the* witness.

(2) ~~Such~~ *A* witness cannot refuse to testify to any fact or to produce any paper ~~touching~~ *concerning* which ~~he~~ *the witness* is examined for the reason that ~~his~~ *the witness's* testimony or the production of ~~such~~ *the* paper tends to disgrace ~~him~~ *the witness* or render ~~him~~ *the witness* infamous.

(3) ~~Nothing in this~~ *This* section ~~exempts~~ *does not exempt* ~~any~~ *a* witness from prosecution and punishment for perjury committed by ~~him on such~~ *the witness during the* examination."

Section 234. Section 5-5-301, MCA, is amended to read:

"5-5-301. Governor to transmit list of appointments to legislature. Within 10 days after the ~~meeting~~ *convening* of the legislature, the governor ~~must~~ *shall* transmit to ~~it~~ *the legislature* a list of all appointments made by ~~him,~~ *the governor* under the provisions of 2-16-506~~,~~ during the recess of the legislature."

Section 235. Section 5-5-302, MCA, is amended to read:

"5-5-302. Nominations to senate to be in writing. Nominations made by the governor to the senate must be in writing, designating the residence of the nominee and the office for which ~~he~~ *the person* is nominated."

Section 236. Section 5-5-413, MCA, is amended to read:

"5-5-413. Suspension pending trial — filling vacancy. (1) Whenever articles of impeachment against any officer subject to impeachment are presented to the senate, ~~such~~ *the* officer is temporarily suspended from ~~his~~ office and cannot act in ~~his~~ *an* official capacity until ~~he~~ *the officer* is acquitted.

(2) Upon ~~such~~ suspension of any officer other than the governor, ~~his~~ *the* office must be at once temporarily filled by an appointment made by the governor, with the advice and consent of the senate. The term of the appointment is until the acquittal of the party impeached or, in case of ~~his~~ *the party's* removal, until the vacancy is filled at the next election as required by law."

Section 237. Section 5-5-415, MCA, is amended to read:

"5-5-415. Service — how made. The service must be made upon the defendant personally, or~~,~~ if ~~he~~ *the defendant* cannot upon diligent inquiry be found within the state, the senate, upon proof of that fact, may order publication to be made, in ~~such~~ *the* manner ~~as~~ *that* it ~~may deem~~ *considers* proper, of a notice requiring ~~him~~ *the defendant* to appear at a specified time and place and answer the articles of impeachment."

Section 238. Section 5-5-418, MCA, is amended to read:

"5-5-418. Counsel may be appointed. (1) If the defendant appears and is unable to procure the assistance of counsel, it is the duty of the president of the senate to appoint some suitable person to assist ~~him~~ *the defendant* in ~~his~~ *a* defense.

(2) If the defendant is served by publication and fails to appear, it is the duty of the president of the senate to appoint some person or counsel to appear in ~~his~~ behalf *of the defendant* and *to* make *a* defense ~~for him~~."

Section 239. Section 5-5-419, MCA, is amended to read:

"5-5-419. Defendant's objection or answer. When the defendant appears, ~~he~~ *the defendant* may *object,* in writing, ~~object~~ to the sufficiency of the articles of impeachment or ~~he~~ may answer the ~~same~~ *articles* by an oral plea of not guilty. The plea must be entered upon the journal and must put in issue every material allegation of the articles of impeachment."

Section 240. Section 5-5-420, MCA, is amended to read:

"5-5-420. Overrule of objection — defendant's plea. If the objection to the sufficiency of the articles of impeachment is not sustained by a majority of the members of the senate, the defendant must be ordered ~~forthwith~~ to *immediately* answer the articles of impeachment. If ~~he then~~ *the defendant* pleads guilty, the senate ~~must~~ *shall* render judgment of conviction against ~~him~~ *the defendant*. If ~~he~~ *the defendant* pleads not guilty or refuses to plead, the senate ~~must~~ *shall*, at ~~such~~ *the* time ~~as~~ *that* it ~~may appoint~~ *designates*, proceed to try the impeachment."

Section 241. Section 5-5-421, MCA, is amended to read:

"5-5-421. Two-thirds vote necessary to a conviction. The defendant cannot be convicted on impeachment without the concurrence of two-thirds of

the members elected, voting by ayes and noes. If two-thirds of the members elected do not concur in a conviction, ~~he~~ *the defendant* must be acquitted."

Section 242. Section 5-5-431, MCA, is amended to read:

"5-5-431. Nature of ~~the~~ judgment. The judgment *in the impeachment* may be that the defendant be suspended or that ~~he~~ *the defendant* be removed from office and disqualified to hold any office of honor, trust, or profit under the state."

Section 243. Section 5-6-109, MCA, is amended to read:

"5-6-109. Interns responsible to sponsor. Each legislative intern is directly responsible to ~~his or her~~ *the intern's* legislator."

Section 244. Section 5-7-101, MCA, is amended to read:

"5-7-101. Purposes of chapter — applicability. (1) The purposes of this chapter are to promote a high standard of ethics in the practice of lobbying, to prevent unfair and unethical lobbying practices, to provide for the licensing of lobbyists and the suspension or revocation of the licenses, to require elected officials to make public their business, financial, and occupational interests, and to require disclosure of the amounts of money spent for lobbying.

(2) ~~Nothing in this~~ *This* chapter ~~subjects~~ *does not subject* an individual lobbying on ~~his~~ *the individual's* own behalf to any reporting requirements ~~nor deprives~~ *or deprive* an individual of the constitutional right to communicate with public officials."

Section 245. Section 5-7-201, MCA, is amended to read:

"5-7-201. Docket — contents. The commissioner shall make available to the public the information required by this chapter, including but not limited to the name and business address of each lobbyist, the name and business address of ~~his~~ *the lobbyist's* principal, and the subject or subjects to which the employment relates or a statement that the employment relates to all matters in which the principal has an interest. The docket entry for each principal must also indicate the date of receipt of the principal's lobbying reports as required by 5-7-208."

Section 246. Section 5-7-203, MCA, is amended to read:

"5-7-203. Principal — name of lobbyist on docket. ~~Every~~ *Each* principal who employs ~~any~~ *a* lobbyist shall within 1 week after ~~such~~ *the* employment cause the name of ~~said~~ *the* lobbyist to be entered upon the docket. It ~~shall~~ *is* also ~~be~~ the duty of the lobbyist to enter ~~his~~ *the lobbyist's* name upon the docket. Upon the termination of ~~such~~ employment, ~~such~~ *that* fact may be entered opposite the name of the lobbyist either by the lobbyist or *by* the principal."

Section 247. Section 5-7-210, MCA, is amended to read:

"5-7-210. Reimbursement. Whenever a lobbyist invites a public official to attend a function ~~which~~ *that* the lobbyist or ~~his~~ *the lobbyist's* principal has fully or partially funded or sponsored~~,~~ or whenever a lobbyist offers a public official a gift, the lobbyist ~~must~~ *shall*, upon request, supply the recipient public official with the benefit's true or estimated cost and allow the public official to reimburse. ~~Such~~ *The* expenditures must be itemized in the principal's reports with a notation "reimbursed by benefactee"."

Section 248. Section 5-7-301, MCA, is amended to read:

"5-7-301. Prohibition of practice without license and registration. (1) ~~No~~ *An* individual may *not* practice as a lobbyist unless that individual has been licensed under 5-7-103 and listed on the docket as employed in respect to all the matters ~~he~~ *that the individual* is promoting or opposing.

(2) ~~No~~ *A* principal may *not* directly or indirectly authorize or permit any lobbyist employed by that principal to practice lobbying until the lobbyist is ~~duly~~ licensed and the names of the lobbyist and the principal are ~~duly~~ entered on the docket."

Section 249. Section 5-11-104, MCA, is amended to read:

"5-11-104. Officers — rules of procedure — records. The legislative council shall organize immediately following appointment by electing one of its members as its ~~chairman~~ *presiding officer* and by electing ~~such~~ other officers from among its membership ~~as~~ *that* the council ~~may deem desirable~~ *considers appropriate*. The council ~~is empowered to~~ *may* adopt rules of procedure, ~~and to~~ make ~~all~~ arrangements for its meetings, and ~~to~~ carry out the purpose for which it is created. The council ~~is directed to~~ *shall* keep accurate records of its activities and proceedings."

Section 250. Section 5-11-204, MCA, is amended to read:

"5-11-204. Secretary of state to assign chapter numbers to new laws. ~~It shall be the duty of the~~ *The* secretary of state *shall*, when bills passed by any legislature ~~of Montana~~ are filed in ~~his~~ *the secretary's* office as directed in 5-4-302 and 5-4-305, ~~to~~ note ~~thereon~~ *on the bill* the date of filing and ~~to~~ number ~~such~~ *the* bills, except resolutions, in the order of their reception ~~by him~~, chapter 1 and upwards, using Arabic numerals."

Section 251. Section 5-12-202, MCA, is amended to read:

"5-12-202. Appointment of members. (1) The legislative finance committee consists of:

(a) four members of the senate finance and claims committee appointed by the ~~chairman~~ *presiding officer*;

(b) two members of the senate appointed at large by the committee on committees;

(c) four members of the house of representatives appropriations committee appointed by the ~~chairman~~ *presiding officer*; and

(d) two members of the house appointed at large by the speaker.

(2) These members ~~shall~~ *must* be appointed before the end of each legislative session. No more than three members of each house, two committee members and one at-large member, may be from the same political party."

Section 252. Section 5-12-203, MCA, is amended to read:

"5-12-203. Term — officers — compensation. (1) Appointments are for 2 years, and a member of the committee shall serve until ~~his~~ *the member's* term of office as a legislator ends or until ~~his~~ *a* successor is appointed, whichever occurs first.

(2) The committee shall elect one of its members as ~~chairman~~ *presiding officer* and ~~such~~ other officers ~~as~~ *that* it considers necessary.

(3) Members of the committee are entitled to receive compensation and expenses as provided in 5-2-302."

Section 253. Section 5-13-303, MCA, is amended to read:

"5-13-303. Term and removal. The legislative auditor is responsible solely to the legislature. ~~He~~ *The legislative auditor* shall hold office for a term of 2 years beginning with July 1 of each even-numbered year. The committee may remove ~~him~~ *the legislative auditor* for misfeasance, malfeasance, or nonfeasance in office at any time after notice and hearing."

Section 254. Section 5-13-306, MCA, is amended to read:

"5-13-306. Legislative auditor to assist legislature during sessions. During sessions of the legislature, the legislative auditor and ~~his~~ *the audit* staff, when requested, shall assist the legislature, its committees, and its members by gathering and analyzing information relating to the fiscal affairs of state government."

Section 255. Section 5-13-307, MCA, is amended to read:

"5-13-307. Recommendations of legislative auditor — implementation costs. (1) The reports of the legislative auditor may include comments, recommendations, and suggestions, but ~~he shall have no~~ *the legislative auditor does not have the* power to enforce them ~~nor shall he~~ *and may not* otherwise influence or direct executive or legislative action.

(2) Whenever significant costs are associated with the implementation of audit recommendations, the legislative auditor shall, if practicable, note this fact and the estimated amount of ~~such~~ *the* costs in the appropriate audit report."

Section 256. Section 5-13-309, MCA, is amended to read:

"5-13-309. Information from state agencies. (1) All state agencies shall aid and assist the legislative auditor in the auditing of books, accounts, and records.

(2) The legislative auditor may examine at any time the books, accounts, and records, confidential or otherwise, of a state agency. This ~~shall~~ *section may* not be construed as authorizing the publication of information ~~which the~~ *prohibited by* law ~~prohibits publishing~~.

(3) The head of each state agency shall immediately notify both the attorney general and the legislative auditor in writing upon the discovery of any theft, actual or suspected, involving state ~~moneys~~ *money* or property under ~~his~~ *that agency's* control or for which ~~he~~ *that agency* is responsible."

Section 257. Section 5-13-402, MCA, is amended to read:

"5-13-402. Audit costs. (1) Prior to July 1 of each even-numbered year, the legislative auditor shall advise each agency and the budget director of the estimated audit costs for the following biennium. Each agency shall include the estimated audit costs in its proposed budget submitted to the budget director pursuant to 17-7-112. The budget director shall notify the legislative auditor if the executive budget recommendation to the legislature for audit costs differs from that proposed by the legislative auditor.

(2) Not later than 60 days after adjournment of each legislature, the budget director shall provide to the legislative auditor a schedule reflecting, by fund, amounts appropriated to each agency for audit costs.

(3) The legislative auditor shall bill agencies for audit services ~~as he~~ *that the legislative auditor* considers necessary. ~~In no event may the~~ *The* legislative auditor *may not* bill an agency for audit services in excess of amounts appropriated for audit services. Additional ~~audit related~~ *audit-related* services

may be provided by the legislative auditor at a cost agreed to by an agency and billed to the agency."

Section 258. Section 5-15-102, MCA, is amended to read:

"5-15-102. Ineligibility for appointment. ~~Any~~ *A* person who is an employee, agent, officer, partner, or director of ~~any~~ *a* regulated company or who has served a regulated company in any capacity within the 3 years previous to ~~his~~ *the person's* appointment may not be a member of the committee."

Section 259. Section 5-15-103, MCA, is amended to read:

"5-15-103. Term of office. A member shall serve until ~~his~~ *the member's* term of office as a legislator ends and until ~~his~~ *a* successor is appointed."

Section 260. Section 5-15-105, MCA, is amended to read:

"5-15-105. Officers. The committee shall elect one of its members as ~~chairman~~ *presiding officer* and ~~such~~ other officers ~~as~~ *that* it determines necessary."

Section 261. Section 5-15-201, MCA, is amended to read:

"5-15-201. Consumer counsel — appointment and qualifications. The committee shall appoint a consumer counsel and set ~~his~~ *the consumer counsel's* salary. The consumer counsel ~~shall~~ *must* have the following minimum qualifications and ~~such~~ additional qualifications ~~as~~ *that* the committee determines appropriate:

(1) a bachelor's degree or equivalent from an accredited college or university with a major or minor in accounting or allied fields;

(2) be admitted to practice law in Montana courts and in the United States district court for the state of Montana."

Section 262. Section 5-16-105, MCA, is amended to read:

"5-16-105. Officers. The council shall elect one of its members as ~~chairman~~ *presiding officer* and ~~such~~ other officers ~~as~~ *that* it ~~deems~~ *determines* necessary. ~~Such~~ *An* officer ~~shall be~~ *is* elected for a term of 2 years."

Section 263. Section 7-1-4121, MCA, is amended to read:

"7-1-4121. General definitions. As used in 7-1-4121 through 7-1-4127 and 7-1-4129 through 7-1-4149, unless otherwise provided, the following definitions apply:

(1) "Charter" means a written document defining the powers, structure, privileges, rights, and duties of the government and limitations on the government.

(2) "Chief executive" means the elected executive in a government adopting the commission-executive form, the manager in a government adopting the commission-manager form, the ~~chairman~~ *presiding officer* in a government adopting the ~~commission-chairman~~ *commission-presiding officer* form, the town ~~chairman~~ *presiding officer* in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers designated in the charter in a government adopting a charter.

(3) "Elector" means a resident of the municipality qualified and registered to vote under state law.

(4) "Employee" means a person other than an officer who is employed by a municipality.

(5) "Executive branch" means that part of the municipality, including departments, offices, and boards, charged with implementing actions approved and administering policies adopted by the governing body of the local government or performing the duties required by law.

(6) "Governing body" means the commission or town meeting legislative body established in the alternative form of local government.

(7) "Guideline" means a suggested or recommended standard or procedure to serve as an index of comparison and is not enforceable as a regulation.

(8) "Law" means a statute enacted by the legislature of Montana and approved and signed by the governor or a statute adopted by the people of Montana through statutory initiative procedures.

(9) "Municipality" means an entity that incorporates as a city or town.

(10) "Office of the municipality" means the permanent location of the seat of government from which the records administrator, or the office of the clerk of the governing body where one is appointed, carries out the duties of the records administrator.

(11) "Officer" means a person holding a position with a municipality ~~which~~ *that* is ordinarily filled by election or, in those municipalities with a manager, the manager.

(12) "Ordinance" means an act adopted and approved by a municipality, having effect only within the jurisdiction of the local government.

(13) "Person" means any individual, firm, partnership, company, corporation, trust, trustee, assignee or other representative, association, or other organized group.

(14) "Plan of government" means a certificate submitted by a governing body that documents the basic form of government selected, including all applicable suboptions. The plan must establish the terms of all officers and the number of commissioners, if any, to be elected.

(15) "Political subdivision" refers to a local government, authority, school district, or multicounty agency.

(16) "Population" means the number of inhabitants as determined by an official federal, state, or local census or official population estimate approved by the department of commerce.

(17) "Printed" means the act of reproducing a design on a surface by any process as defined by 1-1-203(3).

(18) "Public agency" means a political subdivision, Indian tribal council, state or federal department or office, or the Dominion of Canada or any provincial department or office or political subdivision.

(19) "Public property" means any property owned by a municipality or held in the name of a municipality by any of the departments, boards, or authorities of the local government.

(20) "Real property" means lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term "real property", including not only fee simple absolute but also all lesser interests, such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

(21) "Reproduced" means the act of reproducing a design on any surface by any process.

(22) "Resolution" means a statement of policy by the governing body or an order by the governing body that a specific action be taken.

(23) "Service" means an authorized function or activity performed by local government.

(24) "Structure" means the entire governmental organization through which a local government carries out its duties, functions, and responsibilities."

Section 264. Section 7-2-101, MCA, is amended to read:

"7-2-101. Transcript of records upon alteration of boundary of local government. When ~~any~~ *a* territory ~~shall be~~ *is* detached from any county, city, or town in this state and annexed to any other county, city, or town:

(1) it ~~shall be~~ *is* the duty of the proper officer of ~~such~~ *the* county, city, or town to which ~~said~~ *the* territory ~~shall be~~ *is* annexed to demand from the proper officer of the county, city, or town having custody of the public records of the territory a transcript of all public records pertaining to ~~such~~ *the* territory; and

(2) it ~~shall be~~ *is* the duty of ~~such~~ *the* officer from whom ~~they shall be~~ *the records are* demanded to furnish ~~such~~ *the* authenticated transcripts of all ~~such~~ records in ~~his~~ *that* office, which ~~shall~~ *must* be paid for, after ~~they shall be so~~ *the records are* furnished, by the county, city, or town to which ~~said~~ *the* territory ~~shall be~~ *is* annexed."

Section 265. Section 7-2-2206, MCA, is amended to read:

"7-2-2206. Contents of petition — petition approval procedure — deadline for filing signatures. (1) ~~Such~~ *A* petition or petitions *for creation of a new county* must contain:

(a) a legal description of the territory proposed to be taken from the county in which the petition is circulated;

(b) a general map, on a separate page or pages, ~~which~~ *that* with shaded areas or darkened boundary lines will display to prospective petition signers the general outlines of the territory described in subsection (1)(a);

(c) a statement of the assessed valuation of ~~such~~ *the* proposed county as shown by the ~~last preceding~~ *most recent* assessment, inclusive of all assessed valuation;

(d) a statement of the surveyed area, in square miles, ~~which~~ *that* will remain in the county or counties from which territory is taken to form ~~such~~ *the* new county after ~~such~~ *the* county is formed; a statement of the surveyed area in square miles~~, which~~ *that* will be in the new county after formation; and a statement that the surveyed area of the territory proposed to be transferred is greater than 49 square miles;

(e) a warning that a person is subject to a $500 fine or 6 months in jail, or both, if ~~he~~ *the person* purposefully:

(i) signs a name other than ~~his~~ *the person's* own to the petition;

(ii) signs more than once for the same issue; or

(iii) signs when not a legally registered voter residing in the territory to be added to the proposed new county;

(f) if the proposed new county is to be formed from one existing county, or from portions of two or more existing counties, the name of the proposed new

county and a ~~prayer~~ *request* that ~~such~~ *the* proposed new county be organized into a new county under the provisions of this part; and

(g) if the proposed new county is to be an existing county enlarged by territory taken from one or more other counties, a ~~prayer~~ *request* that this territory be added to the proposed new county under the provisions of this part.

(2) Each person ~~must~~ *shall* sign ~~his~~ *the person's* name and address in substantially the same manner as on ~~his~~ *the person's* voter registry card~~,~~ or the signature will not be counted.

(3) Numbered lines must be provided for signatures. Each numbered line must contain spaces for the signature, the printed last name of the signer, and the signer's address.

(4) The signatures ~~need~~ *are* not *required to* all be appended to one paper but may be signed to several petitions, which must be similar in form. When ~~so~~ signed, the several petitions may be fastened together and ~~shall~~ *must* be treated and presented as one petition.

(5) Before a petition may be circulated for signatures, a sample petition must be submitted to the county election administrator in the form in which it will be circulated for approval as to form. The county election administrator shall refer a copy of the sample petition to the county attorney, who shall review the sample petition to ensure compliance with the requirements of this part. The county attorney shall cooperate with and provide necessary services to the person who submitted the petition to ensure that an adequate and valid legal description is written for the proposed new county boundaries. If the petition is rejected as to form, the county election administrator shall within 10 days after submission of the sample send written notice to the person who submitted the petition. If the petition is approved as to form, the election administrator shall within 21 days after submission of the sample send written notice to the person who submitted the petition. ~~Thereafter~~ *After that notice,* the petition may not be challenged except with regard to the number and validity of signatures appended to it.

(6) All petition signatures must be collected and filed within 120 days of the date of the notice that the petition has been approved as to form."

Section 266. Section 7-2-2207, MCA, is amended to read:

"7-2-2207. Affidavits to be attached to petition — verification of signatures. (1) There ~~shall~~ *must* be attached and filed with each sheet or section of the petition or petitions an affidavit of the person who circulated the petition, stating that it is ~~his~~ *the person's* belief that:

(a) it is signed by at least 50% of the qualified electors, as ~~herein~~ provided *in this part*, of the proposed new county or of the proposed portion ~~thereof~~ *of a proposed county* taken from each existing county, where the proposed new county is to be formed from portions of two or more existing counties;

(b) the signatures ~~affixed thereto~~ are genuine; and

(c) each ~~of such persons so~~ *person* signing was, at the date of ~~such~~ signing, a qualified elector of the proposed new county or of the portion ~~thereof~~ *of the proposed county* taken from an existing county.

(2) The clerk of the county receiving the petition shall check the names of all signers to verify that they are registered electors of the proposed territory to be taken from the county. In addition, the county clerk shall randomly select signatures on each sheet or section of the petition and compare them with the signatures of the electors as they appear on the registration records of the office.

If all of the randomly selected signatures appear to be genuine, the number of signatures of registered electors on the sheet or section may be certified without further comparison of signatures. If any of the randomly selected signatures do not appear to be genuine, all signatures on that sheet or section must be compared with the registration records of the office."

Section 267. Section 7-2-2223, MCA, is amended to read:

"7-2-2223. Procedure to complete creation of county. (1) The board of county commissioners shall immediately file a copy of its resolution, authorized by 7-2-2222(1) and ~~duly~~ certified, together with a legal description of the new boundaries of each affected county, in the office of the secretary of state. Ninety days after the date of ~~such~~ filing:

(a) the new county is considered to be fully created;

(b) the organization ~~thereof~~ *of the new county* is considered completed; and

(c) any new county officers, other than the county commissioners and the county clerk, are entitled to enter upon the duties of their respective offices upon qualifying in accordance with law and giving bonds for the faithful performance of their duties, as required by the laws of the state.

(2) The election administrator of the county with which the petition was filed ~~must~~ *shall* immediately make out and deliver to each of the individuals declared and designated to be elected a certificate of election authenticated by ~~his~~ *the administrator's* signature and the seal of the county. The individuals elected members of the board and the county clerk shall, immediately upon receiving their certificates of election, assume the duties of their respective offices."

Section 268. Section 7-2-2227, MCA, is amended to read:

"7-2-2227. Qualification, oath of office, and bond. (1) Each person elected or appointed to fill an office of ~~such~~ *a* new county under the provisions of this part shall qualify in the manner provided by law for ~~such~~ *that* officer, except as otherwise provided *in this part*, and shall enter upon the discharge of the duties of ~~his~~ *the* office within ~~such~~ *the* time ~~as herein~~ provided *in this part* after the receipt of the certificate of ~~his~~ election.

(2) Each of ~~such~~ *the* officers may take the oath of office before any officer authorized by the laws of Montana to administer oaths.

(3) The bond of any officer from which a bond is required ~~shall~~ *must* be approved by ~~any~~ *a* judge of the district court of the district to which ~~such~~ *the* new county is attached for judicial purposes."

Section 269. Section 7-2-2228, MCA, is amended to read:

"7-2-2228. Judicial district for new county. ~~Said~~ *A* new county, when created and organized ~~in pursuance of the provisions of~~ *pursuant to* this part, ~~shall~~ *must* be attached to ~~such~~ *the* judicial district ~~as may be~~ designated by the governor ~~of Montana,~~ in a proclamation ~~to be issued by him~~ designating ~~such~~ *the* new county as attached to the particular judicial district for judicial purposes."

Section 270. Section 7-2-2242, MCA, is amended to read:

"7-2-2242. Conduct of business by commission. (1) The commissioners provided for in 7-2-2241 shall, within 10 days after the notice of the appointment, meet at the county seat of the new county and organize by electing from their number a ~~chairman~~ *presiding officer* and also by electing a secretary, who ~~must~~ *may* not be a member of ~~said~~ *the* commission. Thereafter, ~~such~~ *the* commission may meet at ~~such~~ *a* place ~~or places as~~ *that* it may select. A majority

of ~~such~~ *the* commissioners ~~shall constitute~~ *constitutes* a quorum for the transaction of business.

(2) (a) ~~Said~~ *The* commission ~~shall have power to~~ *may* compel by citation or subpoena, signed by ~~their president~~ *its presiding officer* and secretary, the attendance of ~~such~~ persons and the production of ~~such~~ books and papers before ~~said~~ *the* commission ~~as~~ *that* may be required in the performance of the duties imposed by this part, except that the official records of any county or counties from which ~~said~~ *the* new county was formed ~~shall in no case~~ *may not* be taken away from the county seat of ~~said~~ *the original* county.

(b) It ~~shall be~~ *is* the duty of the sheriff of any county to execute in ~~his~~ *that* county all lawful orders and citations of the ~~said~~ commission, and for ~~any~~ *the* services ~~so~~ performed, the sheriff ~~shall be~~ *is* allowed the same fees ~~as~~ *that* are allowed ~~to him~~ for services in civil actions.

(c) All witnesses attending before ~~said~~ *the* commission ~~shall be~~ *are* entitled to the same compensation and mileage ~~as~~ *that* is allowed to witnesses in courts of record. ~~No~~ *A* witness ~~shall~~ *may not* be excused from attendance at the time and place mentioned in ~~said~~ *the* order or citation by reason of the failure of the officer making ~~such~~ *the* service to tender to ~~such~~ *the* witness ~~his~~ fees and mileage in advance."

Section 271. Section 7-2-2255, MCA, is amended to read:

"7-2-2255. Transfer of court files and actions. (1) The files of all actions in the office of the clerk of the district court of the old county, whether reduced to judgment or pending, for the recovery of the possession of, quieting the title to, or the enforcement of liens upon real estate lying wholly in the new county or any other actions affecting real estate lying wholly in the new county ~~shall~~ *must* be delivered by the clerk of the district court of the old county to the clerk of the district court of the new county to be kept and preserved ~~by him~~ as permanent files of ~~such~~ *the* new county~~, to the end~~ *so* that only the minutes and other entries in books kept by the clerk of the district court need *to* be transcribed.

(2) All actions pending in the district court of the old county or counties for the recovery of the possession of quieting title to or the enforcement of liens upon real estate lying wholly in the new county or any other actions affecting real estate lying wholly in the new county ~~shall~~ *must*, ~~forthwith~~ upon the delivery of the files ~~in said action~~ to the clerk of the district court of the new county as provided in subsection (1), be transferred to the district court in which the new county may be attached for judicial purposes and ~~thereafter shall be~~ *are* subject to the same laws as if ~~said~~ *the* action had been originally brought in the district court of the new county."

Section 272. Section 7-2-2405, MCA, is amended to read:

"7-2-2405. Certification of accuracy of transcription. (1) When the transcript of ~~such~~ *the* records provided for ~~herein shall be~~ *in this part are* completed and approved by the county commissioners of ~~such~~ *the* county, they ~~shall~~ *must* be delivered to the county clerk and recorder of the county from which ~~such~~ *the* records were taken. It ~~shall be~~ *is* the duty of ~~such~~ *the* county clerk and recorder to compare the records ~~so~~ transcribed with the original records as the ~~same~~ *records* appear on the record books of the ~~said~~ original county. The county clerk and recorder to whom the transcript ~~shall be~~ *is* delivered for comparison shall certify under oath that the transcribed records are full, complete, and exact copies of the original records.

(2) The county clerk and recorder ~~shall be~~ *is* entitled to $6 ~~per~~ *a* day for ~~his~~ *the* time actually spent in comparing the ~~said~~ records, to be paid out of the general fund of the county requiring ~~such~~ *the* comparison and certificate."

Section 273. Section 7-2-2411, MCA, is amended to read:

"7-2-2411. Transfer of court actions affecting real property. (1) In all counties created out of any other county wherever there has been an action or proceeding begun affecting any real property situated within ~~such~~ *the* new county, whether ~~such~~ *the* action has been prosecuted to judgment or not, upon a written motion being filed by any person or persons interested in ~~such~~ *the* real property ~~so~~ affected by ~~such~~ *the* action or proceeding requesting the transfer of the files and papers and records of ~~such~~ *the* action or proceeding to the office of the clerk of the district court of the new county ~~wherein such~~ *in which the* real property is situated, it ~~shall be~~ *is* the duty of the judge of the district court in which ~~said~~ *the* action or proceeding was originally begun to order that a transfer of all the files and papers of ~~such~~ *the* action or proceeding be made to the office of the clerk of the district court of the new county in which ~~such~~ *the* real property is situated. When ~~such~~ an order of transfer is made, it ~~shall be~~ *is* the duty of the clerk of the district court ~~wherein such~~ *in which the* action or proceeding was originally instituted to transmit all of the files and papers in ~~such~~ *the* action or proceeding, together with a certified copy of all minutes of the court relating to ~~such~~ *the* action or proceeding, to the clerk of ~~such~~ *the* new county in which the real property, the subject matter of ~~such~~ *the* action or proceeding, is situated.

(2) ~~Said~~ *The* clerk of the district court of the new county in which ~~said~~ *the* property is situated shall, upon the receipt of ~~such~~ *the* files and papers and certified copies of the minutes of the court, file ~~said~~ *the* papers in ~~his~~ *the clerk's* office as transferred files from the original county and shall enter and transcribe upon ~~his~~ *the clerk's* records any final judgment or decree or order contained in ~~such~~ *the* files or papers or records ~~so~~ transferred.

(3) Upon the receipt and filing of the files and papers in any action or proceeding transferred to a new county in accordance with the provisions of this section, the district court of ~~such~~ *the* new county in which ~~such~~ *the* files and papers ~~shall~~ have been transferred ~~shall have~~ *has* the same jurisdiction with reference to ~~said~~ *the* real property for the enforcement of any decree, judgment, or order that may have been entered ~~therein~~ or for ~~such~~ other proceedings ~~as~~ *that* may be necessary in ~~such~~ *the* action or proceeding as the district court had in the county ~~wherein such~~ *in which the* action or proceeding was originally begun."

Section 274. Section 7-2-2412, MCA, is amended to read:

"7-2-2412. Fees for transfer of court records. (1) The clerk of the district court ~~wherein such~~ *in which an* action or proceeding was originally begun ~~shall be~~ *is* entitled to receive, for transferring ~~such~~ *the* files, ~~and~~ papers, and certified copies of the minutes and records entered in connection with ~~such~~ *the* action or proceeding, ~~no other~~ *only a* fee ~~than~~ *at* the rate of 20 cents per folio for copies of minutes ~~made by him~~ and 50 cents for *a* certificate fee.

(2) The clerk of the district court of the new county to which ~~such~~ files and papers may be transferred in accordance with the provisions of 7-2-2411 ~~shall~~ *is* not ~~be~~ entitled to any fees for the filing of ~~such~~ *the* transferred records, but for the filing of any papers that may be filed ~~thereafter~~ *after the transfer* in connection with ~~such~~ *an* action or proceeding or for the issuance of any writs or other papers, ~~such~~ *the* clerk ~~shall be~~ *is* entitled to charge the same fees as ~~now~~ provided by law."

Section 275. Section 7-2-2423, MCA, is amended to read:

"7-2-2423. Correction of jury lists for old counties. The clerk or clerks of the district court of the county or counties from which ~~such~~ *the* new county has been created shall, after the creation of ~~such~~ *the* new county, remove from the list of jurors and jury boxes of ~~his or their~~ *the clerk's* county or counties the names of all persons upon the list ~~which~~ *that* may have been filed with ~~him or them~~ *the clerk* by the jury commission who may appear to ~~him or them~~ *the clerk* to be residents of the new county and ~~so~~ certified by ~~him~~ *the clerk* as ~~aforesaid~~ *provided in 7-2-2422*."

Section 276. Section 7-2-2502, MCA, is amended to read:

"7-2-2502. Petition to change county name. (1) Petitions for change of names must be heard and determined by the district court of the county whose name is sought to be changed.

(2) A petition for the change of the name~~, designation, appellation, cognomen, or title~~ of any county in this state must be signed by a number of the legal voters who are taxpayers in ~~such~~ *the* county equal, at least, to 25% of the whole number of votes cast for the office of governor of Montana in ~~such~~ *the* county at the gubernatorial election ~~next~~ preceding the circulation of ~~such~~ *the* petition. The signatures, in each instance, must be the genuine personal signature of the voter attaching ~~his~~ *the voter's* name to the petition. The petition must specify the present name of the county, the name proposed, and the reason or reasons for ~~such~~ *the* change of name and must be entitled in and addressed to the appropriate district court."

Section 277. Section 7-2-2503, MCA, is amended to read:

"7-2-2503. Form of petition. (1) The ~~following shall be substantially the~~ form of petition for any change of name of a county*,* as provided in this part*, must be substantially as follows*:

In the district court of the .... judicial district of the state of Montana, in and for the county of .....

Petition for the change of the name of ..... County

To the honorable district court of the .... judicial district of the state of Montana, in and for the county of .....

We, the undersigned legal voters of the county of ...., state of Montana, respectfully petition the honorable district court ~~aforesaid~~ that the name of .... County, Montana, be changed to the name of .... County, Montana.

The reasons for the proposed change of name ~~as aforesaid~~ are as follows (here set out reasons):

We further petition this honorable court to appoint a time for the hearing of this petition and of ~~such~~ objections ~~thereto as~~ *to this petition that* may be filed before ~~such~~ *that* date.

Each voter whose signature is ~~hereby~~ affixed ~~hereby~~ certifies that ~~he~~ *the voter* has personally signed this petition and that the residence, post-office address, and voting precinct of ~~such~~ *the* signer are correctly written after ~~his~~ *the* signature ~~appearing hereon~~.

Name	Residence	P.O. Address	Voting Precinct
.....			

Numbered lines for names.

(2) ~~Every such~~ *Each* sheet for ~~petitioner's signature shall~~ *petitioners' signatures must* be attached to a full and correct copy of the petition, and ~~such~~ *the* petition may be filed with the clerk of the district court ~~aforesaid~~ in sections for convenience in handling."

Section 278. Section 7-2-2504, MCA, is amended to read:

"7-2-2504. Verification of petition signatures — county clerk's certification. (1) The county clerk of the county in which ~~said~~ *the* petition ~~shall~~ *provided for in 7-2-2503 must* be signed shall compare the signatures of the voters signing the ~~same~~ *petition* with their signatures on the registration books and blanks on file in ~~his~~ *the clerk's* office for the preceding general election. The county clerk ~~shall~~ *may* not retain ~~in his possession any such~~ *a* petition or any part ~~thereof~~ *of a petition* for a longer period than 2 days for the first 200 signatures ~~thereon~~ and 1 additional day for each 200 additional signatures or fraction ~~thereof~~ *of that number* on the sheets presented to ~~him~~ *the clerk*. At the expiration of ~~such~~ *that* time, ~~he~~ *the clerk* shall file the ~~same~~ *petition* with the clerk of the ~~aforesaid~~ district court, with ~~his~~ *the county clerk's* certificate attached ~~thereto~~ *to the petition* as provided in subsection (2).

(2) After comparing the signatures, the county clerk shall attach to the sheets of ~~said~~ *the* petition containing ~~such~~ *the* signatures~~, his~~ *a* certificate to the ~~aforesaid~~ district court, substantially as follows:

State of Montana, County of ....

To the honorable district court of the .... judicial district of the state of Montana, in and for the county of .....

I, ..., county clerk of the county of ...., ~~hereby~~ certify that I have compared the signatures on (number of sheets) of the petition for change of name attached ~~hereto~~ with the signatures of ~~said~~ voters as they appear on the registration books and blanks in my office~~; and~~. I believe that the signatures of (names of signers), numbering (number of genuine signatures), are genuine. I further certify that the number of genuine signatures ~~hereto~~ attached equals at least 25% of the whole number of votes cast for the office of governor of Montana in ~~said~~ *the* county at the gubernatorial election ~~next~~ preceding the circulation of this petition.

...., County Clerk

(Seal) By ....

Deputy ....

(3) The forms ~~herein given~~ *in this section* are not mandatory, and if substantially followed in any petition, it ~~shall be~~ *is* sufficient, disregarding clerical and merely technical errors."

Section 279. Section 7-2-2603, MCA, is amended to read:

"7-2-2603. Withdrawal of name from petition. At any time on or before the date fixed for the hearing, any person having signed the original petition for the removal of the county seat may file a statement in writing with the county clerk that ~~he~~ *the person* desires to have ~~his~~ *the person's* name withdrawn from ~~such~~ *the* petition, provided that not more than one withdrawal ~~shall~~ *may* be permitted by the same person."

Section 280. Section 7-2-2702, MCA, is amended to read:

"7-2-2702. Petition for abandonment of county. (1) A petition may be filed with the county clerk of a county asking that the question of abandoning

and abolishing the organization and corporate existence of the county and attaching its territory to and making the ~~same~~ *territory* a part of some adjoining county be submitted to the qualified electors of the county at an election. The petition ~~shall~~ *must* state the name of the adjoining county to which the territory of the county to be abandoned and abolished ~~shall~~ *will* be attached and made a part.

(2) The petition ~~shall~~ *must* be signed by not less than 35% of the qualified electors of the county whose names appear upon the registration records of ~~such~~ *the* county, ~~shall~~ *must* contain the post-office address and voting precinct of each individual signing it, and ~~shall~~ *must* state the name and address of three individuals to whom notice of the insufficiency of the petition ~~shall~~ *must* be sent ~~in the event that~~ *if* the petition does not have the required number of signatures of registered electors ~~signed thereto~~. ~~No~~ *A* person, after signing ~~any such~~ *the* petition, ~~shall~~ *may not* be allowed or permitted to withdraw ~~his~~ *the person's* signature or name ~~therefrom~~ *from the petition*."

Section 281. Section 7-2-2703, MCA, is amended to read:

"7-2-2703. Processing of petition — certification to county commissioners. (1) It ~~shall be~~ *is* the duty of the election administrator, within 30 days after the filing of the petition, to examine it and to ascertain and determine from the registration records of the county whether the petition is signed by the required number of registered electors. The election administrator may be authorized by the board of county commissioners to employ additional help in ~~his~~ *the administrator's* office to assist ~~him~~ in the work of examining the petition, and the board shall provide for their compensation.

(2) When the examination is completed, the election administrator shall ~~forthwith~~ attach to the petition ~~his~~ *the administrator's* certificate, properly dated and signed, showing the result of ~~his~~ *the* examination. If the certificate shows that the petition is signed by the required number of registered electors, the election administrator shall ~~immediately~~ present the petition to the board ~~if the board is then in session; otherwise,~~ at its first regular meeting after the date of the certificate."

Section 282. Section 7-2-2705, MCA, is amended to read:

"7-2-2705. Petition to amend proposed consolidation. (1) At any time prior to 5 days before the date fixed for consideration and final action on ~~such~~ *the* petition, 50% of the registered electors residing within a particular part or portion of ~~such~~ *the* county may file with the county clerk of ~~such~~ *the* county a petition in writing, signed by them, ~~praying~~ *asking* that the part or portion of ~~such~~ *the* county within which ~~such~~ *the* petitioners reside ~~shall~~ not be attached to the county designated in the petition for abandonment but ~~shall~~ be attached to some other adjoining county. ~~No~~ *A* person, after signing ~~any such~~ *the* petition, ~~shall~~ *may not* be allowed or permitted to withdraw ~~his~~ *the person's* signature or name ~~therefrom~~ *from the petition*.

(2) The petition authorized by subsection (1) ~~shall~~ *must* definitely, particularly, and accurately describe the boundaries of ~~such~~ *the* part or portion of ~~said~~ *the* county ~~which said~~ *that the* petitioners desire to be attached to ~~such~~ *the* other adjoining county and ~~shall~~ *must* specify and name ~~such~~ *the* other adjoining county to which ~~such~~ *the* part or portion is to be attached if ~~said~~ *the* county is abandoned and abolished.

(3) Separate and independent petitions may be filed by registered electors residing within the boundaries of separate and distinct and different parts or

portions of ~~such~~ *the* county, ~~praying~~ *asking* that, if ~~said~~ *the* county is abandoned, the territory embraced within the boundaries described ~~therein~~ *in the petition* ~~may~~ be attached to and become parts of the same or different adjoining counties other than the county named and designated in the petition for abandonment."

Section 283. Section 7-2-2706, MCA, is amended to read:

"7-2-2706. Processing of petition to amend proposed consolidation — certification to county commissioners. Whenever any petition is filed under 7-2-2705, the election administrator shall immediately examine the ~~same~~ *petition* and determine from the registration records of the county whether the petition has been signed by the required number of registered electors and shall attach ~~thereto his~~ *to the petition the administrator's* certificate showing the total number of registered electors residing within the boundaries described in the petition and the number ~~thereof~~ *of registered electors* whose names appear on ~~said~~ *the* petition and shall deliver the petition, with the certificate attached, to the board of county commissioners when the board meets to consider and take final action on the petition for abandonment."

Section 284. Section 7-2-2712, MCA, is amended to read:

"7-2-2712. Canvass of returns — proclamation of results. (1) The board of county commissioners of each county, acting as a canvassing board, ~~must~~ *shall*, within 10 days after the ~~holding of the~~ election, canvass the returns of the election. Within 5 days ~~thereafter~~ *after the canvass*, the election administrator of each county ~~must~~ *shall* make and enter in the records of the board a statement of the vote in the county and transmit to the secretary of state, by ~~registered or~~ certified mail, an abstract ~~thereof~~ *of the vote*, which ~~shall~~ *must* be marked "election returns".

(2) Within 10 days after receiving the abstracts from all counties in which the election was held and on notice from the secretary of state, the board of state canvassers shall meet and canvass, compute, and determine the vote. The secretary of state, as secretary of the board, ~~must~~ *shall* make and file in ~~his~~ *the secretary of state's* office a statement of ~~it~~ *the canvass* and transmit a copy ~~thereof~~ *of the canvass* to the governor.

(3) Upon receipt of the copy, the governor shall issue a proclamation declaring the result of the election and shall file a copy of the proclamation in the office of the secretary of state and transmit a copy of the proclamation to the county clerk of each of the counties in which ~~such~~ *the* election was held. Each county clerk shall file the ~~same~~ *proclamation* in ~~his~~ *the clerk's* office and present the ~~same~~ *proclamation* to the board of county commissioners of ~~his~~ *that* county ~~if the board is then in session; otherwise,~~ at the first meeting of the board after the copy has been received by the clerk."

Section 285. Section 7-2-2750, MCA, is amended to read:

"7-2-2750. Procedure to collect and transmit taxes when several counties involved. (1) Whenever any levy is made under the provisions of 7-2-2745 through 7-2-2749, the county clerk of the county in which the board of county commissioners makes ~~such~~ *the* levy shall immediately certify ~~such~~ *the* levy to the county clerk of each other county to which any part of the territory of the abandoned county has been attached.

(2) (a) The county clerk of each ~~such~~ other county shall compute and extend the taxes against the property within the portion of the abandoned county ~~which~~ *that* has been attached to ~~his~~ *the clerk's* county, and the treasurer of ~~such~~ *that*

county shall collect the ~~same~~ *taxes* at the same time and in the same manner that other taxes are collected by ~~said~~ *the* county treasurer.

(b) Each ~~such~~ *county* treasurer shall, at least twice each year, once during the second week in December and once during the second week in June, transmit the amount of all ~~such~~ taxes paid to and collected by ~~him and then in his hands as~~ *the* county treasurer to the treasurer of the county in which the board made ~~such~~ *the* tax levy."

Section 286. Section 7-2-2756, MCA, is amended to read:

"7-2-2756. Sale of acquired real property. (1) ~~No real~~ *Real* estate may *not* be sold by the board of county commissioners unless the property has been appraised within 1 year immediately prior to the date of sale by three taxpayers who reside within the territory of the abandoned and abolished county and who were appointed by the judge of the district court to which the county is attached, on petition of the board of ~~such~~ *that* county. ~~Every~~ *Each* sale of real estate ~~shall~~ *must* be made at public sale, and notice ~~shall~~ *must* be published as provided in 7-1-2121. ~~No such~~ *The* real estate ~~shall~~ *may not* be sold for a price less than 90% of the appraised value ~~thereof~~.

(2) The full purchase price of any real estate ~~so~~ sold ~~shall~~ *may* not be required to be made in one payment~~;~~. ~~but the~~ *The* purchaser ~~thereof~~ may pay the ~~same~~ *price* in four installments, the first of which ~~shall~~ *must* be not less than 25% of the purchase price, to be paid at the time of purchase, with the remainder to be paid in three equal annual installments with interest ~~thereon~~ at not less than 5% ~~per annum~~ *a year*. Whenever the purchase price of any real estate is to be paid in installments, the board shall enter into a contract with the purchaser ~~thereof,~~ and ~~such~~ *the* contract ~~shall~~ *must* be recorded in the office of the county clerk. When payment in full has been made for real estate, the ~~chairman~~ *presiding officer* of the board shall execute and deliver the proper bill of sale or deed to the purchaser or ~~his~~ *the purchaser's* successor in interest.

(3) All real estate sold, with any improvements ~~thereon~~ *on the real estate*, ~~shall be~~ *is* subject to assessment and taxation annually to the purchaser or ~~his~~ *the purchaser's* successor in interest at a value equal to the amount paid on the purchase price ~~thereof~~ until the purchase price is fully paid, when ~~such~~ *the* real estate ~~shall~~ *must* be assessed at its full cash value. Any ~~and all~~ improvements placed on any ~~such~~ real estate after its purchase ~~shall be~~ *are* subject to assessment and taxation at the full cash value ~~thereof~~ *of the improvements*."

Section 287. Section 7-2-2757, MCA, is amended to read:

"7-2-2757. Sale of acquired personal property. (1) ~~No personal~~ *Personal* property having a value in excess of $100 may *not* be sold unless it has been appraised within 1 year immediately prior to the date of sale by three taxpayers who reside within the territory of the abandoned and abolished county and who were appointed by the judge of the district court to which the county succeeding to the ownership of the property is attached, on petition of the board of county commissioners ~~thereof~~. ~~No~~ *A* sale of any personal property ~~may~~ *must* be made ~~except~~ at public sale after notice ~~or~~ *and* for a price *not* less than 90% of the appraised value.

(2) Whenever the purchase price of any real estate is to be paid in installments, the board shall enter into a contract with the purchaser ~~thereof,~~ and ~~such~~ *the* contract ~~shall~~ *must* be recorded in the office of the county clerk. When payment in full has been made for any personal property, the ~~chairman~~

presiding officer of the board shall execute and deliver the proper bill of sale or deed to the purchaser or ~~his~~ *the purchaser's* successor in interest."

Section 288. Section 7-2-4107, MCA, is amended to read:

"7-2-4107. Officers elected at first election. (1) At ~~such~~ *the* election *provided for in 7-2-4106,* there must be elected:

(a) in a city of the first class, a mayor, a city judge, a city attorney, a city treasurer, a city marshal, and two ~~aldermen~~ *city council members* from each ward into which the city ~~may be~~ *is* divided;

(b) in a city of the second class, a mayor, a city judge, a city treasurer, a city marshal, and two ~~aldermen~~ *city council members* from each ward;

(c) in a town, a mayor and two ~~aldermen~~ *city council members* from each ward.

(2) Those elected hold office until the first Monday of January after the first annual election and until their successors are elected and qualified. The persons ~~so~~ elected ~~must~~ *shall* qualify in the manner prescribed by law for county officers."

Section 289. Section 7-2-4807, MCA, is amended to read:

"7-2-4807. Hearing on question of exclusion — resolution of exclusion. (1) The clerk shall, at the next regular meeting of the city or town council after expiration of the 20 days, ~~lay before the same~~ *provide the council with* all *written* communications ~~in writing so~~ received by ~~him~~ *the clerk* for its consideration~~,~~. ~~and if~~ *If* after considering the ~~same~~ *communications*~~,~~ ~~such~~ *the* council ~~shall duly and regularly pass and adopt~~ *adopts* a resolution to that effect, the boundaries of ~~such~~ *the* city or town ~~shall~~ *must* be altered ~~so as~~ to exclude the territory described in ~~said~~ *the* petition. ~~Said~~ *The* resolution ~~shall~~ *must* also describe the streets, avenues, alleys, and public places in ~~said~~ *the* excluded territory ~~which~~ *that* are to be vacated and abandoned.

(2) ~~Said~~ *The* resolution ~~shall become~~ *becomes* effective 30 days after its passage and approval, and ~~thereafter~~ the boundary of ~~said~~ *the* city or town ~~shall be~~ *is* as set forth in ~~said~~ *the* resolution.

(3) ~~Such~~ *The* resolution ~~shall~~ *may* not be finally adopted by ~~such~~ *the* council after written disapproval by a majority of the owners in value of the territory proposed to be excluded or after written disapproval or protest by a majority of the owners in value of property within the corporate limits of ~~said~~ *the* city or town immediately adjacent and contiguous to the territory sought to be excluded."

Section 290. Section 7-2-4913, MCA, is amended to read:

"7-2-4913. Release of public property to county commissioners. Except as provided in 7-2-4914, upon the disincorporation of a city or town, ~~every~~ *each* public officer of the city shall immediately turn over all public property of every nature and description in ~~his~~ *the officer's* possession to the board of county commissioners of the county in which the city or town is situated."

Section 291. Section 7-3-102, MCA, is amended to read:

"7-3-102. Adoption of alternative form. Each local government in the state shall adopt one of the alternative forms of government provided for in parts 1 through 7, including one of each suboption authorized:

(1) the commission-executive form (which may also be called the council-executive, the council-mayor, or the commission-mayor form);

(2) the commission-manager form (which may also be called the council-manager form);

(3) the commission form;

(4) the ~~commission-chairman~~ *commission-presiding officer* form;

(5) the town meeting form; or

(6) the charter form."

Section 292. Section 7-3-151, MCA, is amended to read:

"7-3-151. Treatment of suboptions for alternative forms. (1) ~~No~~ *A* petition recommendation may *not* involve more than three separate suboptions, and ~~no~~ *a* suboption may *not* contain more than two alternatives. If a suboption is submitted to the voters, only the ballot alternatives within that suboption receiving the highest number of affirmative votes are considered approved and included in the alternative form of government. If the alternative form of government fails, a suboption is of no effect.

(2) A proposed plan ~~shall~~ *must* be submitted to the voters as a single question, except that the suboptions within the alternative plan of local government authorized in Title 7, chapter 3, parts 1 through 6, and the suboptions authorized in a charter may be submitted to the electors as separate questions. The question of adopting a suboption ~~shall~~ *must* be submitted to the electors in substantially the following form:

Vote for one:

A legal officer (who may be called the "county attorney"):

☐ ~~Shall~~ *Must* be elected for a term of 4 years.

☐ ~~Shall~~ *Must* be appointed for a term of 4 years by the ~~chairman~~ *presiding officer* of the local governing body."

Section 293. Section 7-3-179, MCA, is amended to read:

"7-3-179. Organization of commission. (1) Not later than 10 days after all members of the study commission have been elected or appointed, the study commission shall meet and organize at a time set by the ~~chairman~~ *presiding officer* of the governing body of the local government ~~which~~ *that* the study commission is to examine.

(2) At the first meeting of the study commission, the study commission may elect a temporary ~~chairman~~ *presiding officer*, who will serve until a permanent ~~chairman~~ *presiding officer* is selected."

Section 294. Section 7-3-183, MCA, is amended to read:

"7-3-183. Commission powers. (1) A study commission may employ and fix the compensation and duties of necessary staff. State, municipal, and county officers and employees, at the request of the study commission and with the consent of the employing agency, may be granted leave with or without pay from their agency to serve as consultants to the study commission. If leave with pay is granted, they may receive no other compensation from the study commission except mileage and per diem.

(2) A study commission may contract and cooperate with other agencies, public or private, ~~as~~ *that* it considers necessary for assistance in carrying out the purposes for which the commission was established. Upon request of the

~~chairman~~ *presiding officer* of the study commission, state agencies, counties, and other local governments and the officers and employees ~~thereof~~ *of those entities* shall furnish or make available to the commission ~~such~~ information ~~as~~ *that* may be necessary for carrying out the commission's function.

(3) A study commission may:

(a) establish advisory boards and committees, including on them persons who are not members of the study commission;

(b) retain consultants; and

(c) do any other act consistent with and reasonably required to perform its function."

Section 295. Section 7-3-193, MCA, is amended to read:

"7-3-193. Application of other sections. (1) Except as provided in subsection (2), 7-3-122 and 7-3-152 through 7-3-161 apply to the adoption of an alternative plan of government upon recommendation by a study commission.

(2) (a) The ~~chairman~~ *presiding officer* of the study commission and not the ~~chairman~~ *presiding officer* of the governing body shall certify documents under 7-3-153.

(b) The study commission and not the governing body shall prepare an advisory plan for orderly transition to a new plan of local government under 7-3-157.

(c) A study commission plan may provide for existing elected officers under 7-3-158(3)."

Section 296. Section 7-3-203, MCA, is amended to read:

"7-3-203. Duties of executive. The executive shall:

(1) enforce laws, ordinances, and resolutions;

(2) perform duties required ~~of him~~ by law, ordinance, or resolution;

(3) administer affairs of the local government;

(4) carry out policies established by the commission;

(5) recommend measures to the commission;

(6) report to the commission on the affairs and financial condition of the local government;

(7) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(8) report to the commission as the commission may require;

(9) attend commission meetings and may take part in discussions;

(10) execute the budget adopted by the commission; *and*

(11) appoint, with the consent of the commission, all members of boards~~:~~*,* except the executive may appoint without the consent of the commission temporary advisory committees established by the executive."

Section 297. Section 7-3-212, MCA, is amended to read:

"7-3-212. Administrative assistants. The executive:

(1) shall appoint one or more administrative assistants to assist ~~him~~ in the supervision and operation of the local government, and ~~such~~ *the* administrative assistants ~~shall be~~ *are* answerable solely to the executive; or

(2) may appoint one or more administrative assistants to assist ~~him~~ in the supervision and operation of the local government, and ~~such~~ *the* administrative assistants ~~shall be~~ *are* answerable solely to the executive."

Section 298. Section 7-3-220, MCA, is amended to read:

"7-3-220. ~~Chairman~~ *Presiding officer* of commission. The commission ~~shall~~ *must* have a ~~chairman~~ *presiding officer* who ~~shall~~ *must* be:

(1) elected by the members of the commission from their own number for a term established by ordinance; or

(2) selected as provided by ordinance."

Section 299. Section 7-3-221, MCA, is amended to read:

"7-3-221. Presiding officer of commission. The presiding officer of the commission ~~shall be~~:

(1) ~~the chairman of the commission, who~~ may vote as other members of the commission;

(2) *is* the executive, who may vote as the commissioners;

(3) *is* the executive, who shall decide all tie votes of the commission but ~~shall~~ *may not* have ~~no other~~ *another* vote (the ~~chairman~~ *presiding officer* of the commission shall preside if the executive is absent); or

(4) *is* the executive~~,~~ but ~~he~~ may not vote."

Section 300. Section 7-3-301, MCA, is amended to read:

"7-3-301. Commission-manager form. The commission-manager form*,* ~~(~~which may be called the council-manager form~~)~~*,* consists of an elected commission*,* ~~(~~which may be called the council~~)~~*,* and a manager appointed by the commission, who ~~shall be~~ *is* the chief administrative officer of the local government. The manager ~~shall be~~ *is* responsible to the commission for the administration of all local government affairs placed in ~~his~~ *the manager's* charge by law, ordinance, or resolution."

Section 301. Section 7-3-304, MCA, is amended to read:

"7-3-304. Duties of manager. The manager shall:

(1) enforce laws, ordinances, and resolutions;

(2) perform the duties required ~~of him~~ by law, ordinance, or resolution;

(3) administer the affairs of the local government;

(4) direct, supervise, and administer all departments, agencies, and offices of the local government unit except as otherwise provided by law or ordinance;

(5) carry out policies established by the commission;

(6) prepare the commission agenda;

(7) recommend measures to the commission;

(8) report to the commission on the affairs and financial condition of the local government;

(9) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(10) report to the commission as the commission may require;

(11) attend commission meetings and may take part in the discussion~~,~~ but ~~he~~ may not vote;

(12) prepare and present the budget to the commission for its approval and execute the budget adopted by the commission;

(13) appoint, suspend, and remove all employees of the local government except as otherwise provided by law or ordinance;

(14) appoint members of temporary advisory committees established by the manager."

Section 302. Section 7-3-305, MCA, is amended to read:

"7-3-305. Employees of commission-manager government. (1) Employees appointed by the manager and ~~his~~ *the manager's* subordinates ~~shall~~ *must* be administratively responsible to the manager.

(2) Neither the commission nor any of its members may dictate the appointment or removal of any employee whom the manager or any of ~~his~~ *the manager's* subordinates are empowered to appoint.

(3) Except for the purpose of inquiry or investigation under this title, the commission or its members shall deal with the local government employees who are subject to the direction and supervision of the manager solely through the manager, and neither the commission nor its members may give orders to ~~any such~~ *the* employee, either publicly or privately."

Section 303. Section 7-3-312, MCA, is amended to read:

"7-3-312. Appointment to boards. All members of boards, other than temporary advisory committees established by the manager, ~~shall~~ *must* be appointed by:

(1) the ~~chairman~~ *presiding officer* with the consent of the commission; ~~or~~

(2) the manager with the consent of the commission; or

(3) the commission."

Section 304. Section 7-3-315, MCA, is amended to read:

"7-3-315. ~~Chairman~~ *Presiding officer* of commission. The ~~chairman~~ *presiding officer* of the commission ~~shall~~ *must* be:

(1) elected by the members of the commission from their own number for a term established by ordinance;

(2) elected by the qualified electors for a term of office; or

(3) selected as provided by ordinance."

Section 305. Section 7-3-403, MCA, is amended to read:

"7-3-403. Role of ~~chairman~~ *presiding officer* of commission. The ~~chairman~~ *presiding officer* of the commission~~, who~~ may be referred to as the mayor~~, shall be the presiding officer of the commission~~. All members of boards and committees ~~shall~~ *must* be appointed by the ~~chairman~~ *presiding officer* with the consent of the commission. The ~~chairman shall~~ *presiding officer must* be recognized as the head of the local government unit and may vote as other members of the commission."

Section 306. Section 7-3-414, MCA, is amended to read:

"7-3-414. ~~Chairman~~ *Presiding officer* of commission. The ~~chairman~~ *presiding officer* of the commission ~~shall~~ *must* be:

(1) elected by the members of the commission from their own number for a term established by ordinance;

(2) selected as provided by ordinance; or

(3) elected directly by the voters for a term established by ordinance."

Section 307. Section 7-3-432, MCA, is amended to read:

"7-3-432. Legal officer. A legal officer, ~~(~~who may be called the county attorney~~)~~:

(1) ~~shall~~ *may* be elected;

(2) ~~shall~~ *may* be appointed by the local government commission;

(3) ~~shall~~ *may* be appointed by the ~~chairman~~ *presiding officer* of the local government commission;

(4) ~~shall~~ *may* be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) ~~shall~~ *may* not be included in this form as a separate office."

Section 308. Section 7-3-433, MCA, is amended to read:

"7-3-433. Law enforcement officer. A law enforcement officer, ~~(~~who may be called the sheriff~~)~~:

(1) ~~shall~~ *may* be elected;

(2) ~~shall~~ *may* be appointed by the local government commission;

(3) ~~shall~~ *may* be appointed by the ~~chairman~~ *presiding officer* of the local government commission;

(4) ~~shall~~ *may* be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) ~~shall~~ *may* not be included in this form as a separate office."

Section 309. Section 7-3-434, MCA, is amended to read:

"7-3-434. Clerk and recorder. A clerk and recorder:

(1) ~~shall~~ *may* be elected;

(2) ~~shall~~ *may* be appointed by the local government commission;

(3) ~~shall~~ *may* be appointed by the ~~chairman~~ *presiding officer* of the local government commission;

(4) ~~shall~~ *may* be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) ~~shall~~ *may* not be included in this form as a separate office."

Section 310. Section 7-3-435, MCA, is amended to read:

"7-3-435. Clerk of district court. A clerk of district court:

(1) ~~shall~~ *may* be elected;

(2) ~~shall~~ *may* be appointed by the local government commission;

(3) ~~shall~~ *may* be appointed by the ~~chairman~~ *presiding officer* of the local government commission;

(4) ~~shall~~ *may* be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) ~~shall~~ *may* not be included in this form as a separate office."

Section 311. Section 7-3-436, MCA, is amended to read:

"7-3-436. Treasurer. A treasurer:

(1) ~~shall~~ *may* be elected;

(2) ~~shall~~ *may* be appointed by the local government commission;

(3) ~~shall~~ *may* be appointed by the ~~chairman~~ *presiding officer* of the local government commission;

(4) ~~shall~~ *may* be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) ~~shall~~ *may* not be included in this form as a separate office."

Section 312. Section 7-3-437, MCA, is amended to read:

"7-3-437. Surveyor. A surveyor:

(1) ~~shall~~ *may* be elected;

(2) ~~shall~~ *may* be appointed by the local government commission;

(3) ~~shall~~ *may* be appointed by the ~~chairman~~ *presiding officer* of the local government commission;

(4) ~~shall~~ *may* be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) ~~shall~~ *may* not be included in this form as a separate office."

Section 313. Section 7-3-438, MCA, is amended to read:

"7-3-438. Superintendent of schools. A superintendent of schools:

(1) ~~shall~~ *may* be elected;

(2) ~~shall~~ *may* be appointed by the local government commission;

(3) ~~shall~~ *may* be appointed by the ~~chairman~~ *presiding officer* of the local government commission;

(4) ~~shall~~ *may* be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) ~~shall~~ *may* not be included in this form as a separate office."

Section 314. Section 7-3-439, MCA, is amended to read:

"7-3-439. Assessor. An assessor:

(1) ~~shall~~ *may* be elected;

(2) ~~shall~~ *may* be appointed by the local government commission;

(3) ~~shall~~ *may* be appointed by the ~~chairman~~ *presiding officer* of the local government commission;

(4) ~~shall~~ *may* be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) ~~shall~~ *may* not be included in this form as a separate office."

Section 315. Section 7-3-440, MCA, is amended to read:

"7-3-440. Coroner. A coroner:

(1) ~~shall~~ *may* be elected;

(2) ~~shall~~ *may* be appointed by the local government commission;

(3) ~~shall~~ *may* be appointed by the ~~chairman~~ *presiding officer* of the local government commission;

(4) ~~shall~~ *may* be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) ~~shall~~ *may* not be included in this form as a separate office."

Section 316. Section 7-3-441, MCA, is amended to read:

"7-3-441. Public administrator. A public administrator:

(1) ~~shall~~ *may* be elected;

(2) ~~shall~~ *may* be appointed by the local government commission;

(3) ~~shall~~ *may* be appointed by the ~~chairman~~ *presiding officer* of the local government commission;

(4) ~~shall~~ *may* be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) ~~shall~~ *may* not be included in this form as a separate office."

Section 317. Section 7-3-442, MCA, is amended to read:

"7-3-442. Auditor. An auditor:

(1) ~~shall~~ *may* be elected;

(2) ~~shall~~ *may* be appointed by the local government commission;

(3) ~~shall~~ *may* be appointed by the ~~chairman~~ *presiding officer* of the local government commission;

(4) ~~shall~~ *may* be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) ~~shall~~ *may* not be included in this form as a separate office."

Section 318. Section 7-3-501, MCA, is amended to read:

"7-3-501. ~~Commission-chairman~~ *Commission-presiding officer* form. The ~~commission-chairman~~ *commission-presiding officer* form consists of an elected commission, ~~(~~which may also be referred to as the council~~)~~, and a commission ~~chairman~~ *presiding officer,* ~~(~~who may also be referred to as mayor or as president~~)~~, elected by the members of the commission from their own number and serving at the pleasure of the commission."

Section 319. Section 7-3-503, MCA, is amended to read:

"7-3-503. Role and duties of ~~chairman~~ *presiding officer*. The commission ~~chairman shall~~ *presiding officer*:

(1) ~~be the presiding officer of the commission,~~ *must* be recognized as the head of the local government unit, *must* have the power to vote as other members of the commission, *and must* be the chief executive officer of the local government; ~~and~~

(2) *shall* enforce laws, ordinances, and resolutions;

(3) *shall* perform duties required ~~of him~~ by law, ordinance, or resolution;

(4) *shall* administer the affairs of the local government;

(5) *shall* direct, supervise, and administer all departments, agencies, and offices of the local government except as otherwise provided by law or ordinance;

(6) *shall* carry out policies established by the commission;

(7) *shall* prepare the commission agenda;

(8) *shall* recommend measures to the commission;

(9) *shall* report to the commission on the affairs and financial condition of the local government;

(10) *shall* execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(11) *shall* report to the commission as the commission may require;

(12) *shall* attend commission meetings and may take part in discussions;

(13) *shall* execute the budget adopted by the commission;

(14) *shall* appoint, with the consent of the commission, all members of boards and committees~~;~~. ~~except~~ *However,* the ~~chairman~~ *presiding officer* may appoint without the consent of the commission temporary advisory committees ~~established by the chairman;~~.

(15) *shall* appoint, with the consent of a majority of the commission, all department heads, and the ~~chairman~~ *presiding officer* may remove department heads and may appoint and remove all other employees;

(16) *shall* prepare the budget and present it to the commission for adoption; *and*

(17) *shall* exercise control and supervision over the administration of departments and boards."

Section 320. Section 7-3-514, MCA, is amended to read:

"7-3-514. Administrative assistants. The commission ~~chairman~~ *presiding officer*:

(1) shall appoint one or more administrative assistants to assist ~~him~~ in the supervision and operation of the local government, and ~~such~~ *the* administrative assistants ~~shall be~~ *are* answerable solely to the ~~chairman~~ *presiding officer*; or

(2) may appoint one or more administrative assistants to assist ~~him~~ in the supervision and operation of the local government, and ~~such~~ *the* administrative assistants ~~shall be~~ *are* answerable solely to the ~~chairman~~ *presiding officer*."

Section 321. Section 7-3-601, MCA, is amended to read:

"7-3-601. Town meeting form. (1) The town meeting form consists of an assembly of the qualified electors of a town, ~~(~~known as a ~~town meeting)~~ *"town meeting"*, an elected town ~~chairman~~ *presiding officer*, who ~~shall~~ *must* be a qualified elector, and an optional elected town meeting moderator.

(2) The town meeting form may be adopted only by incorporated cities of less than 2,000 persons and incorporated towns of less than 2,000 persons, as determined by the most recent decennial census as conducted by the United States bureau of the census unless a more recent enumeration of inhabitants ~~be~~ *is* made by the state, in which case ~~such~~ *that* enumeration ~~shall~~ *must* be used for the purposes of this part. ~~Any~~ *A* unit of local government ~~which~~ *that* adopts this form may retain it even though its population increases to more than 2,000.

(3) All legislative powers of the town ~~shall~~ vest in the town meeting. The town meeting may enact rules, resolutions, and ordinances."

Section 322. Section 7-3-603, MCA, is amended to read:

"7-3-603. Holding of town meeting. (1) Towns adopting this form shall convene an annual town meeting on the first Tuesday of March. Special town meetings may be called by the town ~~chairman~~ *presiding officer* or upon petition of 10% of the qualified electors of the town, but ~~in no case~~ *not* by less than 10 qualified electors.

(2) All qualified electors of the town may attend the town meeting, take part in the discussion, and vote on all matters coming before the town meeting. Others may attend but ~~shall~~ *may* not vote or take part in the discussion except by a majority vote of the town meeting.

(3) A quorum ~~shall consist~~ *consists* of at least 10% of the qualified electors of the town, but a higher quorum requirement may be established by a majority vote of the town meeting.

(4) The election of town officials ~~shall~~ *must* be nonpartisan and ~~shall~~ *must* be by a plurality of those qualified electors present and voting. All other voting in the town meeting ~~shall~~ *must* be by a simple majority of those qualified electors present and voting.

(5) Election of officials ~~shall~~ *must* be by secret ballot. Other voting ~~shall~~ *must* be by secret ballot upon the request of at least five members of the town meeting."

Section 323. Section 7-3-605, MCA, is amended to read:

"7-3-605. Agenda and conduct of initial town meeting. The first agenda of the first town meeting following the adoption of this form ~~shall~~ *must* be established by the local study commission. At that town meeting the ~~chairman~~ *presiding officer* of the local study commission shall preside over the election of the presiding officer of the town, after which the presiding officer of the town shall preside."

Section 324. Section 7-3-606, MCA, is amended to read:

"7-3-606. Selection, role, and duties of town ~~chairman~~ *presiding officer*. (1) The town meeting shall elect a town ~~chairman~~ *presiding officer* for a term of not less than 1 year or more than 2 years. An unexpired term of a town ~~chairman shall~~ *presiding officer must* be filled at the next annual or special town meeting.

(2) The town ~~chairman shall be~~ *presiding officer is* the chief executive officer of the town~~,~~ and ~~he~~ shall:

(a) enforce laws, ordinances, and resolutions;

(b) perform duties required ~~of him~~ by law, ordinance, or resolution;

(c) administer the affairs of the town;

(d) prepare the town meeting agenda;

(e) attend all annual and special town meetings;

(f) recommend measures to the town meeting;

(g) report to the town on the affairs and financial condition of the town;

(h) execute bonds, notes, contracts, and written obligations of the town, subject to the approval of the town;

(i) appoint, with the consent of the town meeting, members of all boards and appoint and remove all employees of the town;

(j) prepare the budget and present it to the town meeting for adoption;

(k) exercise control and supervision of the administration of all departments and boards; *and*

(l) carry out policies established by the town meeting.

(3) Compensation of the town ~~chairman shall~~ *presiding officer must* be established by ordinance but ~~shall~~ *may* not be reduced during the current term of the town ~~chairman~~ *presiding officer*."

Section 325. Section 7-3-607, MCA, is amended to read:

"7-3-607. Committees. Permanent committees to advise the town ~~chairman and/or~~ *presiding officer or* the town meeting may be established and dissolved by ordinance. The town ~~chairman~~ *presiding officer* may establish temporary committees to advise ~~him~~ *the presiding officer*."

Section 326. Section 7-3-612, MCA, is amended to read:

"7-3-612. Town meeting moderator. The town meeting shall:

(1) elect a town meeting moderator for a term of 1 year, who ~~shall be~~ *is* the presiding officer of all annual and special town meetings but who ~~shall~~ *does not* have ~~no~~ other governmental powers; or

(2) designate the town ~~chairman~~ *presiding officer* as presiding officer of all annual and special town meetings."

Section 327. Section 7-3-613, MCA, is amended to read:

"7-3-613. Administrative assistant. (1) The town ~~chairman~~ *presiding officer*:

(a) shall appoint an administrative assistant to assist ~~him~~ in the supervision and operation of the affairs of the town; or

(b) may appoint an administrative assistant to assist ~~him~~ in the supervision and operation of the affairs of the town.

(2) The administrative assistant ~~shall be~~ *is* answerable solely to the town ~~chairman~~ *presiding officer*, and the town ~~chairman~~ *presiding officer* may delegate powers to the administrative assistant ~~at his discretion~~."

Section 328. Section 7-3-705, MCA, is amended to read:

"7-3-705. Officials and personnel. (1) The charter ~~shall~~ *must* specify which official of the local government will be the chief administrative and executive officer, the method of ~~his~~ *the officer's* selection, ~~his~~ *the* term of office (except that it may be at the pleasure of the selecting authority if ~~such~~ *the* officer is not elected by popular vote), the grounds for ~~his~~ *the officer's* removal, and ~~his~~ *the officer's* powers and duties. ~~Notwithstanding the foregoing~~ *However*, the charter may allocate the chief executive and the chief administrative functions

among two or more officials specified as ~~above~~ *provided in this section,* or the charter may provide that chief executive and administrative functions of the local government will be performed by one or more members of the legislative body.

(2) A charter form of government ~~shall~~ *must* have ~~such~~ *the* officers, departments, boards, commissions, and agencies ~~as~~ *that* are established in the charter, by local ordinance, or required by state law."

Section 329. Section 7-3-1215, MCA, is amended to read:

"7-3-1215. Qualifications for commission. (1) Members of the commission must be qualified electors of the consolidated municipality and may not hold any other public office except that of notary public or member of the state militia.

(2) A member of the commission ceasing to possess any of the qualifications specified in this section shall immediately forfeit ~~his~~ *the member's* office."

Section 330. Section 7-3-1219, MCA, is amended to read:

"7-3-1219. Organization and officers of commission. (1) At the first meeting of the commission following the special election at which the members ~~thereof~~ *of the commission* are first elected and ~~thereafter~~ *after that time* at its meeting on the first Monday of January following each general election at which members of the commission are elected, the commission shall choose one of its members as president and another as ~~vice-president~~ *vice president*.

(2) The president shall preside at meetings of the commission and shall exercise the powers and perform the duties conferred and imposed by ~~this part or~~ part 13 *or this part* and the ordinances of the municipality. ~~He shall be recognized as~~ *The president is* the official head of the municipality for all ceremonial purposes, by the courts for serving civil processes, and by the governor for purposes of military law. In time of public danger or emergency, ~~he~~ *the president* shall, if authorized by *a* vote of the commission, take command of the police, maintain order, and enforce the law. If a vacancy occurs in the office of president or in case of ~~his~~ *the president's* absence or disability, the ~~vice-president~~ *vice president* shall act as president for the unexpired term or during the continuance of the absence or disability.

(3) The director of finance ~~shall be~~ *is* ex officio clerk of the commission and shall, either in person or by deputy, keep the records of the commission and perform ~~such~~ other duties ~~as~~ *that* may be required by ~~this part or~~ part 13 *or this part* or by the commission."

Section 331. Section 7-3-1220, MCA, is amended to read:

"7-3-1220. Conduct of commission business. (1) The commission shall determine its own rules and order of business and shall keep a journal of its proceedings. It ~~shall have power to~~ *may* compel the attendance of absent members, may punish its members for disorderly behavior, and, by *a* vote of not less than two-thirds of its members, may expel a member for disorderly conduct or the repeated violation of its rules~~;~~. ~~but no~~ *However, a* member ~~shall~~ *may not* be expelled unless notified of the charge against ~~him~~ *the member* and given an opportunity to be heard.

(2) A majority of the members elected to the commission ~~shall~~ constitute a quorum to do business, but a less number may adjourn from time to time and compel the attendance of absent members in ~~such~~ *the* manner and under ~~such~~ *the* penalties ~~as may be~~ prescribed by ordinance. The affirmative vote of a

majority of the members elected to the commission ~~shall be~~ *is* necessary to adopt any ordinance, resolution, order, or vote~~;~~. ~~except that~~ *However,* a vote to adjourn or regarding the attendance of absent members may be adopted by a majority of the members present."

Section 332. Section 7-3-1221, MCA, is amended to read:

"7-3-1221. Compensation of commission members. (1) The commission may by ordinance provide compensation for its members, but the total amount and manner of compensation may not exceed the maximum sum prescribed by law for ~~aldermen~~ *city council members* of cities of the first class.

(2) In addition to any compensation authorized by this section, each member of the commission ~~shall~~ *must* receive the same sum prescribed by law for county commissioners per mile for any distance in excess of 10 miles necessarily traveled in going from and returning to ~~his~~ *the member's* residence because of attendance ~~upon~~ *at* a regular or regularly called meeting of the commission or in travel in the county undertaken in performance of official duties."

Section 333. Section 7-3-1228, MCA, is amended to read:

"7-3-1228. Action on initiative petition. (1) If an initiative petition or amended petition ~~be~~ *is* found sufficient by the clerk, ~~he~~ *the clerk* shall ~~so~~ certify *it* and shall submit the ordinance ~~therein~~ set forth *in the petition* to the commission at its next meeting, and the commission shall ~~at once~~ read and refer it to an appropriate committee, which may be a committee of the whole.

(2) Provision ~~shall~~ *must* be made for public hearings upon the proposed ordinance before the committee to which it is referred. ~~Thereafter~~ *After the hearings*, the committee shall report the ordinance to the commission, with its recommendations ~~thereon~~, not later than 60 days after the date on which ~~such~~ *the* ordinance was submitted to the commission by the clerk.

(3) Upon receiving the ordinance from the committee, the commission shall ~~proceed at once to~~ consider it and shall take final action ~~thereon~~ *on the ordinance* within 30 days from the date of ~~such~~ *the* committee report."

Section 334. Section 7-3-1241, MCA, is amended to read:

"7-3-1241. Appointment and removal of manager of consolidated municipality. (1) The commission shall appoint a manager. ~~He shall~~ *The manager must* be chosen by the commission solely on the basis of ~~his~~ executive and administrative qualifications and ~~need~~ *is* not, when appointed, *required to* be a resident of the municipality. ~~No~~ *A* member of the commission ~~shall~~ *may not*, during the time for which elected, be chosen manager. In case of the absence or disability of the manager, the commission may designate some responsible person to perform the duties of the office. The manager ~~shall~~ *must* receive ~~such~~ *the* compensation ~~as may be~~ fixed by the commission.

(2) The manager ~~shall~~ *may* not be appointed for a definite term but ~~shall~~ *must* be removable at the pleasure of the commission. ~~In case~~ *If* the commission determines to remove the manager, ~~he shall, if he so demands~~ *upon request*, *the manager must* be given a written statement of the reason alleged for the proposed removal and the right to be heard ~~thereon~~ *on the proposed removal* at a public meeting of the commission prior to the date on which ~~his~~ *the* final removal ~~shall take~~ *takes* effect~~;~~. ~~but~~ *However,* pending and during ~~such~~ *the* hearing, the commission may suspend ~~him~~ *the manager* from office. The action of the commission in suspending or removing the manager ~~shall be~~ *is* final~~;~~. ~~it being~~ *It is* the intention of this section to vest all authority and fix all responsibility for any ~~such~~ suspension or removal in the commission."

Section 335. Section 7-3-1242, MCA, is amended to read:

"7-3-1242. Role of manager. (1) The manager ~~shall be~~ *is* the chief executive officer of the municipality.

(2) The manager ~~shall be~~ *is* responsible to the commission for the proper administration of the affairs of the municipality placed in ~~his~~ *the manager's* charge, and ~~to that end~~ *the manager* shall appoint all officers and employees in the administrative service of the municipality, except as otherwise provided in ~~this part or~~ part 13 *or this part*. ~~and except as he~~ *The manager* may authorize the head of a department or office responsible to ~~him~~ *the manager* to appoint subordinates in ~~such~~ *that* department or office."

Section 336. Section 7-3-1244, MCA, is amended to read:

"7-3-1244. Removal of appointees. (1) ~~Any~~ *An* officer or employee of the municipality appointed by the manager or upon ~~his~~ *the manager's* authorization may be laid off, suspended, or removed from office or employment either by the manager or the *appointing* officer ~~by whom appointed~~. Verbal or written notice of layoff, suspension, or removal given to an officer or employee or written notice left at or mailed to ~~his~~ *the officer's or employee's* usual place of residence ~~shall be~~ *is* sufficient to put ~~any such~~ *the* layoff, suspension, or removal into effect unless the person ~~so~~ notified ~~shall~~, within 5 days of ~~such~~ *the* notice, ~~demand~~ *demands* a written statement of reasons ~~therefor~~ *for the action* and the right to be heard ~~thereon~~ *on the action* before the manager. Upon ~~such~~ *the* demand, the officer making the layoff, suspension, or removal shall supply the person notified ~~thereof~~ with a written statement of the reasons ~~therefor~~ *for the action*, and the manager shall fix a time and place for the public hearing. Following the public hearing, the manager shall either confirm the layoff, suspension, or removal as specified in the notice, reinstate the person ~~so notified in the service~~, or make ~~such other~~ *another* disposition of the matter ~~as~~ *that* in ~~his~~ *the manager's* opinion the good of the service may require.

(2) The decision of the manager ~~in any such case shall be~~ *is* final, and there ~~shall be~~ *is* no appeal ~~therefrom~~ to any officer, body, or court ~~whatsoever~~. A copy of the written statement of reasons given for any layoff, suspension, or removal and a copy of any written reply ~~thereto~~ *to the statement* by the officer or employee involved, together with a copy of the decision of the manager, ~~shall~~ *must* be filed as a public record in the office of the clerk."

Section 337. Section 7-3-1245, MCA, is amended to read:

"7-3-1245. Relationship of commission and manager regarding appointments and administrative service. (1) Neither the commission nor any of its committees or members ~~shall~~ *may* direct or request the appointment of ~~any person to~~ or ~~his~~ removal from office or employment *of any person* by the manager or any of ~~his~~ *the manager's* subordinates or in any manner take part in the appointment or removal of officers and employees in the administrative service of the municipality. Except for the purpose of inquiry, the commission and its members shall deal with that portion of the administrative service for which the manager is responsible solely through the manager, and neither the commission nor any member ~~thereof shall~~ *of the commission may* give orders to any subordinate of the manager either publicly or privately.

(2) Any violation of the provisions of this section by a member of the commission ~~shall be~~ *is* a misdemeanor, conviction of which ~~shall~~ immediately ~~forfeit~~ *forfeits* the office of the member ~~so~~ convicted."

Section 338. Section 7-3-1246, MCA, is amended to read:

"7-3-1246. General duties of manager. ~~It shall be the duty of the~~ *The* manager ~~to~~ *shall* act as chief conservator of the peace within the municipality, ~~to~~ supervise the administration of the affairs of the municipality, ~~to~~ see that the ordinances of the municipality and the laws of the state are enforced, ~~to~~ make ~~such~~ recommendations to the commission concerning the affairs of the municipality ~~as may seem to him desirable~~, ~~to~~ keep the commission advised of the financial conditions and future needs of the municipality, ~~to~~ prepare and submit to the commission ~~such~~ reports ~~as~~ *that* may be required by that body, and ~~to~~ perform ~~such~~ other duties ~~as~~ *that* may be prescribed by ~~this part or~~ part 13 *or this part* or be required ~~of him~~ by ordinance or resolution of the commission."

Section 339. Section 7-3-1249, MCA, is amended to read:

"7-3-1249. Employees and employment list. (1) The number of assistants and other subordinates to be employed in or by each administrative department or office ~~shall~~ *must* be fixed by the commission, but the commission may authorize the manager to determine the number of ~~such~~ assistants and subordinates in and for a specified department or office, subject to the appropriations made ~~thereto~~ *for the department or office*.

(2) The director of finance shall maintain in ~~his~~ *the director's* office a list of all persons in the administrative service of the municipality, showing in connection with each name the position held, the date of appointment, the character of employment, and the rate of compensation. Each appointing officer shall promptly transmit to the director of finance ~~such~~ *the* information regarding ~~his~~ *the officer's* department or office as may be necessary to keep this list accurate in all respects at all times. The treasurer ~~shall~~ *may* not pay nor shall the director of finance issue ~~any~~ *a* warrant for the payment of any salary or compensation to ~~any~~ *a* person whose name does not appear upon ~~such~~ *the* list, nor shall payment be made at a rate other than that specified on ~~such~~ *the* list. Any sum paid contrary to the ~~foregoing~~ provisions of this section may be recovered from any officer paying or authorizing the payment ~~thereof~~ or from the surety on ~~his~~ *the officer's* official bond. If, through the failure of ~~any~~ *an* officer to give information to the director of finance as required in this section or through omission or error in ~~such~~ *the* information, payment is made to any person whose name should not be on ~~such~~ *the* list or payment is made in excess of the amount ~~which~~ *that* any person whose name is rightfully on the list should receive, then the amount of ~~any such~~ *the* payment or excess payment may be recovered from the officer by reason of whose failure, omission, or error the payment or excess payment was made or from the surety on ~~his~~ *the officer's* official bond."

Section 340. Section 7-3-1253, MCA, is amended to read:

"7-3-1253. Disposition of money received by officers in official capacity. ~~No~~ *A* person elected or appointed to ~~any~~ *an* office or position under the municipal government established by ~~this part and~~ part 13 ~~shall be~~ *and this part is not* entitled to ~~or~~ *and may not* receive for ~~his~~ *the person's* own use any fees, emoluments, commissions, or perquisites other than the salary or compensation fixed by ~~this part and~~ part 13 *and this part* or by the commission~~; and all such~~. *All* fees, emoluments, commissions, and perquisites ensuing out of the performance of official duty ~~shall~~ belong to the municipality and *must* be paid into the treasury ~~thereof~~ *of the municipality* at the times and in the manner provided by the general laws of the state."

Section 341. Section 7-3-1254, MCA, is amended to read:

"7-3-1254. Nonpartisan nature of government. (1) ~~No~~ *A* person holding an appointive office or position in the municipal government ~~shall~~ *may not* directly or indirectly solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political party or purpose ~~whatever~~. ~~No~~ *A* person ~~shall~~ *may not* orally or by letter solicit or be in any manner concerned in soliciting any assessment, subscription, or contribution for any political party or purpose from any person holding an appointive office or position in the municipal government. ~~No~~ *A* person ~~shall~~ *may not* use or promise to use ~~his~~ *the person's* influence or official authority to secure any appointment or prospective appointment to any position in the service of the municipality as a reward or return for personal or partisan political service. ~~No~~ *A* person ~~shall~~ *may not* take part in preparing any political assessment, subscription, or contribution with the intent that it should be sent or presented to or collected from any person in the service of the municipality~~,~~. ~~nor shall he~~ *A person may not* knowingly send or present, directly or indirectly, in person or otherwise, any political assessment, subscription, or contribution to or request its payment by any person in ~~such~~ *the* service *of the municipality*.

(2) ~~No~~ *A* person in the service of the municipality ~~shall~~ *may not* discharge, suspend, lay off, reduce in grade, or in any manner change the official rank or compensation of any person in ~~such~~ service or threaten to do so for withholding or neglecting to make any contribution of money or service or any valuable thing for any political service. ~~No~~ *A* person holding an appointive office or place in the municipal government ~~shall~~ *may not* act as an officer in a political organization or serve as a member of a committee of any ~~such~~ *political* organization or circulate or seek signatures for any petition provided for by primary or election laws.

(3) ~~Any~~ *A* person who, ~~by himself~~ *individually* or in cooperation with one or more persons, willfully or corruptly violates any of the provisions of subsections (1) and (2) shall be guilty of a misdemeanor and shall upon conviction ~~thereof~~ be punished by a fine of not less than $50 or more than $500*,* ~~or~~ by imprisonment for a term not exceeding 3 months*,* or ~~by~~ both ~~such fine and imprisonment~~, and if ~~he~~ *the person* is an officer or employee of the municipality, ~~he~~ *the person* shall immediately forfeit ~~his~~ *the* office or employment."

Section 342. Section 7-3-1255, MCA, is amended to read:

"7-3-1255. Commissioners not to hold or seek other office. ~~No~~ *A* person elected to the commission ~~shall~~ *may not*, during the term for which elected, be appointed to any office or position in the service in the municipality. If a member of the commission ~~shall become~~ *becomes* a candidate for any public office other than that of commissioner, ~~he~~ *the person* shall immediately forfeit ~~his place on the commission~~ *the office of commissioner*."

Section 343. Section 7-3-1257, MCA, is amended to read:

"7-3-1257. Control of conflict of interest. ~~No~~ *An* officer or employee of the municipality ~~shall~~ *may not* have a financial interest, direct or indirect, in any contract ~~therewith~~ *with the municipality* or be financially interested, directly or indirectly, in the sale to the municipality of any land, materials, supplies, or services except on behalf of the municipality as an officer or employee. Any willful violation of this section ~~shall constitute~~ *constitutes* malfeasance in office, and any officer or employee found guilty ~~thereof~~ shall ~~thereby~~ forfeit ~~his~~ *the* office or position. ~~Any~~ *A* violation of this section with the knowledge, actual or implied, of the person or corporation contracting with the

municipality ~~shall render~~ *renders* the contract involved voidable by the manager or the commission."

Section 344. Section 7-3-1259, MCA, is amended to read:

"7-3-1259. Oath of office. ~~Every~~ *Each* officer of the municipality shall, before entering upon the duties of ~~his~~ office, take and subscribe to the oath or affirmation required of officers by the constitution of the state of Montana, ~~which~~ *and the* oath or affirmation ~~shall~~ *must* be filed and kept in the office of the clerk."

Section 345. Section 7-3-1304, MCA, is amended to read:

"7-3-1304. Division of audit and accounts. There ~~shall be~~ *is* in the department of finance a division of audit and accounts, of which the director of finance ~~shall himself be~~ *is* the head. As head of ~~such~~ *the* office, ~~he shall be~~ *the director is* charged with keeping the books of financial account for all departments and offices of the municipality, and whenever practicable, ~~such~~ *the* books and accounts ~~shall~~ *must* be kept in the office of the division of audit and accounts. ~~Report shall~~ *A report must* be made daily to the division of audit and accounts by each department and office, showing the receipt *and disposition* of all money ~~and the disposition thereof~~."

Section 346. Section 7-3-1305, MCA, is amended to read:

"7-3-1305. Conduct of audits. (1) Upon the death, resignation, removal, or expiration of the term of ~~any~~ *an* officer of the municipality, the director of finance shall cause an audit and investigation of the accounts of ~~such~~ *the* officer to be made and shall report to the manager and the commission. Either the commission or the manager may at any time provide for an examination or audit of the accounts of any officer or department of the municipal government.

(2) In case of the death, resignation, or removal of the director of finance, the manager shall cause an audit to be made of ~~his~~ *the director's* accounts.

(3) If, as a result of ~~any such~~ *an* audit, an officer is found indebted to the municipality, the director of finance or other person making ~~such~~ *the* audit shall immediately give notice ~~thereof~~ to the commission, the manager, and the director of law, and the ~~latter~~ *director of law* shall ~~forthwith~~ proceed to collect ~~such~~ *the* indebtedness."

Section 347. Section 7-3-1307, MCA, is amended to read:

"7-3-1307. Division of purchases and supplies. There ~~shall be~~ *is* in the department of finance a division of purchases and supplies~~;~~. ~~at the~~ *The* head of ~~which there shall be~~ *the division is* a purchasing agent. The purchasing agent shall make all purchases for the municipality in the manner and with ~~such~~ *the* exceptions ~~as~~ *that* may be provided by ordinance and shall, under ~~such~~ regulations ~~as~~ *that* may be provided by ordinance, sell all property, real and personal, of the municipality not needed for public use or that may have become unsuitable for use. ~~He shall have~~ *The purchasing agent has* charge of ~~such~~ *the* storerooms and warehouses of the municipality ~~as~~ *that* the commission may by ordinance provide."

Section 348. Section 7-3-1314, MCA, is amended to read:

"7-3-1314. Payment and investigation of claims — use of warrants. (1) ~~No~~ *A* claim against the municipality ~~shall~~ *may not* be paid except by means of a warrant on the treasury issued by the director of finance. The director of finance ~~shall~~ *may not* issue ~~no~~ *a* warrant for the payment of a claim unless the claim is evidenced by a voucher approved by the head of the department or office

for which the indebtedness was incurred~~,~~. ~~and each such~~ *The* officer and ~~his~~ *the officer's* surety ~~shall be~~ *are* liable to the municipality for all loss or damage sustained by reason of ~~his~~ *the officer's* negligent or corrupt approval of ~~any~~ *a* claim.

(2) *(a)* The director of finance shall examine all payrolls, bills, and other claims and demands against the municipality and ~~shall~~ *may not* issue ~~no~~ *a* warrant for payment unless ~~he~~ *the director* finds that*:*

(i) the claim is in proper form, correctly computed, and ~~duly~~ approved;

(ii) ~~that it~~ *the claim* is legally due and payable; and

(iii) ~~that~~ an appropriation has been made ~~therefor~~ *for the claim* ~~which~~ *that* has not been exhausted.

(b) ~~He~~ *The director of finance* may investigate any claimant and for that purpose may summon ~~before him~~ any officer, agent, or employee of the municipality or any claimant or other person and examine ~~him~~ *the person* upon oath or affirmation ~~relative thereto~~ *concerning the claim*. If ~~he~~ *the director* finds a claim to be fraudulent, erroneous, or otherwise invalid or that the appropriation out of which ~~such~~ *the* claim is payable has been exhausted, ~~he shall~~ *the director may* not issue a warrant ~~therefor~~ *for the claim*. If the director of finance issues a warrant on the treasury authorizing payment of any claim in contravention of the provisions of this subsection *(2)*, ~~he~~ *the director* and ~~his~~ *the director's* sureties ~~shall be~~ *are* individually liable to the municipality for the amount of ~~such~~ *the* warrant if paid."

Section 349. Section 7-3-1315, MCA, is amended to read:

"7-3-1315. Certification of certain obligations by finance director. (1) ~~No~~ *A* contract, agreement, or other obligation, other than contracts pertaining to work or improvements to be paid for by special assessments, involving the expenditure of any funds ~~shall~~ *may not* be entered into nor ~~shall~~ *may* any order for ~~such~~ expenditures be valid unless the director of finance ~~shall~~ first ~~certify~~ *certifies* to the commission that the object or purpose for which ~~such~~ *the* expenditure is to be made and the amount ~~thereof~~ *of the expenditure* ~~is~~ *are* provided for by an appropriation in the annual budget or in a supplemental budget and that the ~~same~~ *appropriation* has not been expended. The certificate of the director of finance ~~shall~~ *must* be filed and made a matter of record in ~~his~~ *the director's* office, and the appropriation for ~~such~~ *that* purpose ~~shall thereafter~~ *must* be considered as having been set aside and expended ~~to~~ *in* the amount of ~~such~~ *the* contract, agreement, or obligation.

(2) All contracts, agreements, or other obligations entered into, all ordinances and resolutions passed, and all orders adopted contrary to the provisions of subsection (1) ~~shall be~~ *are* void, and ~~no~~ *a* person ~~whatever shall~~ *may not* have any claim or demand against the municipality ~~thereunder~~, nor ~~shall~~ *may* the commission or any officer of the municipality waive or qualify the limitations fixed by subsection (1) or ~~fasten upon~~ *incur for* the municipality any liability ~~whatever~~ in excess ~~thereof~~ *of the limitations*."

Section 350. Section 7-3-1317, MCA, is amended to read:

"7-3-1317. Deposit security. (1) Unless a bank designated as a depository ~~shall elect~~ *elects* to deposit securities with the treasurer as provided in subsection (2), it shall give good and sufficient bonds, with sureties to be approved by the commission, conditioned for the safekeeping and payment of the municipal funds deposited ~~therewith~~ *with the bank* and the interest ~~thereon~~ *on the deposit*. Any ~~such~~ bonds of a depository ~~shall~~ *must* be in the aggregate

equal to the amount designated by the commission as the maximum of municipal funds ~~which~~ *that* may at any time be kept by ~~such~~ *the* depository. All surety bonds given by a bank in accordance with the provisions of this subsection ~~shall~~ *must* continue in force so long as funds of the municipality deposited ~~therein shall be~~ *in the bank are* unpaid. ~~Nothing provided herein shall~~ *This section may not* impair the rights and remedies of the municipality on ~~such~~ *the* bonds under the laws of the state.

(2) In lieu of the surety bonds specified in subsection (1), ~~any~~ *a* bank designated as a depository of municipal funds may deposit with the treasurer bonds of the class and kind in which, by the provisions of 7-3-1322, the sinking fund of the municipality may be invested. ~~Bonds so deposited shall~~ *Deposited bonds must* be in an amount equal to the amount of municipal funds permitted at any time to be deposited with ~~such~~ *the* bank, ~~shall~~ *must* be approved by the commission, and ~~shall~~ *must* be accompanied by proper assignment, to the end that the bank ~~so~~ depositing and assigning ~~such~~ *the* bonds will safely keep and pay over to the treasurer or ~~his~~ *the treasurer's* order, on demand and free of exchange, all money at any time deposited ~~therein~~ *in the bank* with interest ~~thereon~~ *on the money* at the rate agreed upon and that in case of default on the part of ~~such~~ *the* bank, the commission ~~shall have power and authority to~~ *may* sell ~~such~~ *the* bonds or so much ~~thereof~~ *of the bonds* as may be necessary to realize the full amount of the funds deposited ~~therein~~. The bank ~~shall be~~ *is* entitled to interest on the securities ~~so~~ deposited with the treasurer, when paid, and to the return of the securities at the termination of ~~such~~ *the* trust so long as the bank is not in default. With the approval of the commission, a bank may at any time substitute other ~~like~~ *similar* securities of equal value for those ~~so~~ deposited.

(3) Bonds and other securities given by banks in accordance with this part ~~shall~~ *must* be entered in a record to be kept for that purpose by the director of finance and deposited with the treasurer for safekeeping. The record of ~~such~~ *the* bonds and securities kept by the director of finance or copies ~~thereof~~ *of the record* certified by that officer ~~shall be~~ *are* competent and prima facie evidence of the contents and tenor ~~thereof~~ *of the bonds and securities*."

Section 351. Section 7-3-1319, MCA, is amended to read:

"7-3-1319. Deposit of funds with depository banks. (1) All funds received by the treasurer ~~shall~~ *must* be deposited ~~by him~~ in the designated banks in the name of the municipality, subject to the order of the treasurer, and ~~shall~~ *must* be distributed among the designated banks as nearly as may be in proportion to the maximum amounts ~~which~~ *that* they have been authorized to receive by the commission.

(2) Banks designated as depositories shall pay interest on daily balances of municipal funds at a rate approved by the commission, which ~~shall in no case~~ *may not* be less than 2 1/2%. The interest due on ~~such~~ *the* deposits ~~shall~~ *must* be paid to the treasurer by check on the last day of each quarter of the fiscal year. If the treasurer ~~shall at any time receive~~ *receives* or ~~have~~ *has* in any bank funds ~~which~~ *that* will probably remain on deposit 3 months or longer, ~~he~~ *the treasurer* may, with the approval of the commission, either take ~~therefor~~ certificates of deposit from a designated depository, payable to ~~his~~ *the treasurer's* order on demand and bearing a higher rate of interest, or invest ~~such~~ *the* funds in any bonds maturing within 6 months in which the sinking fund of the municipality may be invested. The treasurer shall make a monthly statement to the director of finance of the municipal funds in each bank and the interest received ~~therein,~~ as of the last day of each month.

(3) ~~No~~ *A* bank receiving funds of the municipality on deposit ~~shall have authority to~~ *may not* pay out ~~any such~~ *the* money except upon checks drawn upon that bank signed by the treasurer."

Section 352. Section 7-3-1320, MCA, is amended to read:

"7-3-1320. Liability for deposited funds. (1) When the funds of the municipality are deposited and kept in designated banks according to the provisions of this part, the treasurer and the sureties on ~~his~~ *the treasurer's* official bond ~~shall be~~ *are* exempt from all liability for the loss of any funds ~~so~~ deposited if ~~such~~ *the* loss is caused by the failure, bankruptcy, or any other act or default of ~~such~~ *the* banks, but the want of care or due diligence on the part of the treasurer or commission in protecting the municipality against loss ~~shall~~ *does* not exempt the treasurer, the members of the commission, or sureties on their respective bonds from liability.

(2) ~~Nothing provided herein shall~~ *This section may not* deprive the municipality of any right or remedy against ~~any~~ *a* defaulting bank or against its officers or stockholders."

Section 353. Section 7-3-1322, MCA, is amended to read:

"7-3-1322. Investment of sinking funds. (1) The sinking funds of the municipality ~~shall~~ *must* be in charge of a sinking fund board consisting of the president, the director of finance, and the director of law. The president ~~shall be~~ *is* the ~~chairman~~ *presiding officer* and the director of finance, the secretary of the board. By and with consent of the commission, the sinking fund board shall invest the sinking fund in bonds or certificates of indebtedness of the United States, state bonds or certificates of indebtedness of Montana or any other state of the United States, bonds of the municipality, registered warrants on the treasury of ~~such~~ *the* municipality, bonds of any city in Montana, and in ~~such~~ county or school bonds of Montana ~~as~~ *that* may be approved by the commission.

(2) ~~In case~~ *If* the sinking fund is invested in bonds of the municipality, ~~such~~ *the* bonds ~~shall~~ *may* not be canceled before maturity but ~~shall~~ *must* be held by the sinking fund board and the interest ~~thereon~~ *on the bonds* paid over and applied to the increase of the sinking fund. Whenever the principal of any of the bonds of the municipality ~~shall become~~ *becomes* due, the sinking fund board shall, with the consent of the commission, dispose of ~~such~~ *any* of the bonds belonging to the sinking fund ~~as~~ *that*, with the money on hand belonging to the sinking fund, ~~shall be~~ *are* necessary to pay the bonds ~~so~~ becoming due."

Section 354. Section 7-3-1331, MCA, is amended to read:

"7-3-1331. Department of public works. (1) The department of public works is in the charge of a director~~,~~ who ~~shall~~*:*

(a) shall manage and *must* have charge of the construction, repair, improvement, and maintenance of all*:*

(i) public buildings;

(ii) ~~of~~ roads, streets, alleys, sidewalks, bridges, viaducts, and other public ways;

(iii) ~~of~~ sewers, drains, ditches, culverts, streams, and watercourses; and

(iv) ~~of~~ boulevards, parks, playgrounds, cemeteries, and other public places and grounds dedicated to public use~~.~~*;*

(b) ~~He~~ shall manage and control all*:*

(i) public cemeteries, crematories, market places or houses, garbage and sewage disposal plants, and farms~~,~~*;* and

(ii) all public utilities belonging to the municipality or any subdivision ~~thereof~~ *of the municipality;* ~~and~~

(c) ~~shall~~ *must* have charge of*:*

(i) the enforcement of the obligations to the municipality of all privately owned or operated public utilities enforceable by the municipality~~.~~*; and*

(ii) ~~He shall have charge of~~ the cleaning, sprinkling, and lighting of the streets and the collection and disposal of garbage and waste~~.~~*; and*

(d) ~~He shall also~~ *must* be responsible for the making and preservation of all surveys, maps, plans, drawings, and estimates for ~~such~~ *each* public work and for the preservation of contracts, papers, plans, tools, and appliances belonging to the municipality and pertaining to the functions of the department.

(2) The director of public works ~~shall~~ *must* have the qualifications prescribed by law for county surveyors~~.~~ ~~and in~~ *In* addition to the duties required by ~~this part or~~ part 12 *or this part* and *required* by the ordinances of the municipality, ~~he shall have the powers and shall,~~ *the director,* either in person or ~~by~~ *through* a deputy having the qualifications prescribed by law for county surveyors, *shall* perform the duties required of county surveyors by the laws of the state."

Section 355. Section 7-3-1341, MCA, is amended to read:

"7-3-1341. Department of law. (1) The department of law is in the charge of a director ~~to be~~ appointed by the commission without definite term~~,~~ who ~~shall~~ *must* be a resident and elector of the municipality and who ~~shall~~ *must* possess all of the qualifications required of county attorneys.

(2) ~~He shall have~~ *The director has* all the powers and, either personally or ~~by such~~ *through designated* assistants ~~as he may designate~~, shall perform all the duties that are prescribed for county attorneys, city attorneys, and public administrators, and in addition ~~thereto~~, ~~he shall be~~ *the director is* chief legal adviser of and attorney ~~and counsel~~ for the municipality and of all departments and offices ~~thereof~~ *of the municipality*. ~~and~~ *The director* shall perform ~~such~~ other duties ~~as~~ *that* may be required by the commission.

(3) ~~He~~ *The director* shall qualify by taking the oath of office prescribed by the constitution and *by* giving a bond in the amount required of a public administrator in a county of the same class. ~~He~~ *The director* ~~shall~~ *must* receive from the state as part of ~~his~~ *the director's* salary the same amount ~~which~~ *that* is paid by the state to county attorneys in counties of the same class, and the remainder of ~~his~~ *the* salary ~~shall~~ *must* be paid by the municipality. For all purposes in connection with criminal prosecutions, ~~he shall~~ *the director must* be known and designated as "county attorney of the city and county of .....".

Section 356. Section 7-3-1346, MCA, is amended to read:

"7-3-1346. Department of health. The director of the department of health ~~shall~~ *must* be a physician legally authorized to practice medicine and surgery in Montana. Except as otherwise provided in ~~this part or~~ part 12 *or this part*, the director of the department of health ~~shall have~~ *has* the powers and *shall* perform the duties conferred on and required of coroners and county health officers and local health officers by the general laws of the state. ~~He shall~~ *The director* also ~~have such~~ *has* other powers and *shall* perform ~~such~~ other duties ~~as~~ *that* may be prescribed by ordinance."

Section 357. Section 7-3-1348, MCA, is amended to read:

"7-3-1348. Superintendent of schools. The commission shall, by majority vote of all its members, appoint a municipal superintendent of schools to serve without definite term but subject to removal at the pleasure of the commission. The superintendent of schools for any district within the municipality may, with the consent of the trustees of ~~such~~ *that* district, be appointed to serve as municipal superintendent. The compensation of the municipal superintendent ~~shall~~ *must* be fixed by the commission, and ~~he shall have~~ *the superintendent has* the powers and *shall* perform the duties prescribed for county superintendents of schools by the laws of the state."

Section 358. Section 7-3-4102, MCA, is amended to read:

"7-3-4102. Relationship of administrative assistants and budget and finance director to mayor. (1) The administrative assistants ~~shall be~~ *are* answerable solely to the mayor.

(2) The budget and finance director ~~shall be~~ *is* answerable solely to the mayor and ~~shall serve~~ *serves* at ~~his~~ *the mayor's* pleasure."

Section 359. Section 7-3-4201, MCA, is amended to read:

"7-3-4201. Definitions. In the construction of this part, the following rules ~~shall~~ *must* be observed unless ~~such~~ *that* construction would be inconsistent with the manifest intent or repugnant to the context of the statute:

(1) The words "~~councilman~~" *"council member"* or "~~alderman" shall~~ *"city council member" must* be construed to mean "~~councilman~~" *"council member"* when applied to cities under this part.

(2) The word "electors" ~~shall~~ *must* be construed to mean persons qualified to vote for elective offices at regular municipal elections.

(3) The words "franchise" ~~or~~ *and* "right" ~~shall~~ include every special privilege in the streets, highways, and public places of the city, whether granted by the state or the city, ~~which~~ *that* does not belong to citizens generally by common right.

(4) When an office or officer is named in any law referred to in this part, it ~~shall~~ *must*, when applied to cities under this part, be construed to mean the office or officer having the same function or duties under the provisions of this part or under ordinances passed under authority ~~thereof~~ *of this part*."

Section 360. Section 7-3-4205, MCA, is amended to read:

"7-3-4205. City to be governed by mayor and ~~councilmen~~ *council members.* ~~Every~~ *Each* city ~~shall~~ *must* be governed by a mayor and ~~councilmen~~ *council members*, as provided in 7-3-4215, each of whom ~~shall have~~ *has* the right to vote on all questions coming before the council."

Section 361. Section 7-3-4207, MCA, is amended to read:

"7-3-4207. Requirements of petitions. Petitions provided for in this part ~~shall~~ *must* be signed by ~~none but~~ *only* legal voters of the city. Each petition ~~shall~~ *must* contain, in addition to the names of the petitioners, the street and house number in which the petitioner resides and ~~his~~ *the petitioner's* length of residence in the city. ~~It shall~~ *The petition must* also be accompanied by the affidavit of one or more legal voters of the city stating that the signers ~~thereof~~ *of the petition* were, at the time of signing, legal voters of ~~said~~ *the* city and the number of signers at the time *that* the affidavit was made."

Section 362. Section 7-3-4213, MCA, is amended to read:

"7-3-4213. Election for first city officers. (1) If a majority of the votes cast at the election is in favor of reorganization, the city council shall, at its first regular meeting held after the election, order a special election to be held for the purpose of electing a mayor and the number of ~~councilmen~~ *council members* to which the city is entitled. The order must specify the time of holding the election, which must be held in conjunction with a regular or primary election. The mayor shall issue a proclamation setting forth the purposes for which the special election is called and the day of holding the election. The proclamation must be published for 10 successive days in each daily newspaper published in the city if there is a daily newspaper or once a week for 2 consecutive weeks in each weekly newspaper published in the city. A copy of the proclamation must be posted at each voting place within the city and in at least 10 of the most public places in the city.

(2) The election must be conducted, the vote must be canvassed, and the result must be declared in the same manner as provided by law in respect to other city elections."

Section 363. Section 7-3-4214, MCA, is amended to read:

"7-3-4214. First term of office. (1) The mayor and ~~councilmen~~ *council members* elected at ~~such~~ *a* special election shall qualify and their terms of office ~~shall~~ *must* begin on the first Monday after their election. The terms of office of the mayor and ~~councilmen~~ *council members* or ~~aldermen~~ *city council members* in ~~such~~ *the* city in office at the beginning of the term of office of the ~~councilmen~~ *council members* first elected under the provisions of this part ~~shall then cease and determine~~ *end*, and the terms of office of all their appointed officers in force in ~~such~~ *the* city, except as ~~hereinafter~~ provided *in this part*, ~~shall cease and determine~~ *end,* as soon as the council shall by resolution declare.

(2) The terms of office of the mayor and all ~~councilmen~~ *council members* elected at ~~such~~ *the* special election ~~shall~~ expire on the first Monday in January of the first even-numbered year following their election. At the first regular city election held in the year prior to the year in which the terms of office of the mayor and ~~councilmen~~ *council members* elected at ~~such~~ *the* special election ~~shall~~ expire, a mayor and two ~~councilmen shall~~ *council members must* be elected in cities having a population of less than 25,000. The mayor elected at ~~such~~ *the* first general city election shall hold office for 4 years, one of the ~~councilmen~~ *council members* elected at ~~such~~ *the* first city election shall hold office for 2 years, and the other of ~~such councilmen~~ *the council members* elected at ~~such~~ *the* first general city election shall hold office for 4 years, beginning with the first Monday in January of the year following their election. A mayor and four ~~councilmen shall~~ *council members must* be elected in cities having a population of 25,000 or more, and the mayor elected at ~~such~~ *the* first general city election shall hold office for 4 years. Two of the ~~councilmen~~ *council members* elected at ~~such~~ *the* first general city election shall hold office for 2 years, and the other two of the ~~councilmen~~ *council members* elected at ~~such~~ *the* first general city election shall hold office for 4 years, beginning with the first Monday in January of the year following their election.

(3) The ~~councilmen~~ *council members* elected at the first general city election shall decide by lot, in ~~such~~ *a* manner ~~as~~ *that* they may select, which ~~thereof~~ *members* shall hold the office of ~~councilman~~ *council member* the term of which expires 2 years ~~thereafter~~ *after the election* and which ~~thereof~~ *members* shall hold the office ~~of councilman the~~ *for a* term of ~~which expires~~ 4 years ~~thereafter~~."

Section 364. Section 7-3-4215, MCA, is amended to read:

"7-3-4215. ~~Councilmen~~ *Council members* and mayor to be elected. (1) In every city of the third class, there ~~shall~~ *must* be a mayor and two ~~councilmen~~ *council members*. In every city of the second class, there ~~shall~~ *must* be a mayor and two ~~councilmen~~ *council members*. In every city of the first class having a population of less than 25,000, there ~~shall~~ *must* be a mayor and two ~~councilmen~~ *council members*. In every city of the first class having a population of 25,000 or more, there ~~shall~~ *must* be a mayor and four ~~councilmen~~ *council members*.

(2) The mayor and all ~~councilmen shall~~ *council members must* be elected at large."

Section 365. Section 7-3-4216, MCA, is amended to read:

"7-3-4216. General term of office. The terms of office of the mayor and all ~~councilmen~~ *council members* elected after the first term ~~shall be~~ *is* 2 years."

Section 366. Section 7-3-4217, MCA, is amended to read:

"7-3-4217. Oath of office and official bond. Every person who has been declared elected mayor or ~~councilman~~ *council member* shall, within 10 days ~~thereafter~~ *after the declaration*, take and file with the city clerk an oath of office in the form and manner provided by law and shall execute and give sufficient bond to the municipal corporation in the sum of $10,000, conditioned for the faithful performance of the duties of the office. This bond ~~shall~~ *must* be approved by the judge of the district court of the county in which ~~such~~ *the* city is situated and *must be* filed with the clerk and recorder of the county in which ~~such~~ *the* city is situated."

Section 367. Section 7-3-4218, MCA, is amended to read:

"7-3-4218. Vacancies. (1) Vacancies in the office of mayor or ~~councilmen shall~~ *council member must* be filled by appointment made by a majority vote of the remaining members of the council. If in filling ~~such~~ *a* vacancy a tie vote should occur, then the person to fill ~~said~~ *the* vacancy ~~shall~~ *must* be determined by lot in ~~such~~ *a* manner ~~as said~~ *that the* council may provide.

(2) A person appointed to fill ~~any such~~ *a* vacancy shall hold ~~his~~ office until the next general election and until ~~his~~ *a* successor is elected and qualified. A person elected to fill a vacancy shall hold office until the expiration of the term for which the ~~person he succeeds~~ *predecessor* was elected."

Section 368. Section 7-3-4220, MCA, is amended to read:

"7-3-4220. Council meetings. (1) Regular meetings of the council ~~shall~~ *must* be held on the first Monday after the election of ~~councilmen~~ *council members* and ~~thereafter~~ *after that meeting* at least once each month. The council shall provide by ordinance for the time for holding regular meetings, and special meetings may be called from time to time by the mayor or two ~~councilmen~~ *council members*.

(2) All meetings of the council, whether regular or special, at which any person not a city officer is admitted ~~shall~~ *must* be open to the public."

Section 369. Section 7-3-4221, MCA, is amended to read:

"7-3-4221. Conduct of business. (1) (a) In cities having a mayor and two ~~councilmen~~ *council members*, the mayor and one ~~councilman~~ *council member* or two ~~councilmen shall~~ *council members* constitute a quorum and the affirmative vote of the mayor and one ~~councilman~~ *council member* or the affirmative vote of two ~~councilmen shall be~~ *council members is* necessary to adopt or reject any

motion, resolution, or ordinance or pass any measure unless a greater number is provided for in this part.

(b) In cities having a mayor and four ~~councilmen~~ *council members*, the mayor and two ~~councilmen~~ *council members* or three ~~councilmen shall~~ *council members* constitute a quorum and the affirmative vote of the mayor and two ~~councilmen~~ *council members* or the affirmative vote of three ~~councilmen shall be~~ *council members is* necessary to adopt or reject any motion, resolution, or ordinance or pass any measure unless a greater number is provided for in this part.

(2) Upon every vote the ayes and nays ~~shall~~ *must* be called and recorded. Every motion, resolution, or ordinance ~~shall~~ *must* be reduced to writing and read before the vote is taken ~~thereon~~. Every resolution or ordinance passed by the council must be signed by the mayor or by two ~~councilmen~~ *council members* and must be recorded before ~~the same shall be~~ *it is* in force.

(3) The mayor ~~shall be~~ *is the* president of the council and shall preside at its meetings and shall supervise all departments of the city and report and recommend to the council for its action all matters requiring attention in any department. The council shall, at its first regular meeting, select one of its members for ~~vice-president~~ *vice president* of the council, and in case of a vacancy in the office of mayor or the absence or inability of the mayor, ~~he~~ *the vice president* shall perform the duties of the mayor."

Section 370. Section 7-3-4253, MCA, is amended to read:

"7-3-4253. Department structure and operation. (1) The executive and administrative powers, authority, and duties in ~~such~~ *municipal commission government* cities ~~shall~~ *must* be distributed into and among departments as follows:

(a) in cities having a mayor and two ~~councilmen~~ *council members*, into three departments:

(i) a department of accounts, finance, and public property;

(ii) a department of public safety and charity; *and*

(iii) a department of streets, public improvements, and parks;

(b) in cities having a mayor and four ~~councilmen~~ *council members*, into five departments:

(i) a department of public affairs;

(ii) a department of accounts and finance;

(iii) a department of public safety and charity;

(iv) a department of street and public improvements; *and*

(v) a department of parks and public property.

(2) The council shall determine the powers and duties to be performed by each department of the city, shall prescribe the powers and duties of officers and employees, may assign particular officers and employees to one or more of the departments, may require an officer or employee to perform duties in two or more departments, and may make ~~such~~ rules ~~as may be~~ necessary or proper for the efficient and economical conduct of the business of the city."

Section 371. Section 7-3-4254, MCA, is amended to read:

"7-3-4254. Selection and supervision of officers and employees. (1) In cities having a mayor and two ~~councilmen~~ *council members*, the mayor ~~shall be~~

is the superintendent of the department of accounts, finance, and public property, and in cities having a mayor and four ~~aldermen~~ *city council members*, the mayor ~~shall be~~ *is the* superintendent ~~over~~ *of* the department of public affairs~~, and the~~. *The* mayor ~~shall have~~ *has* general supervision over all departments of the city and over all matters connected with ~~said~~ *the* city, and the council shall, at its first regular meeting after the election of its members, designate by majority vote one ~~councilman~~ *council member* to be superintendent over each department of the city, but ~~such~~ *that* designation may be changed whenever it appears that the public service would be benefited ~~thereby~~.

(2) The council shall, at its first regular meeting after the election of its members or as soon thereafter as practicable, elect by majority vote the following officers: a city clerk, a city treasurer, a city attorney, a city auditor, a city engineer, a city physician, a chief of the fire department, a chief of the police department, a commissioner of weights and measures, a street commissioner, library trustees, cemetery trustees, and ~~such~~ other officers and assistants as ~~shall be~~ provided for by ordinance and ~~which~~ *that* may be necessary to the proper and efficient conduct of the affairs of the city. The council may by ordinance consolidate any of the *enumerated* offices, ~~the election to which is made by the council and~~ may require any officer elected by the council to perform the duties of any other officer, and shall appoint a city judge with the authority ~~now~~ conferred by existing laws. The tenure in office of a chief of the fire department and other officers of the fire department ~~shall be~~ *is* governed by the provisions of 7-33-4106 and 7-33-4122 through 7-33-4124. Any officer or assistant elected or appointed by the council may be removed from office at any time by a majority vote of the members of the council, except as otherwise provided in this part.

(3) The council ~~shall have power from time to time to~~ *may* create, fill, and discontinue offices and employment other than ~~herein~~ *those* prescribed *in this section*, according to their judgment of the needs of the city, ~~and~~ by majority vote of all the members to remove any ~~such~~ officer or employee, except as otherwise provided for in this part~~, and~~. *The council* may by resolution or otherwise prescribe, limit, or change the compensation of ~~such~~ officers or employees."

Section 372. Section 7-3-4255, MCA, is amended to read:

"7-3-4255. Compensation of mayor, council members, and employees. (1) The total compensation of ~~councilmen shall be~~ *council members is* as follows:

(a) In cities of the third class having a population of less than 3,000, the annual salary of the mayor ~~shall~~ *may* not exceed $600 and the annual salary of each ~~councilman shall~~ *council member may* not exceed $500. In cities of the third class having a population of 3,000 or more, the annual salary of the mayor ~~shall~~ *may* not exceed $1,000 and the annual salary of each ~~councilman shall~~ *council member may* not exceed $900.

(b) In cities of the second class, the annual salary of the mayor ~~shall~~ *may* not exceed $1,650 and the annual salary of each ~~councilman shall~~ *council member may* not exceed $1,500.

(c) In cities of the first class having a population of less than 30,000, the annual salary of the mayor ~~shall~~ *may* not exceed $4,500 and the annual salary of each ~~councilman shall~~ *council member may* not exceed $3,800. In cities of the first class having a population of 30,000 and over, the annual salary of the mayor ~~shall~~ *may* not exceed $4,800 and the annual salary of each ~~councilman shall~~ *council member may* not exceed $4,000.

(2) Any increase in salary occasioned by the advance in class or increase in population of any city ~~shall commence~~ *commences* with the month ~~next after~~ *following* the publication of the census showing ~~such~~ *the* advance in class or increase in population.

(3) Every other officer or assistant ~~shall~~ *must* receive ~~such~~ *the* salary or compensation ~~as~~ *that* the council shall by ordinance from time to time provide, payable in equal monthly installments.

(4) The salary or compensation of all other employees of ~~such~~ *the* city ~~shall~~ *must* be fixed by the council and ~~shall be~~ *is* payable monthly or at ~~such~~ shorter periods ~~as~~ *that* the council ~~shall~~ *may* determine."

Section 373. Section 7-3-4256, MCA, is amended to read:

"7-3-4256. Control of conflict of interest. (1) ~~No~~ *An* officer or employee elected or appointed in any ~~such~~ *municipal commission government* city ~~shall be interested~~ *may not have an interest*, directly or indirectly, in any contract or job for work or materials or the profits ~~thereof~~ *of the contract or job* or materials, supplies, or services to be furnished *to* or performed for the city. ~~No such~~ *An* officer or employee ~~shall be interested~~ *may not have an interest*, directly or indirectly, in any contract or job for work or materials or the profits ~~thereof~~ *of the contract or job* or services to be furnished *to* or performed for any person, firm, or corporation operating *any* interurban railway, street railway, gasworks, waterworks, electric light or power plant, heating plant, telegraph line, telephone exchange, or other public utility within the territorial limits of ~~said~~ *the* city. ~~No such~~ *An* officer or employee ~~shall~~ *may not* accept or receive, directly or indirectly, from any person, firm, or corporation operating within the territorial limits of ~~said~~ *the* city any interurban railway, street railway, gasworks, waterworks, electric light or power plant, heating plant, telegraph line, ~~or~~ telephone exchange, or other business using or operating under a public franchise any frank, free pass, free ticket, or free service or accept or receive, directly or indirectly, from any ~~such~~ person, firm, or corporation any other service ~~upon~~ *on* terms more favorable than ~~is~~ *are* granted to the public generally. ~~Such~~ *The* prohibition of free transportation ~~shall~~ *does* not apply to ~~policemen~~ *police officers* or firefighters in uniform~~, nor shall any free service to the city officials heretofore provided by any franchise or ordinance be affected by this section~~. Any officer or employee of ~~such~~ *the* city who, by solicitation or otherwise, ~~shall exert his~~ *exerts* influence, directly or indirectly, to influence other officers or employees of ~~such~~ *the* city to adopt ~~his~~ *the officer's or employee's* political views or to favor any particular person or candidate for office or who ~~shall~~ in any manner ~~contribute~~ *contributes* money, labor, or other valuable thing to any person for election purposes ~~shall be~~ *is* guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding $300 or by imprisonment in the county jail not exceeding 30 days.

(2) Any violation of the provisions of this section ~~shall be~~ *is* a misdemeanor, and every ~~such~~ contract and agreement ~~shall be~~ *that violates the provisions of this section is* void."

Section 374. Section 7-3-4257, MCA, is amended to read:

"7-3-4257. Appointment of civil service commission. (1) Immediately after organizing, the council shall by ordinance appoint three civil service commissioners, who shall hold office, one until the first Monday in April ~~in~~ *of* the second year, one until the first Monday in April of the fourth year, and one until the first Monday in April of the sixth year after ~~his~~ appointment. Each succeeding council shall, as soon as practicable after organizing, appoint one

commissioner for 6 years, who shall take the place of a commissioner whose term of office expires. The ~~chairman~~ *presiding officer* of the commission for each biennial period ~~shall~~ *must* be the member whose term first expires. ~~No~~ *A* person while on the ~~said~~ commission ~~shall~~ *may not* hold or be a candidate for any office of public trust. Two of ~~said~~ *the* members ~~shall~~ constitute a quorum to transact business. The commissioners must be citizens of Montana and residents of the city for more than 3 years ~~next~~ preceding their appointment.

(2) Before entering upon the duties of ~~his~~ office, each of ~~said~~ *the* commissioners shall take and subscribe an oath, which ~~shall~~ *must* be filed and kept in the office of the city clerk, to support the constitution of the United States and of the state of Montana, to obey the laws, to aid ~~to secure and maintain~~ *in securing and maintaining* an honest and efficient force free from partisan distinction or control, and to perform the duties of ~~his~~ office to the best of ~~his~~ *the commissioner's* ability.

(3) The council*, by majority vote,* may remove any of ~~said~~ *the* commissioners during their term of office for cause~~, a majority of councilmen voting in favor of such removal,~~ and shall fill any vacancy that ~~shall occur~~ *occurs* in ~~said~~ *the* commission for the unexpired term. The city council shall provide suitable rooms in which the ~~said~~ civil service commission shall hold its meetings~~;~~. ~~it shall~~ *The commission must* have a clerk, who shall keep a record of all its meetings~~;~~. ~~such~~ *The* city ~~to~~ *shall* supply the ~~said~~ commission with all necessary equipment to properly attend to ~~such~~ *its* business."

Section 375. Section 7-3-4259, MCA, is amended to read:

"7-3-4259. Discharge of employees. All persons subject to ~~such~~ *the* civil service examination ~~shall be~~ *are* subject to removal from office or employment by the council for misconduct or failure to perform their duties under ~~such~~ rules ~~as it~~ *that the council* may adopt, and the chief of police, chief of the fire department, or any superintendent or ~~foreman~~ *lead supervisor* in charge of municipal work may peremptorily suspend or discharge any subordinate then under ~~his~~ *that person's* direction for neglect of duty or disobedience of ~~his~~ orders but shall, within 24 hours ~~thereafter~~, report ~~such~~ *the* suspension or discharge and the reason ~~therefor~~ *for the suspension or discharge* to the superintendent of ~~his~~ *the* department~~,~~. ~~who~~ *The superintendent* shall ~~thereupon~~ affirm or revoke ~~such~~ *the* discharge or suspension according to the facts. ~~Such~~ *The* employee ~~(~~or the officer discharging or suspending ~~him)~~ *the employee* may, within 5 days of ~~such~~ *the* ruling, appeal ~~therefrom~~ to the council, which shall fully hear and determine the matter."

Section 376. Section 7-3-4316, MCA, is amended to read:

"7-3-4316. Term of office for commissioners. (1) The commissioners elected at the first election shall qualify and their terms of office shall begin on the first Monday after their election~~,~~. ~~and the~~ *The* terms of office of the mayor and ~~councilmen or aldermen~~ *city council members* in ~~such~~ *a municipal commission-manager* city or town in office at the beginning of the term of office of the commissioners first elected under the provisions of *part 44 and* this part ~~and part 44 shall cease and~~ terminate and the terms of office of all their appointed officers and of all of the employees of ~~such~~ *the* city or town ~~shall cease and~~ terminate as soon as the commissioners shall by resolution declare.

(2) All commissioners shall serve for a term of 4 years and until their successors are elected and have qualified, except that at the first election the two candidates having the highest number of votes shall hold office for a period of 4 years less the time elapsed since December 31 of the *preceding* odd-numbered

year ~~last preceding~~. The terms of office of all other candidates ~~shall~~ expire on December 31 in any odd-numbered year following the special election provided for in this part at which the first commissioners are elected."

Section 377. Section 7-3-4319, MCA, is amended to read:

"7-3-4319. Designation of mayor. (1) The mayor ~~shall be~~ *is* that member of the commission who, at the regular municipal election at which the commissioners were elected, received the highest number of votes. In case two candidates receive the same number of votes, one of them ~~shall~~ *must* be chosen mayor by the remaining members of the commission.

(2) ~~In event of~~ *If* a vacancy in the office of the mayor *is caused* by the expiration of ~~his~~ *the* term of office, the holdover commissioner having received the highest number of votes ~~shall be~~ *is* the mayor. ~~In the event~~ *If* there is a vacancy in the office of the mayor for any other cause, the remaining members of the commission shall choose ~~his~~ *the mayor's* successor for the unexpired term from their own number by lot.

(3) ~~In the event that~~ *If* the commissioner who is acting as mayor ~~shall be~~ *is* recalled, the remaining members of the commission shall select one of their number to serve as mayor for the unexpired term. ~~In the event of the recall of~~ *If* all the commissioners *are recalled*, the person receiving the highest number of votes at the election held to determine their successors ~~shall serve as~~ *is* the mayor."

Section 378. Section 7-3-4320, MCA, is amended to read:

"7-3-4320. Role of mayor. The mayor ~~shall be~~ *is* the presiding officer, except that in ~~his~~ *the mayor's* absence, a president pro tempore may be chosen. The mayor shall exercise ~~such~~ *the* powers conferred and perform all duties imposed upon ~~him~~ *the mayor* by ~~this part and~~ part 44 *and this part*, the ordinances of the municipality, and the laws of the state, except that ~~he shall have no power to~~ *the mayor may not* veto any measure. ~~He shall~~ *The mayor must* be recognized as the official head of the municipality by the courts for the purpose of serving civil processes, by the governor for the purposes of the military law, and for all ceremonial purposes."

Section 379. Section 7-3-4322, MCA, is amended to read:

"7-3-4322. Meetings of commission. (1) At 10 a.m. on the first Monday after January 1 following a regular municipal election, the commission shall meet at the usual place for holding the meetings of the legislative body of the municipality, at which time the newly elected commissioners shall assume the duties of their office. Thereafter, the commissioners shall meet at ~~such~~ times ~~as~~ *that* may be prescribed by ordinance or resolution, except that in municipalities having less than 5,000 inhabitants, they shall meet regularly at least once and not more than four times per month and in municipalities having more than 5,000 inhabitants, they shall meet not less than once every 2 weeks.

(2) Absence from five consecutive regular meetings ~~shall operate to vacate~~ *vacates* the seat of a member unless ~~such~~ *the* absence ~~be~~ *is* authorized by the commission.

(3) The commissioner acting as mayor, any two members of the commission, or the city manager may call special meetings of the commission ~~upon at least 12 hours~~ *with* written notice *of at least 12 hours* to each member of the commission, served personally on each member or left at ~~his~~ *the member's* usual place of residence."

Section 380. Section 7-3-4361, MCA, is amended to read:

"7-3-4361. Appointment of city manager. The commission shall appoint a city manager. ~~He shall~~ *The manager must* be appointed without regard to ~~his~~ political beliefs and may or may not be a resident of the municipality when appointed. ~~He shall hold~~ *The manager holds* office at the will of the commission."

Section 381. Section 7-3-4363, MCA, is amended to read:

"7-3-4363. Powers and duties of city manager. *(1)* The powers and duties of the city manager ~~shall be~~ *are*:

~~(1)~~*(a)* to see that the laws and ordinances are enforced;

~~(2)~~*(b)* to appoint and, except as ~~herein~~ provided *in this part*, remove all directors of departments and all subordinate officers and employees in the departments in both the classified and unclassified service; ~~all appointments to be upon merit and fitness alone and in the classified service all appointments to be subject to the civil service provisions of this part and part 44;~~

~~(3)~~*(c)* to exercise control over all the departments and divisions created ~~herein~~ *in this part* or that may ~~hereafter~~ be created by the commission;

~~(4)~~*(d)* to attend all meetings of the commission, with the right to take part in the discussions but ~~having no~~ *without the right to* vote;

~~(5)~~*(e)* to recommend to the commission for adoption ~~such~~ measures ~~as he may deem~~ *considered* necessary or expedient;

~~(6)~~*(f)* to keep the commission fully advised as to the financial condition and needs of the city; and

~~(7)~~*(g)* to perform ~~such~~ other duties ~~as may be~~ prescribed by *part 44 or* this part ~~or part 44~~ or ~~be~~ required ~~of him~~ by ordinance or resolution of the commission.

(2) All appointments referred to in subsection (1)(b) must be made on merit and fitness, and in the classified service all appointments are subject to the civil service provisions of part 44 and this part."

Section 382. Section 7-3-4365, MCA, is amended to read:

"7-3-4365. Investigations by commission. (1) The commission or any committee ~~thereof duly~~ *of the commission* authorized by the commission to do so may investigate the financial transactions of any office or department of the municipal government and the official acts of any municipal official and by similar investigations may secure information upon any matter.

(2) In conducting ~~such~~ investigations, the commission or ~~any~~ committee ~~thereof~~ may compel the attendance of witnesses and the production of books, papers, and other evidence and for that purpose may issue subpoenas or attachments, which ~~shall~~ *must* be signed by the presiding officer of the commission or the ~~chairman~~ *presiding officer* of ~~such~~ *the* committee~~,~~. ~~as the case may be, and which~~ *The subpoenas or attachments* may be served and executed by any officer authorized by law to serve subpoenas or other process. ~~No~~ *A* witness may *not* be excused from testifying ~~touching his~~ *concerning the witness's* knowledge of the matter under investigation in any ~~such~~ inquiry, but ~~such~~ *the* testimony may not be used against ~~him~~ *the witness* in any criminal prosecution except for perjury committed upon ~~such~~ *the* inquiry."

Section 383. Section 7-3-4367, MCA, is amended to read:

"7-3-4367. Control of conflict of interest. (1) Commissioners and other officers and employees ~~shall~~ *may* not be interested in the profits or emoluments of any contract, job, work, or service for the municipality and ~~shall~~ *may* not hold any partisan political office or employment. Any commissioner who ~~shall cease~~ *ceases* to possess any of the qualifications ~~herein~~ required *in this part* ~~shall forthwith forfeit his~~ *forfeits the* office, and any ~~such~~ contract in which any member is or may be interested may be declared void by the commission.

(2) ~~No~~ *A* commissioner or other officer or employee of ~~said~~ *the* city or town ~~shall~~ *may not* accept any frank, free ticket, pass, or service, directly or indirectly, from any person, firm, or corporation ~~upon~~ *on* terms more favorable than are granted to the public generally. Any violation of the provisions of this section ~~shall be~~ *is* a misdemeanor and ~~shall~~ *is* also ~~be~~ sufficient cause for the summary removal or discharge of the offender. ~~Such~~ *The* provisions for free service ~~shall~~ *do* not apply to ~~policemen~~ *police officers* or firefighters in uniform or wearing their official badges ~~where the same is~~ *when the service is* provided by ordinance or to any commissioner*,* ~~or to~~ the city manager*,* or ~~to~~ the city attorney upon official business~~,~~ or to any other employee or official of ~~said~~ *the* city on official business who exhibits written authority signed by the city manager."

Section 384. Section 7-3-4402, MCA, is amended to read:

"7-3-4402. Appointment of department directors. The city manager shall appoint a director for each department, as specified ~~herein~~ *in this part* or as specified by ordinance of the commission, who shall serve until removed by the city manager or until ~~his~~ *the director's* successor is appointed and has qualified."

Section 385. Section 7-3-4403, MCA, is amended to read:

"7-3-4403. Role of department director. Each director shall conduct the affairs of ~~his~~ *the director's* department in accordance with the rules made by the city manager and ~~shall be~~ *is* responsible for the conduct of the officers and employees of ~~his~~ *that* department, for the performance of its business, and for the custody and preservation of the books, records, papers, and property under its control. Subject to the supervision and control of the city manager in all matters, the director of each department shall manage the department."

Section 386. Section 7-3-4405, MCA, is amended to read:

"7-3-4405. Establishment of civil service board. (1) The commission may appoint three electors of the municipality as a civil service board, with one to serve for 2 years, one for 4 years, and one for 6 years, and to take office on January 1 after the municipality comes under the provisions of ~~this part and~~ part 43 *and this part* or as soon ~~thereafter~~ *after that date* as appointed and qualified. ~~Thereafter~~ *After the initial appointments,* members of the civil service board ~~shall~~ *must* be appointed to serve for 6 years and until their successors have been appointed and have qualified. The commission may remove any member of the board upon stating in writing the reasons for removal and allowing ~~him~~ *the member* an opportunity to be heard in ~~his~~ *the member's* own defense. Any vacancy ~~shall~~ *must* be filled by the commission for the unexpired term.

(2) Members of the board ~~shall~~ *may* not hold any other public office.

(3) It is ~~intended hereby~~ *the intent of this section* that the establishment of a civil service board ~~shall be~~ *is* permissive and not mandatory. If appointed*,* the board may be abolished at any time upon resolution ~~to that effect~~ by the commission~~;~~ and ~~thereafter any~~ *the* civil service board appointed under the provisions of this part ~~shall cease~~ *ceases* to exist~~;~~. ~~but so~~ *However, as* long as ~~any~~

~~such~~ *a* civil service board ~~shall exist~~ *exists*, its operations and proceedings ~~shall~~ *must* be controlled as provided in this part.

(4) The salaries of the board and its employees ~~shall~~ *must* be determined by the commission, and a sufficient sum ~~shall~~ *must* be appropriated each year to carry out the civil service provisions of this part."

Section 387. Section 7-3-4406, MCA, is amended to read:

"7-3-4406. Organization of board. Immediately after appointment, the board shall organize by electing one of its members ~~chairman~~ *presiding officer*. The board shall appoint a chief examiner, who shall also act as secretary. The board may appoint ~~such~~ other subordinates as may be provided for by appropriation."

Section 388. Section 7-3-4409, MCA, is amended to read:

"7-3-4409. Role of chief examiner. The chief examiner ~~shall be~~ *is* the employment officer of all municipal employees coming under the classified service. ~~He~~ *The chief examiner* shall provide examinations in accordance with the regulations of the board and maintain lists of eligibles ~~of~~ *for* each class of the service of those meeting the requirements of ~~said~~ *the* regulations. Positions in the classified service ~~shall~~ *must* be filled ~~by him~~ from ~~such~~ *the* eligible lists upon requisition from and after consultation with the city manager. As positions are filled, the employment officer shall certify the fact, by proper and prescribed form, to the director of finance and the director of the department in which the vacancy exists."

Section 389. Section 7-3-4411, MCA, is amended to read:

"7-3-4411. Procedure for discharge, demotion, or suspension of employee. (1) An employee ~~shall~~ *may* not be discharged or reduced in rank or compensation until ~~he~~ *the employee* has been presented with the reasons for ~~such~~ discharge or reduction, specifically stated in writing, and has been given an opportunity to be heard in ~~his~~ *the employee's* own defense. The reason for ~~such~~ discharge or reduction and any reply in writing ~~thereto~~ *to the reason* by ~~such~~ *the* employee ~~shall~~ *must* be filed with the board.

(2) Any employee of any department in the municipality in the classified service who is suspended, reduced in rank, or dismissed from a department by the director of that department or the city manager may appeal from the decision ~~of such officer~~ to the civil service board~~,. and such~~ *The* board shall define the manner, time, and place in which ~~such~~ *an* appeal ~~shall be~~ *is* heard. The judgment of ~~such~~ *the* board ~~shall be~~ *is* final."

Section 390. Section 7-3-4412, MCA, is amended to read:

"7-3-4412. Retention of existing positions. Any person in the employ of a municipality holding a position in the classified service at the time that the municipality comes under the provisions of ~~this part and~~ part 43 *and this part* shall, unless ~~his~~ *the person's* position ~~be~~ *is* abolished, retain the same *position* until discharged, reduced, promoted, or transferred in accordance ~~herewith~~ *with part 43 and this part*."

Section 391. Section 7-3-4431, MCA, is amended to read:

"7-3-4431. Department of finance. (1) The duties of the director of finance ~~shall~~ include*:*

(a) the keeping and supervision of all accounts and the custody of all public money of the municipality;

(b) the purchase, storage, and distribution of supplies needed by the various departments;

(c) the making and collection of special assessments;

(d) the issuance of licenses;

(e) the collection of license fees and taxes; and

(f) ~~such~~ other duties ~~as~~ *that* the commission may by ordinance require.

(2) ~~He~~ *The director of finance* shall install and have supervision over the accounts of all the departments and offices of the municipality. Whenever practicable the books of financial accounts ~~shall~~ *must* be kept in the office of the department of finance. ~~He~~ *The director* shall require daily departmental reports of money receipts and the disposition ~~thereof~~ *of money* and shall require of each *department*, in ~~such~~ *a* form ~~as~~ *that* may be prescribed, current financial and operating statements exhibiting each transaction and the cost ~~thereof~~ *of the transaction*. Upon the death, resignation, removal, or expiration of the term of any officer, ~~he~~ *the director* shall examine the accounts of ~~such~~ *that* officer and report ~~his~~ *the* findings to the city manager.

(3) ~~He shall have~~ *The director of finance has* charge of the preparation and certification of all special assessments for public improvements, the mailing of notices of ~~such~~ *the* assessments to property owners and purchasers of property under contracts for deed and all other duties connected ~~therewith~~ *with the assessments*, the collection of ~~such~~ assessments ~~as~~ *that* are payable directly to the municipality, and the preparation and certification of all unpaid assessments to the county treasurer for collection. ~~He~~ *The director* shall issue all licenses and collect all *license* fees ~~therefor~~ and shall ~~pay~~ *deposit* the ~~same~~ *fees* into the treasury in the manner provided by ordinance.

(4) The director of finance ~~shall be~~ *is* the custodian of all public money of the municipality and all other public money coming into ~~his hands~~ *the director's possession*. ~~He~~ *The director* shall keep and preserve ~~such~~ *the* money in the place or places determined by ordinance or by the provisions of any ~~law~~ applicable ~~thereto~~ *law*. Except as otherwise provided in ~~this part or~~ part 43 *or this part*, ~~he~~ *the director* shall collect, receive, and disburse all public money of the municipality upon warrant and shall also receive and disburse all other public money coming into ~~his hands in pursuance of such~~ *the director's possession pursuant to* regulations ~~as~~ *that* may be prescribed by the authorities having lawful control over ~~such~~ *the* funds."

Section 392. Section 7-3-4433, MCA, is amended to read:

"7-3-4433. Claims and issuance of warrants. ~~No~~ *A* warrant for the payment of any claim ~~shall~~ *may not* be issued unless ~~such~~ *the* claim ~~shall be~~ *is* evidenced by a voucher approved by the head of the department for which the indebtedness was incurred and countersigned by the city manager. Before issuing ~~such~~ *a* voucher, the supplies and materials delivered or work done ~~shall~~ *must* be ~~duly~~ inspected and certified to by the head of the proper department or office or by a person designated by ~~him~~ *the head of the department or office*. The head of each department or office shall require proper time reports ~~from~~ *for* all services rendered, to be certified by those having ~~cognizance thereof~~ *knowledge of the services*, to serve as a basis for the preparation of payroll vouchers. Each director of a department and ~~his~~ *the director's* surety ~~shall be~~ *are* liable to the municipality for all loss or damage sustained by the municipality, by reason of the negligent or corrupt approval of any claim against the municipality in ~~his~~ *the director's* department. Prior to the drawing of a warrant for the payment of any

voucher or claim, the director of finance may ~~at his discretion~~ cause an investigation or inspection to be made by a person designated by ~~him~~ *the director of finance* and ~~shall have power to~~ *may* summon persons and examine them under oath or affirmation, which oath or affirmation ~~he~~ *the director of finance* may administer."

Section 393. Section 7-3-4434, MCA, is amended to read:

"7-3-4434. Purchase and sale of supplies and property. (1) The director of finance or city manager shall, in manner provided by ordinance, purchase all supplies for the municipality and sell all real and personal property of the municipality not needed or unsuitable for public use or that may have been condemned as useless by the director of a department. ~~He shall have~~ *The director of finance or city manager has* charge of ~~such~~ *the* storerooms and storehouses of the municipality ~~as~~ *that* may be provided by ordinance, in which ~~shall~~ *must* be stored all supplies and materials purchased by the municipality and not delivered to the various departments.

(2) ~~He~~ *The director of finance or city manager* shall inspect all supplies delivered to determine quality and quantity and conformance with specifications, and ~~no~~ *a* voucher ~~shall~~ *may not* be honored unless the accompanying invoice ~~shall be~~ *is* endorsed as approved.

(3) ~~He~~ *The director of finance or city manager* may require from the director of each department, at ~~such~~ times ~~as~~ *that* contracts for supplies are to be let, a requisition for the quantity and kind of supplies to be paid for from the appropriations of the department.

(4) Upon certification that funds are available in the proper appropriations, ~~such~~ *the* goods ~~shall~~ *must* be purchased and ~~shall~~ *must* be paid for from funds in the proper department for that purpose. However, this procedure ~~shall~~ *may* not prejudice the director of finance or city manager from purchasing goods for cash to the credit of the stores account to be furnished *to* the several departments on requisition~~;~~. *The* goods ~~so furnished to~~ *must* be paid for by the department *to which the goods are* furnished ~~therewith~~ by warrant made payable to the stores account.

(5) ~~He shall~~ *The director of finance or city manager may* not furnish any supplies to or purchase any supplies for any department unless ~~there be to the credit of such~~ *the* department *has* an available appropriation balance in excess of all unpaid obligations sufficient to pay for ~~such~~ *the* supplies.

(6) Before making any purchase or sale, the director of finance or city manager shall give opportunity for competition~~;~~. ~~all~~ *All* proposals ~~to~~ *must* be upon precise specifications and under ~~such~~ rules ~~as~~ *established by* the commission ~~shall establish~~. Each order of purchase or sale~~, to~~ *must* be approved and countersigned by the city manager or ~~his~~ *the* deputy *city manager*.

(7) In cases of emergency, purchases may be made without competition if a sufficient appropriation has ~~theretofore~~ been made against which purchases may lawfully be charged. In ~~such~~ *those* cases, a copy of the order issued ~~shall~~ *must* be filed with the director of finance, together with a certificate by the head of the department stating the facts of the emergency. A copy of this certificate ~~shall~~ *must* be attached to and filed with the voucher covering payment for the supplies. The director of finance shall ~~have such~~ *employ* assistants and ~~force of office~~ employees ~~as may be~~ *that are* necessary to properly carry out ~~his~~ *the director's* duties under the provisions of *part 43 and* this part ~~and part 43~~. If ~~it is found~~ desirable, ~~he~~ *the director* may divide ~~his~~ *the* office into divisions presided

over by ~~the following officers:~~ *an* accountant, *a* treasurer, and *a* purchasing agent."

Section 394. Section 7-3-4441, MCA, is amended to read:

"7-3-4441. Department of public service. Subject to the control and supervision of the city manager in all matters, the director of public service shall*:*

(1) manage and have charge of*:*

(a) the construction, improvement, repair, and maintenance of streets, sidewalks, alleys, lanes, bridges, viaducts, and other public highways;

(b) ~~of~~ sewers, drains, ditches, culverts, canals, streams, and watercourses; *and*

(c) ~~of~~ boulevards, squares, and other public places and grounds belonging to the municipality or dedicated to public use, except parks and playgrounds~~.~~*;*

(2) ~~He shall~~ manage market houses, sewage disposal plants and farms, and all public utilities of the municipality~~.~~*; and*

(3) ~~He shall~~ have charge of*:*

(a) the enforcement of all obligations of privately owned or operated public utilities enforceable by the municipality~~.~~*;*

(b) ~~He shall have charge of~~ the making and preservation of all surveys, maps, plans, drawings, and estimates for public work;

(c) the cleaning, sprinkling, and lighting of streets and public places;

(d) the collection and disposal of waste; and

(e) the preservation of contracts, papers, plans, tools, and appliances belonging to the municipality and pertaining to the department."

Section 395. Section 7-3-4443, MCA, is amended to read:

"7-3-4443. Utility connections. (1) The director of public service ~~shall have authority to~~ *may* compel the making of sewer, water, gas, and other connections whenever, in view of the contemplated street improvements or as a sanitary regulation, sewer, water, gas, or other connections should in ~~his~~ *the director's* judgment be constructed.

(2) ~~He~~ *The director* shall cause written notice of ~~his~~ *the* determination ~~thereof~~ to be given to the owner of each lot or parcel of land to which ~~such~~ connections are to be made. The notice ~~shall~~ *must* state the number and character of connections required. ~~Such~~ *The* notice ~~shall~~ *must* be served by a person designated by the director of public service, in the manner provided for the service of summons in civil actions. Nonresidents of the municipality or persons who cannot be found may be served by one publication of ~~such~~ *the* notice in a daily newspaper of general circulation in the municipality if ~~such~~ there ~~be~~ *is a newspaper* and, if not, by one publication in a weekly newspaper. The notice ~~shall~~ *must* state the time within which ~~such~~ *the* connections ~~shall~~ *must* be constructed, and if they ~~be~~ *are* not constructed within the time, the work may be done by the municipality and the cost ~~thereof~~ *of the connections*, together with a penalty of 5%, assessed against the lots and lands for which ~~such~~ *the* connections are made~~;~~. ~~provided that~~ *However,* the city commission may in its discretion order and direct that the cost of making any ~~such~~ connection by the municipality may be assessed without penalty and may be paid in annual installments over a period of not to exceed 8 years, together with interest ~~thereon~~ *on the cost at a rate*

not to exceed 6% ~~per annum~~ *a year* payable annually on the deferred payments. ~~Said~~ *The* assessments ~~shall~~ *must* be certified and collected as other assessments for street improvements. The actual work of making ~~such~~ *the* connections ~~shall~~ *must* be done under ~~such~~ regulations ~~as~~ *that* are provided for by ordinance."

Section 396. Section 7-3-4444, MCA, is amended to read:

"7-3-4444. Supervision of plats. (1) The director of public service ~~shall be~~ *is* the supervisor of plats of the municipality. ~~He~~ *The director* shall see that the regulations governing the platting of all lands require all streets and alleys to be of proper width and to be coterminous with the adjoining streets and alleys and that all other regulations are conformed with. Whenever ~~he shall deem~~ *the director considers* it expedient to plat any portion of the territory within the corporate limits in which the necessary or convenient streets and alleys have not already been accepted by the municipality so as to become public streets or alleys or when any person plats any land within the corporate limits or within 3 miles ~~thereof~~ *of those limits*, the ~~supervisor of plats~~ *director* shall, if ~~such~~ *the* plats are in accordance with the regulations prescribed ~~therefor~~ *for plats*, endorse ~~his~~ *the director's* written approval ~~thereon~~ *on the plats*.

(2) ~~No~~ *A* plat subdividing lands within the corporate limits or within 3 miles ~~thereof shall~~ *of those limits may not* be entitled to ~~record~~ *be recorded* in the recorder's office of the county without ~~such~~ *the* written approval ~~so~~ endorsed ~~thereon~~ *on the plat*."

Section 397. Section 7-3-4461, MCA, is amended to read:

"7-3-4461. Department of law. (1) The head of the department of law ~~shall~~ *must* be an attorney ~~at law~~ who has been admitted to practice in the state of Montana and ~~shall~~ *must* be known as the city attorney.

(2) ~~He shall be~~ *The department head is* the legal adviser of and attorney and counsel for the municipality and for all the officers and departments ~~thereof~~ *of the municipality* in matters relating to their official duties. ~~He~~ *The department head* shall prosecute and defend all suits for and in behalf of the municipality and shall prepare all contracts, bonds, and other instruments in writing in which the municipality is concerned and shall endorse on each ~~his~~ *an* approval of the form and correctness ~~thereof~~ *of the documents*. ~~He shall have such other duties and authority as are now conferred upon the city attorney by existing laws.~~

(3) ~~He~~ *The department head* shall ~~have such~~ *employ the* number of assistants ~~as~~ *that* the commission ~~by ordinance~~ may authorize *by ordinance*."

Section 398. Section 7-3-4463, MCA, is amended to read:

"7-3-4463. Department of public welfare. (1) Subject to the supervision and control of the city manager in all matters, the director of public welfare shall manage all charitable, correctional, and reformatory institutions and agencies belonging to the municipality and the use of all recreational facilities of the municipality, including libraries, parks, and playgrounds. ~~He shall have~~ *The director has* charge of the inspection and supervision of public amusements and entertainments. ~~He~~ *The director* shall enforce all laws, ordinances, and regulations ~~relative~~ *relating* to*:*

(a) the preservation and promotion of the public health;

(b) the prevention and restriction of disease;

(c) the prevention, abatement, and suppression of nuisances; and

(d) the sanitary inspection and supervision of the production, transportation, storage, and sale of foodstuffs.

(2) ~~He~~ *The director* shall cause a complete and accurate system of vital statistics to be kept. In time of epidemic or threatened epidemic, ~~he~~ *the director* may enforce ~~such~~ quarantine regulations ~~as~~ *that* are appropriate to the emergency. The director of public welfare shall provide for the study of and research into causes of poverty, delinquency, crime, disease, and other social problems in the community and shall, by means of lectures and exhibits, promote the education and understanding of the community in those matters ~~which~~ *that* affect the public welfare.

~~(2)~~*(3)* The health officer of the municipality ~~shall be~~ *is* under the direction and control of the director of public welfare, ~~and~~ shall enforce all ordinances and laws relating to health, and shall perform all duties and have all powers provided by general law relative to the public health to be exercised in municipalities by health officers. Regulations affecting the public health ~~additional~~ *in addition* to those established by general law and for the violation of which penalties are imposed ~~shall~~ *must* be enacted by the commission and enforced as provided ~~herein~~ *in this part*."

Section 399. Section 7-3-4464, MCA, is amended to read:

"7-3-4464. Department of public safety. (1) Subject to the supervision and control of the city manager in all matters, the director of public safety ~~shall be~~ *is* the executive head of the division of police and fire. ~~He shall~~ *The director is* also ~~be~~ the chief administrative authority in all matters affecting the inspection and regulation of the erection, maintenance, repair, and occupancy of buildings as ~~may be ordained~~ *prescribed* by the commission or established by the general law of Montana. ~~He shall~~ *The director is* also ~~be~~ charged with the enforcement of all laws and ordinances relating to weights and measures.

(2) ~~Nothing herein shall~~ *This section does not* affect, impair, restrict, or repeal any provisions of general law authorizing the levying of taxes to provide for firefighters, police, and sanitary police pension funds and to create and perpetuate boards of trustees for the administration of ~~such~~ *those* funds."

Section 400. Section 7-3-4465, MCA, is amended to read:

"7-3-4465. Police department. (1) The chief of police ~~shall have~~ *has* exclusive control of the stationing and transfer of all patrol officers and other officers and employees constituting the police force, under ~~such~~ rules ~~as~~ *that* the director of public safety may prescribe. The police force ~~shall~~ *must* be composed of a chief of police and ~~such~~ officers, patrol officers, and other employees ~~as~~ *that* the city manager may determine. In case of riot, in event of emergency, or at time of elections or similar occasions, the director of public safety may appoint additional patrol officers and officers for temporary service~~,~~ who need not be in the classified service.

(2) ~~No~~ *A* person ~~shall~~ *may not* act as *a* ~~special policeman,~~ special detective~~,~~ or ~~other~~ special police officer for any purpose whatsoever except upon the written authority of the director of public safety. ~~Such~~ *The written* authority ~~shall~~ *must* be exercised only under the direction and control of the chief of police and for a specified time.

(3) Section 7-4-4202(1) and (4), parts 2 and 41 of chapter 32, and chapters 9 and 19 of Title 19 ~~shall~~ *are* in all respects ~~be~~ applicable to and govern the police departments of all cities and towns under the commission-manager form of government provided for ~~herein~~ *in this part*."

Section 401. Section 7-4-505, MCA, is amended to read:

"7-4-505. Eligibility for award. (1) Except as provided in subsection (2), an employee may be eligible for an incentive award if ~~his~~ *the employee's* suggestion or invention results in:

(a) eliminating or reducing an agency's expenditures; or

(b) improving services to the public by permitting more work to be accomplished without increasing the cost of governmental operations.

(2) (a) An employee may not be eligible for an incentive award if ~~his~~ *the employee's* suggestion or invention directly relates to ~~his~~ *the employee's* assigned duties and responsibilities unless the proposal is so superior or meritorious as to warrant special recognition as determined by the governing body.

(b) Suggestions or inventions relating to the following matters may not be considered for awards:

(i) personnel grievances;

(ii) classification and pay of positions;

(iii) matters recommended for study or review; and

(iv) proposals resulting from assigned or contracted audits, studies, surveys, reviews, or research."

Section 402. Section 7-4-2108, MCA, is amended to read:

"7-4-2108. Mileage allowance for county commissioners — expenses. (1) In addition to the salary provided by 7-4-2107(1), each member of the board of county commissioners in counties of the first, second, third, and fourth class shall receive a mileage allowance as provided in 2-18-503 for the distance necessarily traveled in going to and returning from the county seat and ~~his~~ *the commissioner's* place of residence~~,~~ each day that ~~such~~ *the* trip is actually made and while engaged in the performance of ~~his~~ official duties.

(2) Each member of the board in all other counties is entitled to a mileage allowance as provided in 2-18-503 for the distance necessarily traveled in going to and returning from the county seat and ~~his~~ *the commissioner's* place of residence each day that ~~such~~ *the* trip is actually made to perform official duties. Any county commissioner whose place of residence is 50 miles or more from the county seat, as measured by the usual route of travel, and who elects to remain more than one day in the county seat to attend sessions of the board or perform ~~his~~ official duties is entitled to receive, in addition to mileage for one round trip between ~~his~~ *the commissioner's* place of residence and the county seat, $18 per day as expenses for each day's attendance on sessions of the board while engaged in the performance of ~~his~~ official duties.

(3) All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(4) When other than commercial, nonreceiptable lodging facilities are utilized by a county commissioner, the amount of $7 ~~will be~~ *is* authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in this section. However, when overnight accommodations are provided at the expense of any government entity, ~~no~~ reimbursement may *not* be claimed for lodging.

(5) This section does not apply to counties that have adopted *a* charter form of government."

Section 403. Section 7-4-2109, MCA, is amended to read:

"7-4-2109. ~~Chairman~~ *Presiding officer* of board. The board of county commissioners must elect one of its members ~~chairman~~ *presiding officer*. The ~~chairman must~~ *presiding officer shall* preside at all meetings of the board, and in case of ~~his~~ *the presiding officer's* absence or inability to act, the members present ~~must by an order~~ *shall* select one of their number to act temporarily as ~~chairman~~ *presiding officer*."

Section 404. Section 7-4-2111, MCA, is amended to read:

"7-4-2111. Indemnity insurance for county officers. The board of county commissioners may ~~in its discretion~~ pay a proper charge to any insurance company authorized to do business in this state for effecting insurance providing indemnity for or protection to any county officer against ~~his~~ liability for the loss, without fault, connivance, or neglect on ~~his~~ *the officer's* part, of money, securities, or other property for which ~~he~~ *the officer* is accountable to the county."

Section 405. Section 7-4-2113, MCA, is amended to read:

"7-4-2113. Liability on official bond of commissioner. In addition to any other penalty provided in this code, ~~any~~ *a* county commissioner who neglects or refuses to perform any duty imposed on ~~him~~ *the commissioner* without just cause ~~therefor~~, who willfully violates any law provided for ~~his~~ *the commissioner's* government as ~~such~~ *an* officer, who fraudulently or corruptly performs any duty imposed on ~~him~~ *the commissioner*, or who willfully, fraudulently, or corruptly attempts to perform an act unauthorized by law as commissioner forfeits to the county $500 for every ~~such~~ act, to be recovered on ~~his~~ *the commissioner's* official bond, and is further liable on ~~his~~ *the* official bond to any person injured ~~thereby~~ *by the act* for all damages sustained."

Section 406. Section 7-4-2202, MCA, is amended to read:

"7-4-2202. General qualifications for district or township offices. ~~No~~ *A* person is *not* eligible to a district or township office ~~who~~ *unless the person* is ~~not~~:

(1) of ~~the~~ *voting* age ~~of voting~~ as required by the Montana constitution;

(2) a citizen of the state; and

(3) an elector of the district or township in which the duties of the office are to be exercised or for which ~~he~~ *the person* is elected."

Section 407. Section 7-4-2207, MCA, is amended to read:

"7-4-2207. Duty of officers to complete official business. It is the duty of all officers to complete the business of their respective offices *prior* to the time of the expiration of their respective terms. ~~In case~~ *If* any officer, at the close of ~~his~~ *the* term, leaves to ~~his~~ *the officer's* successor official labor to be performed for which ~~he~~ *the officer* has received compensation or ~~which~~ *that* it was ~~his~~ *the officer's* duty to perform, ~~he~~ *the officer* is liable to pay to ~~his~~ *the* successor the full value of ~~such~~ *the* services, which may be recovered in any court of competent jurisdiction upon action brought against ~~him~~ *the officer* on ~~his~~ *the officer's* official bond."

Section 408. Section 7-4-2210, MCA, is amended to read:

"7-4-2210. Restriction on practice of law by certain officers. (1) Sheriffs, clerks, constables, and their deputies are prohibited from practicing

law or acting as attorneys or counselors at law or having as a partner a lawyer or one who acts as ~~such~~ *a lawyer*.

(2) ~~No~~ *A* county clerk, clerk of any court, or sheriff ~~shall~~ *may not* act as *an* agent or solicitor in the prosecution of any claim or application for lands, pensions, patent rights, or other proceedings before any department of the state or general government or courts of the United States during ~~his~~ *the person's* continuance in office."

Section 409. Section 7-4-2213, MCA, is amended to read:

"7-4-2213. Inspection of official bonds. (1) At a regular meeting of the board of county commissioners in March and September of each year, the board of county commissioners shall carefully examine all official bonds of all county and township officials then in force and effect and investigate the qualifications and financial condition and liability of all sureties ~~thereon~~ *on the bonds* and their sufficiency.

(2) If it appears to the satisfaction of the board or a majority of the members ~~thereof~~ *of the board* that any surety upon any ~~such~~ bond has, since the approval and acceptance of ~~such~~ *the* bond, died or withdrawn ~~therefrom;~~*,* left the state~~;~~*,* disposed of all of ~~his~~ *the surety's* property in this state~~;~~*,* or become mentally ill, insolvent, financially embarrassed, or not good and responsible for the amount of ~~his~~ *the* liability ~~thereon~~ *on the bond*, the board shall immediately cause the clerk of the board to notify in writing the judge of the district court of that district of its action and conclusion and all facts in connection ~~therewith~~ *with* and the reasons ~~thereof~~ *for the action*.

(3) The judge shall take ~~cognizance thereof~~ *notice of* and investigate ~~such~~ *the* matter and take steps, by order to show cause or other order, citation, step, or action, as may be necessary to make ~~such~~ *the* bond good and sufficient according to the requirements of law and ample security for the amount ~~thereof~~ *of the bond*."

Section 410. Section 7-4-2304, MCA, is amended to read:

"7-4-2304. Petition details. (1) ~~Said~~ *A* petition ~~shall~~ *for consolidation of offices must* be addressed to the board or boards of county commissioners of the counties affected and ~~shall~~ *must* set forth and state the reasons why ~~such~~ *the* consolidation is believed by the petitioners to be necessary or desirable or for the best interests of the county taxpayers.

(2) Each person signing ~~such~~ *the* petition shall place ~~his~~ *the person's* printed last name, post-office address, and voting precinct after ~~his~~ *the* signature.

(3) For purposes of determining the number of signatures needed on a petition to meet the percentage requirements of this part, the number of electors must be the number of individuals registered to vote at the preceding general election for the county."

Section 411. Section 7-4-2312, MCA, is amended to read:

"7-4-2312. Salary and bond of officer following consolidation. (1) (a) When two or more offices are consolidated under a single officer, ~~such~~ *the* officer shall receive ~~as~~ *a* salary ~~an amount to be~~ determined by the board or boards of county commissioners~~,~~. ~~but which amount must~~ *However, the salary may* not be more than 20% higher than the highest salary provided by law to be paid to any officer whose duties ~~he~~ *the officer* is required to perform by reason of ~~such~~ *the* consolidations.

(b) The board or boards shall, in June of each fourth year, adopt a resolution fixing the salary of ~~such~~ *the* officer for the term beginning with the first Monday in January immediately following the adoption of ~~such~~ *the* resolution.

(2) ~~Such~~ *The* officer shall give a bond in an amount equal to the highest bond required by law of any officer whose duties ~~he~~ *the officer* is required to perform by reason of ~~such~~ *the* consolidation *of offices*."

Section 412. Section 7-4-2403, MCA, is amended to read:

"7-4-2403. Official mention of principal officer includes deputies. Whenever the official name of any principal officer is used in any law conferring power or imposing duties or liabilities, it includes ~~his~~ *the officer's* deputies."

Section 413. Section 7-4-2511, MCA, is amended to read:

"7-4-2511. Collection and disposal of fees. (1) Each salaried county officer ~~must~~ *shall* charge and collect for the use of ~~his~~ *the* county and pay into the county treasury by the 10th day in each month all fees ~~now or hereafter~~ allowed by law, paid or chargeable in all cases, except as provided in 25-10-403. ~~Nothing in this~~ *This* subsection ~~applies~~ *does not apply* to the compensation received by the sheriff as mileage while in the performance of official duties or for the board of prisoners or other persons while in ~~his~~ *the sheriff's* custody.

(2) ~~No~~ *A* salaried county officer may *not* receive for ~~his~~ *the officer's* own use any fees, penalties, or emoluments of any kind, except the salary as provided by law, for any official service rendered ~~by him~~. Unless otherwise provided, all fees, penalties, and emoluments of every kind collected by a salaried county officer are for the sole use of the county and must be accounted for and paid to the county treasurer as provided by subsection (1) and credited to the general fund of the county."

Section 414. Section 7-4-2513, MCA, is amended to read:

"7-4-2513. Filing of statements and affidavits. The treasurer ~~must~~ *shall* file and preserve in ~~his~~ *the treasurer's* office ~~said~~ *the* statements and affidavits *provided for in 7-4-2512* and ~~must~~ *shall* issue to the officer one original and one duplicate receipt ~~therefor~~ *for the statements and affidavits*. The officer receiving ~~said~~ *the* receipts must preserve one in ~~his~~ *the officer's* office and file the duplicate with the county clerk, ~~whereupon the clerk must~~ *who shall* charge the treasurer with the amount shown by the receipt."

Section 415. Section 7-4-2515, MCA, is amended to read:

"7-4-2515. Fees to be paid in advance. (1) The officers mentioned in this chapter ~~must~~ *may* not ~~in any case~~ perform any official services unless the fees prescribed for ~~such~~ *the* services are paid in advance. On ~~such~~ payment, the officers ~~must~~ *shall* perform the services required. For every failure or refusal to perform *the* official duty when the fees are tendered, the officer is liable on ~~his~~ *the officer's* official bond.

(2) The county clerk is not bound to record any instrument, file any paper or notice, furnish any copies, or render any service connected with ~~his~~ *the* office until the fee for the ~~same~~ *recording or the service* as prescribed by law is, if demanded, paid or tendered.

(3) When any publication is required by law to be made by an officer of any suit, process, notice, order, or other paper, the costs of the ~~same~~ *publication* must be first tendered by the party, if demanded, for whom ~~such~~ *the* order of publication was granted before the officer is compelled to make ~~such~~ *the* publication."

Section 416. Section 7-4-2517, MCA, is amended to read:

"7-4-2517. Itemized receipt for fees. Every officer, upon receiving any fees for official duty or service, may be required by the person paying the ~~same~~ *fee* to make ~~out in writing~~ and deliver to ~~such~~ *the* person a ~~particular~~ *written* account of ~~such~~ *the* fees, specifying for what they accrued, respectively, and ~~must~~ *shall issue a* receipt *for* the ~~same~~ *fee*. If ~~he~~ *the officer* refuses or neglects to ~~do so~~ *issue an account and a receipt* when required, ~~he~~ *the officer* is liable to the party paying the ~~same~~ *fee* in treble the amount ~~so~~ paid."

Section 417. Section 7-4-2518, MCA, is amended to read:

"7-4-2518. Statement of fees to be posted. (1) It is the duty of each officer entitled to collect fees to keep posted in ~~his~~ *the* office a plain and legible statement of the fees allowed by law.

(2) A failure to do so subjects the officer to a fine of $100 and costs, to be recovered by the county attorney in the name of the state."

Section 418. Section 7-4-2520, MCA, is amended to read:

"7-4-2520. Misconduct concerning official fees to result in vacancy of office. Upon receiving a certified copy of the record of conviction of any officer for receiving illegal fees or upon proof that the officer collected fees and failed to account for the ~~same~~ *fees*, the board of county commissioners must declare ~~his~~ *the* office vacant and appoint ~~his~~ *a* successor."

Section 419. Section 7-4-2521, MCA, is amended to read:

"7-4-2521. Designation of person to receive decedent's warrants or paychecks — reissuance. Any person employed by a county may file with ~~his~~ *the* appointing power a designation of a person who, notwithstanding any other provision of law, is entitled, on the death of the employee, to receive all warrants or paychecks that would have been payable to the decedent ~~had he survived~~. The employee may change the designation from time to time. A *designated* person ~~so designated~~ shall claim ~~such~~ *the* warrants or paychecks from the county clerk, and on sufficient proof of identity, the county clerk shall reissue the warrant or paycheck in the name of the designated person and deliver the warrant or paycheck to the designated person."

Section 420. Section 7-4-2602, MCA, is amended to read:

"7-4-2602. Designation of chief deputy by county clerk. The county clerk in counties of the first class may designate one of ~~his~~ *the* deputy clerks as chief deputy clerk."

Section 421. Section 7-4-2616, MCA, is amended to read:

"7-4-2616. Map book. The county clerk ~~must~~ *shall* keep a well-bound book ~~which must contain~~ *containing* maps of towns, villages, or additions to the ~~same~~ *towns or villages* within ~~his~~ *the* county, together with the description, acknowledgment, or other writing ~~thereon~~ *on the maps*."

Section 422. Section 7-4-2617, MCA, is amended to read:

"7-4-2617. Procedure to record documents. (1) When any instrument, paper, or notice authorized by law to be recorded is deposited for record in the office of the county clerk, as ex officio recorder, and accompanied by the required fee, ~~he~~ *the clerk* must endorse upon the ~~same~~ *document* the time it was received, noting the year, month, day, hour, and minute of its ~~reception~~ *receipt*, and the ~~reception~~ *receipt* of the instrument must be immediately entered in the county clerk and recorder's ~~reception~~ *receipt* book.

(2) If the printed, written, or typed words or numbers are considered by the clerk and recorder to be illegible and not legibly reproducible, the clerk and recorder must affix to the recorded document a statement that the document is illegible and not legibly reproducible.

(3) The county clerk ~~must~~ *shall* record ~~said~~ *the* instrument without delay, together with the acknowledgment, proofs, and certificates written upon or ~~annexed~~ *attached* to the ~~same~~ *instrument* and with the plats, surveys, schedule, and other *attached* papers ~~thereto annexed~~, in the order and as of the time when the ~~same~~ *instrument* was received for ~~record~~ *recording,* and ~~must~~ *shall* note at the foot of the record the exact time of its ~~reception~~ *receipt*.

(4) The county clerk ~~must~~ *shall* also endorse upon each instrument, paper, or notice the time when and the book and pages or document number in which it is recorded and ~~must thereafter~~ *shall* deliver it, upon request, to the party leaving the ~~same~~ *document* for ~~record~~ *recording* or to ~~his~~ *the party's* order."

Section 423. Section 7-4-2622, MCA, is amended to read:

"7-4-2622. Availability of records. All books or records, maps, charts, surveys, and other papers on file in the county clerk's office must be open during office hours for the inspection of any person who may desire to inspect them and may be inspected without charge. The county clerk ~~must~~ *shall* arrange the books of record and indexes in ~~his~~ *the* office in ~~such~~ suitable places ~~as to~~ *that* facilitate their inspection."

Section 424. Section 7-4-2704, MCA, is amended to read:

"7-4-2704. Limitations on activities of county attorneys and deputy county attorneys. (1) The county attorney, except for ~~his own~~ *personally rendered* services, ~~must~~ *may* not present any claim, account, or other demand for allowance against the county or in any way advocate the relief asked on the claim or demand made by another.

(2) In each county with a population in excess of 30,000, the county attorney is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law, except ~~that he may represent himself and his~~*:*

(a) for self-representation and the representation of immediate family*;* and

(b) ~~except~~ as provided in subsection (4).

(3) Any deputy county attorney in a county with a population in excess of 30,000 who is paid 70% or more of the county attorney's salary is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law except as to those matters in which ~~he~~ *the deputy* has a direct interest and except as provided in subsection (4).

(4) Any elected or appointed county attorney and any deputy county attorney shall, upon demonstration of need to the board of county commissioners, be granted a period of time, not to exceed 3 months from the date ~~he~~ *the person* takes office, to complete any pending matters remaining from any previous private practice of law. During ~~such~~ *that* time the county attorney and any appointed deputy are bound by the customary rules of ethics applicable to attorneys at law."

Section 425. Section 7-4-2707, MCA, is amended to read:

"7-4-2707. Contract for services of county attorney from another county. The county commissioners of any county may, upon the consent of the

county attorney, by agreement with the commissioners and county attorney of any other county, contract in writing to employ any other county attorney or attorney member of ~~his~~ *a county attorney's* staff to perform civil or criminal legal services for the county at a reasonable rate. The provisions of this section are subject to the provisions of interlocal cooperative agreements."

Section 426. Section 7-4-2711, MCA, is amended to read:

"7-4-2711. County attorney to be legal adviser of county and other subdivisions. (1) The county attorney is the legal adviser of the board of county commissioners. ~~He must~~ *The county attorney shall* attend their meetings when required and ~~must~~ *shall* attend and oppose all claims and accounts against the county ~~which~~ *that* are unjust or illegal. ~~He must~~ *The county attorney shall* defend all suits brought against ~~his~~ *the* county.

(2) The county attorney ~~must~~ *shall*:

(a) give, when required and without fee, ~~his~~ *an* opinion in writing to the county, district, and township officers on matters relating to the duties of their respective offices;

(b) act as counsel, without fee, for fire districts and fire service areas in unincorporated territories, towns, or villages within ~~his~~ *the* county;

(c) when requested by a conservation district pursuant to 76-15-319, act as counsel, without fee;

(d) when requested by a weed district pursuant to 7-22-2103, act as counsel, without fee; and

(e) when requested by a county hospital board pursuant to 7-34-2115, act as counsel, without fee, unless the legal action requested involves the county commissioners."

Section 427. Section 7-4-2712, MCA, is amended to read:

"7-4-2712. Prosecutorial duties. The county attorney is the public prosecutor and ~~must~~ *shall*:

(1) institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses when ~~he~~ *the county attorney* has information that ~~such~~ *the* offenses have been committed and for that purpose, whenever not otherwise officially engaged, must ~~attend upon~~ *be present and assist* the magistrate in cases of arrest and ~~attend~~ *appear* before and give advice to the grand jury whenever cases are presented to them for their consideration;

(2) draw all indictments and informations."

Section 428. Section 7-4-2713, MCA, is amended to read:

"7-4-2713. Actions to recover money. The county attorney ~~must~~ *shall* prosecute all recognizances forfeited in the courts of record and all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or ~~his~~ *the* county."

Section 429. Section 7-4-2714, MCA, is amended to read:

"7-4-2714. Recovery of illegally paid money. Whenever the board of county commissioners, without authority of law, orders any money paid as a salary or fee or for any other purpose and ~~such~~ *the* money has been actually paid or whenever any other county officer has drawn a warrant in ~~his~~ *the officer's* own favor or in favor of any other person without being authorized by the board or by

law and the ~~same~~ *warrant* has been paid, the county attorney ~~is empowered and it is his duty to~~ *shall* institute an action in the name of the county against ~~such~~ *the* person to recover the money and 25% damages for the use ~~thereof~~ *of the money*. ~~No~~ *An* order of the board ~~therefor~~ is ~~necessary~~ *unnecessary* to maintain this suit. Whenever the money has not been paid on the order or warrant, it is the duty of the county attorney, upon receiving notice ~~thereof~~, to commence an action in the name of the county for restraining the payment of the ~~same~~ *money*, and ~~no~~ *an* order of the board is ~~necessary~~ *unnecessary* to maintain the action."

Section 430. Section 7-4-2715, MCA, is amended to read:

"7-4-2715. Records and reports. The county attorney ~~must~~ *shall*:

(1) keep a register of all official business, in which must be entered a note of every action, whether criminal or civil, prosecuted officially and of the proceedings ~~therein~~ *in the action*;

(2) deliver receipts for money or property received in ~~his~~ *an* official capacity and file duplicates ~~thereof~~ *of the receipts* with the county treasurer;

(3) on the first Monday of January, April, July, and October in each year file with the county clerk an account, verified by ~~his~~ oath, of all money received by ~~him~~ *the county attorney* in ~~his~~ *an* official capacity during the preceding 3 months and at the same time pay it over to the county treasurer."

Section 431. Section 7-4-2716, MCA, is amended to read:

"7-4-2716. Duties related to state matters. The county attorney ~~must~~ *shall*:

(1) attend the district court and conduct, on behalf of the state, all prosecutions for public offenses and represent the state in all matters and proceedings to which it is a party or in which it may be beneficially interested, at all times and in all places within the limits of ~~his~~ *the* county;

(2) when ordered or directed by the attorney general to do so, promptly institute and diligently prosecute in the proper court and in the name of the state of Montana any criminal or civil action or special proceeding;

(3) defend all suits brought against the state."

Section 432. Section 7-4-2801, MCA, is amended to read:

"7-4-2801. Qualifications for county surveyor and deputies. (1) Except as provided in subsection (3), a county surveyor ~~shall~~ *must* be a registered professional engineer or registered professional land surveyor who ~~shall have~~ *has* been in active practice of ~~his~~ *the* profession for at least 3 years and who ~~shall have~~ *has* had responsible charge of work as principal or assistant for at least 1 year. Graduation from a school of engineering or land surveying ~~shall be~~ *is* considered as equivalent to 2 years of active practice.

(2) All deputies must also have a practical knowledge of engineering or land surveying.

(3) When the office of county surveyor is consolidated with another county office within the county, the requirements of subsection (1) are waived. Unless the officeholder has the qualifications prescribed in subsection (1), ~~he~~ *the officer* shall, with the approval of the governing body, contract for the services of a person with those qualifications to perform the duties of county surveyor."

Section 433. Section 7-4-2802, MCA, is amended to read:

"7-4-2802. Employment of assistants to surveyor. If a party for whom the county survey is made does not furnish the ~~chainmen and markers~~ *assistants*, the surveyor may employ the necessary ~~chainmen and markers~~ *assistants* and receive *payment for* the reasonable ~~hire~~ *wages* of all assistants necessarily employed."

Section 434. Section 7-4-2803, MCA, is amended to read:

"7-4-2803. Situations involving use of other surveyors. (1) Whenever the county surveyor is interested in any land the title to which is in dispute and a survey ~~thereof~~ is necessary, the court ~~must~~ *shall* direct the survey to be made by some disinterested person. The *appointed* person ~~so appointed~~ is, for the purpose, authorized to administer and certify oaths. ~~He~~ *The appointed person* shall return the survey, verified by ~~his~~ affidavit annexed ~~thereto~~ *to the survey*, and receive for ~~his~~ *the* services the same fees as the county surveyor would be entitled to for similar services.

(2) Whenever the county surveyor neglects, refuses, or is incompetent to perform the duties prescribed in this part, ~~it is the duty of~~ the board of county commissioners ~~to~~ *shall* employ another competent civil engineer, who ~~shall be~~ *is* subject to the laws governing the county surveyor."

Section 435. Section 7-4-2811, MCA, is amended to read:

"7-4-2811. Function of county surveyor. (1) The county surveyor shall work under the direction of the board of county commissioners. ~~He shall have no power or authority to~~ *The county surveyor may not* incur any indebtedness on the part of the county without the prior order or approval of the board. The county surveyor ~~shall~~ *must* be provided with suitable office *space*, together with necessary equipment, to perform ~~his~~ *the* various duties as prescribed by law.

(2) ~~He~~ *The county surveyor* shall make all surveys, establish all grades, and prepare plans, specifications, and estimates.

(3) ~~He~~ *The county surveyor* shall make progress reports and estimates of all work and ~~such~~ other facts in relation ~~thereto~~ *to the work* as may be required by the board."

Section 436. Section 7-4-2813, MCA, is amended to read:

"7-4-2813. Maintenance of records. (1) The county surveyor shall keep in ~~his~~ *the* office a record of all surveys and plats made or caused to be made by ~~him~~ *the surveyor*, to be recorded in proper books provided for that purpose. ~~He~~ *The county surveyor* shall also keep on file and for record, in suitable plat books provided ~~therefor~~ *for that purpose*, copies of all plats made or caused to be made by ~~him~~ *the surveyor* and have recorded ~~therein~~ *in the books* a description of every public highway within the county.

(2) All ~~such~~ books of record, together with original drawings and *the* original book or books of field notes, calculations, and computations, are and ~~shall~~ remain the property of the county and ~~shall~~ *must* be preserved as ~~such~~ *county records*."

Section 437. Section 7-4-2814, MCA, is amended to read:

"7-4-2814. Preparation of surveys. (1) *(a)* The county surveyor ~~must~~ *shall:*

(i) make any survey that ~~may be~~ *is* required by order of the court or upon application of any person;

(ii) keep a correct and fair record of all surveys made by ~~him~~ *the county surveyor*;

(iii) number ~~them~~ *the surveys* progressively in the order made; and

(iv) preserve a copy of the field notes and calculations of each survey and endorse ~~thereon~~ *on the copy* its proper number~~.~~.

(b) ~~a~~ *A* copy of ~~which~~ *the field notes and calculations of each survey* and a fair and accurate plat, together with the certificate of survey, must be furnished by ~~him~~ *the county surveyor* to any person upon payment of the fees allowed by law.

(c) In all surveys the courses must be expressed according to the true meridian and the variation of the magnetic meridian from the true meridian must be expressed on the plat~~,~~ with the date of the survey.

(2) ~~He must~~ *The county surveyor shall* also keep a correct and plain record of all surveys made by ~~him~~ *the county surveyor* for the county or for individuals or corporations ~~which~~ *that* pertain to the public roads or bridges~~,~~ in a book provided for that purpose by the county, which ~~shall~~ *must* be transmitted to ~~his~~ *the* successor in office."

Section 438. Section 7-4-2901, MCA, is amended to read:

"7-4-2901. Appointment of deputy coroners. (1) The coroner, with approval of the county commissioners, may appoint one or more deputy coroners to assist ~~him~~ *the coroner* or act in ~~his~~ *the coroner's* absence.

(2) At the time of appointment, a deputy coroner or acting coroner must meet the qualifications required of a coroner as provided in 7-4-2904(1) and (2)(a). Within a reasonable time after appointment, a deputy ~~must~~ *shall* successfully complete the basic coroner course, as provided for in 7-4-2905(2)(a). The deputy ~~must~~ *shall* also meet the requirements for advanced education as provided in 7-4-2905(2)(b).

(3) A deputy coroner may be the coroner or qualified deputy coroner from another county."

Section 439. Section 7-4-2902, MCA, is amended to read:

"7-4-2902. Vacancy in office of county coroner or disqualification of coroner. (1) The coroner, or the board of county commissioners if the coroner is unable or refuses to act, shall request the coroner or a qualified deputy coroner of another county to be acting county coroner if the coroner:

(a) is absent or unable to attend to ~~his~~ duties or if the office of coroner is vacant and there are no qualified deputies available;

(b) is related to the deceased;

(c) is a potential party in an action concerning the death or ~~his~~ *the coroner's* inquiry into the death may pose a conflict of interest;

(d) has not successfully completed the basic coroner course required in 7-4-2905 and there are no qualified deputies available; or

(e) is disqualified under the provisions of 46-4-201.

(2) The salary of and expenses incurred by an acting coroner on behalf of a requesting county are an allowable charge against the requesting county."

Section 440. Section 7-4-2904, MCA, is amended to read:

"7-4-2904. Qualifications for office of county coroner. (1) In addition to the qualifications set forth in 7-4-2201, to be eligible for the office of coroner, at

the time of election or appointment to office a person must be a high school graduate or holder of an equivalency of completion of secondary education as provided by the superintendent of public instruction under 20-7-131 or of an equivalency issued by another state or jurisdiction.

(2) Each coroner, before entering the duties of ~~his~~ office, ~~must~~ *shall*:

(a) take and file with the county clerk the constitutional oath of office; and

(b) certify to the county clerk that:

(i) ~~he~~ *the individual* has satisfactorily completed the basic coroner course of study provided in 7-4-2905 or that ~~he~~ *the individual* has completed the equivalent educational requirements approved by the attorney general; or

(ii) ~~he~~ *the individual* intends to take the basic coroner course at the next offering of the course if the coroner has been appointed or was elected by other than a local government general election and, from the date of appointment or election and assumption of ~~his~~ *the* duties as coroner, ~~no~~ *a* basic coroner course was *not* offered. A coroner forfeits ~~his~~ office for failure to take and satisfactorily complete the next offering of the basic coroner course."

Section 441. Section 7-4-2911, MCA, is amended to read:

"7-4-2911. Duties of county coroner. The county coroner shall:

(1) hold inquests as provided in Title 46, chapter 4, parts 1 and 2;

(2) inquire into the cause, manner, and circumstances of all human deaths, as required in 46-4-122, and establish the identity of the deceased person;

(3) provide decent disposal of an unclaimed dead human body and unclaimed parts of bodies believed to be human;

(4) maintain records of inquiries as required by good practice and by law;

(5) as soon as practicable upon identifying a dead human body, provide for notifying the next of kin of the deceased of the fact of death in any death into which ~~he~~ *the coroner* is making an inquiry;

(6) if ~~no~~ *a* law enforcement agency ~~has~~ *does not have* jurisdiction of the case, preserve evidence involving any human death, pursuant to ~~his~~ *the coroner's* authority, including placing under ~~his~~ *the coroner's* control, to the extent necessary, any personal and real property that may be related to or involved in the death;

(7) witness and certify deaths that are the result of a judicial order;

(8) inquire into any human death when no physician or surgeon licensed in the state will sign a death certificate;

(9) notify the county attorney and the law enforcement agency having jurisdiction of all deaths requiring inquiry pursuant to 46-4-122; and

(10) in the cases specified in 25-3-205, discharge the duties of sheriff. If acting as sheriff, the coroner is allowed the same salary as sheriff or the same fees as constable for ~~like~~ *similar* services."

Section 442. Section 7-4-2914, MCA, is amended to read:

"7-4-2914. Statement required before allowing accounts of coroner. Before allowing the accounts of the coroner, the board of county commissioners ~~must~~ *shall* require ~~him~~ *the coroner* to file with the clerk of the board a statement, in writing and verified by ~~his~~ affidavit, showing:

(1) the amount of money or other property belonging to the estate of the deceased person ~~which~~ *that* has come into ~~his~~ *the coroner's* possession since ~~his~~ *the* last statement; *and*

(2) the disposition made of ~~such~~ *the* property."

Section 443. Section 7-4-2915, MCA, is amended to read:

"7-4-2915. Custody and disposition of bodies held pending investigation. (1) In the course of an inquiry authorized under the provisions of 46-4-122, the coroner may take custody of a dead human body and cause it to be removed from the site of death to a facility designated by the coroner.

(2) A dead human body in the custody of a county coroner must be held until the coroner, after consultation with appropriate law enforcement officials and the county attorney, establishes that it is not necessary to hold the body to determine the reasonable and true cause of death or that the body is no longer necessary to assist any local investigations.

(3) If the identity of a dead human body is unknown or if those entitled to custody of a body do not claim it, the coroner shall take custody of the body even if the circumstances of the death do not otherwise require an inquiry by the coroner.

(4) A dead human body in the custody of the coroner may be released by ~~him~~ *the coroner* to the custody of a person who is entitled to custody or to a funeral home.

(5) The coroner shall release to a funeral home a dead human body that is not designated to be released to a specific funeral home by the deceased prior to death, by the deceased's next of kin, or by a friend of the deceased who will take financial responsibility for the disposition of the body. The coroner shall rotate the release of bodies to funeral homes in a manner that is fair and equitable. The coroner may not release a body to a funeral home if the funeral home has requested in writing by December 1 of the preceding year that it does not wish to participate in the release of bodies under this section."

Section 444. Section 7-4-2923, MCA, is amended to read:

"7-4-2923. Computation of mileage for reimbursement. When ~~any~~ *a* coroner serves more than one process in the same cause, not requiring more than one journey from ~~his~~ *the* office, ~~he shall~~ *the coroner may* receive mileage only for the more distant service, and ~~no~~ mileage ~~in any case must be~~ *is not* allowed for less than 1 mile actually traveled."

Section 445. Section 7-4-4101, MCA, is amended to read:

"7-4-4101. Officers of city of first class. (1) The officers of a city of the first class consist of:

(a) one mayor;

(b) two ~~aldermen~~ *city council members* from each ward; *and*

(c) one city judge.

(2) The officers listed in subsection (1) must be elected by the qualified electors of the city, as ~~hereinafter~~ provided *in this part*.

(3) There may also be appointed by the mayor, with the advice and consent of the council:

(a) one city attorney;

(b) one city clerk;

(c) one city treasurer or finance officer or one city clerk-treasurer;

(d) one chief of police;

(e) one assessor;

(f) one street commissioner;

(g) one city jailer;

(h) one city surveyor; and

(i) any other officers necessary to carry out the provisions of this title.

(4) The city council may by ordinance prescribe the duties of all city officers and fix their compensation."

Section 446. Section 7-4-4102, MCA, is amended to read:

"7-4-4102. Officers of city of second or third class. (1) The officers of a city of the second or third class consist of:

(a) one mayor;

(b) two ~~aldermen~~ *city council members* from each ward; *and*

(c) one city judge.

(2) The officers listed in subsection (1), except the city judge for a city of the third class, must be elected by the qualified electors of the city, as ~~hereinafter~~ provided *in this part*.

(3) The governing body of a city of the third class may by ordinance determine whether the office of city judge ~~shall~~ *must* be filled by appointment by the governing body or by election or may appoint a justice of the peace or the city judge of another city as judge of the city court as provided in 3-11-205.

(4) There may also be appointed by the mayor, with the advice and consent of the council:

(a) one city attorney;

(b) one city clerk, who is ex officio city assessor;

(c) one city treasurer or one city clerk-treasurer;

(d) one chief of police; and

(e) any other officers necessary to carry out the provisions of this title.

(5) The city council may prescribe the duties of all city officers and fix their compensation."

Section 447. Section 7-4-4103, MCA, is amended to read:

"7-4-4103. Officers of towns. (1) The officers of a town consist of:

(a) one mayor;

(b) two ~~aldermen~~ *city council members* from each ward; and

(c) one city judge.

(2) The officers listed in subsection (1), except for the city judge, must be elected by the qualified electors of the town, as ~~hereinafter~~ provided *in this part*.

(3) The governing body of the town may by ordinance determine that the office of city judge must be filled either by election or *by* appointment or may appoint a justice of the peace or the city judge of another city to be judge of the city court as provided in 3-11-205.

(4) There may be appointed by the mayor, with the advice and consent of the council:

(a) one clerk, who may be ex officio assessor and tax collector and a member of the council;

(b) one marshal, who may be ex officio street commissioner; and

(c) any other officers necessary to carry out the provisions of this title.

(5) The town council may prescribe the duties of all town officers and fix their compensation, subject to the limitations contained in this title."

Section 448. Section 7-4-4109, MCA, is amended to read:

"7-4-4109. Official bond. Each officer of a city or town who is required to give bond shall file the ~~same~~ *bond*, duly approved, within 10 days after receiving notice of ~~his~~ election or appointment or, if ~~no~~ notice ~~be~~ *is not* received, then on or before the date fixed for the assumption ~~by him~~ of the duties of the office to which ~~he may have been~~ *the officer is* elected or appointed."

Section 449. Section 7-4-4112, MCA, is amended to read:

"7-4-4112. Filling of vacancy. (1) When ~~any~~ *a* vacancy occurs in any elective office, this position ~~shall be~~ *is* considered open and subject to nomination and election at the next general municipal election in the same manner as the election of any other person holding the same office, except the term of office ~~shall be~~ *is* limited to the unexpired term of the person who originally created the vacancy. Pending ~~such~~ *an* election and qualification, the council shall, by a majority vote of the members, appoint a person within 30 days of the vacancy to hold the office until ~~his~~ *a* successor is elected and qualified.

(2) If all council positions become vacant at one time, the board of county commissioners shall appoint persons within 5 days to hold office as ~~aldermen~~ *a city council member*. The appointed ~~aldermen~~ *city council member* shall then appoint persons to any other vacant elective offices.

(3) A vacancy in the office of ~~alderman~~ *city council member* must be filled from the ward in which the vacancy exists."

Section 450. Section 7-4-4211, MCA, is amended to read:

"7-4-4211. Designation of person to receive decedent's warrants or paychecks — reissuance. ~~Any~~ *A* person employed by a municipality may file with ~~his~~ *the* appointing power a designation of a person who, notwithstanding any other provision of law, is entitled, on the death of the employee, to receive all warrants or paychecks that would have been payable to the decedent ~~had he survived~~. The employee may change the designation from time to time. A *designated* person ~~so designated~~ shall claim ~~such~~ *the* warrants or paychecks from the city treasurer or town clerk, whichever is applicable, and on sufficient proof of identity, the city treasurer or town clerk shall reissue the warrant or paycheck in the name of the designated person and deliver the warrant or paycheck to the designated person."

Section 451. Section 7-4-4301, MCA, is amended to read:

"7-4-4301. Qualifications for mayor. (1) ~~No~~ *A* person is *not* eligible for the office of mayor unless ~~he~~ *the person*:

(a) is at least 21 years old;

(b) has been a resident of the state for at least 3 years; and

(c) has been a resident for at least 2 years preceding the election to office of the city or town or an area ~~which~~ *that* has been annexed by the city or town.

(2) The office of mayor of a city or town is considered vacant if the individual elected as mayor ceases to be a resident of the city or town."

Section 452. Section 7-4-4302, MCA, is amended to read:

"7-4-4302. Term of office. The mayor shall hold office for a term of 4 years and until the qualification of ~~his~~ *a* successor."

Section 453. Section 7-4-4401, MCA, is amended to read:

"7-4-4401. Qualifications for ~~alderman~~ *city council member*. ~~No~~ *A* person is *not* eligible for the office of ~~alderman~~ *city council member* unless ~~he~~ *the person* is a resident for at least 60 days preceding the election to office of the ward electing ~~him~~ *the person* or of an area ~~which~~ *that* has been annexed by the city or town and placed in the ward."

Section 454. Section 7-4-4402, MCA, is amended to read:

"7-4-4402. Term of office. (1) Except as provided in subsection (2), ~~an alderman~~ *a city council member* shall hold office for a term of 4 years and until the qualification of ~~his~~ *a* successor.

(2) At the first annual election held after the organization of a city or town under this title, the electors of the city or town ~~must~~ *shall* elect two ~~aldermen~~ *city council members* from each ward, who ~~must~~ *shall*, at the first meeting of the council, decide by lot their terms of office, with one from each ward to hold for a term of 4 years and one~~,~~ for a term of 2 years and until the qualification of their successors. In the succeeding ~~election and thereafter~~ *elections*, one ~~alderman~~ *city council member* from each ward ~~will~~ *must* be elected for a 4-year term."

Section 455. Section 7-4-4403, MCA, is amended to read:

"7-4-4403. Officers of city or town council. The council may elect a president~~,~~ who, in the absence of the mayor, is the presiding officer and may perform the duties of mayor. In the absence of the president, the council may appoint one of its number to act in ~~his~~ *the president's* place."

Section 456. Section 7-4-4502, MCA, is amended to read:

"7-4-4502. Duties of city clerk related to city records and papers. ~~It is the duty of the~~ *The city* clerk ~~to~~ *shall*:

(1) file and keep all records, books, papers, or property belonging to the city or town and deliver the ~~same~~ *documents or property* to ~~his~~ *the clerk's* successor when qualified;

(2) make and certify copies of all records, books, and papers in ~~his~~ *the clerk's* possession on the payment of ~~like~~ fees ~~as~~ *that* are allowed county clerks, which ~~fees~~ must be paid into the city treasury;

(3) make and keep a complete index of the journal, ordinance book, finance book, and all other books and papers on file in ~~his~~ *the clerk's* office."

Section 457. Section 7-4-4512, MCA, is amended to read:

"7-4-4512. Duties of town clerk related to town records and papers. ~~It shall be the duty of the~~ *The* town clerk ~~to~~ *shall* file and keep all records, books, papers, or property belonging to the town and to deliver the ~~same~~ *documents or property* to ~~his~~ *a* successor when qualified."

Section 458. Section 7-4-4602, MCA, is amended to read:

"7-4-4602. Appointment — term of office. (1) The city attorney must be appointed by the mayor, subject to approval by the city council.

(2) The city attorney shall hold ~~his~~ office for 2 years unless suspended or removed as provided by law."

Section 459. Section 7-4-4701, MCA, is amended to read:

"7-4-4701. Term of office for city treasurer. In cities of the first, second, and third classes, a city treasurer shall hold office for a term of 4 years and until the qualification of ~~his~~ *a* successor."

Section 460. Section 7-5-101, MCA, is amended to read:

"7-5-101. Definition. As used in this part, "chief executive" means the elected executive in a government adopting the commission-manager form, the ~~chairman~~ *presiding officer* in a government adopting the ~~commission-chairman~~ *commission-presiding officer* form, the town ~~chairman~~ *presiding officer* in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers ~~so~~ designated in the charter in a government adopting a charter."

Section 461. Section 7-5-103, MCA, is amended to read:

"7-5-103. Ordinance requirements. (1) All ordinances ~~shall~~ *must* be submitted in writing in the form prescribed by resolution of the governing body.

(2) ~~No~~ *An* ordinance passed ~~shall~~ *may not* contain more than one comprehensive subject, which ~~shall~~ *must* be clearly expressed in its title, except ordinances for codification and revision of ordinances.

(3) An ordinance must be read and adopted by a majority vote of members present at two meetings of the governing body not less than 12 days apart. After the first adoption and reading, it must be posted and copies *must be* made available to the public.

(4) After passage and approval, all ordinances ~~shall~~ *must* be signed by the ~~chairman~~ *presiding officer* of the governing body and filed with the official or employee designated by ordinance to keep the register of ordinances."

Section 462. Section 7-5-135, MCA, is amended to read:

"7-5-135. Suit to determine validity and constitutionality of petition and proposed action. (1) The governing body may direct that a suit be brought in district court by the local government to determine whether the proposed action would be valid and constitutional~~,~~. ~~but such a~~ *The* suit must be initiated within 14 days of the date a petition has been approved as to form under 7-5-134.

(2) An action brought under this section takes precedence over other cases and matters in the district court. The court shall as soon as possible render a decision as to whether the proposed action would be valid and constitutional.

(3) If the defendant prevails, ~~he~~ *the defendant* is entitled to be reimbursed by the local government for costs and reasonable attorney's fees incurred.

(4) The 90-day period during which petition signatures must be collected under 7-5-134 begins on the date of the court order resolving the suit."

Section 463. Section 7-5-2127, MCA, is amended to read:

"7-5-2127. Subpoena power of county commissioners. (1) The board may, by its ~~chairman~~ *presiding officer* or the ~~chairman~~ *presiding officer* of any committee, issue subpoenas to compel the attendance of any person and the

production of any books or papers relating to the affairs of the county, for the purpose of examination upon any matter within its jurisdiction.

(2) When served, a witness is bound to attend and to answer all questions ~~which he~~ *that the witness* would be bound to answer before any court. Disobedience to the subpoena or to an order to attend or to testify may be enforced by the board, and for that purpose, the board has all the powers conferred by and the witness is subject to all the provisions of Title 26, chapter 2, parts 1 and 2; 26-2-303; and Rule 45(c), M.R.Civ.P."

Section 464. Section 7-5-2130, MCA, is amended to read:

"7-5-2130. Records to be signed. The records must be signed by the ~~chairman~~ *presiding officer* and the clerk."

Section 465. Section 7-5-4102, MCA, is amended to read:

"7-5-4102. Powers and duties of mayor related to administration and executive function. (1) The mayor ~~has power to~~ *may*:

(a) communicate to the council, at the beginning of ~~every~~ *each* session and more often if considered necessary, a statement of the affairs of the city or town, with ~~such~~ recommendations ~~as~~ *that* the mayor considers proper;

(b) recommend to the council ~~such~~ measures connected with the public health, cleanliness, and ornament of the city or town and the improvement of the government and finances ~~as~~ *that* the mayor considers expedient;

(c) call special meetings of the council;

(d) cause to be presented, once in 3 months, a full statement of the financial condition of the city or town;

(e) bid for the city or town on any property sold at a tax or judicial sale whenever the city or town is an interested party;

(f) procure and have in ~~his~~ *the mayor's* custody the seal of the city or town;

(g) take and administer oaths;

(h) perform ~~such~~ other duties ~~as~~ *that* may be prescribed by law or by resolution or ordinance of the council.

(2) The mayor is the presiding officer of the council and ~~must~~ *shall* sign the journals ~~thereof~~ *of the council* and all warrants on the city treasury and decide all ties by ~~his~~ vote. The mayor has no other vote."

Section 466. Section 7-5-4112, MCA, is amended to read:

"7-5-4112. Reports from municipal officers. The city or town council ~~has power to~~ *may* require from an officer at any time a report in detail of the transactions in ~~his~~ *that* office or any matter connected ~~therewith~~ *with that office*."

Section 467. Section 7-5-4142, MCA, is amended to read:

"7-5-4142. Attendance at meetings and conventions by municipal officers and employees. Unless otherwise provided by law, ~~no~~ *a* city officer or employee may *not* receive payment from any public funds for traveling expenses or other expenses of any sort for attendance at ~~any~~ *a* convention, meeting, or other gathering of public officers except for attendance upon ~~such~~ *a* convention, meeting, or other gathering ~~as~~ *that* the officer or employee may by virtue of ~~his~~ *the* office find it necessary to attend."

Section 468. Section 7-5-4201, MCA, is amended to read:

"7-5-4201. Municipal ordinances. (1) The style of ordinances may be as follows: "Be it ordained by the council of the city of .... (or town of ....)", and all ordinances may be published or posted as prescribed by the council.

(2) All ordinances, bylaws, and resolutions must be passed by the council and approved by the mayor or the person acting in ~~his~~ *the mayor's* stead and must be recorded in a book kept by the clerk, called "The Ordinance Book", and numbered by numerical decimal system in the order in which they are passed or codified.

(3) ~~No~~ *An* ordinance ~~shall~~ *may not* be passed containing more than one subject, which ~~shall~~ *must* be clearly expressed in its title, except ordinances for the codification and revision of ordinances."

Section 469. Section 7-5-4308, MCA, is amended to read:

"7-5-4308. Procedure to modify contract. (1) When it becomes necessary in the prosecution of any work to make alterations or modifications of the specifications or plans of a contract, ~~such~~ *the* alteration or modification ~~must~~ *may* ~~only~~ be made *only* by resolution of the council. ~~Such~~ *The* resolution is ~~of no~~ *not in* effect until the price to be paid for the ~~same~~ *work* is agreed to in writing and signed by the contractor and approved by the council.

(2) ~~No~~ *A* contractor ~~must~~ *may not* be allowed anything for extra work caused by an alteration or modification unless a resolution is made and an agreement *is* signed as provided in subsection (1). ~~He must~~ *A contractor may* not ~~in any case~~ be allowed more for ~~such~~ *the* alteration than the price fixed by ~~such~~ *the* agreement."

Section 470. Section 7-5-4322, MCA, is amended to read:

"7-5-4322. Election on question of granting franchise. (1) Notice of the election ~~shall~~ *must* be published as provided in 13-1-108. The notice must state the time and place of holding the election, the character of any ~~such~~ franchise applied for, and the valuable consideration, if there is any, to be derived by the city.

(2) At ~~such~~ *the* election, the ballots must contain the words "For granting franchise" and "Against granting franchise", and in voting, the elector ~~must~~ *shall* make a cross (X) opposite the answer ~~he~~ *that the elector* intends to vote for. The election must be conducted and canvassed and the return made in the same manner as other city or town elections.

(3) If the majority of the votes cast at the election are "For granting franchise", the mayor and city council ~~must thereupon~~ *shall* grant the ~~same~~ *franchise* by the passage and approval of a proper ordinance."

Section 471. Section 7-6-106, MCA, is amended to read:

"7-6-106. Political subdivisions to receive county warrants for share of in-lieu payments. (1) After apportioning any payment to the several accounts as provided in 7-6-105, the county treasurer shall prepare in duplicate a complete itemized statement, one copy of which ~~shall~~ *must* be filed with the board of county commissioners and the other of which ~~shall~~ *must* be filed with the county clerk.

(2) The board shall, by appropriate resolution, order warrants drawn on the county treasury to the order of each political subdivision named in the itemized statement and in the amount of the political subdivision's share in the payment. The county clerk shall draw and sign the warrants, which ~~shall~~ *must* also be signed by the ~~chairman~~ *presiding officer* of the board.

(3) (a) Except as provided in subsection (3)(b), whenever ~~such~~ *a* warrant is presented to the county treasurer, ~~he~~ *the treasurer* shall debit the proper account in the fund and shall pay the amount of ~~such~~ *the* warrant in full, without deduction, to the political subdivision presenting the ~~same~~ *warrant*.

(b) The county treasurer may not honor ~~such~~ *the* warrant unless it is endorsed by the president~~, chairman,~~ or other presiding officer of the governing body of the political subdivision. The endorsement of any warrant by the presiding officer of the governing body of a political subdivision as provided in this section constitutes an approval of the agreement under which the payment was received. If ~~any~~ *a* governing body of a political subdivision refuses to receive any warrant delivered pursuant to this section, the amount of the warrant ~~shall~~ *must* be refunded to the United States by the county."

Section 472. Section 7-6-207, MCA, is amended to read:

"7-6-207. Deposit security. (1) The local governing body may require security only for that portion of the deposits ~~which~~ *that* is not guaranteed or insured according to law and, as to ~~such~~ *the* unguaranteed or uninsured portion, to the extent of:

(a) 50% of ~~such~~ *the* deposits if the institution in which the deposit is made has a net worth to total assets ratio of 6% or more; or

(b) 100% if the institution in which the deposit is made has a net worth to total assets ratio of less than 6%. The security ~~shall~~ *must* consist of those enumerated in 17-6-103 or cashier's checks issued to the depository institution by any federal reserve bank.

(2) When negotiable securities are furnished, ~~such~~ *the* securities may be placed in trust. The trustee's receipt may be accepted in lieu of the actual securities when ~~such~~ *the* receipt is in favor of the treasurer or town clerk and ~~his~~ *the treasurer's or clerk's* successors. All warrants or other negotiable securities must be properly assigned or endorsed in blank. ~~It is the duty of the~~ *The* appropriate governing body *shall*, upon the acceptance and approval of any of the ~~above-mentioned~~ bonds or securities, ~~to~~ make a complete minute entry of the acceptance and approval upon the record of ~~their~~ *its* proceedings, and the bonds and securities ~~shall~~ *must* be reapproved at least ~~quarter-annually thereafter~~ *quarterly*."

Section 473. Section 7-6-212, MCA, is amended to read:

"7-6-212. Limitation on liability of treasurer or town clerk. ~~Where~~ *When* money ~~shall have~~ *has* been deposited in accordance with the provisions of this part, the treasurer or town clerk ~~shall~~ *is* not ~~be~~ liable for loss on account of any ~~such~~ deposit that may occur through damage by the elements or for any other cause or reason occasioned through means other than ~~his~~ *the treasurer's or clerk's* own neglect, fraud, or dishonorable conduct."

Section 474. Section 7-6-2101, MCA, is amended to read:

"7-6-2101. Procedure if county treasurer dies in office. (1) In case of the death of ~~any~~ *a* county treasurer, ~~his~~ *the treasurer's* legal representatives ~~must~~ *shall* deliver up all official money, books, accounts, papers, and documents ~~which~~ *that* come into their possession.

(2) ~~No~~ *A* percentage ~~must~~ *may not* be allowed to the treasurer on any money received by ~~him~~ *the treasurer* from the legal representative of ~~such~~ *a* predecessor."

Section 475. Section 7-6-2103, MCA, is amended to read:

"7-6-2103. Suspension of county treasurer in case of misconduct. Whenever ~~any~~ *a* action based upon official misconduct is commenced against ~~any~~ *a* county treasurer, the board of county commissioners may in its discretion suspend ~~him~~ *the treasurer* from office until ~~such~~ *the* suit is determined and may appoint some person to fill the vacancy."

Section 476. Section 7-6-2115, MCA, is amended to read:

"7-6-2115. Manner of settling accounts. (1) The treasurer ~~must~~ *shall* settle ~~his~~ accounts relating to the collection, care, and disbursement of public revenue ~~of whatsoever nature and kind~~ with the county clerk on the first Monday of each month. For the purpose of making ~~such~~ *the* settlements, ~~he must~~ *the treasurer shall* make out a statement, under oath, of the amount of money or other property received prior to the period of ~~such~~ *the* settlement, the sources ~~whence the same was derived~~ *of the money or property*, *and* the amount of payments or disbursements and to whom, with the amount remaining on hand. ~~He must~~ *The treasurer shall*, in ~~such~~ *the* settlements, deposit all *redeemed* warrants ~~redeemed by him~~ and take the county clerk's receipt ~~therefor~~ *for the warrants*.

(2) ~~He must~~ *The treasurer shall* make a full settlement of all accounts with the county clerk, annually on the first Monday of January and in the presence of the county commissioners, who have control ~~thereof~~ *of the accounts*."

Section 477. Section 7-6-2116, MCA, is amended to read:

"7-6-2116. Receipt for money paid to county treasurer. (1) Except as provided in subsection (2), when ~~any~~ money is paid to the county treasurer, ~~he must~~ *the treasurer shall* issue a receipt, in triplicate, for ~~such~~ *the* money, the original of which ~~shall~~ *must* be delivered to the person paying the ~~same~~ *money*, the duplicate of which ~~shall~~ *must* be delivered to the county clerk, and the triplicate ~~shall~~ *must* be retained in ~~his~~ *the* office.

(2) When any money is paid to the county treasurer through the mail or by any electronic means, ~~he must~~ *the treasurer shall* issue receipts for the money. The original receipt ~~shall~~ *must* be retained in ~~his~~ *the treasurer's* office, and a duplicate ~~shall~~ *must* be delivered to the county clerk. Upon request, the county treasurer ~~must~~ *shall* issue a receipt to the person paying the money."

Section 478. Section 7-6-2117, MCA, is amended to read:

"7-6-2117. Receipt of money from county attorney. (1) The county attorney ~~must~~ *shall*, on the first Monday of January, April, July, and October in each year file with the county clerk an account, verified by ~~his~~ oath, of all money received by ~~him~~ *the county attorney* in ~~his~~ *an* official capacity during the preceding 3 months and at the same time pay it over to the county treasurer.

(2) If the county attorney refuses or neglects to account for and pay over money received ~~by him~~ as required by subsection (1), the county treasurer ~~must~~ *shall* bring an action against ~~him~~ *the county attorney* for the recovery ~~thereof~~ *of the money* in the name of the county and may recover in ~~such~~ *the* action, in addition to the amount ~~so~~ received, 50% ~~thereon~~ *of the amount* by way of damages."

Section 479. Section 7-6-2118, MCA, is amended to read:

"7-6-2118. Receipt of money from predecessor county treasurer. ~~No~~ *A* percentage ~~must~~ *may not* be allowed to the treasurer on any money received ~~by him~~ from ~~his~~ *the treasurer's* predecessor in office."

Section 480. Section 7-6-2204, MCA, is amended to read:

"7-6-2204. Cash verification by county clerk. The county clerk and recorder, at the close of business each month, shall count the cash in the office of the county treasurer and shall retain a copy of the counting in ~~his~~ *the county clerk's* office."

Section 481. Section 7-6-2403, MCA, is amended to read:

"7-6-2403. Qualifications of county auditor. ~~No~~ *A* person is *not* eligible to serve in the office of county auditor of any county ~~who is not~~ *unless the person is* of voting age and ~~who~~ has ~~not~~ been a resident of the county for which ~~he~~ *the person* is elected or appointed for at least 2 years preceding ~~his~~ election or appointment."

Section 482. Section 7-6-2405, MCA, is amended to read:

"7-6-2405. Location of office. The county auditor shall keep ~~his~~ *the auditor's* principal office at the county seat of the county for which ~~he shall have been~~ elected or appointed."

Section 483. Section 7-6-2406, MCA, is amended to read:

"7-6-2406. Compensation of auditor. The county auditor receives the annual compensation provided by law, payable monthly by warrants drawn on the treasury of the county, and ~~shall~~ *may not* receive ~~no~~ other compensation or emolument ~~whatsoever~~ for any service rendered or performed ~~by him~~, except actual expenses for living and traveling whenever the duties of ~~his~~ office require ~~his~~ *the auditor's* presence at any place in the county other than the county seat, and then only after the travel has been ordered and advised by the board of county commissioners."

Section 484. Section 7-6-2410, MCA, is amended to read:

"7-6-2410. Maintenance of records. The county auditor shall carefully preserve all documents, books, records, and other papers required to be kept in ~~his~~ *the auditor's* office. Each county auditor, on ~~going out of~~ *leaving* office, shall deliver over to ~~his~~ *the* successor in office all documents, books, records, and property in ~~his hands~~ *the office* belonging to the county."

Section 485. Section 7-6-2411, MCA, is amended to read:

"7-6-2411. List of claims allowed or rejected. The county clerk and recorder shall return to the county auditor, within 10 days after the adjournment of each session of the board of county commissioners, a list of the claims allowed or rejected, either in whole or in part, by them. This list ~~shall~~ *must* be recorded by the auditor in a book kept for that purpose and carefully preserved in ~~his~~ *the auditor's* office."

Section 486. Section 7-6-2412, MCA, is amended to read:

"7-6-2412. Other duties of auditor. (1) Subject to the requirements of subsection (2), the county auditor shall ~~also~~ perform ~~such~~ other duties, clerical or otherwise, as ~~he may be~~ directed ~~to perform~~ by the county commissioners.

(2) A reasonable amount of time must be allowed the county auditor for the performance of the duties ~~definitely~~ set forth in this part."

Section 487. Section 7-6-2424, MCA, is amended to read:

"7-6-2424. Appeal of decision concerning claim. (1) Whenever a claim against a county is disallowed in whole or in part or whenever ~~any~~ *a* taxpayer or resident of the county is not satisfied with ~~any~~ *an* allowance made by the board, the claimant, taxpayer, or resident may appeal from the decision of the board to the district court for the county. ~~by causing a~~ *A* written notice of appeal ~~to~~ *must*

be served on the clerk of the board within 30 days after the making of the decision or allowance, and ~~executing~~ a bond *must be executed* to the county, with surety to be approved by the clerk of the board, conditioned to prosecute the appeal to effect and to pay all costs that may be adjudged against the appellant.

(2) The clerk of the board, upon an appeal being taken, ~~must~~ *shall* immediately give notice ~~thereof~~ to the county attorney and ~~must~~ *shall* make out a return of the proceedings in the matter before the board, with its decision ~~thereon~~ *on the matter*, and file the ~~same~~ *return*, together with the bond and all the papers ~~therein~~ *in the matter* in ~~his~~ *the clerk's* possession, with the clerk of the district court.

(3) The appeal must be entered, tried, and determined the same as appeals from justices' courts, and costs are awarded in ~~like~~ *the same* manner."

Section 488. Section 7-6-2603, MCA, is amended to read:

"7-6-2603. Registration of warrants. (1) If the fund is insufficient to pay ~~any~~ *a* warrant, it must be registered and ~~thereafter~~ paid in the order of its registration.

(2) The county treasurer ~~must~~ *may* not register any county order or warrant in the name of any person other than the payee ~~thereof~~ except at the request of ~~such~~ *the* payee or ~~his~~ *the payee's* agent, assignee, or legal representative, whose authority must be produced to the treasurer in writing."

Section 489. Section 7-6-2604, MCA, is amended to read:

"7-6-2604. Interest on unpaid warrants. (1) When any high school warrant or any school district warrant is presented to the treasurer for payment and the ~~same~~ *warrant* is not paid for ~~want~~ *lack* of funds, the treasurer ~~must~~ *shall* endorse ~~thereon~~ *on the warrant* "Not paid for ~~want~~ *lack* of funds", ~~annexing~~ *include* the date of presentation, and sign ~~his name thereto~~ *the warrant*. When the treasurer pays ~~any~~ *a* warrant on which any interest is due, ~~he must~~ *the treasurer shall* note on the warrant the amount of interest paid ~~thereon~~ and enter on ~~his~~ *the treasurer's* account the amount of ~~such~~ interest, distinct from the principal.

(2) ~~From and after~~ *After* the date of presentation and endorsement by the treasurer, the warrant ~~shall~~ *must* bear interest at a rate fixed by the board of trustees in accordance with law.

(3) All county warrants, after having been presented to the county treasurer for payment and ~~by him~~ endorsed "Not paid for ~~want~~ *lack* of funds in the treasury", ~~from and~~ after the date of ~~such~~ presentation and endorsement, ~~shall~~ *must* draw interest at the rate fixed by the board of county commissioners in accordance with law."

Section 490. Section 7-6-2605, MCA, is amended to read:

"7-6-2605. Call for payment of warrants drawing interest. (1) When there is sufficient money to pay the warrants drawing interest, the treasurer ~~must~~ *shall* give notice as provided in 7-1-2121 that ~~he is ready to pay such~~ *the* warrants *are able to be paid*.

(2) In advertising warrants under the provisions of this section in any newspaper, the treasurer ~~must~~ *may* not publish the warrants in detail but *shall* give notice only that county warrants presented for payment prior to ~~such~~ *a* date~~,~~ stated in the notice are payable. When only a part of the warrants presented for payment on the same day are payable, the treasurer ~~must~~ *shall* designate ~~such~~ *the* payable warrants in the advertisement.

(3) ~~Such~~ *The* warrants cease to draw interest from the first publication or posting of ~~such~~ *the* notice.

(4) (a) If ~~such~~ *the* warrants ~~be~~ *are* not re-presented for payment within 60 days from the time the notice ~~hereinbefore provided for~~ is given, the fund set aside for the payment of the ~~same~~ *warrants* must be applied by the treasurer to the payment of unpaid warrants ~~next~~ in order of registry.

(b) The board of county commissioners may, on application and presentation of warrants, properly endorsed, which have been advertised, pass an order directing the treasurer to pay ~~them~~ *the warrants* out of any money in the treasury *that is* not otherwise appropriated."

Section 491. Section 7-6-2606, MCA, is amended to read:

"7-6-2606. Order of redemption of warrants. (1) Warrants drawn on the treasury and properly attested are entitled to preference as to payment out of money in the treasury properly applicable to ~~such~~ *the* warrants according to the priority of time in which they were presented. The time of presenting ~~such~~ *the* warrants must be noted by the treasurer.

(2) Upon the receipt of money into the treasury, not otherwise appropriated, ~~he must~~ *the treasurer shall* set apart the ~~same~~ *the money* or ~~so~~ *as* much ~~thereof~~ *of the money* as is necessary for the payment of ~~such~~ *the* warrants."

Section 492. Section 7-6-2801, MCA, is amended to read:

"7-6-2801. Management of school funds. The county treasurer ~~must~~ *shall*:

(1) keep all school money in a separate fund and keep a separate account of its disbursement to the several school districts ~~which~~ *that* are entitled to receive it, according to the apportionment of the county superintendent of schools;

(2) notify the county superintendent of the amount of the county school fund in the county treasury subject to apportionment, whenever required, and inform ~~him~~ *the superintendent* of the amount of school money belonging to any other fund subject to apportionment, or as otherwise provided by law;

(3) pay all warrants drawn on county or district school money, in accordance with the provisions of law, whenever ~~such~~ *the* warrants are countersigned by the district clerk and properly endorsed by the holders;

(4) make annually, during the month of September, a financial report for the preceding year ending August 31 to the county superintendent, in ~~such~~ *a* form ~~as is~~ required by ~~him~~ *the superintendent*."

Section 493. Section 7-6-4301, MCA, is amended to read:

"7-6-4301. Presentation of claims against municipality. (1) All accounts and demands against a city or town must be presented to the council~~,~~ ~~duly~~ *in an* itemized *format*. These claims must be presented with all necessary and proper vouchers within 1 year from the date the ~~same~~ *claims* accrued. ~~No~~ *An* action may *not* be maintained against the city or town for or on account of any demand or claim against the city or town until ~~such~~ *the* demand or claim has first been presented to the council.

(2) Payment of claims against a city or town may be authorized by the council when:

(a) payee-signed claims have been issued to the city or town and the payee has attested in the claim to its accuracy and that ~~he~~ *the payee* has not received the claimed amount; or

(b) the payee has provided the city or town with an invoice or other document identifying the quantity and total cost ~~per~~ *for each* item included on the invoice.

(3) All bills, claims, accounts, or charges for materials of any kind that are purchased by and on behalf of a city or town by its department heads or officers must be reviewed by the city or town finance director or the city or town clerk before submission to the council.

(4) ~~Any~~ *A* claim or demand not ~~so~~ presented within the time provided in subsection (1) is forever barred, and the council has no authority to allow any account or demand not ~~so~~ presented *as provided in this section*."

Section 494. Section 7-6-4304, MCA, is amended to read:

"7-6-4304. Issuance of duplicate warrants and checks. (1) A duplicate warrant or check may be issued by the appropriate municipal officer whenever an instrument drawn by ~~him~~ *the officer* upon the municipality is lost or destroyed. The duplicate warrant or check must be in the same form as the original except that it must have plainly printed across its face the word "duplicate". Except as provided in subsection (2), ~~no~~ *a* duplicate warrant or check may *not* be issued or delivered unless the person entitled to receive it deposits with the issuing municipal officer a bond in double the amount for which the duplicate warrant or check is issued, conditioned to hold the municipality and its officers harmless on account of the issuance of the duplicate warrant or check.

(2) ~~No~~ *A* bond of indemnity is *not* required when:

(a) the payee is the U.S. government, a state of the United States, an agency, instrumentality, or officer of the U.S. government or of a state, county, city, city and county, town, district, or other political subdivision of a state, or an officer ~~thereof~~ *of an enumerated entity*;

(b) the owner or custodian is the state of Montana or an agency or officer ~~thereof~~ *of the state*;

(c) the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the U.S. government or by the state of Montana;

(d) the amount of the lost or destroyed warrant or check is less than $100;

(e) it can be established that a crime has been committed, and as a result of ~~such~~ *the* crime, the warrant or check was stolen or destroyed;

(f) it can be established that the warrant or check was mailed to an incorrect payee; or

(g) the payee is a vendor or contractor doing business with the municipality.

(3) Whenever the owner or custodian applies under the provisions of subsection (2)(e), (2)(f), or (2)(g), a stop-payment order must be placed on the original warrant or check by the municipality.

(4) Whenever the owner or custodian applies under the provisions of subsection (2)(c), (2)(d), (2)(e), (2)(f), or (2)(g), the application must include an agreement to indemnify and hold harmless the municipality or its officers and employees from any loss resulting from the issuance of a duplicate warrant or check. Any loss incurred in connection with the issuance of a duplicate warrant or check must be charged against the account from which the payment was derived."

Section 495. Section 7-6-4502, MCA, is amended to read:

"7-6-4502. Call for payment of warrants drawing interest. (1) Except as provided in subsection (2), when there is money in the city or town treasury applicable to the payment of any warrants drawing interest and sufficient to pay the ~~same~~ *warrants*, the city treasurer or town clerk ~~must~~ *shall*:

(a) give notice in some newspaper published in ~~such~~ *the* city or town or, if ~~none~~ *a newspaper* is *not* published ~~therein~~ *in the city or town*, ~~then~~ by written notice posted in a conspicuous place on the outer door of the office of the city treasurer or town clerk, stating that ~~he~~ *the treasurer or clerk* is ready to pay the warrants and giving the number of the warrants to be paid; and

(b) if the warrants are subject to purchase by the county for investment as provided in 7-6-2701, notify the county treasurer that any ~~such~~ warrants in the possession of the county will be paid upon presentation to the city treasurer or town clerk.

(2) If all of ~~such~~ *the* warrants are held by a county, only the notice provided for in subsection (1)(b) is required.

(3) The warrants ~~so~~ called cease to draw interest from the time of the first publication or posting of ~~such~~ *the* notice unless all of ~~such~~ *the* warrants are held by a county, in which case the warrants cease to draw interest from the time of notification of the county treasurer."

Section 496. Section 7-6-4601, MCA, is amended to read:

"7-6-4601. Deposit of public money. ~~It shall be the duty of the~~ *The* city treasurer or town clerk, whichever is appropriate, ~~to~~ *shall* deposit all public money in ~~his~~ *the treasurer's or clerk's* possession and under ~~his~~ *the treasurer's or clerk's* control, except ~~such~~ as may be required for current business, *only* in any solvent bank or banks located in ~~such~~ *the* city or town and subject to national supervision or state examination, as the council shall designate~~, and no other~~."

Section 497. Section 7-6-4603, MCA, is amended to read:

"7-6-4603. Investment of municipal money in city or town warrants. (1) Except as provided in 7-7-4102, whenever the city or town has, under its control and in any fund, any money for which there is no immediate demand and ~~which~~ *that*, in the judgment of the city or town council, it would be advantageous to invest in city or town warrants, the city or town council may direct the city treasurer or town clerk to purchase legally issued city or town general obligation warrants of the same city or town ~~thereafter~~ issued against funds in which there ~~is~~ *are* not sufficient funds to pay ~~such~~ *the* city or town warrants at the time of issuance.

(2) (a) ~~In case of such purchase~~ *If warrants are purchased*, the city or town council shall designate the fund or funds to be invested and shall fix the amount ~~thereof~~ *of investment* and shall also designate the city or town warrants ~~which~~ *that* are to be purchased by ~~such~~ *the* funds. The city or town clerk shall ~~thereupon~~ cause to be attached to or stamped, written, or printed upon the warrants ordered to be purchased a notice to the effect that the city or town will exercise its preference right to purchase ~~such~~ *the* warrant.

(b) The city treasurer or town clerk shall ~~thereafter~~, when ~~such~~ *the* city or town warrant is presented ~~to him~~, purchase the ~~same~~ *warrant* out of the proper fund as designated by the city or town council. The warrant ~~so~~ purchased ~~shall~~ *must* be registered as other city or town warrants and bear interest as provided by law.

(3) When the designated amounts have been invested, the city treasurer shall notify the city clerk."

Section 498. Section 7-7-101, MCA, is amended to read:

"7-7-101. Submission of local government general obligation bond proceedings to attorney general for review. The governing body of any county, city, or town shall submit a certified copy of all proceedings preliminary to the issue of general obligation bonds to the attorney general, together with ~~such~~ other proceedings, certificates, and records ~~as he~~ *that the attorney general* may require, and request ~~his~~ *the attorney general's* report as to validity."

Section 499. Section 7-7-106, MCA, is amended to read:

"7-7-106. Hearing and determination on challenge. (1) Within 5 days after the petition is filed, the district judge shall designate the time and place of hearing.

(2) The clerk shall immediately issue a citation for the defendant to appear at the time and place specified in the order and shall serve the citation immediately upon the defendant either:

(a) personally; or

(b) if the party cannot be found, by leaving a copy at the house where ~~he~~ *the defendant* last resided.

(3) The court shall meet at the time and place designated to determine the contested election and ~~shall have~~ *has* all the powers necessary to the determination ~~thereof~~ *of the election*.

(4) The court ~~shall be~~ *is* governed by the rules of law and evidence governing the determination of questions of law and fact so far as the ~~same~~ *rules* may be applicable.

(5) The court shall continue in special session to hear and determine all issues in the contested election. After hearing the proofs and allegations of the parties and within 10 days after submission ~~thereof~~, the court shall file its findings of fact and conclusions of law and shall immediately pronounce judgment ~~in the premises~~, either confirming or annulling and setting aside the election. The judgment ~~shall~~ *must* be entered immediately ~~thereafter~~ *after the pronouncement*."

Section 500. Section 7-7-2106, MCA, is amended to read:

"7-7-2106. Procedure if original bond, warrant, or coupon is presented. ~~It is the duty of the~~ *The* county treasurer, upon the production ~~to him~~ of any original bond, warrant, or coupon by the lawful owner or holder ~~thereof~~, ~~to~~ *shall* assign by endorsement and ~~to~~ deliver to ~~him~~ *the owner or holder* the surety bond mentioned in 7-7-2104. ~~Such~~ *The* owner or holder may maintain an action ~~in his own name~~ upon ~~such~~ *the* surety bond for the recovery of any money paid upon ~~such~~ *the* duplicate, but the delivery of ~~such~~ *the* surety bond does not relieve or exonerate the county from the payment of the amount specified ~~therein~~ *in the bond* upon a demand and refusal of the sureties named in the indemnifying surety bond to pay the ~~same~~ *amount*."

Section 501. Section 7-7-2225, MCA, is amended to read:

"7-7-2225. Filing of petition with election administrator — certificate. (1) The completed petition ~~shall~~ *for an election on issuing bonds must* be filed with the election administrator. The election administrator shall, within 15 days ~~thereafter~~, carefully examine the petition and the county records

showing the qualifications of the petitioners and attach a certificate, under ~~his~~ official signature and the seal of ~~his~~ *the administrator's* office.

(2) The certificate ~~shall~~ *must* set forth:

(a) the total number of individuals who are registered electors;

(b) which and how many of the individuals whose names are subscribed to the petition ~~possess~~ *have* all of the qualifications required of signers of ~~such~~ a petition;

(c) whether ~~such~~ *the* qualified signers constitute more or less than 20% of the registered electors of the county."

Section 502. Section 7-7-2226, MCA, is amended to read:

"7-7-2226. Delivery of certified petition to board of county commissioners. (1) After completing the certificate required by 7-7-2225, the election administrator shall deliver the certified petition to the board of county commissioners.

(2) When the petition has been filed with the election administrator and ~~he~~ *the administrator* has found that it has a sufficient number of signers qualified to sign it, ~~he~~ *the administrator* shall place ~~it~~ *the petition* before the board at its first meeting held after ~~he has attached his certificate thereto~~ *certification*."

Section 503. Section 7-7-2258, MCA, is amended to read:

"7-7-2258. Copy of bond to be kept by county treasurer. The county clerk shall ~~also~~ deliver to the county treasurer an unsigned and canceled printed copy of a bond of each issue, as ~~so~~ issued and registered, to be preserved in ~~his~~ *the treasurer's* office."

Section 504. Section 7-7-2272, MCA, is amended to read:

"7-7-2272. Cancellation of bonds and coupons. (1) (a) All bonds and interest coupons paid by the county treasurer from time to time ~~shall~~ *must* be canceled by ~~him~~ *the treasurer*, and after ~~such~~ cancellation, ~~he~~ *the treasurer* shall deliver the ~~same~~ *bonds and coupons* to the county clerk, with a report showing the numbers of ~~such~~ bonds and the amounts paid as principal and interest ~~thereon~~. The county treasurer shall enter on the record of the registration of ~~such~~ *the* bonds the date of the payment of the ~~same~~ *bonds* and the ~~several~~ coupons attached ~~thereto~~ *to the bonds*.

(b) The county clerk shall exhibit ~~such~~ *the* bonds and coupons, with ~~such~~ *the* report, to the board of county commissioners at ~~the~~ *its* next regular meeting ~~thereof~~.

(2) (a) When any bonds have been or are purchased with any sinking and interest fund money under the provisions of 7-7-2270, ~~such~~ *the* bonds, with attached interest coupons, if not ~~then~~ in the possession of the county treasurer, ~~shall~~ *must* be immediately delivered to ~~him~~ *the treasurer*. ~~Such~~ *The* county treasurer shall at once endorse across the face of each ~~such~~ bond the word "Paid" and the date ~~thereof~~ and shall sign ~~such~~ *the* endorsement~~;~~. ~~and such~~ *The* treasurer shall, without detaching the ~~same~~ *coupons*, cancel each interest coupon attached to ~~such~~ *the* bonds by endorsing across the face ~~thereof~~ *of the coupon* the word "Canceled" and the date ~~thereof~~ and shall sign ~~such~~ *the* endorsement. After making ~~such~~ *the* endorsements on ~~such~~ *the* bonds and coupons, the county treasurer shall enter on the record of registration ~~thereof~~ the date ~~such~~ *the* bonds and coupons were ~~so~~ endorsed ~~by him~~ as being paid and canceled, with the numbers and amounts ~~thereof~~ *of the bonds and coupons* and

the dates when the ~~same~~ *bonds and coupons* would have become due and payable if they had not been ~~so~~ purchased. The county treasurer shall then deliver ~~such~~ *the* bonds, with the canceled coupons attached, to the county clerk, with a report showing the numbers ~~thereof~~ *of the bonds* and amount paid on the purchase ~~thereof~~ *of the bonds*.

(b) The county clerk shall exhibit ~~such~~ *the* bonds, with attached coupons and report, to the board at its next regular session."

Section 505. Section 7-7-2405, MCA, is amended to read:

"7-7-2405. Form of ballots. There must be written or printed on the ballots the words "For the loan" and "Against the loan", and in voting, the elector ~~must~~ *shall* vote for the proposition ~~he~~ *that the elector* prefers by making an X opposite the proposition."

Section 506. Section 7-7-4103, MCA, is amended to read:

"7-7-4103. General qualifications to vote on questions of municipal indebtedness. (1) Registered electors of the city, town, or other municipal corporation may vote upon any proposal to create or increase any indebtedness of the city, town, or other municipal corporation required by law to be submitted to a vote of the electors.

(2) ~~No~~ *An* elector, otherwise qualified, may *not* be denied the right to vote because the polling place for a general election for the precinct ~~wherein he~~ *in which the elector* resides and is entitled to vote lies within another city, town, or other municipal corporation."

Section 507. Section 7-7-4224, MCA, is amended to read:

"7-7-4224. Petition to request election. (1) A petition asking that an election be held on the question of issuing bonds ~~shall~~ *must* be signed by not less than 20% of the qualified electors of the city or town. The petition ~~shall~~ *must* give the street and house number, if any, and the voting precinct of each person signing the ~~same~~ *petition*.

(2) ~~Every~~ *Each* petition for the calling of an election to vote upon the question of issuing bonds ~~shall~~ *must* plainly and clearly state the purpose or purposes for which it is proposed to issue ~~such~~ bonds and ~~shall~~ *must* contain an estimate of the amount necessary to be issued for ~~such~~ *the* purpose or purposes. There may be a separate petition for each purpose, or two or more purposes may be combined in one petition if each purpose, with an estimate of the amount of bonds to be issued ~~therefor~~, is separately stated in ~~such~~ *the* petition.

(3) ~~Such~~ *The* petition may consist of one sheet or of several sheets, identical in form and fastened together after being circulated and signed so as to form a single complete petition before being delivered to the city or town clerk as ~~hereinafter~~ provided *in this part*.

(4) Only persons who are qualified to sign ~~such~~ petitions ~~shall be~~ *are* qualified to circulate the ~~same~~ *petitions*, and there ~~shall~~ *must* be attached to the completed petition the affidavit of some person who circulated or assisted in circulating ~~such~~ *the* petition that ~~he~~ *the person* believes the signatures ~~thereon~~ *on the petition* are genuine and that the signers knew the contents ~~thereof~~ *of the petition* before signing the ~~same~~ *petition*."

Section 508. Section 7-7-4225, MCA, is amended to read:

"7-7-4225. Presentation of petition to city or town clerk — clerk's certificate. (1) The completed petition ~~shall~~ *for an election on the bonds must* be

filed with the city or town clerk. The clerk shall, within 15 days ~~thereafter~~, carefully examine the ~~same~~ *petition* and the county records showing the qualifications of the petitioners and attach ~~thereto~~ *to the petition* a certificate, under ~~his~~ official signature.

(2) The certificate ~~shall~~ *must* set forth:

(a) the total number of persons who are registered electors;

(b) which and how many of the persons whose names are subscribed to ~~such~~ *the* petition ~~are possessed of~~ *have* all of the qualifications required of signers to ~~such~~ *the* petition;

(c) whether ~~such~~ *the* qualified signers constitute more or less than 20% of the registered electors of the city or town."

Section 509. Section 7-7-4256, MCA, is amended to read:

"7-7-4256. Printing of bonds. (1) Except as provided in subsection (2), the city or town clerk, under the direction of the council, shall cause the bonds, with coupons attached ~~thereto~~, to be printed or lithographed at the expense of the city or town at lowest commercial rates.

(2) A purchaser of ~~such~~ *the* bonds may furnish the ~~same~~ *bonds* to the city or town, in the form prescribed by the council, for execution, if ~~the same is done~~ *furnished* at ~~his~~ *the purchaser's* own expense and without cost or expense to the city or town."

Section 510. Section 7-7-4258, MCA, is amended to read:

"7-7-4258. Copy of bond to be kept by city treasurer or town clerk. The city or town clerk shall also deliver to the city treasurer ~~or town clerk~~ an unsigned and canceled printed copy of one of the bonds, as ~~so~~ issued and registered, to be preserved in ~~his~~ *the treasurer's* office."

Section 511. Section 7-7-4261, MCA, is amended to read:

"7-7-4261. Maintenance of accounts for bond issues. (1) The city treasurer or town clerk shall keep in ~~his~~ *the treasurer's or clerk's* books a special and separate sinking fund account for each issue or series of outstanding bonds, including citizen bonds as provided in 7-7-4211 through 7-7-4214, issued by ~~his~~ *the* city or town. Each ~~such~~ fund must at all times show the exact condition ~~thereof~~ *of the fund*.

(2) All taxes collected for interest and principal on city or town bonds ~~shall~~ *must* be placed to the credit of the sinking fund for which the taxes were levied.

(3) The sinking fund ~~shall~~ *must* be administered as provided in 7-7-123, 7-7-124, and 7-7-4270."

Section 512. Section 7-7-4272, MCA, is amended to read:

"7-7-4272. Cancellation of bonds and coupons. (1) All bonds and interest coupons paid by the city treasurer or town clerk from time to time ~~shall~~ *must* be canceled by ~~him~~ *the treasurer or clerk*~~,~~. ~~and after such~~ *After* cancellation, ~~he~~ *the treasurer or clerk* shall deliver the ~~same~~ *bonds and coupons* to the city or town clerk, with a report showing the numbers of ~~such~~ *the* bonds and the amounts paid as principal and interest ~~thereon~~. The city treasurer or town clerk shall enter on the records of the registration of ~~such~~ *the* bonds the date of the payment of the ~~same~~ *bonds* and the ~~several~~ coupons attached ~~thereto~~ *to the bonds*.

(2) The city or town clerk shall exhibit ~~such~~ *the* bonds and coupons, with ~~such~~ *the* report, to the city or town council at ~~the~~ *its* next regular meeting ~~thereof~~."

Section 513. Section 7-7-4629, MCA, is amended to read:

"7-7-4629. Management of enterprise. (1) In order that the payment of the refunding bonds and interest ~~thereon shall be~~ *on the bonds is* adequately secured, any municipality issuing refunding bonds pursuant to this part and the proper officers, agents, and employees ~~thereof are hereby directed and it~~ *of the municipality* shall ~~be the mandatory duty of such officers, agents, and employees under this part and it shall further be of the essence of the contract of such municipality with the bondholders,~~ at all times:

(a) ~~to~~ operate the enterprise in an efficient and economical manner and establish, levy, maintain, and collect ~~such~~ fees, tolls, rentals, rates, and other charges in connection ~~therewith~~ *with the enterprise* as may be necessary or proper, ~~which fees, tolls, rates, rentals, and other charges shall be at least~~ *in an amount that is* sufficient, after making due and reasonable allowances for contingencies and for a margin of error in the estimates:

(i) to pay all current expenses of operation, maintenance, and repair of ~~such~~ *the* enterprise;

(ii) to pay the interest on and principal of the refunding bonds as the ~~same shall become~~ *principal becomes* due and payable;

(iii) to comply in all respects with the terms of the resolution authorizing the issuance of refunding bonds or any other contract or agreement with the holders of the refunding bonds; and

(iv) to meet any other obligations of the municipality ~~which~~ *that* are charges, liens, or encumbrances upon the ~~revenues~~ *revenue* of ~~such~~ *the* enterprise;

(b) ~~to~~ operate, maintain, preserve, and keep or cause to be operated, maintained, preserved, and kept the enterprise and every part ~~and parcel thereof~~ *of the enterprise* in good repair, working order, and condition;

(c) ~~to~~ pay and discharge or cause to be paid or discharged any ~~and all~~ lawful claims for labor, materials, and supplies ~~which~~ *that*, if unpaid, might by law become a lien or charge upon the ~~revenues~~ *revenue* ~~or any part thereof~~ prior or superior to the lien of the refunding bonds or ~~which~~ *that* might impair the security of the refunding bonds, to the end that the priority and security of the refunding bonds ~~shall be~~ *are* fully preserved and protected;

(d) ~~to~~ keep proper books of record and accounts of the enterprise, ~~(~~separate from all other records and accounts~~)~~, in which complete and correct entries ~~shall~~ *must* be made of all transactions relating to the enterprise ~~or any part thereof~~ and ~~which~~ *that*, together with all other books and papers of the municipality, ~~shall~~ *must* at all times be subject to the inspection of the ~~holder or~~ holders of not less than 10% of the refunding bonds then outstanding or ~~his or their~~ *the holders'* representatives ~~duly~~ authorized in writing.

(2) ~~None of the foregoing~~ *The* duties ~~shall~~ *in subsection (1) may not* be construed to require the expenditure in any manner or for any purpose by the municipality of any funds other than ~~revenues~~ *revenue* received or receivable from the enterprise."

Section 514. Section 7-7-4631, MCA, is amended to read:

"7-7-4631. Role of receiver. (1) The receiver appointed pursuant to 7-7-4630 shall ~~forthwith~~, directly or by ~~his~~ *the receiver's* agents and attorneys, enter into and upon and take possession of the enterprise and ~~each and~~ every part ~~thereof~~ *of the enterprise* and may exclude the municipality, its governing body, officers, agents, and employees, and all persons claiming under them wholly ~~therefrom~~ *from the enterprise* and ~~shall~~ *must* have~~,~~ *and shall* hold, use, operate, manage, and control the ~~same~~ *enterprise* and ~~each and~~ every part ~~thereof~~ *of the enterprise* and, in the name of the municipality or otherwise as the receiver may ~~deem~~ *consider* best, shall exercise all the rights and powers of the municipality with respect to the enterprise as the municipality itself might do.

(2) ~~Such~~ *The* receiver shall:

(a) maintain, restore, insure, and keep insured the enterprise and from time to time make all ~~such~~ necessary or proper repairs as may seem expedient to ~~such~~ *the* receiver;

(b) establish, levy, maintain, and collect ~~such~~ fees, tolls, rentals, and other charges in connection with the enterprise ~~as such~~ *that the* receiver ~~may deem~~ *considers* necessary or proper and reasonable; and

(c) collect and *must* receive all ~~revenues~~ *revenue* and deposit the ~~same~~ *revenue* in a separate account and apply ~~such revenues so collected and received~~ *revenue* in ~~such~~ *a* manner ~~as~~ *that* the court shall direct.

(3) ~~Such~~ *The* receiver shall, in the performance of the powers conferred upon ~~him~~ *the receiver*, act under the direction and supervision of the court making ~~such~~ *the* appointment and ~~shall~~ *must* at all times be subject to the orders and decrees of ~~such~~ *the* court and may be removed ~~thereby~~ *by the court*. ~~Nothing herein contained shall~~ *This section does not* limit or restrict the jurisdiction of ~~such~~ *the* court to enter ~~such~~ other and further orders and decrees ~~as such~~ *that the* court ~~may deem~~ *considers* necessary or appropriate for the exercise by the receiver of any functions specifically set forth ~~herein~~ *in this section*."

Section 515. Section 7-7-4633, MCA, is amended to read:

"7-7-4633. Remedies of holders of refunding revenue bonds. (1) Subject to any contractual limitations binding upon the holders of ~~any~~ *an* issue of refunding bonds or trustee ~~therefor~~ *for the holders*, including but not limited to the restriction of the exercise of ~~any~~ *a* remedy to the specified proportion of percentage of ~~such~~ *the* holders, ~~any~~ *a* holder of refunding bonds or trustee ~~therefor~~ *for the holder* ~~shall have~~ *has* the right and power, for the equal benefit and protection of all holders of refunding bonds similarly situated:

(a) by mandamus or other suit, action, or proceeding at law or in equity, to enforce ~~his~~ *the holder's* rights against the municipality and its governing body and any of its officers, agents, and employees and to require and compel ~~such~~ *the* municipality or ~~such~~ *the* governing body or any ~~such~~ officers, agents, or employees to perform and carry out ~~its and their~~ duties and obligations under this part and ~~its and their~~ covenants and agreements with bondholders;

(b) by action or suit in equity, to require the municipality and the governing body ~~thereof~~ to account as if they were the trustee of an express trust;

(c) by action or suit in equity, to enjoin any acts or things ~~which~~ *that* may be unlawful or in violation of the rights of the bondholders;

(d) to bring suit upon the refunding bonds.

(2) (a) ~~No~~ *A* remedy conferred by this part upon ~~any~~ *a* holder of refunding bonds or ~~any~~ *a* trustee ~~therefor~~ *for the holder* is *not* intended to be exclusive of

any other remedy, but each ~~such~~ remedy is cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred by this part or by any other law.

(b) ~~No~~ *A* waiver of any default or breach of duty or contract, whether by ~~any~~ *a* holder of refunding bonds or ~~any~~ *a* trustee ~~therefor~~ *for a holder*, ~~shall~~ *does not* extend to or ~~shall~~ affect any subsequent default or breach of duty or contract or ~~shall~~ impair any rights or remedies ~~thereon~~ *on the breach or contract*. ~~No~~ *A* delay or omission of ~~any~~ *a* bondholder or ~~any~~ *a* trustee ~~therefor~~ *for a holder* to exercise any right or power accruing upon any default ~~shall~~ *may not* impair any ~~such~~ right or power or ~~shall~~ be construed to be a waiver of any ~~such~~ default or acquiescence ~~therein~~ *in the default*.

(c) Every substantive right and every remedy conferred upon the holders of refunding bonds may be enforced and exercised from time to time and as often as ~~may be deemed~~ *considered* expedient.

(3) In case any suit, action, or proceeding to enforce any right or exercise any remedy ~~shall~~ *must* be brought or taken and then discontinued or abandoned or ~~shall~~ *must* be determined adversely to the holder of the refunding bonds or ~~any~~ *a* trustee ~~therefor~~ *for the holder*, then and in ~~every such~~ *each* case the municipality and ~~such~~ *the* holder or trustee ~~shall~~ *must* be restored to their former positions and rights and remedies as if ~~no such~~ *the* suit, action, or proceeding had *not* been brought or taken."

Section 516. Section 7-8-2304, MCA, is amended to read:

"7-8-2304. Terms for sale of tax-deed land. (1) A sale must be made for cash or, in the case of real property, on terms that the board of county commissioners approves.

(2) (a) If the sale is made on terms, at least 20% of the purchase price must be paid in cash at the date of sale and the remainder may be paid in installments extending over a period not to exceed 5 years. All deferred payments bear interest at a rate established by the board of county commissioners. The rate may not exceed more than 4 percentage points a year above the prime rate of major New York banks, as published in the Wall Street Journal within 7 days prior to the date of sale.

(b) If a sale is made on terms, the ~~chairman~~ *presiding officer* of the board shall execute a contract containing the terms that are provided by a contract approved by the department of revenue."

Section 517. Section 7-8-2305, MCA, is amended to read:

"7-8-2305. Deed of conveyance — reservation of mineral royalty. (1) Subject to the provisions of subsection (2), upon payment of the purchase price in full, together with all interest ~~which~~ *that* may become due on any installment or deferred payments, the ~~chairman~~ *presiding officer* of the board of county commissioners shall execute a deed attested to by the county clerk to the purchaser or ~~his~~ *the purchaser's* assigns or ~~such~~ other instruments ~~as shall be~~ *that are* sufficient to convey all of the title of the county in and to the property ~~so~~ sold.

(2) The county may in the discretion of the board reserve not to exceed 6 1/4% royalty interest in the oil, gas, other hydrocarbons, and minerals produced ~~and saved~~ from ~~said~~ *the* land."

Section 518. Section 7-8-2307, MCA, is amended to read:

"7-8-2307. Tax liability of purchased tax-deed lands. (1) On January 1 following the execution of ~~such~~ *a* contract or deed, the land ~~shall be~~ *is* subject to taxation in the name of the purchaser or ~~his~~ *the purchaser's* assignee.

(2) ~~In the event~~ *If* the taxes are not paid and ~~the same~~ become delinquent, ~~said~~ *the* contract ~~shall be~~ *is* subject to cancellation and all payments ~~theretofore~~ made ~~shall~~ *must* be ~~taken, treated, and~~ regarded as rent for ~~said~~ *the* property."

Section 519. Section 7-8-2701, MCA, is amended to read:

"7-8-2701. State policy for resource management. It is ~~hereby declared to be~~ the policy of the state of Montana:

(1) to promote the conservation of the natural resources of the state;

(2) to provide for the conservation, protection, and development of forage plants and for the beneficial ~~utilization thereof~~ *use of forage plants* for grazing by livestock, under ~~such~~ regulations ~~as~~ *that* may be considered necessary;

(3) to put into crop production only ~~such~~ *properly fitted* lands ~~as are properly fitted therefor~~;

(4) to encourage the storage and conservation of water for livestock and irrigation;

(5) to place the farming and livestock industries upon a permanent and solid foundation;

(6) to extend preference in sales and leases of lands to resident farmers, ~~stockmen~~ *stockgrowers*, and taxpayers; *and*

(7) to gradually restore to private ownership the immense areas of lands ~~which~~ *that* have passed into county ownership because of tax delinquencies."

Section 520. Section 7-8-2707, MCA, is amended to read:

"7-8-2707. Organization of board — conduct of business. (1) The board shall~~, from its membership,~~ select a ~~chairman~~ *presiding officer from its members*. The county clerk ~~shall be~~ *is* the clerk of ~~said~~ *the* board.

(2) The board shall hold regular meetings on the first Wednesday following the first Monday of each month and may hold meetings whenever ~~deemed~~ *considered* necessary upon *a* call of the ~~chairman~~ *presiding officer* or a majority of the members. Three members of the board ~~shall~~ constitute a quorum for the transaction of business. The board may adopt ~~whatever~~ rules it ~~deems~~ *considers* proper for the conduct of its meetings.

(3) The county clerk, as clerk of the advisory board, shall keep the minutes of all meetings ~~thereof~~ and ~~be~~ *is* custodian of all its records. ~~It shall be the duty of the~~ *The* board ~~to~~ *shall* keep a record of the minutes of all meetings ~~thereof~~ in a suitable book, provided by the board of county commissioners for that purpose, and ~~to~~ preserve all important documents, maps, plats, and papers."

Section 521. Section 7-11-204, MCA, is amended to read:

"7-11-204. Authorization for establishment of interlocal cooperation commissions. An interlocal cooperation commission may be established in either of two ways:

(1) A joint resolution providing for the establishment of an interlocal cooperation commission may be adopted by a separate vote of a majority of the governing bodies of the county, cities, and towns having any jurisdiction in the county under consideration. A certified copy of ~~such~~ *the* resolution or certified copies of ~~such~~ *the* concurring resolutions ~~shall~~ *must* be transmitted to the clerk

and recorder of the county, and an interlocal cooperation commission ~~shall~~ *must* be ~~deemed~~ *considered* to be authorized.

(2) (a) A petition requesting the establishment of an interlocal cooperation commission ~~shall~~ *must* be signed by at least 10% of the qualified voters within the county registered for the preceding general election and ~~shall~~ *must* be filed with the clerk and recorder of the county.

(b) Upon receipt of ~~such~~ a petition, the clerk and recorder shall examine the source and certify to the sufficiency of the signatures ~~thereon~~. Within 30 days following receipt of ~~such~~ *the* petition, the clerk and recorder shall transmit the ~~same~~ *petition* to the board of county commissioners and to the governing bodies of all cities and towns having any jurisdiction in the county, together with ~~his~~ *the clerk and recorder's* certificate as to the sufficiency ~~thereof~~ *of the petition*, and an interlocal cooperation commission ~~shall~~ *must* be ~~deemed~~ *considered* to be authorized."

Section 522. Section 7-11-207, MCA, is amended to read:

"7-11-207. Composition of commission. ~~Any~~ *An* interlocal cooperation commission established pursuant to this part ~~shall consist~~ *consists* of members to be selected as follows:

(1) four members selected by the county commissioners;

(2) four members appointed by the mayor of the principal city and confirmed by the governing body of the city;

(3) one member appointed by the mayor of each of the other cities and towns in the county and confirmed by the governing body of the city or town;

(4) one member, who ~~shall~~ *must* be ~~chairman~~ *presiding officer* of the interlocal cooperation commission, selected by the other members of the commission at their initial meeting."

Section 523. Section 7-11-208, MCA, is amended to read:

"7-11-208. Qualifications of members of commission. (1) Each member shall reside, at the time of ~~his~~ appointment, within the county if selected by the board of county commissioners or within the city or town by which appointed.

(2) ~~No~~ *A* member ~~shall~~ *may not* be an official or employee of any unit of local government."

Section 524. Section 7-11-210, MCA, is amended to read:

"7-11-210. Vacancies. In case of a vacancy for any cause, a new member ~~shall~~ *must* be appointed in the same manner as the member ~~he replaces~~ *being replaced*."

Section 525. Section 7-11-212, MCA, is amended to read:

"7-11-212. Organization of commission — meetings. (1) Not later than 80 days after the commission is authorized, the members of the commission shall meet and organize at a time ~~which shall~~ *that must* be set by the board of county commissioners.

(2) At the first meeting of the commission, one of the members appointed by the board of county commissioners ~~shall~~ *must* be designated by that body to serve as temporary ~~chairman~~ *presiding officer*. As its first official act, the commission shall select a ~~chairman~~ *presiding officer* from outside its own membership.

(3) Further meetings of the commission ~~shall~~ *must* be held upon *a* call of the ~~chairman~~ *presiding officer*, the ~~vice-chairman~~ *vice presiding officer* in the absence or inability of the ~~chairman~~ *presiding officer*, or a majority of the members of the commission."

Section 526. Section 7-11-227, MCA, is amended to read:

"7-11-227. Furnishing of information to commission. Upon request of the ~~chairman~~ *presiding officer* of the commission, all state agencies, all counties and other units of local government, and the officers and employees ~~thereof~~ *of those entities* shall furnish the commission ~~such~~ *with* information ~~as~~ *that* may be necessary for carrying out its functions and ~~which~~ *that* may be available to or procurable by ~~such~~ *the* agencies or units of government."

Section 527. Section 7-12-1103, MCA, is amended to read:

"7-12-1103. Definitions. As used in this part, the following definitions apply:

(1) "Appointing authority" means the mayor in the case of a municipality, the board of county commissioners in the case of a county, or the chief executive of a consolidated city-county government.

(2) "Board" means the board of trustees created in 7-12-1121.

(3) "Business" means all types of business, including professions.

(4) "District" means a business improvement district created under this part.

(5) "Governing body" means the legislative body of a local government.

(6) "Local government" means a municipality, a county, or a consolidated city-county government.

(7) "Owner" means a person in whom appears the legal title to real property by deed ~~duly~~ recorded in the county records or a person in possession of real property under claim of ownership for ~~himself~~ *the person* or as the personal representative, agent, or guardian of the owner."

Section 528. Section 7-12-1121, MCA, is amended to read:

"7-12-1121. Board of trustees — appointment — number — term of office. (1) When the governing body of a local government adopts an ordinance creating a business improvement district, the appointing authority, with the approval of the governing body, shall appoint not less than five or more than seven owners of property within the district to ~~comprise~~ *compose* the board of trustees of the district.

(2) The number of members of the board, once established, may be changed within these limits from time to time by subsequent resolutions of the governing body of the local government. A resolution to reduce board membership may not require resignation of any member prior to completion of ~~his~~ *the member's* appointed term.

(3) Three of the members who are first appointed must be designated to serve for terms of 1, 2, and 3 years, respectively, from the date of their appointments, and two must be designated to serve for terms of 4 years from the date of their appointments. For a seven-member commission, there must be two additional appointments for terms of 2 years and 3 years, respectively.

(4) After initial appointment, members must be appointed for a term of office of 4 years, except that a vacancy occurring during a term must be filled for the

unexpired term. A member shall hold office until ~~his~~ *a* successor has been appointed and qualified."

Section 529. Section 7-12-1122, MCA, is amended to read:

"7-12-1122. Organization of board of trustees — no compensation. (1) The appointing authority shall designate which member of the board is to be the first ~~chairman~~ *presiding officer*. When the office of ~~chairman~~ *presiding officer* of the board becomes vacant ~~thereafter~~, the board shall elect a ~~chairman~~ *presiding officer* from among its members. The term of office as ~~chairman~~ *presiding officer* of the board, unless otherwise prescribed by the governing body, must be for 1 calendar year or for that portion ~~thereof~~ *of a year* remaining after each ~~chairman~~ *presiding officer* is designated or elected.

(2) Members may *not* receive ~~no~~ compensation."

Section 530. Section 7-12-2101, MCA, is amended to read:

"7-12-2101. Definitions. (1) The word "blocks", ~~shall mean such~~ *means* blocks, whether regular or irregular, ~~as~~ *that* are bounded by main streets or partially by a boundary line of the city.

(2) The term "board of county commissioners" includes any body or board ~~which~~ *that* under the law is the legislative department of the government of the county.

(3) The word "city" and the word "municipality", as used in this part, ~~shall be understood and so construed as to include~~ *include* all corporations ~~heretofore organized and now existing and hereafter~~ organized for municipal purposes.

(4) The terms "clerk" and "county clerk", as used in this part, include any person or officer who ~~shall be~~ *is* clerk of the board of county commissioners.

(5) The term "county treasurer", as used in this part, means and includes any person who, under whatever name or title, is the custodian of the funds of the county.

(6) The term "engineer", as used in this part, means the person, firm, or corporation ~~who is~~ designated by the board of county commissioners as the engineer for the improvement.

(7) The term "incidental expenses", as used in this part, includes:

(a) the compensation of the engineer for work done ~~by him~~;

(b) the cost of printing and advertising, as provided in this part;

(c) interest on warrants of the county issued to pay costs of improvements, as provided in this part;

(d) costs of issuance of the bonds or warrants of the special improvement district, including costs of printing the bonds, bond registration fees, ~~attorneys'~~ *attorney* fees and financial consultants' fees, a premium for bond insurance, any price paid by the original purchaser of the bonds that is less than the face amount ~~thereof~~ *of the bonds*, and interest to accrue on bonds or warrants of the special improvement district before assessments levied by the district are collected in amounts and at times sufficient to pay ~~such~~ *the* interest; and

(e) a reasonable administrative fee payable to the county for the creation and administration of the district by the county, its officers, and its employees.

(8) The term "main street" means ~~such~~ *an* actually opened street or streets as bound a block.

(9) The words "paved" or "repaved", as used in this part, ~~shall be held to~~ mean and include pavement of stone, whether paving blocks or macadam; of bituminous rock or asphalt; or of wood, brick, or other material, whether patented or not, ~~which~~ *that* the board of county commissioners by rule or resolution shall adopt.

(10) The term "quarter block", as used in this part ~~as~~ *in reference* to irregular blocks, includes all lots or portions of lots having ~~any~~ frontage on either intersecting street halfway from ~~such~~ *the* intersection to the next main street or, when ~~no~~ *a* main street ~~intervenes~~ *does not intervene*, all the way to the boundary line of ~~any~~ *the* city.

(11) The word "street", as used in this part, includes avenues, highways, lanes, alleys, crossings or intersections, courts, and places ~~which~~ *that* have been dedicated and accepted according to the law or in common and undisputed use by the public for a period of not less than 5 years ~~next preceding~~.

(12) The term "street intersection", ~~wherever~~ *as* used in this part, means that parcel of land at the point of juncture or crossing of intersecting streets~~, which~~ *that* lies between lines drawn from corner to corner of all lot lines immediately cornering at ~~such~~ *the* juncture.

(13) The words "work", "improved", and "improvements", as used in this part, ~~shall include~~ *include* all work or the securing of property, by purchase or otherwise, mentioned in this part and also the construction, reconstruction, maintenance, and repair of ~~all or~~ any portion of ~~said~~ *the* work."

Section 531. Section 7-12-2117, MCA, is amended to read:

"7-12-2117. Record of expenses to be kept by engineer. ~~It shall be the duty of the~~ *The* engineer selected as ~~hereinbefore~~ provided ~~to~~ *in this part shall* keep an account in ~~his~~ *the engineer's* office of all costs and expenses incurred in connection with ~~every~~ *each* special improvement district and ~~to~~ *shall* certify the ~~same~~ *costs and expenses* to the county clerk."

Section 532. Section 7-12-2122, MCA, is amended to read:

"7-12-2122. Term of office of multicounty district trustee. (1) The trustees appointed upon the creation of ~~such~~ *a* district shall serve staggered terms of 1, 2, and 3 years. ~~Thereafter~~ *After the initial appointments*, each trustee serves a term of 3 years.

(2) A trustee holds office for the term of ~~his~~ appointment or until ~~his~~ *a* successor is appointed and qualified."

Section 533. Section 7-12-2135, MCA, is amended to read:

"7-12-2135. Decision on award of contract. (1) The board of county commissioners may award the contract for ~~such~~ *the* work or improvement to the lowest responsible bidder at the prices named in ~~his~~ *the* bid and shall reject all proposals other than the lowest regular proposal or bid of ~~any~~ *a* responsible bidder.

(2) The board:

(a) may reject any ~~and all~~ proposals or bids ~~should~~ *if* it ~~deem~~ *considers* this for the public good;

(b) may also reject the bid of ~~any~~ *a* party who has been delinquent or unfaithful in ~~any~~ *a* former contract with the board."

Section 534. Section 7-12-2137, MCA, is amended to read:

"7-12-2137. Procedure for dealing with bid securities. (1) If bids are rejected, the board of county commissioners shall ~~thereupon~~ return to the proper parties the bid securities accompanying the *rejected* bids ~~so rejected~~.

(2) The bid security accompanying ~~said~~ *the* accepted proposal or bid ~~shall~~ *must* be held by the county clerk until the contract for doing ~~said~~ *the* work~~, as hereinafter provided,~~ has been entered into, either by the lowest bidder or by the owners of over 50% of frontage, ~~whereupon said~~ *at which time the* bid security ~~shall~~ *must* be returned to ~~said~~ *the* bidder.

(3) If ~~said~~ *the* bidder fails, neglects, or refuses to enter into the contract to perform ~~said~~ *the* work and improvements ~~as hereinafter provided~~, then the bid security accompanying ~~his~~ *the* bid~~, in the amount therein mentioned, shall~~ *must* be declared to be forfeited to the board and ~~shall~~ *must* be collected by ~~it~~ *the board* and paid into the general fund of the county."

Section 535. Section 7-12-2139, MCA, is amended to read:

"7-12-2139. Procedure if person entering contract defaults on work. (1) If the contractor who may have taken ~~any~~ *a* contract does not complete the ~~same~~ *contract* within the time limited in the contract or within ~~such~~ *a* further time ~~as~~ *that* may be given ~~him~~, the engineer selected as ~~hereinbefore~~ provided *in this part* shall report ~~such~~ *the* delinquency to the board of county commissioners.

(2) (a) The board may relet the unfinished portion of ~~said~~ *the* work after pursuing the formalities prescribed in 7-12-2131 through 7-12-2137 for the letting of the ~~whole~~ *contract* in the first instance.

(b) The board ~~shall have the right, in its option, to~~ *may* complete the contract and deduct any cost in excess of the contract price ~~thereof~~ from any money, bond, or warrant due ~~such~~ *the* contractor. ~~In the event~~ *If* there is no money, bond, or warrant due ~~such~~ *the* contractor from which to deduct ~~such~~ *the* cost, then the board ~~shall have the right to~~ *may* sue ~~such~~ *the* contractor and recover ~~from him such~~ *the* costs."

Section 536. Section 7-12-2140, MCA, is amended to read:

"7-12-2140. Procedure for objection to proceedings. (1) At any time within 60 days from the date of the awarding of a contract, any owner or other person having ~~any~~ *a* interest in any lot, tract, or plot of land liable to assessment who claims that any of the previous acts or proceedings relating to ~~said~~ *the* improvements are irregular, defective, erroneous, or faulty or that ~~his~~ *the* property will be damaged by ~~the~~ making ~~of~~ any of the improvements in the manner contemplated may file with the county clerk a written notice specifying in what respect ~~said~~ *the* acts or proceedings are irregular, defective, erroneous, or faulty or in what manner and to what extent ~~his~~ *the* property will be damaged by ~~the~~ making ~~of said~~ *the* improvements.

(2) ~~Said~~ *The* notice ~~shall~~ *must* state that it is made in pursuance of this section.

(3) All objections in any act or proceeding or in relation to ~~the~~ making ~~of said~~ *the* improvements must be made in writing and in the manner and at the time ~~aforesaid~~ *provided in subsection (1).* All claims for damages ~~therefor shall~~ *must* be waived by ~~such~~ *the* property owner ~~in case no~~ *if a* written objection is *not* filed ~~by him~~, ~~provided that~~ *if* notice of the passage of the resolution of intention has been actually published and the notice of improvements posted as provided in this part."

Section 537. Section 7-12-2154, MCA, is amended to read:

"7-12-2154. Payment of damages incurred as ~~a~~ result of improvements. Whenever the owner or anyone interested in ~~any~~ property situated in the special improvement district, after filing with the county clerk a written notice claiming that ~~his~~ *the person's* property has been damaged, is awarded or recovers any amount because of damages sustained by the property because of the construction of ~~any~~ *an* improvement in the special improvement district~~:~~

~~(1)~~ *and* before the resolution levying the assessment to defray the cost of making the improvement in the district is passed and adopted by the board of county commissioners, the amount ordered to be recovered ~~shall~~ *must* be added to and constitute a part of making the improvements~~;~~. ~~but~~

~~(2)~~ *However,* if the resolution levying the assessment to defray the cost and expenses of making the improvement has been passed and adopted by the board, it shall pass and adopt a supplemental resolution levying an additional assessment against the property in the district for the purpose of paying the amount awarded, and the supplemental resolution ~~shall~~ *must* be made in the same manner and prepared and certified the same as the original resolution levying the assessment to defray the cost of making the improvements."

Section 538. Section 7-12-2158, MCA, is amended to read:

"7-12-2158. Resolution for levy and assessment of tax. (1) To defray the cost of making or acquiring improvements in ~~any~~ *a* special improvement district, the board of county commissioners shall by resolution levy and assess a tax upon all benefited property in the district created for ~~such~~ *that* purpose~~,~~ by using for a basis for ~~such~~ assessment the method or methods provided for by this part and described in the resolution of intention.

(2) ~~Such~~ *The* resolution ~~shall~~ *must* contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment, when made, and the day when the ~~same shall become~~ *payment becomes* delinquent.

(3) ~~Such~~ *The* resolution, signed by the ~~chairman~~ *presiding officer* of the board, ~~shall~~ *must* be kept on file in the office of the county clerk."

Section 539. Section 7-12-2163, MCA, is amended to read:

"7-12-2163. Collection of district assessments by county treasurer — delinquencies. (1) ~~Where any~~ *When a* resolution of assessment, either for construction or maintenance, has been ~~duly~~ certified by the county clerk, ~~it shall be the duty of~~ the county treasurer *shall*, in accordance with the provisions of this title, ~~to~~ collect ~~such~~ *the* assessment in the same manner and at the same time as taxes for general and municipal purposes are collected ~~by him~~.

(2) When the payment of an installment of a special assessment becomes delinquent, all payments of subsequent installments of the special assessment may, at the option of the board of county commissioners and upon adoption of the appropriate resolutions, become delinquent. Upon delinquency in one or all installments, the whole property must be sold the same as other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent."

Section 540. Section 7-12-2164, MCA, is amended to read:

"7-12-2164. Payment of tax under protest — action to recover. (1) When ~~any~~ *a* tax levied and assessed under any of the provisions of this part is

~~deemed~~ *considered* unlawful by the party whose property is ~~thus~~ taxed or from whom ~~such~~ *the* tax is demanded, ~~such~~ *the* person may pay ~~such~~ *the* tax or any part ~~thereof deemed~~ *of the tax considered* unlawful under protest to the county treasurer.

(2) ~~Thereupon, such~~ *The* party ~~so~~ paying *under protest* or ~~his~~ *the party's* legal representative may bring an action in any court of competent jurisdiction against the officer to whom ~~such~~ *the* tax was paid or against the county in whose behalf the ~~same~~ *tax* was collected to recover ~~such~~ *the* tax or any portion ~~thereof so~~ *of the tax* paid under protest. ~~Any~~ *An* action instituted to recover ~~such~~ *the* tax paid under protest must be commenced within 60 days after the date of payment ~~thereof~~.

(3) The tax ~~so~~ paid under protest ~~shall~~ *must* be held by the county treasurer until the determination of ~~any~~ *an* action brought for the recovery ~~thereof~~ *of the tax*."

Section 541. Section 7-12-4101, MCA, is amended to read:

"7-12-4101. Definitions. Unless the context indicates otherwise, as used in ~~this part and~~ part 42 *and this part*, the following definitions apply:

(1) "Blocks" means blocks, whether regular or irregular, that are bounded by main streets or by main streets and a boundary line of the city.

(2) "City" or "municipality" means all corporations organized for municipal purposes.

(3) "City clerk" or "clerk" means ~~any~~ *a* person or officer who is clerk of the council.

(4) "City council" means ~~any~~ *a* body or board that is the legislative department of the government of the city.

(5) "City engineer" means ~~any~~ *a* person or officer who is responsible for the maintenance and improvement of the streets in a city.

(6) "City treasurer" means ~~any~~ *a* person who, under whatever name or title, is the custodian of the funds of the municipality.

(7) "Incidental expenses" means:

(a) the compensation of the city engineer for work done ~~by him~~;

(b) the cost of printing and advertising as provided in ~~this part and~~ part 42 *and this part*;

(c) the compensation of persons appointed by the city engineer to take charge of and superintend any of the work mentioned in this part;

(d) the expenses of making the assessment for any work authorized by this part;

(e) interest on warrants of the city issued to pay costs of improvements;

(f) costs of issuance of bonds or warrants of the special improvement district, including costs of printing the bonds, bond registration fees, ~~attorneys'~~ *attorney fees* and financial consultants' fees, a premium for bond insurance, and ~~any~~ *the* price paid by the original purchaser of the bonds that is less than the face amount ~~thereof~~ *of the bonds*;

(g) interest to accrue on bonds or warrants of the special improvement district before assessments levied in the district are collected in amounts and at times sufficient to pay ~~such~~ *the* interest; and

(h) a reasonable administrative fee payable to the city for the creation and administration of the district by the city, its officers, and *its* employees.

(8) "Main street" means ~~such~~ *the* actually opened street ~~as~~ *that* bounds a block.

(9) "Paved" or "repaved" means pavement of stone (whether paving blocks or macadam), of bituminous rock or asphalt, or of wood, brick, or other material (whether patented or not) ~~which~~ *that* the city council adopts by ordinance or resolution.

(10) "Quarter-block", when used in reference to irregular blocks, means all lots or portions of lots having ~~any~~ frontage on either of two intersecting streets halfway from the intersection to the next main street or, when ~~no~~ *a* main street ~~intervenes~~ *does not intervene*, all the way to a boundary line of the city.

(11) "Street" means avenues, highways, lanes, alleys, crossings or intersections, courts, and places ~~which~~ *that* have been dedicated and accepted according to the law or in common and undisputed use by the public for a period of not less than 5 years.

(12) "Street intersection" means that parcel of land at the point of juncture or crossing of intersecting streets ~~which~~ *that* lies between lines drawn from corner to corner of all lot lines immediately cornering at ~~such~~ *the* juncture.

(13) "Work", "improved", or "improvement" means all work or the securing of property mentioned in ~~this part and~~ part 42 *and this part* and also the construction, reconstruction, and repair of ~~all or~~ any portion of *the* work."

Section 542. Section 7-12-4121, MCA, is amended to read:

"7-12-4121. Record of expenses to be kept by city engineer. ~~It shall be the duty of the~~ *The* city engineer ~~to~~ *shall* keep an account of all costs and expenses incurred in ~~his~~ *the engineer's* office in connection with ~~every~~ *each* special improvement district and certify the ~~same~~ *costs and expenses* to the city clerk."

Section 543. Section 7-12-4143, MCA, is amended to read:

"7-12-4143. Decision on award of contract. (1) The city council may award the contract for ~~said~~ *the* work or improvement to the lowest responsible bidder at the prices named in ~~his~~ *the* bid and shall reject all proposals or bids other than the lowest regular proposal or bid of ~~any~~ *a* responsible bidder.

(2) The council may reject any ~~and all~~ proposals or bids ~~should~~ *if* it ~~deem~~ *considers* this for the public good and may also reject the bid of ~~any~~ *a* party who has been delinquent or unfaithful in ~~any~~ *a* former contract with the municipality."

Section 544. Section 7-12-4145, MCA, is amended to read:

"7-12-4145. Procedure for dealing with bid securities. (1) If bids are rejected, the city council shall ~~thereupon~~ return to the proper parties the bid securities corresponding to the *rejected* bids ~~so rejected~~.

(2) The bid securities accompanying ~~such~~ *the* accepted proposals or bids ~~shall~~ *must* be held by the city clerk of ~~said~~ *the* city until the contract for doing ~~said~~ *the* work~~, as hereinafter provided,~~ has been entered into, either by ~~said~~ *the* lowest bidder or by the owners of over 75% of the frontage, ~~whereupon said~~ *at which time the* bid security ~~shall~~ *must* be returned to ~~said~~ *the* bidder.

(3) If ~~said~~ *the* bidder fails, neglects, or refuses to enter into the contract to perform ~~said~~ *the* work or improvements ~~as hereinafter provided~~, then the bid

securities accompanying ~~his~~ *the* bid ~~and the amount therein mentioned shall~~ *must* be declared to be forfeited to ~~said~~ *the* city and ~~shall~~ *must* be collected by ~~it~~ *the city* and paid into the general fund."

Section 545. Section 7-12-4148, MCA, is amended to read:

"7-12-4148. Contract with successful bidder. ~~Should~~ *If* the owners referred to in 7-12-4147 fail to elect to take ~~said~~ *the* work, to enter into a written contract ~~therefor~~ *for the work* within 3 days, or to commence the work within 15 days after the date of ~~such~~ *the* written contract and to prosecute the ~~same~~ *contract* with diligence to completion, ~~it shall be the duty of~~ the city council ~~to~~ *shall* enter into a contract with the original bidder to whom the contract was awarded at the prices specified in ~~his~~ *the* bid."

Section 546. Section 7-12-4152, MCA, is amended to read:

"7-12-4152. Procedure if person entering contract defaults on work. (1) If the contractor or owner who may have taken ~~any~~ *a* contract does not complete the ~~same~~ *contract* within the time limited in the contract or within ~~such~~ *a* further time ~~as~~ *that* the city council may give ~~him~~, the city engineer shall report ~~such~~ *the* delinquency to the council.

(2) (a) The council may relet the unfinished portion of ~~said~~ *the* work after pursuing the formalities prescribed in 7-12-4141 through 7-12-4145 for the letting of the ~~whole~~ *contract* in the first instance.

(b) The city ~~shall have the right~~ *may*, at its option, ~~to~~ complete the contract and deduct any cost in excess of the contract price ~~thereof~~ from any money, bonds, or warrants due ~~such~~ *the* contractor or owners. ~~In the event~~ *If* there is no money, bonds, or warrants due ~~such~~ *the* contractor or owners from which to deduct ~~such~~ *the* cost, then the city ~~shall have the right to~~ *may* sue ~~such~~ *the* contractor or owners and recover ~~from him such~~ *the* cost."

Section 547. Section 7-12-4167, MCA, is amended to read:

"7-12-4167. Provision for grading street by owner of abutting property. (1) ~~It shall be lawful for the~~ *The* owner or owners of the lots or land fronting upon ~~any~~ *a* street, the width and grade of which ~~shall have~~ *have* been established by the city council or commission, ~~to~~ *may, after obtaining permission from the city council or commission,* perform, at ~~his or their own~~ *the owner's* expense ~~(after obtaining permission from the council or commission to do so but before said council or commission has passed its resolution of intention to order grading exclusive of this)~~, any grading upon ~~said~~ *the* street, to its full width or to the centerline ~~thereof~~ *of the street* and to its *established* grade~~, as then established, and thereupon to~~. *The owner may* procure, at ~~his or their own~~ *the owner's* expense, a certificate from the city engineer setting forth the number of cubic yards of cutting and filling made by ~~him or them~~ *each owner* in ~~such~~ *the* grading and proportions performed by each owner and *certifying* that the ~~same~~ *work* is done to establish *the* width and grade of ~~said~~ *the* street or to the centerline ~~thereof~~ *of the street* and ~~thereafter to~~ *may* file ~~said~~ *the* certificate with the city engineer. The engineer shall record the certificate in a properly indexed book kept for that purpose in ~~his~~ *the engineer's* office.

(2) (a) ~~Thereafter, whenever~~ *If* the council or commission orders the grading of ~~said~~ *the* street or any portion ~~thereof~~ *of the street* on which any grading, certified as provided in subsection (1), has been done, the bids and contracts must express the price by the cubic yard for cutting and filling in grading. The owner ~~or owners~~ and ~~his or their~~ *the owner's* successors in interest ~~shall be~~ *are* entitled to credit on the assessment upon ~~his or their~~ *the owner's* lots and lands

fronting on ~~said~~ *the* street for the grading ~~thereof~~ *of the street* to the amount of the cubic yards of cutting and filling set forth in ~~his or their~~ *the owner's* certificate, at the prices named in the contract for ~~said~~ *the* cutting and filling or, if the grade ~~meanwhile~~ has been ~~duly~~ altered, only for so much of ~~said~~ *the* certified work as would be required for grading to the altered grade. ~~Such~~ *The* owner ~~or owners shall~~ *is* not ~~be~~ entitled to ~~such~~ credit ~~as may be~~ in excess of the assessments for grading upon the lots and lands owned by ~~him or them~~ *the owner* and proportionately assessed for the whole of ~~said~~ *the* grading.

(b) The city clerk shall include in the assessment, for the whole of ~~said~~ *the* grading upon the same grade, the number of cubic yards of cutting and filling set forth in ~~any and~~ all certificates ~~so~~ recorded in ~~his~~ *the clerk's* office, or for the whole of ~~said~~ *the* grading to the ~~duly~~ altered grade, *and* so much of ~~said~~ *the* certified work ~~as~~ *that* would be required for grading ~~thereto~~ and shall enter corresponding credits, deducting the ~~same~~ *credits* as payments upon the amounts assessed against the lots and land owned, respectively, by ~~said~~ *the* certified owners and their successors in interest~~;~~. ~~provided, however~~ *However*, ~~that he shall~~ *the clerk may* not ~~so~~ include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading ~~which~~ *that* are made upon ~~any~~ lots and lands fronting upon ~~said~~ *the* street and belonging to ~~any such~~ certified owners or their successors in interest."

Section 548. Section 7-12-4168, MCA, is amended to read:

"7-12-4168. Provision for work other than grading done by owner of property. Whenever ~~any~~ *an* owner or owners of ~~any~~ lots and lands fronting on ~~any~~ *a* street ~~shall~~ have ~~heretofore~~ done or ~~shall hereafter~~ do any work*,* ~~(~~excepting grading~~)~~*,* on ~~such~~ *the* street in front of ~~any~~ *a* block at ~~his or their own~~ *the owner's* expense and the city council or commission ~~shall~~ subsequently ~~order~~ *orders* any work to be done of the same class in front of the same block, ~~said~~ *the* work ~~so~~ done at the expense of ~~such~~ *the* owner or owners ~~shall~~ *must* be excepted from the order ordering work to be done, ~~provided that~~ *if* the work ~~so~~ done at the expense of ~~such~~ *the* owner or owners ~~shall be~~ *is* upon the official grade and in condition satisfactory to the city engineer at the time ~~said~~ *that the* order is passed."

Section 549. Section 7-12-4170, MCA, is amended to read:

"7-12-4170. Payment of damages incurred as ~~a~~ result of improvements. Whenever the owner or anyone interested in ~~any~~ property situated within ~~any~~ *the* special improvement district, after filing with the clerk a written notice claiming that ~~his~~ *the person's* property has been damaged, is awarded or recovers any amount because of damages sustained by the property because of the construction of ~~any~~ *an* improvement in the special improvement district~~:~~

~~(1)~~ *and* if the resolution levying the assessment to defray the cost of making the improvement in the district is not passed and adopted by the city council, the amount to be recovered ~~shall~~ *must* be added to and constitute a part of the cost of making the improvement~~;~~. ~~but~~

~~(2)~~ *However,* if the resolution levying the assessment to defray the costs and expenses of making the improvement has been passed and adopted by the council, it shall pass and adopt a supplemental resolution levying additional assessments against all the property in the district for the purpose of paying the amount awarded*,* and the supplemental resolution ~~shall~~ *must* be made in the same manner and prepared and certified the same as the original resolution levying the assessment to defray the cost of making the improvement."

Section 550. Section 7-12-4182, MCA, is amended to read:

"7-12-4182. Collection of district assessments by city treasurer in cities collecting their own taxes — delinquencies. (1) In ~~every~~ *each* city or town ~~which shall provide~~ *that provides* by ordinance for the collection of its taxes for general, municipal, and administrative purposes by its city treasurer or town clerk, the city treasurer or town clerk shall collect all special assessments and taxes levied and assessed in accordance with any of the provisions of ~~this part and~~ part 42 *and this part* in the same manner and at the same time as taxes for general, municipal, and administrative purposes are collected ~~by him~~. All of the provisions of 7-6-4423 apply to the collection of the special taxes and assessments in the same manner as the provisions apply to the collection of other city or town taxes.

(2) (a) When the payment of an installment of a special assessment becomes delinquent, all payments of subsequent installments may, at the option of the city or town council and upon adoption of the appropriate resolutions, become delinquent. The city or town may, pursuant to 7-12-4184, order that all assessments that are delinquent for specific parcels of land as a result of acceleration be withdrawn.

(b) Upon delinquency in one or all installments, the whole property ~~shall~~ *must* be sold the same as other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent."

Section 551. Section 7-12-4185, MCA, is amended to read:

"7-12-4185. Payment of tax under protest — action to recover. (1) When ~~any~~ *a* tax levied and assessed under any of the provisions of ~~this part and~~ part 42 *and this part* is ~~deemed~~ *considered* unlawful by the party whose property is ~~thus~~ taxed or from whom ~~such~~ *the* tax is demanded, ~~such~~ *the* person may pay ~~such~~ *the* tax or any part ~~thereof deemed~~ *of the tax considered* unlawful under protest to the city or county treasurer~~, as the case may be~~.

(2) ~~Thereupon, such~~ *The* party ~~so~~ paying *under protest* or ~~his~~ *the party's* legal representative may bring an action in any court of competent jurisdiction against the officer to whom ~~such~~ *the* tax was paid or against the city in whose behalf the ~~same~~ *tax* was collected to recover ~~such~~ *the* tax or any portion ~~thereof so~~ *of the tax* paid under protest. ~~Any~~ *An* action instituted to recover ~~any~~ *the* tax paid under protest must be commenced within 60 days after the date of payment ~~thereof~~.

(3) The tax ~~so~~ paid under protest ~~shall~~ *must* be held by the city or county treasurer~~, as the case may be,~~ until the determination of ~~any~~ *an* action brought for the recovery ~~thereof~~ *of the tax*."

Section 552. Section 7-12-4255, MCA, is amended to read:

"7-12-4255. Contents of notice of hearing — protest. (1) The notice ~~shall~~ *must* state the substance of the petition and the time and place for hearing and that any interested person or any person whose rights may be affected by the issuance or sale of the bonds or the levy of the special assessment, may, on or before the day fixed for the hearing on the petition, answer the petition and may appear at the hearing and contest the granting of the ~~prayer~~ *request* of the petition and the entry of any order of confirmation pursuant ~~thereto~~ *to the petition*.

(2) ~~Any~~ *A* person eligible to appear may enter ~~his~~ *an* appearance in the proceedings and answer the petition and contest the granting of the ~~prayer~~ *request* of the petition, and all provisions of the code of civil procedure ~~shall be~~ *are* applicable to the proceedings."

Section 553. Section 7-12-4304, MCA, is amended to read:

"7-12-4304. Protest against creation of lighting district. At any time within 15 days after the date of the first publication of the notice of passage of the resolution of intention, ~~any~~ *an* owner of property liable to be assessed for ~~said~~ *the* work may make written protest against the proposed work or against the extent or creation of the district to be assessed, or both. ~~Such~~ *The* notice must be in writing and be delivered to the clerk of the city council, who shall endorse ~~thereon~~ *on the notice* the date of ~~its~~ receipt ~~by him~~."

Section 554. Section 7-12-4307, MCA, is amended to read:

"7-12-4307. Objections to irregular proceedings or manner of making improvements. (1) At any time within 60 days from the date of the award of ~~any~~ *a* contract by a city or town council under the provisions of this part or at any time within 60 days from the date the council requires or instructs the street commissioner or any other official of the city or town to cause the posts, wires, pipes, conduits, lamps, or other suitable and necessary appliances for the purpose of lighting ~~said~~ *the* streets of ~~said~~ *the* city or town to be procured and erected, ~~any~~ *an* owner or other person having ~~any~~ *an* interest in ~~any~~ *a* lot or land liable to assessment who claims that any of the previous acts or proceedings relating to ~~said~~ *the* improvements are irregular, defective, erroneous, or faulty or that ~~his~~ *the person's* property will be damaged by the making of any improvements in the manner contemplated may file with the city clerk a written notice specifying in what respect ~~said~~ *the* acts or proceedings are irregular, defective, erroneous, or faulty or in what manner and to what extent ~~his~~ *the person's* property will be damaged by the making of ~~said~~ *the* improvements. The city clerk shall deliver the notice to the council.

(2) All objections to ~~any~~ *an* act or proceeding or in relation to the making of ~~said~~ *the* improvements not made in writing and in the manner *and* at the time ~~aforesaid~~ *provided in subsection (1)* and all claims for damage ~~therefor shall be~~ *are* waived by ~~such~~ *the* property owners~~, provided~~ *if* the notice of the passage of the resolution of intention has been actually published and the notices of improvements *have been* posted as provided in this part."

Section 555. Section 7-12-4309, MCA, is amended to read:

"7-12-4309. Record of expenses to be kept by city engineer. ~~It shall be the duty of the~~ *The* city engineer ~~to~~ *shall* keep an account of all costs and expenses incurred in ~~his~~ *the engineer's* office in connection with ~~every~~ *each* special improvement district and certify the ~~same~~ *costs and expenses* to the city clerk."

Section 556. Section 7-12-4325, MCA, is amended to read:

"7-12-4325. Incidental expenses considered as costs of improvements. The cost and expense connected with and incidental to the formation of ~~any such~~ *the* district, including the cost of preparation of plans, specifications, maps, and plats; engineering, superintendence, and inspection, ~~(~~including the compensation of the city engineer for work done ~~by him)~~; the cost of printing and advertising as provided in this part; and the preparation of assessment rolls ~~shall~~ *must* be considered a part of the cost and expenses of making the improvements within ~~such~~ *the* special improvement district."

Section 557. Section 7-12-4353, MCA, is amended to read:

"7-12-4353. Objections to irregular proceedings or manner of making ~~a~~ modification. (1) At any time within 60 days from the date of the award of a contract by a city or town council to implement the provisions of 7-12-4352 or at any time within 60 days from the date the council instructs an official of the city or town to cause the necessary equipment or appliances to be procured and installed, an owner of property liable to assessment who claims that any of the previous acts or proceedings relating to the modification are irregular, defective, erroneous, or faulty or that ~~his~~ *the person's* property will be damaged by making the modification in the manner contemplated may file with the city or town clerk a notice specifying in what respect these acts or proceedings are irregular, defective, erroneous, or faulty or in what manner and to what extent ~~his~~ *the person's* property will be damaged by the modification.

(2) Objections to ~~any~~ *an* act or proceeding or in relation to the making of the modification not made in writing or not made in the manner provided for in subsection (1) and all claims for damage ~~therefor~~ are waived by the property owners~~, providing~~ *if* the notice of the passage of the resolution has been published and the notices of the modification *have been* posted as provided in 7-12-4303."

Section 558. Section 7-12-4604, MCA, is amended to read:

"7-12-4604. Protest against creation of fire hydrant maintenance district. At any time within 15 days after the date of the first publication or posting of the notice of passage of the resolution of intention, ~~any~~ *an* owner of property who would be liable for district assessments may make a written protest against the proposed improvement or the creation of the district, or both. The protest must be delivered, in writing, to the clerk of the city council, who shall endorse ~~thereon~~ *on the protest* the date of ~~its~~ receipt ~~by him~~."

Section 559. Section 7-13-108, MCA, is amended to read:

"7-13-108. Right to protest. (1) At any time within 30 days after the date of the first publication of the passage of the resolution of intention, ~~any~~ *an* owner of property liable to be assessed for ~~said~~ *the* work may make *a* written protest against the proposed work.

(2) ~~Such~~ *The* protest must be in writing and be delivered to the county clerk, who shall endorse ~~thereon~~ *on the protest* the date of ~~the~~ receipt ~~by him~~."

Section 560. Section 7-13-124, MCA, is amended to read:

"7-13-124. Resolution to assess and levy tax for making improvements. (1) To defray the cost of making improvements in ~~any~~ *a* special improvement district, the board of county commissioners shall by resolution levy and assess a tax upon all property in the district created for ~~such~~ *that* purpose by using ~~for~~ *as* a basis for ~~such~~ *the* assessment the method provided for by this part.

(2) ~~Such~~ *The* resolution ~~shall~~ *must* contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment when made and the day when the ~~same shall become~~ *payment becomes* delinquent.

(3) ~~Such~~ *The* resolution, signed by the ~~chairman~~ *presiding officer* of the board, ~~shall~~ *must* be kept on file in the office of the county clerk."

Section 561. Section 7-13-209, MCA, is amended to read:

"7-13-209. Right to protest. (1) At any time within 21 days after the date of the first publication of the notice provided for in 7-13-208, ~~any~~ *an* owner of property liable to be assessed for ~~said~~ *the* service may make written protest against the proposed service or against the fees proposed to be charged for the service.

(2) ~~Such~~ *The* protest must be in writing and be delivered to the county clerk, who shall endorse ~~thereon~~ *on the protest* the date of ~~the~~ receipt ~~by him~~."

Section 562. Section 7-13-218, MCA, is amended to read:

"7-13-218. Role of county attorney. The county attorney ~~shall be~~ *is* the legal ~~advisor~~ *adviser* of the solid waste management districts and boards within the county ~~of his jurisdiction~~ and shall prosecute and defend all suits to which the districts may be a party. A district or board may employ special legal counsel to defend any ~~such~~ suits ~~in the event~~ *if* a conflict of interest would prohibit ~~such~~ *the* defense by the county attorney."

Section 563. Section 7-13-2209, MCA, is amended to read:

"7-13-2209. Application to include benefited lands. ~~Any~~ *A* person whose lands are benefited by ~~such~~ *the* district may, in the discretion of ~~said~~ *the* board of county commissioners, have ~~such~~ *the* lands included within ~~said~~ *the* proposed district upon ~~his~~ application to the board of county commissioners of the county in which ~~his~~ *the* lands ~~be~~ *are located*."

Section 564. Section 7-13-2241, MCA, is amended to read:

"7-13-2241. Filing of petition of nomination. (1) A petition of nomination, signed by at least five electors of the district for any one candidate, may be filed with the election administrator not earlier than 135 days or later than 75 days before the election. The election administrator shall endorse ~~thereon~~ *on the petition* the date upon which the petition was presented ~~to him~~.

(2) If the district lies in more than one county, the petition for nomination ~~shall~~ *must* be presented to the election administrator whose county contains the largest percentage of the territory of the district and the election administrator shall fulfill all duties assigned to election administrators in elections under ~~this part and~~ part 23 *and this part*.

(3) If the petition conforms to this section, the election administrator shall place the name of the petitioner on the ballot as a candidate for director of the district."

Section 565. Section 7-13-2246, MCA, is amended to read:

"7-13-2246. Withdrawal of candidacy. (1) ~~Any~~ *An* individual who has been nominated as a candidate may, not later than 75 days before the day of election, cause ~~his~~ *the individual's* name to be withdrawn from nomination by filing with the election administrator a request ~~therefor~~ *for withdrawal* in writing, and ~~no~~ *a withdrawn* name ~~withdrawn~~ may *not* be printed upon the ballot.

(2) If, upon ~~such~~ withdrawal, the number of candidates remaining does not exceed the number to be elected, then other nominations may be made by filing petitions ~~therefor~~ *for nomination* not later than 75 days prior to the election."

Section 566. Section 7-13-2247, MCA, is amended to read:

"7-13-2247. Preservation of petitions. The county clerk shall ~~preserve~~ *retain* in ~~his~~ *the clerk's* office for a period of 2 years all petitions of nomination filed under 7-13-2241."

Section 567. Section 7-13-2278, MCA, is amended to read:

"7-13-2278. Duties of administrative personnel. (1) The general manager ~~shall have~~ *has* full charge and control of the maintenance, operation, and construction of all works and systems of the district, with full power and authority to employ and discharge all employees and assistants at pleasure and prescribe their duties, and shall, subject to the approval of the board of directors, fix their compensation. The general manager shall perform ~~such~~ other duties ~~as~~ *that* may be imposed ~~upon him~~ by the board. The general manager shall report to the board in accordance with ~~such~~ rules ~~as~~ *that* it may adopt.

(2) The secretary shall countersign all contracts on behalf of the district and perform ~~such~~ other duties ~~as~~ *that* may be imposed by the board.

(3) The auditor ~~shall be~~ *is* charged with the duty of installing and maintaining a system of auditing and accounting that ~~shall~~ *must* completely and at all times show the financial condition of the district. ~~He~~ *The auditor* shall draw warrants to pay demands made against the district when ~~such~~ *the* demands have been first approved by at least three members of the board and by the general manager."

Section 568. Section 7-13-2308, MCA, is amended to read:

"7-13-2308. Payment of tax under protest — action to recover. (1) ~~Where such~~ *When the* tax is ~~deemed~~ *considered* unlawful for any reason by the person whose property is taxed, whether or not ~~he~~ *the person* has protested the ~~same~~ *tax* at the hearing provided for in 7-13-2306(4), ~~he~~ *the person* may pay the tax or the installments ~~thereof~~ *of the tax* under protest in the manner provided by 15-1-402 and, ~~thereupon and~~ within the time prescribed and in the manner provided by 15-1-402, may commence an action to recover ~~such~~ *the* tax or installments and in ~~such~~ *that* action *may* contest and litigate the payment of ~~such~~ *the* tax on the same grounds and for the same reasons ~~that he has~~ stated in ~~his~~ *the* written protest and for no other reasons and on no other grounds.

(2) All of the provisions of 15-1-402 for the retention or refunding of taxes paid under protest ~~shall~~ apply to taxes paid under protest under this section."

Section 569. Section 7-13-2342, MCA, is amended to read:

"7-13-2342. Consolidation of county water and/or sewer districts. (1) Two or more districts organized under the provisions of ~~this part and~~ part 22 *and this part* may consolidate at any time~~,~~ upon petitions submitted to the board of directors of each ~~such~~ district. ~~Such~~ *The* petitions ~~shall~~ *must* be in the form required for petitions for the organization of districts. Each ~~such~~ petition ~~shall~~ *must* be signed by not less than 10% of the registered voters of the territory included within ~~said~~ *the* district.

(2) ~~Said~~ *The* petitions may be granted by ordinance of the board of directors of each ~~of said districts~~ *district*. ~~Such~~ *The* ordinances ~~shall~~ *must* be submitted for adoption or rejection to the vote of the electors in ~~such districts~~ *the district* at general or special elections held, as provided in ~~this part and~~ part 22 *and this part*, within 70 days after the adoption of ~~such~~ *the* ordinances.

(3) If ~~such~~ *the* ordinances are approved, the president and secretary of the boards of directors of each ~~of said districts~~ *district* shall certify that fact to the secretary of state and to the county clerk of the county or counties in which ~~such~~ *the* districts are located. Upon the receipt of ~~said~~ *the* certificate, the secretary of state shall within 10 days issue ~~his~~ *a* certificate, reciting the passage of ~~said~~ *the* ordinances and the consolidation of ~~said~~ *the* districts. A copy of ~~such~~ *the*

certificate ~~shall~~ *must* be transmitted to and filed with the county clerk of each county in which ~~such~~ *the* consolidated district is situated.

(4) ~~From and after~~ *After* the date of ~~such~~ *the* certificate, the districts ~~shall be deemed~~ *are considered* to be consolidated and ~~shall~~ consist of one district with all the rights, privileges, and powers set forth in ~~this part and~~ part 22 *and this part* and necessarily incident ~~thereto~~ *to those rights, privileges, and powers*.

(5) The number and manner of selection and election of directors of the consolidated district ~~shall~~ *must* be the same as the number and manner of selection and election of directors of newly organized districts."

Section 570. Section 7-13-2345, MCA, is amended to read:

"7-13-2345. Hearing and notice on petition to exclude land. (1) Upon the filing of ~~such~~ *a* petition with the secretary of the district, ~~he~~ *the secretary* shall call a meeting of the board of directors of the district at a time not less than 25 days or more than 50 days after the filing of the petition and cause a notice of the filing of ~~such~~ *the* petition to be published as provided in 7-1-2121. ~~Such~~ *The* notice ~~shall also~~ *must* state the date of the filing of ~~such~~ *the* petition and that the ~~same~~ *petition* will ~~come on for hearing~~ *be heard* before the board of directors of the district.

(2) ~~Any~~ *A* landowner or taxpayer within the district ~~shall have~~ *has* the right to appear at ~~said~~ *the* hearing, either in behalf of or in opposition to the granting of ~~said~~ *the* petition. ~~Said~~ *The* petition ~~shall come on for hearing~~ *must be heard* before the board of directors of the district at the time and place specified in the notice of hearing.

(3) (a) Except as provided in subsection (3)(b), the place of the hearing ~~shall~~ *must* be the regular meeting place of the board of directors of the district.

(b) The board may adjourn the hearing to a more convenient meeting place within the district."

Section 571. Section 7-13-2505, MCA, is amended to read:

"7-13-2505. Processing of petition. (1) Upon the filing of ~~such~~ *the* petition or petitions, the county clerk and recorder shall examine the petition and certify whether the required number of signers are found ~~thereon~~ *on the petition*. After the examination of the petition, the county clerk and recorder of any county containing the least number of signers, if more than one county is involved, shall transmit the petition to the county clerk and recorder of the county containing the most signers.

(2) Within 30 days following the receipt of ~~such~~ *the* petitions, the county clerk and recorder in the county containing the most names on the petitions shall transmit the petitions to the board of county commissioners of the county in which the ~~greater~~ *greatest* number of petitioners reside, together with ~~his~~ *the clerk and recorder's* certificate and the certificates of any other county clerk and recorder as to the sufficiency ~~thereof~~ *of the petitions*."

Section 572. Section 7-13-4107, MCA, is amended to read:

"7-13-4107. Protection of private waste disposal service in municipality. A municipality, as of January 1, 1979, that receives garbage and solid waste disposal services from a private motor carrier authorized by the public service commission to provide ~~such~~ *that* service may not, by ordinance or otherwise, elect to provide exclusive garbage and solid waste service unless the municipality pays the private motor carrier fair market value for ~~his~~ *the carrier's* equipment or unless the municipality delays commencing the public

service for a period of 5 years from the date of the decision by the municipality to provide the garbage and solid waste services. The private motor carrier ~~shall~~ *must* be given notice of the decision by the municipality to provide exclusive garbage and solid waste services no later than 10 days after the decision has been made by the municipality."

Section 573. Section 7-14-205, MCA, is amended to read:

"7-14-205. Petition to be filed with election administrator — certificate. (1) The complete petition ~~shall~~ *must* be filed with the election administrator.

(2) The election administrator shall, within 30 days ~~thereafter~~, carefully examine the petition and attach to it a certificate under ~~his~~ *the administrator's* official signature and ~~the~~ seal of ~~his~~ office. The certificate ~~shall~~ *must* set forth:

(a) the total number of individuals who are registered electors within the proposed transportation district; and

(b) which and how many of the individuals whose names are on the ~~petitions~~ *petition* are qualified to sign the petition."

Section 574. Section 7-14-1103, MCA, is amended to read:

"7-14-1103. Commissioners. (1) The powers of each authority are vested in the commissioners ~~thereof~~ *of the authority*. A majority of the commissioners of an authority constitutes a quorum for the purpose of conducting business of the authority and exercising its powers for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present.

(2) There must be elected a ~~chairman~~ *presiding officer* and ~~vice-chairman~~ *vice presiding officer* from among the commissioners. An authority may employ an executive director, secretary, technical experts, and ~~such~~ other officers, agents, and employees, permanent and temporary, ~~as~~ *that* it may require and shall determine their qualifications, duties, and compensation. An authority may delegate to one or more of its agents or employees ~~such~~ *the* powers or duties ~~as~~ *that* it considers proper.

(3) A commissioner of an authority is entitled to receive expenses, as provided in 2-18-501 through 2-18-503, incurred in the discharge of ~~his~~ duties. Each commissioner shall hold office until ~~his~~ *a* successor has been appointed or elected and has qualified. The certificates of the appointment, reappointment, or election of commissioners must be filed with the authority."

Section 575. Section 7-14-2121, MCA, is amended to read:

"7-14-2121. County road districts. (1) The board of county commissioners may in its discretion divide the county into suitable road districts and place each district in the charge of a competent road supervisor. The board shall order and direct each supervisor in the work to be done in ~~his~~ *the* district.

(2) If the board does not divide the county into districts, the county ~~itself shall constitute~~ *constitutes* one road district."

Section 576. Section 7-14-2122, MCA, is amended to read:

"7-14-2122. County road supervisor. (1) Each board of county commissioners may in its discretion employ a competent road supervisor, who shall serve ~~during~~ *at* the pleasure of the board. In ~~any~~ *a* county in which the county surveyor is not paid an annual salary, ~~he~~ *the surveyor* may by agreement be employed by the board to perform the services of road supervisor. ~~He shall~~

The surveyor may not be paid for any duty otherwise required by law to be performed ~~by him~~ as county surveyor.

(2) Under the direction and control of the board, ~~he~~ *the road supervisor* shall:

(a) prescribe the times and places for all work to be done on the county roads;

(b) report any delinquency or inefficiency of ~~any~~ *a* person employed on ~~any~~ *a* road;

(c) perform other duties ~~which~~ *that* are prescribed by the board."

Section 577. Section 7-14-2135, MCA, is amended to read:

"7-14-2135. Notice to remove encroachment. (1) Notice to remove the encroachment immediately, specifying the breadth of the highway and the place and extent of the encroachment, must be given to the occupant or owner of the land or the person owning or causing the encroachment.

(2) Notice must be given in the following manner:

(a) by leaving it at ~~his~~ *the occupant's or owner's* place of residence if ~~such~~ *the* person resides in the county; or

(b) by posting it on the encroachment if ~~such~~ *the* person does not reside in the county."

Section 578. Section 7-14-2137, MCA, is amended to read:

"7-14-2137. Legal actions to remove encroachments or recover costs. (1) (a) If the encroachment is denied, the road supervisor shall commence an action in the proper court to abate the ~~same~~ *encroachment* as a nuisance.

(b) If ~~he~~ *the road supervisor* recovers judgment, ~~he~~ *the supervisor* may have ~~his~~ *the supervisor's* costs and $10 for ~~every~~ *each* day ~~such~~ *the* nuisance remains after notice.

(2) (a) If the encroachment is not denied and is not removed for 5 days after notice is complete, the road supervisor or county surveyor may remove it at the expense of the owner or occupant of the land or of the person owning or controlling the encroachment.

(b) ~~He~~ *The supervisor* may recover the expense of removal, $10 for each day the encroachment remains after notice, and costs in an action brought for that purpose."

Section 579. Section 7-14-2201, MCA, is amended to read:

"7-14-2201. Maintenance and control of bridges. (1) Each board of county commissioners shall maintain all public bridges other than those maintained by the department of transportation.

(2) The board shall manage and control all bridges referred to in this part. It shall direct the method and time of making repairs, planking, replanking, paving, and repaving.

(3) (a) Whenever ~~any~~ *a* bridge needs repair or becomes dangerous for the passage of vehicles or persons, the board, or the county surveyor if ~~he~~ *the surveyor* is in charge, shall repair the bridge upon being notified ~~thereof~~ *of the need for repair*.

(b) ~~Nothing in this~~ *This* subsection ~~shall~~ *(3) may not* be construed as holding the board or any member responsible or liable for anything other than willful, intentional neglect or failure to act.

(4) In this part, "public bridges" means public bridges located in towns or cities and bridges located on county roads maintained by the county."

Section 580. Section 7-14-2302, MCA, is amended to read:

"7-14-2302. Duties of county road superintendent. (1) Under the direction and supervision of the board of county commissioners, the superintendent shall furnish plans and specifications for highway or bridge work. ~~He shall be chairman~~ *The superintendent is the presiding officer* of all boards of road viewers.

(2) Under ~~such~~ direction and supervision, ~~he~~ *the superintendent* shall ~~also~~:

(a) take charge of all roads, bridges, and causeways under the jurisdiction of the county;

(b) open all new roads when they are ~~duly~~ established and ordered to be opened by the board;

(c) perform, at the time and in the manner directed by the board, whatever ~~shall be~~ *is* lawfully directed by the board concerning the public highways under the jurisdiction of the county."

Section 581. Section 7-14-2303, MCA, is amended to read:

"7-14-2303. Equipment used by road superintendent. (1) Upon the requisition of the superintendent, the board of county commissioners shall furnish any necessary equipment, tools, and implements and pay for them out of the county road fund.

(2) The superintendent shall preserve the equipment, tools, and implements and ~~shall~~ *may* not allow them to be used except on public highways. At the expiration of ~~his~~ *the superintendent's* term of office or upon ~~his~~ removal ~~therefrom~~ *from office*, ~~he must~~ *the supervisor shall* turn over all equipment, tools, and implements to ~~his~~ *a* successor or to the board."

Section 582. Section 7-14-2306, MCA, is amended to read:

"7-14-2306. Records and receipts to be maintained. The superintendent shall keep correct accounts of all labor performed, equipment and implements used, and materials furnished. ~~He~~ *The superintendent* shall give ~~to~~ each person performing work or furnishing equipment, implements, or materials a certificate stating the work performed and the price to be paid ~~therefor~~ *for the work*."

Section 583. Section 7-14-2308, MCA, is amended to read:

"7-14-2308. Superintendent's report. At least once each year and more often if required by the board of county commissioners, the superintendent shall file a report with the board detailing the activities and expenditures of ~~his~~ *the superintendent's* office and containing any other information the board requires. At the first monthly or quarterly meeting held after filing of a superintendent's report, the board of county commissioners shall examine ~~it~~ *the report*."

Section 584. Section 7-14-2606, MCA, is amended to read:

"7-14-2606. Survey of road. (1) The board may order the county surveyor, or some other competent surveyor if the county surveyor is incompetent, to survey and plat the road. ~~He~~ *The surveyor* shall file ~~his~~ *the surveyor's* field notes with the county clerk and recorder.

(2) The surveyor ~~shall~~ *must* receive $7 ~~per~~ *a* day and actual traveling expenses."

Section 585. Section 7-14-2607, MCA, is amended to read:

"7-14-2607. Damages resulting from establishment or alteration of road. (1) Whenever the board makes an order establishing or changing any road, it ~~must find~~ *shall determine* the amount of damages sustained by each owner or claimant of lands or improvements ~~thereon~~ affected by the road. Damages must be determined by estimating the benefits and damages accruing. The sum estimated as benefits must be deducted from the sum estimated as damages, and the remainder, if any, ~~shall~~ *must* be the amount of damages awarded.

(2) Damages ~~shall~~ *must* be paid to the owner or claimant, if known, upon ~~his~~ *the owner or claimant* showing or establishing ~~his~~ *the* right or title to the lands or improvements and furnishing proper deeds and releases."

Section 586. Section 7-14-2613, MCA, is amended to read:

"7-14-2613. Notice to district supervisor of opening or alteration of county road. When a county road is to be opened, established, constructed, changed, abandoned, or discontinued, the county clerk shall notify the supervisor of the proper district and furnish ~~him~~ *the supervisor* with a certified copy of the order of the board."

Section 587. Section 7-14-2705, MCA, is amended to read:

"7-14-2705. Meeting between county road superintendent, residents, and owners of land. (1) After receipt of the petition and passage of the resolution, the board shall make an order fixing a time and place in the vicinity of the road for a meeting between the county road superintendent or ~~his~~ *the superintendent's* deputy, all owners upon whose lands special assessments will be levied, and all residents within the proposed district.

(2) All owners of land fronting on the road or land within 2 miles on either side of it upon which special assessments will be levied and all residents within the proposed district may meet with the superintendent or ~~his~~ *the superintendent's* duly appointed deputy."

Section 588. Section 7-14-2707, MCA, is amended to read:

"7-14-2707. Meeting procedure — election of committee of supervisors. (1) The superintendent or ~~his~~ *the superintendent's* deputy, or in their absence one of the landowners or residents present, shall preside. Those present shall elect three *individuals* as a committee of supervisors~~;~~*,* at least one of ~~them shall~~ *whom must* be a petitioner.

(2) A majority of the owners and residents present and voting ~~shall be~~ *is* sufficient for election. The presiding officer shall certify to the board the names of the owners elected to the committee.

(3) Those elected shall qualify immediately by taking an oath that they are owners of land benefited by the improvements and to be included within the local improvement district or residents within the proposed district. They shall take an oath that they will fully, impartially, and faithfully perform their duties as supervisors. The superintendent or ~~his~~ *the superintendent's* deputy may administer the oath, or it may be administered by anyone ~~so~~ authorized by law *to do so*."

Section 589. Section 7-14-2708, MCA, is amended to read:

"7-14-2708. Investigation of proposed road — obtaining releases for damages. The committee and the surveyor or ~~his~~ *the surveyor's* deputy shall:

(1) immediately view, examine, and survey the road petitioned for;

(2) examine and determine the lands ~~which~~ *that* will be specially benefited by the road and ~~which~~ *that* should be included within the district that is to be assessed;

(3) ascertain whether any damage or injury to property will be sustained by or in consequence of the making of the road; and

(a) obtain, if possible without cost, the release in writing of each person of ~~his~~ *the person's* claim for ~~such~~ damage or injury; or

(b) arrange, when necessary, for a release to be given for ~~such~~ *an* amount ~~as may be~~ *that is* fair and reasonable."

Section 590. Section 7-14-2709, MCA, is amended to read:

"7-14-2709. Preparation and presentation of plans, estimates, and report. (1) The road superintendent shall without delay prepare plans and specifications and cost estimates. ~~He~~ *The superintendent* shall prepare a plat and description of the local assessment district and a description of the parcels of land included in the district. The valuation of the lands ~~shall~~ *must* be *the value* that ~~which~~ appears on the last annual assessment roll of the county for the levying of general taxes.

(2) At the next annual meeting of the board after the road superintendent has completed surveying the road and making estimates, ~~he~~ *the superintendent* shall make a detailed report. The report ~~shall~~ *must* state that the maps, descriptions, plans, specifications, and details and estimates of damages, costs, and expenses have been completed."

Section 591. Section 7-14-2712, MCA, is amended to read:

"7-14-2712. Inspector of works — compensation. (1) The committee and road superintendent together shall appoint ~~some~~ *a* suitable and competent person other than ~~they~~ *the committee or the superintendent* to act as an inspector of the work. ~~He shall~~ *The inspector must* be ~~upon~~ *present at the location of* the work at all times during its progress and *shall* inspect the performance ~~thereof~~ *of the work*. ~~He~~ *The inspector* shall report to and be under the supervision of the superintendent.

(2) ~~He shall~~ *The inspector must* be paid ~~for his services as inspector~~ at the rate of $5 ~~per~~ *a* day for the time ~~he is~~ actually engaged ~~thereon~~ *as inspector*."

Section 592. Section 7-14-2719, MCA, is amended to read:

"7-14-2719. Procedure for payment of claims. (1) The committee shall approve and certify all claims and accounts for services and ~~every kind of~~ *any* expense payable from funds of the district.

(2) The county auditor~~,~~ or the county clerk *and recorder* in ~~any~~ *a* county ~~which has no~~ *that does not have an* auditor~~,~~ shall then audit all ~~such~~ claims and accounts. ~~Thereafter he~~ *The person conducting the audit* shall issue *a payment order* to the treasurer ~~an order~~ in favor of the person to whom the claim or account is payable ~~to pay it~~.

(3) Upon presentation of the order by the person to whom it was issued or ~~his~~ *the person's* assignee, the treasurer shall pay ~~it~~ *the order* from the funds of the district."

Section 593. Section 7-14-2720, MCA, is amended to read:

"7-14-2720. Payments while work in progress. (1) The surveyor, with the approval of the committee, shall make estimates of the ~~proportion~~ *amount* of the work completed. After auditing, the estimates may be paid by the treasurer, to an amount not exceeding 80%, during the progress of the work.

(2) If the assessment is payable by installments, the treasurer shall pay the order ~~only~~ from ~~such~~ *the* assessments ~~as shall~~ *that* have been collected prior to the ~~issue~~ *issuance* of the bonds and from the proceeds of the sales of the bonds after ~~issue~~ *issuance*.

(3) If the board has ordered that the contractor ~~shall~~ *must* receive bonds in payment, the order for payment ~~shall~~ *must* call for bonds instead of money. The treasurer shall deliver the bonds, dating them *with* the day ~~he delivers them~~ *of delivery* to the contractor, and interest ~~shall run therefrom~~ *must accrue from that date*."

Section 594. Section 7-14-2721, MCA, is amended to read:

"7-14-2721. Disposition of excess funds after full payment for road. (1) After the payment of the whole cost of construction or improvement, any money remaining in the county treasury ~~which~~ *that* belongs to the district ~~shall~~ *must* be refunded on demand. A rebate ~~therefrom shall~~ *must* be made on demand to any person who ~~shall~~ *has* not ~~have~~ paid ~~his~~ *an* assessment in full.

(2) Demand ~~shall~~ *must* be made within 2 years from the date upon which the assessment became due.

(3) Any ~~such~~ money remaining in the county treasury after the expiration of 2 years for which ~~no~~ demand has *not* been made~~, shall go into~~ *must be deposited in* the general fund."

Section 595. Section 7-14-2753, MCA, is amended to read:

"7-14-2753. Details relating to bonds. (1) Each bond ~~shall~~ *must* provide that the holder ~~shall~~ *may* not demand payment until it comes due. ~~It shall~~ *The bond must* bear interest payable annually and ~~shall~~ *must* have interest coupons for each interest payment attached.

(2) Each bond and coupon ~~shall~~ *must* bear the date of issuance and be made payable to *the* bearer. Each bond ~~shall~~ *must* be signed by the ~~chairman~~ *presiding officer* of the board and attested by the county clerk *and recorder*. The seal of the board ~~shall~~ *must* be affixed to each bond.

(3) Bonds ~~shall~~ *must* be issued in denominations of not less than $100 or more than $1,000.

(4) Each bond ~~shall~~ *must* contain a reference to the district for which it is issued and to the order and record authorizing the issue. ~~It shall~~ *The bond must* state that it is payable only out of the local improvement funds created by special assessment and not otherwise.

(5) On its face, each bond ~~shall~~ *must* bear the designation of the district: "local improvement district No. .... in .... County, Montana".

(6) The board may also direct in the order providing for issuance of the bonds that they be sold by the treasurer at *a value* not less than par ~~value~~ and accrued interest."

Section 596. Section 7-14-2756, MCA, is amended to read:

"7-14-2756. Payment of assessment — release from bond obligations. (1) At any time within 30 days after notice, the owner may pay the assessment

and release and discharge ~~his~~ *the owner's* lands ~~therefrom and~~ from the operation and effect of the bonds.

(2) ~~No bonds shall~~ *Bonds may not* be issued until 20 days after the expiration of 30 days after notice. ~~No bonds shall~~ *Bonds may not* be issued for any assessment paid in full within the 30 days."

Section 597. Section 7-14-2761, MCA, is amended to read:

"7-14-2761. Rights of bondholders. (1) If the treasurer fails, neglects, or refuses to pay bonds or to collect promptly any assessments when due, the owner of any bonds may proceed ~~in his own name~~ *individually* to collect the assessments and to foreclose the lien in any court of competent jurisdiction. In addition to the amount of the assessments and interest ~~thereon~~, ~~any such~~ *the* owner shall recover 5% of the costs of ~~his~~ *the* suit.

(2) Any number of holders of bonds for ~~any~~ *a* single district may join as plaintiffs, and any number of owners of land on which the bonds are a lien may be joined as defendants.

(3) Neither the holder nor ~~any~~ *an* owner of any bond ~~shall~~ *may* have ~~any~~ *a* claim against the county through which the bond is issued except for the assessments. ~~His~~ *The* remedy in case of nonpayment ~~shall be~~ *is* confined to the enforcement of the assessments.

(4) A copy of this section ~~shall~~ *must* be plainly written, printed, or engraved on each bond."

Section 598. Section 7-14-2802, MCA, is amended to read:

"7-14-2802. Construction and operation of ferries uniting two counties. (1) When a public ferry, if constructed, would unite two counties, the boards of county commissioners may act jointly to construct, maintain, and operate it. Each county shall acquire and maintain its own landings and approaches.

(2) When ~~ferrymen~~ *individuals* are employed on joint ferries, they shall report quarterly to each board, giving ~~such~~ *the* information ~~as~~ *that* each board may require."

Section 599. Section 7-14-2805, MCA, is amended to read:

"7-14-2805. Establishment and operation of public ferry or wharf by county upon its own motion. (1) Any county of the state may own and establish and the board of county commissioners of any county of the state may operate and manage free or toll ferries and wharves for the use of the public and may employ one or more ~~ferrymen~~ *individuals* to operate ~~such~~ *the* free or toll ferries and wharves.

(2) While ~~such~~ ferries or wharves are ~~so~~ owned by ~~any~~ *a* county and operated and managed by ~~such~~ *the* board, ~~such~~ *the* operation ~~shall be and~~ is ~~hereby~~ expressly declared to be a governmental function.

(3) The board may also lease any ferries or wharves owned by ~~such~~ *the* county to a company, firm, or individual to be operated for the use of the public. ~~Said~~ *A* company, firm, or individual shall give *a* bond, in an amount ~~deemed~~ *considered* sufficient by the board, conditioned for the careful and ~~business-like~~ *businesslike* operation of ~~such~~ *the* ferry or wharf in accordance with law and the regulations of ~~said~~ *the* board. ~~While such~~ *When a* ferry or wharf is ~~so~~ operated by a lessee of ~~said~~ *the* county, ~~such~~ *the* operation is ~~expressly declared to be~~ the private function of ~~such~~ *the* lessee."

Section 600. Section 7-14-2823, MCA, is amended to read:

"7-14-2823. Hearing and decision on application. (1) At the hearing, proof of giving the notice required by 7-14-2821 and 7-14-2822 must be made, and any person may appear and contest the application. If the board of commissioners finds that the ferry is either a public necessity or convenience and that the applicant is a suitable person and, by reason of the ownership of the landing or failure of the owner ~~thereof~~ *of the landing* to apply, is entitled ~~thereto~~ *to operate the ferry*, authority to erect and take tolls on the ferry may be granted to ~~him~~ *the applicant* for the term of 10 years. The board may at any time ~~they see fit~~ authorize and maintain fords across any water within any distance of ~~any~~ *a* ferry.

(2) The board granting authority to keep a public ferry ~~must~~ *shall* at the same time:

(a) fix the amount of a bond to be given by the person or corporation owning or taking tolls on the ferry for the benefit of the county and all persons crossing or desiring to cross on the ~~same~~ *ferry* and provide for the annual renewal ~~thereof~~ *of the bond*;

(b) fix the amount of license tax to be paid by the person or corporation for taking tolls ~~thereon~~ *on the ferry*, not less than $3 or ~~over~~ *more than* $100 ~~per~~ *a* month, payable annually;

(c) fix the rate of tolls ~~which~~ *that* may be collected for crossing on the ferry;

(d) make all necessary orders relative to the construction, erection, and business of ferries ~~which they have~~ *that it has* by law the power to make.

(3) When a county commissioner is interested in an application to erect, construct, or take tolls on a ferry, ~~he must~~ *the commissioner may* not act in ~~any such~~ *those* matters."

Section 601. Section 7-14-2826, MCA, is amended to read:

"7-14-2826. Regulation of ferry operation — penalties. (1) The board of *county* commissioners may make ~~all needful~~ rules for the government of ferries ~~and ferrykeepers~~ prescribing:

(a) how many boats must be kept, their character, and how *they are* propelled;

(b) the number of ~~hands, boatmen, or ferrymen~~ *individuals* to be employed and rules for their ~~government~~ *supervision*;

(c) when and under what circumstances ~~to~~ *ferries may* make trips in the nighttime;

(d) who may be ferried free of toll;

(e) in what cases of danger or peril ~~not to cross~~ *a crossing is to be*;

(f) penalties for violation of ~~regulations~~ *rules*;

~~(g) in case of steamboats, the rate of speed;~~

~~(h)~~*(g)* the method of and preference in loading and crossing; and

~~(i)~~*(h)* how and by whom action ~~must~~ *may* be brought to recover penalties.

(2) Subject to the ~~foregoing regulations~~ *rules*, ~~ferrykeepers must~~ *ferry operators shall* make trips to accommodate all passengers who desire to cross, and any failure to do so subjects the franchise to forfeiture by a proper proceeding for that purpose.

(3) The owner of ~~every~~ *a* ferry ~~must~~ *shall* have the rates of toll, as fixed by the board, printed or written and posted in some conspicuous place on or near the ferry.

(4) All ~~ferrykeepers must~~ *ferry operators shall* keep the banks of the streams or waters at the landings of their ferries graded and in good order for the passage of vehicles. For every day compliance ~~herewith~~ *with this subsection* is neglected, $25 is forfeited, to be collected, except as provided in 3-10-601, for the use of the road fund of the county."

Section 602. Section 7-14-2827, MCA, is amended to read:

"7-14-2827. Surety bond required. The bond required of the owner or keeper of the ferry must be in the sum fixed by the board of *county* commissioners, with one or more sureties, and conditioned that the ferry will be kept in good repair and condition and that the *owner or* keeper will faithfully comply with the laws of the state and all legal orders of the board regulating the ~~same~~ *ferry* and pay all damages recovered against ~~him~~ *the owner or keeper* by any person injured or damaged by reason of delay at or defect in ~~such~~ *the* ferry or in any manner resulting from a noncompliance with the laws or lawful orders regulating the ~~same~~ *ferry*. The bond must be approved by the board."

Section 603. Section 7-14-2828, MCA, is amended to read:

"7-14-2828. Report required. ~~Every~~ *An* owner or keeper of a ferry ~~must~~ *shall* report annually to the board of *county* commissioners from which ~~his~~ *a* license is obtained, under oath, the following facts:

(1) the actual cost of the construction or erection and equipment of the ferry;

(2) the repairs made during the preceding year and the actual cost ~~thereof~~ *of the repairs*;

(3) the expense of labor and ~~hire~~ of *hiring* agents and other costs necessarily incurred ~~in and about~~ *with regard to* the conduct of ~~his~~ *the* business;

(4) the amount of tolls collected; and

(5) the estimated actual cash value of the ferry, exclusive of the franchise."

Section 604. Section 7-14-4201, MCA, is amended to read:

"7-14-4201. Establishment and alteration of street grade. (1) The city or town council ~~has power to~~ *may* establish the grade of any street, alley, or avenue.

(2) When the grade has been established, it ~~must~~ *may* not be changed except by a vote of the majority of the council and not ~~then~~ until the damage to property owners caused by the change of grade has been assessed and determined by three disinterested appraisers~~,~~. ~~who~~ *The appraisers* must be appointed by the mayor and confirmed by the council~~,~~. ~~who must~~ *The appraisers shall* make an ~~appraisement~~ *appraisal*, taking into consideration the benefits, if any, to the property, and ~~who must~~ *shall* file their report with the *city or town* clerk within 10 days after receiving notice of their appointment. The amount of damages ~~so~~ assessed must be tendered to the owner or ~~his~~ *the owner's* agent before any change of grade is made."

Section 605. Section 7-14-4203, MCA, is amended to read:

"7-14-4203. Determination of damages. (1) ~~In case~~ *If* the council of ~~such~~ *the* city or town and the owner of ~~such~~ *a* building are unable to agree upon the amount of ~~such~~ damages *from the change of a street grade*, the council ~~must~~ *shall*

appoint three disinterested freeholders of ~~such~~ *the* city or town to appraise ~~such~~ *the* damages.

(2) The appraisers ~~so appointed~~, after being duly sworn, ~~must~~ *shall* appraise the damage and make ~~two~~ *a* written ~~reports~~ *report* ~~thereof~~, signed by at least a majority of them~~, one of which~~. *One copy* must be delivered to the clerk of ~~such~~ *the* city or town to be immediately filed in ~~his~~ *the clerk's* office and ~~the other~~ *another copy must be delivered* to the owner of the building. ~~Such~~ *The* report must be made and delivered within 10 days after the appointment of the appraisers."

Section 606. Section 7-14-4301, MCA, is amended to read:

"7-14-4301. Regulation of railways. (1) The city or town council ~~has power to~~ *may* grant the right-of-way through the streets, avenues, and other property of a city or town for the purpose of street or other railroads, to regulate the running and management of the ~~same~~ *railroads* and to compel the owner of ~~such~~ *a* street or other railroad to keep the street in repair when occupied by ~~such~~ *the* street or other railroad, to regulate the speed of railroad engines, and to require railroad companies to station ~~flagmen~~ *flag persons* at street crossings.

(2) The city or town council ~~has power to~~ *may* regulate and control the laying of railroad tracks and ~~to~~ *may* prohibit the use of engines and locomotives ~~propelled by steam or otherwise~~ or ~~to~~ regulate the speed ~~thereof when used~~ *of engines and locomotives*."

Section 607. Section 7-14-4612, MCA, is amended to read:

"7-14-4612. Organization and operation of commission. (1) The powers of each commission ~~shall be~~ *are* vested in the *current* members ~~thereof then in office~~ *of the commission*.

(2) The appointing officer shall designate which of the members of the commission ~~shall be~~ *is* the first ~~chairman~~ *presiding officer*, but when the office of ~~chairman~~ *presiding officer* of the commission becomes vacant ~~thereafter~~, the commission shall elect a ~~chairman~~ *presiding officer* from among its members. The term of office as ~~chairman~~ *presiding officer* of the commission, unless otherwise prescribed by the legislative body of the city, ~~shall~~ *must* be for the calendar year or for that portion ~~thereof~~ *of a year* remaining after each ~~such~~ ~~chairman~~ *presiding officer* is designated or elected.

(3) Members ~~shall~~ *must* receive their actual and necessary expenses, including traveling expenses, and may receive ~~such~~ other compensation ~~as~~ *that* the legislative body may prescribe."

Section 608. Section 7-14-4665, MCA, is amended to read:

"7-14-4665. Role of appointed receiver. If a receiver is appointed pursuant to 7-14-4664(2)(b), ~~he~~ *the receiver* may enter and take possession of ~~such~~ *the* parking facility or any part ~~thereof~~ *of the facility,* ~~and~~ operate and maintain the ~~same~~ *facility,* and collect and receive all fees, rents, ~~revenues~~ *revenue*, or other charges ~~thereafter~~ arising ~~therefrom~~ *from the facility*. The receiver shall keep ~~such~~ *the* money in a separate account or accounts and apply the ~~same~~ *money* in accordance with the obligations of ~~said~~ *the* commission as the court ~~shall direct~~ *directs*."

Section 609. Section 7-14-4717, MCA, is amended to read:

"7-14-4717. List of unpaid assessments. After expiration of the prescribed time from the date of the warrant and after the treasurer has recorded the return, ~~he~~ *the treasurer* shall make and certify to the clerk *and*

recorder a complete list of all unpaid assessments ~~which~~ *that* amount to $25 or ~~over~~ *more* upon any assessment."

Section 610. Section 7-14-4718, MCA, is amended to read:

"7-14-4718. Removal of property from list. (1) If any person before certification of the list to the clerk *and recorder* presents to the treasurer ~~his~~ *an* affidavit that ~~he~~ *the person* is the owner of a lot ~~in~~ *on* the list, accompanied by the certificate of a searcher of records that the person is the owner of record, and notifies the treasurer in writing that ~~he desires no~~ *the person does not desire a* bond to be issued for the assessment upon the lot, then the assessment ~~shall~~ *may* not be included in the list and ~~shall remain~~ *remains* collectible as provided by ~~this part and~~ parts 41 and 42 of chapter 12 *and this part*.

(2) ~~Omission~~ *Failure* to file the notice ~~shall bar~~ *bars* any defense against the bonds except the defense that the governing body did not have authority to issue the bonds."

Section 611. Section 7-14-4721, MCA, is amended to read:

"7-14-4721. Assessments converted to bond liability. (1) The treasurer, at the time ~~he~~ *the treasurer* certifies the list of unpaid assessments to the clerk *and recorder*, shall write the word "certified" on the record of the assessment opposite each assessment included in the list, and ~~thereupon~~ all assessments of $25 or ~~over~~ *more* ~~shall~~ cease to be payable in cash and ~~shall thereafter be~~ *are* payable only in equal annual installments on December 1 in each year ~~preceding January 1 on~~ *in* which the bonds become due. The governing body may provide a plan ~~whereby~~ *for collection of* the annual installment ~~may be collected~~ in partial payments prior to the time the installment is due, and the lien of each assessment on the property assessed ~~shall continue and remain~~ *remains* in full force and effect for 2 years after the last installment on the assessment becomes due or until the assessment is fully paid.

(2) The number of installments in which the assessment is payable ~~shall~~ *must* correspond to the number of years in which there are bonds to be paid, but the total number of installments ~~shall~~ *may* not exceed 25."

Section 612. Section 7-15-2107, MCA, is amended to read:

"7-15-2107. Application for incorporation. (1) The commissioners of the authority shall present to the secretary of state an application signed by them ~~which shall~~ *that must* set forth ~~(~~without any detail other than the mere recital~~)~~:

(a) that a notice has been given and public hearing has been held ~~as aforesaid~~ and that the board of county commissioners made the ~~aforesaid~~ determination *provided for in 7-15-2105* after ~~such~~ *the* hearing and appointed them as commissioners;

(b) the name and official residence of each ~~of the commissioners~~ *commissioner*, together with a certified copy of the appointment evidencing ~~their~~ *the commissioner's* right to office, the date and place of induction into and taking *the* oath of office, and that ~~they~~ *the commissioners* desire the housing authority to become a public body and a body corporate and politic under this part;

(c) the term of office of each of the commissioners;

(d) the name ~~which~~ *that* is proposed for the corporation; and

(e) the location of the principal office of the proposed corporation.

(2) The application ~~shall~~ *must* be subscribed and sworn to by each ~~of said commissioners~~ *commissioner* before an officer authorized by the laws of the state to take and certify oaths, who shall certify upon the application that ~~he~~ *the officer* personally knows the ~~commissioners~~ *commissioner* and knows ~~them~~ *the commissioner* to be ~~the officers~~ *an officer* as asserted in the application and that ~~each~~ *the commissioner* subscribed and swore ~~thereto~~ *to the application* in the officer's presence."

Section 613. Section 7-15-2108, MCA, is amended to read:

"7-15-2108. Processing of application by secretary of state. (1) The secretary of state shall examine the application, and if ~~he finds that~~ the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty, ~~he~~ *the secretary of state* shall receive and file it and shall record it in an appropriate book of record in ~~his~~ *the secretary of state's* office.

(2) When the application has been made, filed, and recorded, the secretary of state shall make and issue to the commissioners a certificate of incorporation pursuant to this part, under the seal of the state, and shall record the ~~same~~ *certificate* with the application."

Section 614. Section 7-15-4221, MCA, is amended to read:

"7-15-4221. Modification of urban renewal project plan. (1) An urban renewal project plan may be modified at any time by the local governing body. If modified after the lease or sale by the municipality of real property in the urban renewal project area, ~~such~~ *the* modification ~~shall be~~ *is* subject to ~~such~~ *any* rights at law or in equity ~~as~~ *that* a lessee or purchaser or ~~his~~ *the lessee's or purchaser's* successor or successors in interest may be entitled to assert.

(2) An urban renewal plan may be modified by ordinance.

(3) All urban renewal plans approved or modified by resolution prior to May 8, 1979, are ~~hereby~~ validated.

(4) A plan may be modified by:

(a) the procedure set forth in 7-15-4212 through 7-15-4219 with respect to adoption of an urban renewal plan;

(b) the procedure set forth in the plan."

Section 615. Section 7-15-4234, MCA, is amended to read:

"7-15-4234. Urban renewal agency to be administered by appointed board of commissioners. (1) If the urban renewal agency is authorized to transact business and exercise powers ~~hereunder~~ *under this part*, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency~~, which shall consist~~ *consisting* of five commissioners.

(2) The initial membership shall consist of one commissioner appointed for 1 year, one for 2 years, one for 3 years, and two for 4 years. Each *subsequent* appointment ~~thereafter shall~~ *must* be for 4 years. A certificate of the appointment or reappointment of ~~any~~ *a* commissioner ~~shall~~ *must* be filed with the clerk of the municipality, and ~~such~~ *the* certificate ~~shall be~~ *is* conclusive evidence of the ~~due and~~ proper appointment of ~~such~~ *the* commissioner.

(3) Each commissioner shall hold office until ~~his~~ *a* successor has been appointed and has qualified.

(4) A commissioner ~~shall~~ *may not* receive ~~no~~ compensation for ~~his~~ services but ~~shall be~~ *is* entitled to the necessary expenses, including traveling expenses, incurred in the discharge of ~~his~~ duties.

(5) Any persons may be appointed as commissioners if they reside within the municipality.

(6) A commissioner may be removed for inefficiency, neglect of duty, or misconduct in office."

Section 616. Section 7-15-4239, MCA, is amended to read:

"7-15-4239. Control of conflict of interest. (1) (a) ~~No~~ *A* public official, ~~no~~ employee of a municipality or urban renewal agency, ~~and no~~ *or* department or officers ~~which~~ *that* have been vested by a municipality with urban renewal project powers and responsibilities under 7-15-4231 ~~shall~~ *may not* voluntarily acquire any interest, direct or indirect, in any urban renewal project, in any property included or planned to be included in any urban renewal project of ~~such~~ *the* municipality, or in any contract or proposed contract in connection with ~~such~~ *an* urban renewal project.

(b) ~~Where such~~ *When an* acquisition is not voluntary, the interest acquired ~~shall~~ *must* be immediately disclosed in writing to the local governing body, and ~~such~~ *the* disclosure ~~shall~~ *must* be entered upon the minutes of the governing body.

(2) If ~~any such~~ *an* official or department or division head owns or controls or owned or controlled within 2 years prior to the date of hearing on the urban renewal project any interest, direct or indirect, in any property ~~which he~~ *that the person* knows is included in an urban renewal project, ~~he~~ *the person* shall immediately disclose this fact in writing to the local governing body, and ~~such~~ *the* disclosure ~~shall~~ *must* be entered upon the minutes of the governing body. ~~Any such~~ *An* official or *a* department or division head ~~shall~~ *may* not participate in any action on that particular project by the municipality or urban renewal agency, department, or officers ~~which~~ *that* have been vested with urban renewal project powers by the municipality pursuant to the provisions of 7-15-4231."

Section 617. Section 7-15-4264, MCA, is amended to read:

"7-15-4264. Obligations of transferees of municipal property in urban renewal area. (1) The purchasers or lessees and their successors and assigns ~~shall be~~ *are* obligated to devote real property transferred pursuant to 7-15-4262 only to the uses specified in the urban renewal plan and may be obligated to comply with ~~such~~ other requirements ~~as~~ *that* the municipality may determine to be in the public interest, including the obligation to begin within a reasonable time any improvements on ~~such~~ real property required by the urban renewal plan.

(2) ~~The municipality in~~ *In* any instrument of conveyance to a private purchaser or lessee*, the municipality* may provide that ~~such~~ *the* purchaser or lessee ~~shall be without power to~~ *may not* sell, lease, or otherwise transfer the real property without the prior written consent of the municipality until ~~he~~ *the purchaser or lessee* has completed the construction of any and all improvements ~~which he has~~ *that the purchaser or lessee is* obligated ~~himself~~ to construct ~~thereon~~.

(3) The inclusion in ~~any such~~ *a* contract or conveyance to a purchaser or lessee of any ~~such~~ covenants, restrictions, or conditions*,* ~~(~~including the incorporation by reference ~~therein~~ of the provisions of an urban renewal plan or any part ~~thereof)~~ *of a plan,* ~~shall~~ *may* not prevent the recording of ~~such~~ *the*

contract or conveyance in the land records of the clerk and recorder ~~or~~ *of* the county in which ~~such~~ *the* city or town is located, in ~~such~~ *a* manner ~~as to afford~~ *that provides* actual or constructive notice ~~thereof~~ *of the covenants, restrictions, or conditions*."

Section 618. Section 7-15-4402, MCA, is amended to read:

"7-15-4402. Definitions. As used in ~~this part or~~ part 45 *or this part*, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Authority" or "housing authority" means a public body and a body corporate and politic organized in accordance with the provisions of this part for the purposes, with the powers, and subject to the restrictions ~~hereinafter~~ set forth *in part 45 or this part*.

(2) "Bonds" means any bonds, interim certificates, notes, debentures, or other obligations of the authority issued pursuant to ~~this part or~~ part 45 *or this part*.

(3) "City" means ~~any~~ *a* city ~~which~~ *that* is or is about to be included in the territorial boundaries of an authority.

(4) "City clerk" and "mayor" mean the clerk and mayor, respectively, of the city or the officers ~~thereof~~ charged with the duties customarily imposed on the clerk and mayor.

(5) "Commissioner" means one of the members of an authority appointed in accordance with the provisions of this part.

(6) "Community facilities" means real and personal property and buildings and equipment for recreational or social assemblies and for educational, health, or welfare purposes and necessary utilities, when designed primarily for the benefit and use of the housing authority ~~and/or~~ *or* the occupants of the dwelling accommodations.

(7) "Contract" means any agreement of an authority with or for the benefit of an obligee, whether contained in a resolution, trust indenture, mortgage, lease, bond, or other instrument.

(8) "Council" means the legislative body, council, board of commissioners, board of trustees, or other body charged with governing a city.

(9) "Elderly families" means families *of which* the head of ~~which (~~ *the family* or ~~his~~ *that person's* spouse~~)~~ is *at least* 60 years of age ~~or over~~ and who otherwise qualify as persons of low income ~~within the meaning of the definition set forth in subsection (16)~~.

(10) "Federal government" means the United States or any agency or instrumentality, corporate or otherwise, of the United States.

(11) "Government" means the state and federal governments and any subdivision, agency, or instrumentality, corporate or otherwise, of either.

(12) (a) "Housing project" means all real and personal property, buildings and improvements, stores, offices, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking:

(i) to demolish, clear, remove, alter, or repair unsanitary or unsafe housing; ~~and/or~~ *or*

(ii) to provide safe and sanitary dwelling accommodations for persons of low income.

(b) The term "housing project" may also be applied to*:*

(i) the planning of the buildings and improvements;

(ii) the acquisition of property;

(iii) the demolition of existing structures;

(iv) the construction, reconstruction, alteration, and repair of the improvements; and

(v) all other work in connection ~~therewith~~ *with subsections (12)(b)(i) through (12)(b)(iv).*

(13) "Mortgage" means deeds of trust, mortgages, building and loan contracts, or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale ~~thereof~~ *of the bonds*.

(14) "Municipality" means ~~any~~ *a* city, town, or incorporated village ~~which~~ *that* is located within the territorial boundaries of an authority.

(15) "Obligee of the authority" or "obligee" means ~~any~~ *a* bondholder, *a* trustee for any bondholder, ~~any~~ *a* lessor demising property to the authority used in connection with a housing project or any assignee or assignees of ~~such~~ *the* lessor's interest or any part ~~thereof~~ *of the interest*, and the United States when it is a party to any contract with the authority.

(16) "Persons of low income" means persons or families who lack the amount of income ~~which~~ *that* is necessary*,* ~~(~~as determined by the authority undertaking the housing project~~)~~*,* to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings without overcrowding.

(17) "Real property" means lands, lands under water, structures, and any and all easements, franchises, and incorporeal hereditaments and every estate and right ~~therein~~ *in an estate*, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise.

(18) "State" means the state of Montana.

(19) "Trust indenture" means instruments pledging the ~~revenues~~ *revenue* of real or personal properties but not conveying ~~such~~ *the* properties or conferring a right to foreclose and cause a sale ~~thereof~~ *of the properties*."

Section 619. Section 7-15-4409, MCA, is amended to read:

"7-15-4409. Application for incorporation. (1) The commissioners shall present to the secretary of state an application signed by them ~~which shall~~ *that must* set forth*,* ~~(~~without any detail other than the mere recital~~)~~:

(a) that a notice has been given and *a* public hearing has been held as ~~aforesaid~~ *provided in 7-15-4405*, that the council made the ~~aforesaid~~ determination *provided for in 7-15-4406* after ~~such~~ *the* hearing, and that the mayor has appointed them as commissioners;

(b) the name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing ~~their~~ *each commissioner's* right to office, the date and place of induction into and taking oath of office, and that ~~they~~ *the commissioner's* desire the housing authority to become a public body and a body corporate and politic under this part;

(c) the term of office of each of the commissioners;

(d) the name ~~which~~ *that* is proposed for the corporation; and

(e) the location of the principal office of the proposed corporation.

(2) The application ~~shall~~ *must* be subscribed and sworn to by each of ~~said~~ *the* commissioners before an officer authorized by the laws of the state to take and certify oaths, who shall certify upon the application that ~~he~~ *the officer* personally knows the commissioners and knows them to be the officers as asserted in the application and that each subscribed and swore ~~thereto~~ *to the application* in the officer's presence."

Section 620. Section 7-15-4410, MCA, is amended to read:

"7-15-4410. Processing of application by secretary of state. (1) The secretary of state shall examine the application, and if ~~he finds that~~ the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty, ~~he~~ *the secretary of state* shall receive and file it and shall record it in an appropriate book of record in ~~his~~ *the secretary of state's* office.

(2) When the application has been made, filed, and recorded, the secretary of state shall make and issue to the commissioners a certificate of incorporation pursuant to this part, under the seal of the state, and shall record the ~~same~~ *certificate* with the application."

Section 621. Section 7-15-4433, MCA, is amended to read:

"7-15-4433. Compensation of commissioners. A commissioner ~~shall~~ *may not* receive ~~no~~ compensation for ~~his~~ services, but ~~he shall be~~ *is* entitled to the necessary expenses, including traveling expenses, incurred in the discharge of ~~his~~ *authority* duties."

Section 622. Section 7-15-4436, MCA, is amended to read:

"7-15-4436. Removal of commissioners. The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner ~~shall have~~ *has* been given a copy of the charges, ~~against him (~~which may be made by the mayor~~),~~ at least 10 days prior to the hearing ~~thereon~~ *on the charges* and *has* had an opportunity to be heard in person or by counsel."

Section 623. Section 7-15-4437, MCA, is amended to read:

"7-15-4437. Right of obligee of authority to request removal of commissioner. (1) ~~Any~~ *An* obligee of the authority may file with the mayor written charges that the authority is willfully violating any law of the state or any term, provision, or covenant in any contract to which the authority is a party. The mayor shall give each of the commissioners a copy of ~~such~~ *the* charges at least 10 days prior to the hearing ~~thereon~~ *on the charges* and *shall provide* an opportunity to be heard in person or by counsel. ~~and~~ *The mayor* shall within 15 days after receipt of ~~such~~ *the* charges remove ~~any~~ *a* commissioner of the authority who ~~shall have been~~ *is* found to have acquiesced in any ~~such~~ willful violation.

(2) A commissioner ~~shall be deemed~~ *is considered* to have acquiesced in a willful violation by the authority of a law of this state or of any term, provision, or covenant contained in a contract to which the authority is a party if, before a hearing is held on the charges ~~against him~~, ~~he shall~~ *the commissioner does* not ~~have filed~~ *file* a written statement with the authority of ~~his~~ objections to or lack of participation in ~~such~~ *the* violation."

Section 624. Section 7-15-4439, MCA, is amended to read:

"7-15-4439. Conduct of business. (1) A simple majority of commissioners constitutes a quorum.

(2) When the office of the first ~~chairman~~ *presiding officer* of the authority becomes vacant, the authority shall select a ~~chairman~~ *presiding officer* from among its members. An authority shall select from among its members a ~~vice-chairman~~ *vice presiding officer*.

(3) An authority may:

(a) employ a secretary, ~~(~~who ~~shall be~~ *is* executive director~~)~~, technical experts, and ~~such~~ other officers, agents, and employees, permanent and temporary, ~~as~~ *that* it may require and shall determine their qualifications, duties, and compensation;

(b) call upon the corporation counsel or chief law officer of the city for legal services ~~as~~ *that* it may require or employ its own counsel and legal staff;

(c) delegate to one or more of its agents or employees powers or duties ~~as~~ *that* it may consider proper."

Section 625. Section 7-15-4528, MCA, is amended to read:

"7-15-4528. Use of bond trustee. In connection with the issuance of bonds ~~and/or~~ *or* the incurring of any obligation under a lease and in order to secure the payment of the bonds ~~and/or~~ *or* obligations, the authority may:

(1) vest in a trustee the right to enforce any covenant made to secure the payment of the bonds ~~and/or~~ *or* obligations;

(2) provide for the powers and duties of the trustee and limit ~~his~~ *the trustee's* liabilities; and

(3) provide the terms and conditions upon which the trustee or a designated proportion of the holders of bonds may enforce any covenant."

Section 626. Section 7-15-4530, MCA, is amended to read:

"7-15-4530. Special remedies of an obligee resulting from mortgage or trust indenture. (1) ~~Any~~ *An* authority ~~shall have power~~ *may* by its trust indenture, mortgage, lease, or other contract ~~to~~ confer upon ~~any~~ *an* obligee holding or representing a specified amount in bonds, leases, or other obligations the right, upon the happening of an event of default as defined in ~~such~~ *the* instrument:

(a) by suit, action, or proceeding in any court of competent jurisdiction, to obtain the appointment of a receiver of ~~any~~ *a* housing project of the authority or any part ~~or parts thereof~~ *of a project*;

(b) by suit, action, or proceeding in any court of competent jurisdiction, to require the authority and the commissioners ~~thereof~~ to account as if it and they were the trustees of an express trust.

(2) If a receiver is appointed pursuant to subsection (1)(a), ~~he~~ *the receiver* may enter and take possession of ~~such~~ *the* housing project or any part of ~~parts thereof~~ *the project,* ~~and~~ *may* operate and maintain the ~~same~~ *project,* and *may* collect and receive all fees, rents, ~~revenues~~ *revenue*, or other charges ~~thereafter~~ arising ~~therefrom~~ *from the project* in the same manner as the authority itself might do. ~~and shall~~ *The receiver shall* keep ~~such~~ *the* money in a separate account or accounts and apply the ~~same~~ *money* in accordance with the obligations of the authority as the court ~~shall direct~~ *directs*."

Section 627. Section 7-16-2312, MCA, is amended to read:

"7-16-2312. County park superintendent. The board of park commissioners ~~shall have the power to~~ *may* employ a park superintendent, who

may also be the secretary of the park board and who shall attend each regular meeting of the ~~said~~ board and report, either in writing or orally as the board may require, as to the activities, functions, and progress of whatever nature pertaining to the park lands and facilities over which ~~he~~ *the superintendent* has supervision. The duties of the park superintendent ~~shall~~ *must* be of a managerial capacity."

Section 628. Section 7-16-2325, MCA, is amended to read:

"7-16-2325. Power of park board to employ persons and to make contracts. (1) A county park board~~, in addition to powers and duties now given under law, shall have the following powers and duties~~ *may*:

(a) ~~to~~ employ and discharge ~~workmen~~ *workers*, laborers, engineers, foresters, and others and ~~to~~ fix their compensation;

(b) ~~to~~ make all contracts necessary or convenient for carrying out any ~~and all~~ of the powers conferred and duties enjoined upon ~~said~~ *the* board by this part.

(2) All contracts made by ~~said~~ *the* board ~~shall~~ *must* be in the name of the county and ~~shall~~ *must* be signed by the president or, in ~~his~~ *the president's* absence, by the ~~vice-president~~ *vice president* of ~~said~~ *the* board~~, or upon~~. *Upon* approval by a majority of the members of the board of park commissioners at a regular meeting of the board at which a quorum is in attendance and voting and with ~~due~~ notice and report being made to the board of county commissioners, ~~such~~ *the* contracts may be signed by the ~~chairman~~ *presiding officer* of the board of county commissioners and attested by the county clerk and recorder.

(3) ~~No~~ *An* order or resolution authorizing the making of ~~any~~ *a* contract ~~shall~~ *may not* be passed or adopted except by a yea and nay vote, which ~~vote shall~~ *must* be recorded in full in the minutes of the secretary."

Section 629. Section 7-16-2330, MCA, is amended to read:

"7-16-2330. Allowance of claims. (1) Subject to the provisions of subsection (2), the board of park commissioners shall, at its first regular meeting in each month, audit and allow all just claims against the county, liability for which ~~shall have been~~ *has been* incurred by ~~said~~ *the* board.

(2) ~~No~~ *A* claim ~~shall~~ *may not* be audited or paid until an itemized account of ~~such~~ *the* claim, in writing and signed by the claimant or ~~his or its~~ *the claimant's* authorized agent, ~~shall have~~ *has* been filed in the office of the secretary of ~~said~~ *the* board.

(3) ~~No~~ *An* order or resolution providing for the payment or expenditure of money or creating an obligation in excess of the sum of $25 ~~shall~~ *may not* be passed or adopted except by a yea and nay vote, which ~~vote shall~~ *must* be recorded in full in the minutes of the secretary."

Section 630. Section 7-16-2331, MCA, is amended to read:

"7-16-2331. Disbursement of money. All money paid out by the park commissioners under the provisions of this part ~~shall~~ *must* be by warrant drawn upon the county treasury, which may be signed by the secretary and countersigned by the president or, in ~~his~~ *the president's* absence, by the ~~vice-president~~ *vice president* of the board of park commissioners. Upon approval by a majority of the members of the board of park commissioners at a regular meeting of the board at which a quorum is in attendance and voting and with ~~due~~ notice and report ~~being~~ made to the board of county commissioners, *authorized* payments ~~so authorized~~ may be made by warrant drawn upon the

county treasury, signed by the ~~chairman~~ *presiding officer* of the board of county commissioners and countersigned by the county clerk and recorder."

Section 631. Section 7-21-2102, MCA, is amended to read:

"7-21-2102. Procedure to supply license blanks. (1) The county clerk *and recorder* shall prepare and have printed ~~such~~ blank licenses as may be required, and after affixing ~~his~~ *the clerk's* official seal ~~thereto~~ *to the licenses*, ~~he~~ *the clerk* shall deliver the ~~same~~ *licenses* to the county treasurer. At the time of ~~such~~ delivery, ~~he~~ *the clerk* shall charge the county treasurer ~~therewith~~ *with the licenses* by appropriate entry in ~~his~~ *the clerk's* records showing the amount, numbers, and classes of licenses ~~so~~ furnished.

(2) As licenses are issued and accounted for by the county treasurer, the county clerk *and recorder* shall credit ~~such~~ *the* account with all licenses ~~so~~ issued and accounted for, so that the account will at all times show the number of licenses furnished *to* the treasurer, their numbers, the number issued or canceled, and the number remaining in the hands of the county treasurer.

(3) On the first Monday in each month, the county treasurer ~~must~~ *shall* return to the county clerk *and recorder* all licenses unsold and show that ~~he~~ *the treasurer* has paid into the county treasury all money collected for licenses sold during the preceding month."

Section 632. Section 7-21-2103, MCA, is amended to read:

"7-21-2103. Determination of persons required to obtain licenses — classes of licenses. (1) The county treasurer ~~must~~ *shall* make diligent inquiry as to all persons in ~~his~~ *the* county ~~liable~~ *required* to pay a license fee as provided in this part.

(2) Whenever the licenses are divided into classes, the county treasurer ~~must~~ *shall* require each person to state, under oath or affirmation, the probable amount of business ~~which he~~ *that the person*, the firm of which ~~he~~ *the person* is a member or for which ~~he~~ *the person* is an agent or attorney, or the association or corporation of which ~~he~~ *the person* is the president, secretary, or managing agent will do in the succeeding 3 months. ~~Thereupon such~~ *The* person, agent, president, secretary, or other officer ~~must~~ *shall* procure a license from the county treasurer for the term desired and the proper class. In all cases ~~where~~ *in which* an underestimate has been made by the party applying, the party making the underestimate or the company ~~he~~ *that the party* represented is required to pay double the sum otherwise required for a license for the next quarter."

Section 633. Section 7-21-2111, MCA, is amended to read:

"7-21-2111. General license requirements. (1) A license must be procured immediately before the commencement of any business or occupation liable to a license tax from the county treasurer of the county where the applicant desires to transact the ~~same~~ *business or occupation*.

(2) The license authorizes the party ~~obtaining the same~~ to transact the business described in ~~such~~ *the* license in ~~his~~ *the* town, city, or particular locality in the county.

(3) Separate licenses must be obtained for each branch establishment or separate house of business located in the same county."

Section 634. Section 7-21-2115, MCA, is amended to read:

"7-21-2115. Liability of county treasurer for licensing violations. Upon ~~the~~ notification of the treasurer as provided in 7-21-2114, the treasurer

~~shall be~~ *is* personally liable for ~~such~~ *the* license or increase unless ~~he~~ *the treasurer* promptly proceeds under 7-21-2104 or 7-21-2116 to collect the ~~same~~ *license fee*."

Section 635. Section 7-21-2117, MCA, is amended to read:

"7-21-2117. Defenses in actions related to licensing violations. Upon the trial of any action authorized by this part, the defendant is ~~deemed~~ *considered* not to have procured the proper license unless ~~he~~ *the defendant* either produces it or proves that ~~he did procure it,~~ *the license was procured.* ~~but he~~ *However, the defendant* may plead in bar of the action a recovery against ~~him~~ and ~~the~~ payment by ~~him~~ *the defendant* in a civil action of the proper license tax, together with damages and costs."

Section 636. Section 7-21-2120, MCA, is amended to read:

"7-21-2120. Regulation of pawnbrokers — definition. (1) The board of county commissioners may, by the adoption of an ordinance that substantially complies with the provisions of 7-5-103 through 7-5-107, regulate the activities of pawnbrokers located outside the boundaries of an incorporated city or town. The regulations may include but are not limited to:

(a) standards for recordkeeping for all pawns, purchases, and sales;

(b) a provision for a waiting period to allow investigators time to examine merchandise;

(c) required forms of identification needed by persons pledging or selling articles; and

(d) penalty provisions for pawnbrokers who fail to comply with the regulations.

(2) For the purpose of this section, "pawnbroker" means a person engaged in conducting or carrying on the business of loaning money ~~for himself~~ *on the person's own behalf* or for another, upon personal property, personal security, pawns, or pledges, or engaged in the business of purchasing articles of personal property and reselling or agreeing to resell the articles to the vendors or their assigns at prices agreed on at or before the time of purchase."

Section 637. Section 7-21-2305, MCA, is amended to read:

"7-21-2305. Application for itinerant vendor license. (1) ~~Every~~ *An* itinerant vendor desiring to do business in any county of this state ~~must~~ *shall*, before commencing ~~such~~ business, file with the county treasurer of ~~such~~ *the* county, on a form to be provided by ~~such~~ *the* treasurer, an application in writing, subscribed and sworn to by ~~such~~ *the* applicant before an officer in this state authorized to take oaths.

(2) The application ~~shall~~ *must* set forth:

(a) *the* name of *the* applicant;

(b) ~~his~~ *the applicant's* place of permanent residence;

(c) ~~his~~ *the applicant's* local headquarters, if any;

(d) *the* time of ~~his~~ *the applicant's* arrival in the county;

(e) *the* county from which *the* last license, if any, *was* received;

(f) whether *the applicant is* acting as principal, agent, or employee;

(g) if acting as agent or employee, the name and place of business of ~~his~~ *the* principal or employer;

(h) *a* brief descriptive list of articles to be offered for sale or services to be performed; *and*

(i) whether payments or deposits of money are collected when orders are taken or in advance of final delivery.

(3) If the applicant is acting as an agent, the principal's acknowledgment of ~~such~~ *the* agency must accompany the application as part of the application.

(4) At the time of filing the application, ~~such~~ *the* itinerant vendor ~~must~~ *shall* accompany the application with the sum specified in 7-21-2303 as a license fee."

Section 638. Section 7-21-2306, MCA, is amended to read:

"7-21-2306. Bond required if deposit taken on orders for future delivery. (1) ~~Every~~ *An* application made by an itinerant vendor taking orders for future delivery and collecting advance payments, deposits, or guarantees ~~thereon~~ *on the orders* under the terms of 7-21-2301 through 7-21-2305 ~~shall~~ *must* be accompanied by a bond in the sum of $250 *payable* to ~~said~~ *the* county treasurer.

(2) (a) The bond ~~shall~~ *must* be executed by a surety company licensed to do business in this state or by two responsible freeholders residing in the county and whose names appear upon the assessment roll of ~~said~~ *the* county.

(b) In lieu of a bond meeting the requirements of subsection (2)(a), the application may be accompanied by a cash bond of equal amount.

(3) The bond ~~shall~~ *must* be approved by ~~said~~ *the* county treasurer and conditioned upon making of final delivery of the goods ordered or the services to be rendered in accordance with the terms of ~~such~~ *the* order or, failing ~~therein~~ *delivery*, that the money advanced by ~~his~~ *the* customers *will* be refunded.

(4) ~~Such~~ *The* bond ~~shall~~ *must* remain in full force and effect for a period of 6 months after the expiration of ~~any such~~ *a* license and ~~shall~~ *must* be held to ~~assure~~ *ensure* only business transacted under the authority of the license issued pursuant to the application ~~which such~~ *that the* bond accompanied."

Section 639. Section 7-21-2307, MCA, is amended to read:

"7-21-2307. Right of aggrieved purchaser. ~~Any~~ *A* person aggrieved by the action or misrepresentation of ~~any such~~ *an* itinerant vendor ~~shall have~~ *has* a right of action on the bond for the recovery of ~~his~~ *the person's* money advanced or damages and costs."

Section 640. Section 7-21-2308, MCA, is amended to read:

"7-21-2308. Processing of application — issuance of license. (1) Upon filing of the application prescribed in 7-21-2305 or the filing of ~~such~~ *the* application and the bond prescribed in 7-21-2306, in proper form, and upon the payment to the county treasurer of the sum required by 7-21-2303, the county treasurer shall issue and deliver to the applicant a license to carry on the business described in ~~such~~ *the* application in the county in which ~~such~~ *the* license is ~~so~~ issued for a period of 90 days from the date of ~~such~~ *the* license.

(2) The county treasurer shall endorse upon each application the date of issuance of the license and shall immediately file ~~such~~ *the* application with the county clerk and recorder of ~~his~~ *that* county. The county clerk and recorder shall file the ~~same~~ *application* in ~~his~~ *the clerk's* office and keep an appropriate index ~~thereof which shall show~~ *of the applications that shows* the date filed, the name of the applicant, and an appropriate reference to the file number by which ~~said~~ *the* application may be found."

Section 641. Section 7-21-2309, MCA, is amended to read:

"7-21-2309. License to be displayed upon demand. (1) ~~Every such~~ *An* itinerant vendor doing business under the provisions of this part ~~must~~ *shall* upon *the* demand of any person exhibit ~~his~~ *the vendor's* license and permit the ~~same~~ *license* to ~~then and there~~ be read *at the time* by the person making ~~such~~ *the* demand.

(2) ~~Any such~~ *An* itinerant vendor who ~~shall~~ willfully ~~refuse~~ *refuses* or ~~fail~~ *fails* to exhibit ~~his~~ *the* license as ~~above~~ provided *in subsection (1)* is guilty of a misdemeanor and shall be fined not less than $100 or more than $250 for each offense."

Section 642. Section 7-21-2401, MCA, is amended to read:

"7-21-2401. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Temporary premises" means ~~any~~ *a* hotel, roominghouse, storeroom, building or part of ~~any~~ *a* building, tent, vacant lot, freight station, railroad car, automobile, truck, trailer or trailer house, or public or quasi-public place~~,~~ *that is* temporarily occupied ~~for such business as described in subsection (2)~~ *by a transient retail merchant*.

(2) "Transient retail merchant" means ~~every~~ *a* person, firm, or corporation *that,* acting ~~for himself or itself~~ *on its own behalf* or representing any other person, firm, or corporation*,* ~~who or which~~ brings into temporary premises a stock of goods, wares, articles of merchandise, notions, or other articles of trade and ~~who or which~~ *that* solicits, sells, offers to sell, or exhibits for sale ~~such~~ *the* stock of goods, wares, articles of merchandise, notions, or other articles of trade at retail."

Section 643. Section 7-21-2406, MCA, is amended to read:

"7-21-2406. Application for transient retail merchant license. (1) ~~Every~~ *A* transient retail merchant desiring to do business in any county of this state ~~must~~ *shall*, before commencing ~~such~~ business, file with the county treasurer of ~~such~~ *the* county, on a form to be provided by ~~such~~ *the* treasurer, an application in writing, subscribed and sworn to by ~~such~~ *the* applicant before an officer in this state authorized to take oaths.

(2) The application ~~shall~~ *must* set forth:

(a) *the* name of *the* applicant;

(b) ~~his~~ *the applicant's* place of permanent residence;

(c) ~~his~~ *the applicant's* local headquarters, if any;

(d) *the* time of ~~his~~ *the applicant's* arrival in the county;

(e) *the* county from which *the* last license, if any, *was* received;

(f) whether *the applicant is* acting as principal, agent, or employee;

(g) if acting as agent or employee, the name and place of business of ~~his~~ *the applicant's* principal or employer;

(h) *a* brief descriptive list of articles to be offered for sale or services to be performed;

(i) whether payments or deposits of money are collected when orders are taken or in advance of final delivery; *and*

(j) the number of weeks for which *the* license is requested.

(3) If the applicant is acting as an agent, the principal's acknowledgment of ~~such~~ *the* agency must accompany the application as part of the application.

(4) At the time of filing the application, ~~such~~ *the* transient retail merchant ~~must~~ *shall* accompany the application with the sum specified in 7-21-2404 as a license fee, except as provided in 7-21-2407."

Section 644. Section 7-21-2408, MCA, is amended to read:

"7-21-2408. Right of aggrieved purchaser. ~~Any~~ *A* person aggrieved by any action or misrepresentation of ~~any such~~ *a* transient retail merchant ~~shall have~~ *has* a right of action on the bond provided for in 7-21-2407 for the recovery of ~~his~~ money advanced or damages and costs."

Section 645. Section 7-21-2409, MCA, is amended to read:

"7-21-2409. Processing of application — issuance of license. (1) (a) Upon filing of the application prescribed in 7-21-2406 and the payment of the fee prescribed in 7-21-2404, the county treasurer shall issue and deliver to the applicant, in the county, a license to carry on the business described in ~~such~~ *the* application in the county in which ~~such~~ *the* license is ~~so~~ issued for the period for which ~~such~~ *the* license is requested.

(b) Upon filing of the application prescribed in 7-21-2406 and the bond prescribed in 7-21-2407, the county treasurer shall issue and deliver to the applicant a license to carry on the business described in ~~such~~ *the* application in the county in which ~~such~~ *the* license is ~~so~~ issued for a period of 1 year from the date of ~~such~~ *the* license.

(2) The county treasurer shall endorse upon each application the date of issuance of the license and the duration ~~thereof~~ *of the license* and shall immediately file ~~such~~ *the* application with the county clerk and recorder of ~~his~~ *the* county. The county clerk and recorder shall file the ~~same~~ *application* in ~~his~~ *the clerk's* office and keep an appropriate index ~~thereof which shall show~~ *of the applications that shows* the date filed, the name of *the* applicant, and an appropriate reference to the file number by which ~~said~~ *the* application may be found."

Section 646. Section 7-21-2410, MCA, is amended to read:

"7-21-2410. License to be displayed in place of business. (1) ~~Every~~ *A* transient retail merchant doing business under the provisions of this part shall at all times keep ~~said~~ *the* license conspicuously posted in ~~said~~ *the* place of business.

(2) ~~Any such~~ *A* transient retail merchant who ~~shall fail~~ *fails* to post and keep posted ~~his~~ *the* license as provided ~~above~~ *in subsection (1)* is guilty of a misdemeanor and shall be fined not less than $10 or more than $25 for each offense."

Section 647. Section 7-21-2502, MCA, is amended to read:

"7-21-2502. Scope of part. (1) ~~Nothing contained in this~~ *This* part is *not* intended to operate so as to impair, abridge, or interfere with the right of any incorporated municipality within this state to enact local laws or ordinances dealing with the subject of this part.

(2) ~~Nothing in this part shall~~ *This part may not* be construed so as in any manner to impair, abridge, or interfere with the right of a grower or producer of farm products to dispose of ~~such~~ products grown or produced by ~~him~~ *the person*."

Section 648. Section 7-21-2505, MCA, is amended to read:

"7-21-2505. Application for huckster license. (1) ~~Every~~ *A* huckster desiring to do business in any county of this state ~~must~~ *shall*, before commencing ~~such~~ business, file with the county treasurer of ~~such~~ *the* county, on a form to be provided by ~~such~~ *the* treasurer, an application in writing.

(2) The application ~~shall~~ *must* set forth:

(a) *the* name of *the* applicant;

(b) ~~his~~ *the applicant's* place of permanent residence;

(c) whether *the applicant is* acting as principal, agent, or employee; *and*

(d) if acting as agent or employee, the name and place of business of ~~his~~ *the* principal or employer.

(3) At the time of filing the application, ~~such~~ *the* huckster ~~must~~ *shall* accompany the application with the sum specified in 7-21-2503 as a license fee."

Section 649. Section 7-21-2506, MCA, is amended to read:

"7-21-2506. Processing of application — issuance of license. (1) Upon filing of the application specified in 7-21-2505 and upon the payment to the county treasurer of the sum specified in 7-21-2503, the county treasurer shall issue and deliver to the applicant a license to carry on the business of a huckster for a period of 6 months from the date of ~~such~~ *the* license.

(2) The county treasurer shall endorse upon each application the date of issuance of the license and shall immediately file ~~such~~ *the* application with the county clerk and recorder of ~~his~~ *the* county. The county clerk and recorder shall file the ~~same~~ *application* in ~~his~~ *the clerk's* office and keep an appropriate index ~~thereof which shall show~~ *of the applications that shows* the date filed, the name of the applicant, and an appropriate reference to the file number by which ~~said~~ *the* application may be found."

Section 650. Section 7-21-2507, MCA, is amended to read:

"7-21-2507. License to be displayed upon demand. (1) ~~Every~~ *A* ~~such~~ huckster doing business under the provisions of this part ~~must~~ *shall*, upon demand of any interested person, exhibit ~~his~~ *the huckster's* license and permit the ~~same~~ *the license* to ~~then and there~~ be read *at that time* by the person making ~~such~~ *the* demand.

(2) ~~Any such~~ *A* huckster who ~~shall refuse~~ *refuses* or ~~fail~~ *fails* to exhibit ~~his~~ *the* license as provided ~~above~~ *in subsection (1)* is guilty of a misdemeanor and shall be fined not less than $10 or more than $25."

Section 651. Section 7-21-3104, MCA, is amended to read:

"7-21-3104. Appointment of public weigher. (1) The board of county commissioners shall appoint, at each place where public scales are established by them, a public weigher who ~~shall have~~ *has* the custody and care of ~~such~~ *the* property.

(2) ~~Such~~ *A* public weigher ~~shall~~ *must* be governed by ~~such~~ rules ~~as~~ *that* may be from time to time prescribed or adopted by the board, and ~~he~~ *the weigher* may be removed at any time by ~~such~~ *the* board."

Section 652. Section 7-21-3105, MCA, is amended to read:

"7-21-3105. Bond of public weigher. A public weigher appointed pursuant to 7-21-3104 shall give a bond to the county in the sum of $500, conditioned for the safekeeping of the public scales and for the faithful and impartial discharge of the duties incident to ~~his~~ *the weigher's* trust in office."

Section 653. Section 7-21-3106, MCA, is amended to read:

"7-21-3106. Record of weighing. (1) ~~It shall be the duty of each~~ *Each* public weigher ~~to~~ *shall* keep a stub record of all weighing done by ~~him~~ *that weigher*. The record and the receipt issued by ~~such~~ *the* public weigher ~~shall~~ *must* show for whom property was weighed and the character and kind ~~thereof~~ *of property* and ~~shall constitute~~ *is* prima facie evidence of the facts ~~therein~~ contained *in the record and receipt*.

(2) All ~~such~~ stub records or other records ~~which~~ *that* the county commissioners may require ~~him~~ *the public weigher* to keep ~~shall~~ *must* at all times be open to public inspection during business hours, between 7 a.m. and 6 p.m. of any day, except Sundays and legal holidays.

(3) ~~Such~~ *A* public weigher shall file a sworn statement with the ~~county~~ *clerk and* recorder of the county, as prescribed by the county commissioners ~~thereof~~. The statement ~~shall~~ *must* show the date and character or kind of property weighed, for whom *it was* weighed, and a complete statement of all fees collected."

Section 654. Section 7-21-3107, MCA, is amended to read:

"7-21-3107. Fee for weighing. ~~Such~~ *A* public weigher ~~shall~~ *may not* receive ~~not to exceed~~ *more than* 10 cents for each receipt issued ~~by him~~."

Section 655. Section 7-21-3108, MCA, is amended to read:

"7-21-3108. Misconduct by public weigher. ~~Any~~ *A* public weigher under the provisions of this part who ~~shall make~~ *makes* any false or fraudulent receipt of any weighing ~~done by him~~ or ~~shall be guilty of any collusion~~ *who conspires* with any other person ~~or persons~~ for the purpose of deceiving any person ~~or persons in~~ *with* regard to the correctness of weights or who ~~shall fail~~ *fails* to comply with the requirements of 7-21-3104(2) or 7-21-3107 is*, upon conviction,* guilty of a misdemeanor."

Section 656. Section 7-21-3211, MCA, is amended to read:

"7-21-3211. Employment of stock inspector. (1) Whenever the board of county commissioners is satisfied, from its own knowledge or from facts and circumstances submitted to it by the county attorney or sheriff, that livestock is being stolen, slaughtered, or otherwise disposed of contrary to law in ~~such~~ *the* county and in ~~such~~ *a* manner that the public officers of the county are not in *a* position to apprehend the criminals or obtain the necessary evidence upon which to base a prosecution, the board of each county, except in counties of the first class, has the power to employ a stock inspector.

(2) Whenever ~~such~~ a stock inspector is ~~so~~ employed, the employment ~~shall be~~ *is* only for the case or cases then under investigation. During the existence of ~~such~~ *the* appointment, ~~he shall be~~ *the inspector is* vested with the same police power and authority as the sheriff, within the limitation of the purposes for which ~~he~~ *the inspector* is appointed."

Section 657. Section 7-21-3212, MCA, is amended to read:

"7-21-3212. Compensation of stock inspector. (1) Whenever ~~such~~ a stock inspector is ~~so~~ employed, ~~his~~ *the inspector's* compensation ~~shall~~ *must* be at ~~the~~ *a* rate ~~of~~ not to exceed the sum of $7.50 ~~per~~ *a* day and necessary expenses for the time actually engaged in ~~such~~ *the* work, and ~~he shall~~ *the inspector must* be paid by a warrant on the general fund of the county.

(2) Whenever a stock inspector is ~~so~~ employed in the investigation of a crime and a reward has been offered under 7-32-2301 for the apprehension and conviction of the party or parties guilty of ~~such~~ *the* crime, ~~such~~ *the* inspector ~~shall~~ *is* not ~~be~~ entitled to any part of ~~said~~ *the* reward."

Section 658. Section 7-21-3213, MCA, is amended to read:

"7-21-3213. Confidentiality of appointment of stock inspector. The proceedings and meetings of the board of county commissioners relating to the employment of a stock inspector ~~shall~~ *may* not be made public until after the investigation of the crime or crimes by ~~said~~ *the* inspector is completed, and any officer who divulges the name of the stock inspector employed or the purpose of ~~his~~ employment during ~~such~~ *the* period ~~shall be~~ *is* guilty of a misdemeanor."

Section 659. Section 7-21-3303, MCA, is amended to read:

"7-21-3303. Opening of public market. ~~The boards~~ *A board* of county commissioners ~~of the counties of the state~~ availing themselves of the provisions of this part ~~must~~ *shall*, as soon as the *necessary* lands and premises ~~necessary therefor~~ have been acquired, cause to be opened and maintained at the county ~~seats of their respective counties~~ *seat* and in the quarters ~~so~~ acquired an open public market for the benefit of the farmers, gardeners, and actual producers of farm products~~,~~. *The market is* for the sale by the producers ~~thereof direct~~ *directly* to the consumers of butter, eggs, cheese, meats, vegetables, and all other farm products raised or produced for domestic consumption~~, wherein the producers thereof within each county may display and offer for sale his or her products direct to the consumers thereof within said counties~~."

Section 660. Section 7-21-3307, MCA, is amended to read:

"7-21-3307. Gross proceeds charge. (1) ~~Every~~ *A* producer of products ~~availing himself or herself of the use of~~ *using* the marketplace established under the provisions of this part shall pay or cause to be paid, at the close of each day's business, to the market master ~~thereof~~ a charge of 5% of ~~his or her~~ *the person's* gross sales.

(2) The funds ~~thus~~ collected by the market master ~~shall~~ *must* be turned in to the county treasury to the credit of the county market fund and ~~shall~~ *must* be used by the county treasurer toward the payment of the expenses of operating and maintaining ~~such~~ *the* public market."

Section 661. Section 7-21-3435, MCA, is amended to read:

"7-21-3435. Management of fair district money — district fair fund. (1) The funds available to a district fair ~~shall~~ *must*, on the first Monday in August or as soon ~~thereafter~~ *after that date* as may be possible, be deposited with the county treasurer of the county in which the district fair is to be held. ~~and~~ *The funds must be* credited to a fund ~~to be~~ known as the district fair fund and ~~shall~~ *must* be held and paid out in the same manner as the county fair fund, except that ~~it shall~~ *the fund must* be paid out on district fair board warrants signed by the ~~chairman~~ *presiding officer* or the ~~vice-chairman~~ *vice presiding officer* and the secretary of the district fair board.

(2) The treasurer of the county in which the district fair ~~will be~~ *is* held shall carry the money received from the various counties in the district in the regular county fair fund in the same manner as regular county fair money, payable~~, however,~~ only on district fair warrants."

Section 662. Section 7-21-3453, MCA, is amended to read:

"7-21-3453. Term of office. The term of office of each commissioner must coincide with ~~his~~ *the commissioner's* term of office on the county fair commission or the county building commission."

Section 663. Section 7-22-2214, MCA, is amended to read:

"7-22-2214. Hearing — decision. (1) On the date set for the hearing, the governing body shall hear comments on the proposed district. If objections have been filed by owners of at least 51% of the land within the district, the governing body shall deny the petition request and may not create the district. Prior to creating a district, the governing body shall make a finding that creation of the district is in the best interests of the district lands and residents. The decision on whether to grant or deny the petition request ~~shall~~ *must* be made within 10 days of the hearing.

(2) The decision ~~is to~~ *must* be made by an order recorded in the minutes of the governing body. If the district is to be created, the order ~~shall~~ *must* state the name of the district, describe the district boundaries, and provide any other information needed to describe the land included within the district.

(3) A landowner within the proposed district after the initial boundaries have been established may, by petitioning the board of county commissioners, have all or a portion of the lands owned by ~~himself~~ *the person* removed from consideration for inclusion within the district. ~~This~~ *However, this* landowner ~~must, however,~~ *shall* agree in writing to control rodents on ~~his~~ *that* land within a 250-yard buffer zone of the district boundary."

Section 664. Section 7-22-2225, MCA, is amended to read:

"7-22-2225. Reimbursement of fund. (1) Whenever the board has undertaken rodent control pursuant to 7-22-2224, the landowner shall reimburse the fund for the expenses related to rodent control on ~~his~~ *the person's* land. The board may, by written contract with the landowner, agree to extend the reimbursement over a period not to exceed 5 years.

(2) The agreement may provide for the reimbursement payments to be collected with property taxes, and in this case, the board shall inform the county clerk *and recorder* of the lands to be charged and the amount to be placed on the tax notice. Upon receipt of the payment, the county clerk *and recorder* shall deposit it in the fund."

Section 665. Section 7-22-2401, MCA, is amended to read:

"7-22-2401. Definitions. In this part the following definitions apply:

(1) "Board" means the mosquito control board for ~~any~~ *a* district created under this part.

(2) "Commissioners" means the board of county commissioners of ~~any~~ *a* county.

(3) "District" means ~~any~~ *a* mosquito control district created under the provisions of this part.

(4) "Mosquito" means any insect belonging to the family Culicidae of the order Diptera.

(5) "Mosquito pest" means any group of mosquitoes ~~which annoy man~~ *that annoys humans* or ~~his~~ domestic animals or ~~transmit~~ *transmits* any disease of ~~man~~ *humans* or of ~~his~~ domestic animals."

Section 666. Section 7-22-2410, MCA, is amended to read:

"7-22-2410. Protest to creation of district. (1) At the hearing provided for in 7-22-2403 or at any time following the first publication of notice of ~~such~~ *the* hearing until the time of ~~said~~ *the* hearing, any qualified elector or an owner of property within the proposed district may file ~~his~~ written objections to the creation of the district. ~~Such~~ *The* objections ~~shall~~ *must* be delivered to the county clerk, who shall endorse ~~thereon~~ *on the objections* the date of ~~its~~ receipt ~~by him~~.

(2) If 51% or more of the qualified electors or of the owners of property within the boundaries of the proposed district file their written objections to the creation of ~~such~~ *the* district, the commissioners ~~shall~~ *may* not proceed with the creation of ~~such~~ *the* district.

(3) If as the result of objections filed the commissioners in their discretion determine ~~the~~ *that there is a* question ~~in doubt~~ *as to* whether or not the creation of a district is ~~to~~ *in* the best interest of an area and the residents ~~therein~~ *in the area*, the commissioners may cause the issue to be determined by referendum at the next regular election."

Section 667. Section 7-22-2434, MCA, is amended to read:

"7-22-2434. Disposition of fines, bonds, and penalties. All fines, forfeited bonds, and penalties collected under the provisions of this part, except those collected by a justice's court, ~~shall~~ *must* be paid to the county treasurer of each county and ~~placed by him~~ *deposited* to the credit of the mosquito control fund."

Section 668. Section 7-23-101, MCA, is amended to read:

"7-23-101. Dog collar and license tag required. It ~~shall be~~ *is* unlawful, ~~where this part,~~ *when* part 21, ~~and~~ 7-23-4103*, and this part* apply, for any person to own, harbor, or keep any dog over the age of 5 months or to permit ~~such~~ a dog owned, harbored, or controlled by ~~him~~ *the person* to run at large unless the dog has attached to its neck a substantial collar on which is fastened a license tag issued by the authority of a county or a municipal corporation for the purpose of identifying the dog and designating the owner~~;. provided, however, that it shall be~~ *It is* lawful to remove ~~such~~ *the* collar and license tag when ~~such~~ *the* dog is under the immediate control of its owner or ~~his~~ *the owner's* agent."

Section 669. Section 7-23-102, MCA, is amended to read:

"7-23-102. Seizure and impounding of dogs running at large without tag. ~~Any~~ *A* dog found running at large without a valid current dog license tag issued by the authority of a county or municipal corporation pursuant to the provisions of ~~this part,~~ part 21, ~~and~~ 7-23-4103*, and this part* may be seized and impounded by any sheriff, deputy sheriff, ~~policeman~~ *police officer*, game warden, county poundmaster, or other law enforcement officer."

Section 670. Section 7-31-112, MCA, is amended to read:

"7-31-112. Details relating to bonds. (1) The bonds ~~to be~~ issued upon the conditions and under the provisions ~~aforesaid shall~~ *of this part must*:

(a) bear the date of their issuance;

(b) be designated as sanitary coupon bonds of the county, city, or town issuing the ~~same~~ *bonds*;

(c) be of a denomination not less than $500 or more than $1,000 each;

(d) be payable at ~~such~~ *a* place in ~~New York City or elsewhere, at~~ the discretion of the board or council issuing the ~~same~~ *bonds*;

(e) bear interest as provided in 17-5-102, payable 30 years after the date ~~thereof~~ *of issuance*, with the privilege of paying the ~~same~~ *interest* at any time after 5 years from ~~such~~ *that* date~~,~~. ~~which~~ *The* interest ~~shall be~~ *is* payable semiannually at the place ~~whereat~~ *where* the principal is payable, and ~~for which~~ interest coupons ~~shall~~ *must* be attached to ~~said~~ *the* bonds.

(2) If ~~said~~ *the* bonds and coupons are issued by ~~any~~ *a* county, they ~~shall~~ *must* be signed by the ~~chairman~~ *presiding officer* of the board of county commissioners of ~~such~~ *that* county and attested *to* by the *county* clerk ~~thereof~~ *and recorder* and ~~his~~ *the clerk's* seal *must be* attached ~~thereto~~ *to the bonds and coupons*. If the bonds and coupons are issued by any incorporated city or town, ~~the same shall~~ *they must* be signed by the mayor and attested to by the city or town clerk and the *clerk's* seal ~~thereof~~ *must be* attached *to the bonds and coupons*."

Section 671. Section 7-31-202, MCA, is amended to read:

"7-31-202. Qualifications for public safety communications officers. To be appointed a public safety communications officer, a person:

(1) must be a citizen of the United States;

(2) must be at least 18 years of age;

(3) must be fingerprinted and a search must be made of local, state, and national fingerprint files to disclose any criminal record;

(4) may not have been convicted of a crime for which ~~he~~ *the person* could have been imprisoned in a federal or state penitentiary;

(5) must be of good moral character, as determined by a thorough background investigation;

(6) must be a high school graduate or have passed the general ~~education~~ *educational* development test and have been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government; and

(7) ~~shall~~ *must* meet any additional qualifications established by the board."

Section 672. Section 7-31-2101, MCA, is amended to read:

"7-31-2101. Authorization to transfer funds for emergency relief. Whenever the governor ~~shall issue~~ *issues* a proclamation declaring that an emergency exists in any county requiring the relief of suffering of the inhabitants ~~thereof~~ caused by famine, destitution, conflagration, or other public calamity, the board of county commissioners of ~~such~~ *the* county ~~is authorized to~~ *may* transfer to the proper fund to be used for purposes of ~~such~~ relief any money in any other fund or funds of the county, but ~~no~~ money belonging to any bond sinking or interest fund or any school fund ~~must~~ *may not* be ~~so~~ transferred. The governor shall in ~~his~~ *the* proclamation state the facts upon which ~~such~~ *the* emergency is declared and shall specifically limit the time during which ~~such~~ *the* transfers may be made."

Section 673. Section 7-31-4102, MCA, is amended to read:

"7-31-4102. Sales of poisons and opium. (1) The city or town council has power to regulate the ~~sales~~ *sale* of poisons and to punish any person for selling or using opium or any *opium* preparation ~~thereof~~, for having ~~the same~~ *opium or any opium preparation* or any implement to be used in smoking ~~it~~ *opium* in ~~his~~ *the person's* possession, or for keeping, maintaining, visiting, or contributing to the support of a room or place where ~~the same~~ *opium or any opium preparation* is smoked or used.

(2) Druggists may sell opium or any *opium* preparation ~~thereof,~~ subject to the general laws of the state in relation ~~thereto~~ *to their sale*."

Section 674. Section 7-31-4206, MCA, is amended to read:

"7-31-4206. Procedure to maintain open ditch. (1) If a person claims that the water has not been abandoned and claims the right to use water in a ditch that the city or town has declared a public nuisance, ~~he~~ *the person* shall notify the city or town before the expiration of the 60-day period that ~~he~~ *the person* wishes to continue the use of ~~such~~ *the* water within the city or town and that ~~he~~ *the person*, individually or with others, will provide ~~such~~ protective devices as ordered by the city or town.

(2) If ~~such~~ notice is given, the person or persons claiming ~~such~~ *the water* right or rights ~~shall have~~ *has* a period not to exceed 6 months to remove the public nuisance in the manner ordered by the city or town.

(3) If the city or town approves the work, it shall permit the water to flow into the city or town. If the protective device is not provided or if it does not meet specifications required by the city or town, the city or town may designate ~~such~~ *the* ditch abandoned and order it closed or filled when the 6-month period ends."

Section 675. Section 7-32-102, MCA, is amended to read:

"7-32-102. Director of department of public safety. The director of the department of public safety ~~shall be~~ *is* the sheriff, who may be elected or may be appointed by the public safety commission if the form of county government provides for an appointed sheriff. ~~A~~ *An appointed* director ~~so appointed~~ shall receive a majority of the votes of the public safety commission members voting on the question of ~~his~~ appointment."

Section 676. Section 7-32-108, MCA, is amended to read:

"7-32-108. Hearing procedure for employee discharged by ~~an~~ appointed director. (1) A director appointed by the public safety commission shall at the time of the discharge or termination of the employment of any subordinate employee provide ~~such~~ *the* employee *with* a written statement, subscribed and sworn to by the director, setting forth the cause or causes for the discharge or termination of employment.

(2) Within 30 days from the date of discharge or termination of ~~his~~ employment, ~~such~~ *the* employee may make application to the public safety commission for a hearing before the commission on the charges resulting in the employee's discharge or termination of employment. ~~Such~~ *The* employee may be present at the hearing in person and may be represented by legal counsel. The commission shall keep a record of the proceedings ~~in such cases~~, and the records ~~shall be~~ *are* a matter of public record. For the purpose of keeping a record of the proceedings ~~in such a case~~, the department of public safety shall provide the commission with a person qualified to keep a record of the proceedings. ~~Such~~ *The* person may be an employee of the department.

(3) The commission shall, after the conclusion of the hearing, decide whether the charges resulting in the employee's discharge or termination of employment have been proven.

(4) The commission ~~shall have~~ *has* the power, in all cases ~~wherein~~ *in which* a majority of the commission members find the charges not proven, to reinstate any employee to the same position ~~he~~ *previously* held and at the same salary ~~he~~ received prior to discharge or termination of employment.

(5) In all cases ~~wherein~~ *in which* a majority of the commission members find the charges proven, the employee may appeal the decision of the commission to the district court of the county ~~wherein~~ *in which* the employee was employed. ~~Such~~ *The* appeal must be initiated within 60 days of the ruling of the commission."

Section 677. Section 7-32-110, MCA, is amended to read:

"7-32-110. Reinstatement of discharged employee who prevails in district court. ~~In the event that~~ *If* an employee prevails in an appeal to the district court, ~~he shall be~~ *the employee is* entitled to be reinstated to the same position ~~he~~ *previously* held and at the same salary ~~he~~ received prior to ~~his~~ discharge or termination by the director."

Section 678. Section 7-32-115, MCA, is amended to read:

"7-32-115. Work period in lieu of workweek — overtime compensation. (1) (a) A department of public safety may establish a work period other than the workweek provided in 7-32-2111 or 39-3-405 for determining when an employee may be paid overtime.

(b) The aggregate of all work periods in a year, when expressed in hours, may not exceed 2,080 hours.

(2) The board of county commissioners may by resolution establish that any employee who works in excess of ~~his~~ *the employee's* regularly scheduled work period will be compensated for the hours worked in excess of the work period at a rate to be determined by the board of county commissioners."

Section 679. Section 7-32-122, MCA, is amended to read:

"7-32-122. Appointment to three-member public safety commission. (1) Upon the creation of a three-member commission:

(a) one member ~~shall~~ *must* be appointed by the legislative body of the city or town;

(b) one ~~shall~~ *member must* be appointed by the board of county commissioners; and

(c) one ~~shall~~ *member must* be appointed by the members of the board of county commissioners and the members of the legislative body of the city or town, meeting in joint session.

(2) In order to be appointed, a candidate for appointment by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of the members of the legislative body of the city or town voting on the question ~~of his appointment~~.

(3) Initially, one commission member shall serve a 4-year term and two commission members shall each serve a 2-year term. Each commission member shall draw a lot to determine the length of ~~his~~ *the member's* term."

Section 680. Section 7-32-123, MCA, is amended to read:

"7-32-123. Appointment to five-member public safety commission. (1) Upon the creation of a five-member commission:

(a) two members ~~shall~~ *must* be appointed by the legislative body of the city or town;

(b) two ~~shall~~ *members must* be appointed by the board of county commissioners; and

(c) one ~~shall~~ *member must* be appointed by the members of the board of county commissioners and the members of the legislative body of the city or town, meeting in joint session.

(2) In order to be appointed, a candidate for the appointment to a five-member commission by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of members of the legislative body of the city or town voting on the question ~~of his appointment~~.

(3) Initially, two commission members shall each serve a 4-year term and three commission members shall each serve a 2-year term. Each commission member ~~must~~ *shall* draw a lot to determine the length of ~~his~~ *the member's* term."

Section 681. Section 7-32-124, MCA, is amended to read:

"7-32-124. Appointment to seven-member public safety commission. (1) Upon the creation of a seven-member commission:

(a) three members ~~shall~~ *must* be appointed by the legislative body of the city or town;

(b) three ~~shall~~ *members must* be appointed by the board of county commissioners; and

(c) one ~~shall~~ *member must* be appointed by the members of the board of county commissioners and the members of the city or town, meeting in joint session.

(2) In order to be appointed, a candidate for the appointment to a seven-member commission by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of the members of the legislative body of the city or town voting on the question ~~of his appointment~~.

(3) Initially, three commission members shall each serve a 4-year term and four commission members shall each serve a 2-year term. Each commission member shall draw a lot to determine the length of ~~his~~ *the member's* term."

Section 682. Section 7-32-125, MCA, is amended to read:

"7-32-125. Residency requirements for public safety commissioners. Each commission member shall reside at the time of ~~his~~ appointment within the county if selected by the board of county commissioners or within the city or town by which appointed."

Section 683. Section 7-32-126, MCA, is amended to read:

"7-32-126. Vacancies and succession. (1) In case of a vacancy for any cause, a new member ~~shall~~ *must* be appointed in the same manner as the person ~~he replaces~~ *replaced*. ~~A person so appointed~~ *The appointee* shall serve out the unexpired portion of the term of the person ~~he replaces~~ *replaced*.

(2) The successor for a commission member whose term has expired ~~shall~~ *must* be appointed in the same manner used to appoint the commission member ~~he~~ *that the person* succeeds.

(3) A member of a public safety commission is eligible for reappointment to the commission at the end of ~~his~~ *a* term."

Section 684. Section 7-32-127, MCA, is amended to read:

"7-32-127. Organization of public safety commission. (1) Not later than 60 days after the commission is authorized, the members of the commission

shall meet and organize at a time ~~which shall~~ *that must* be set by the board of county commissioners and the legislative body of the city or town.

(2) At the first meeting of the commission, the member jointly appointed by the board of county commissioners and the legislative body of the city or town ~~shall~~ *must* be designated by the commission to serve as temporary ~~chairman~~ *presiding officer*. As its first official act, the commission members shall select a ~~chairman~~ *presiding officer* and ~~vice-chairman~~ *vice presiding officer* from ~~their own number~~ *the members of the commission*.

(3) The ~~chairman~~ *presiding officer* of the commission shall preside over all meetings and hearings of the commission. In the absence or inability of the ~~chairman~~ *presiding officer*, the ~~vice-chairman~~ *vice presiding officer* shall preside over all meetings and hearings of the commission."

Section 685. Section 7-32-128, MCA, is amended to read:

"7-32-128. Meetings. Meetings of the commission ~~shall~~ *must* be held upon call of the ~~chairman~~ *presiding officer*, the ~~vice-chairman~~ *vice presiding officer* in the absence or inability of the ~~chairman~~ *presiding officer*, or a majority of the commission members. Hearings in all cases involving employee discharge or termination ~~shall~~ *must* be held upon request of ~~any~~ *the* employee ~~so~~ discharged or terminated."

Section 686. Section 7-32-213, MCA, is amended to read:

"7-32-213. Qualifications for appointment as reserve officer. To be appointed a reserve officer, a person ~~must~~:

(1) *must* have resided in the state continuously for at least 1 year prior to the appointment and in the county where ~~such~~ *the* appointment is made for a period of at least 6 months prior to the date of the appointment;

(2) *must* be a citizen of the United States;

(3) *must* be at least 18 years of age;

(4) *must* be fingerprinted, and a search must be made of local, state, and national fingerprint files to disclose any criminal record;

(5) *may* not have been convicted of a crime for which ~~he~~ *the person* could have been imprisoned in a federal penitentiary or state prison;

(6) *must* be of good moral character as determined by a thorough background investigation;

(7) *must* be a graduate of an accredited high school or the equivalent;

(8) *must* be examined by a licensed physician within 30 days immediately preceding the date of appointment and pronounced in good physical condition; and

(9) *must* possess a valid Montana driver's license."

Section 687. Section 7-32-301, MCA, is amended to read:

"7-32-301. Residency requirements. ~~No~~ *A* sheriff of a county, mayor of a city, or other person authorized by law to appoint special deputies, marshals, or ~~policemen~~ *police officers* in this state to preserve the public peace and prevent or quell public disturbance ~~shall hereafter~~ *may not* appoint as ~~such~~ *a* special deputy, marshal, or ~~policeman~~ *police officer* any person who ~~shall~~ *has* not ~~have~~ resided continuously in this state for a period of at least 1 year and in the county where ~~such~~ *the* appointment is made for a period of at least 6 months prior to the date of ~~said~~ appointment."

Section 688. Section 7-32-302, MCA, is amended to read:

"7-32-302. Waiver of residency requirements. The person or body authorized by law to appoint special deputies, marshals, or ~~policemen~~ *police officers* may in its discretion waive residency requirements."

Section 689. Section 7-32-2101, MCA, is amended to read:

"7-32-2101. Vacancy in office of sheriff. When the sheriff is committed under an execution or commitment for not paying over money received ~~by him~~ by virtue of ~~his~~ *the sheriff's* office and remains committed for 60 days, ~~his~~ *the* office is vacant."

Section 690. Section 7-32-2104, MCA, is amended to read:

"7-32-2104. Qualifications of deputy sheriff. (1) ~~No~~ *A* sheriff ~~shall~~ *may not* employ *an individual* as a deputy ~~any individual who does not possess all the following qualifications~~ *sheriff unless the individual*:

(a) *is a* graduate of an accredited high school or the equivalent ~~thereof~~;

(b) *is of* good moral character;

(c) *has* never been convicted of a felony;

(d) has not within 5 years immediately preceding ~~his~~ *the* date of employment been affiliated in any manner with a subversive organization; *and*

(e) *has* been examined by a physician licensed to practice in the state of Montana within 30 days immediately preceding ~~his~~ *the* date of employment and has been pronounced in good physical condition.

(2) This section ~~shall~~ *is* not ~~be~~ applicable to any deputy sheriff whose term of employment commenced prior to March 2, 1967."

Section 691. Section 7-32-2107, MCA, is amended to read:

"7-32-2107. Tenure for deputy sheriffs — grounds for termination of employment. ~~Any~~ *A* deputy sheriff ~~now employed or who may hereafter be employed~~ shall continue in service until relieved of ~~his~~ employment in the manner ~~hereinafter~~ provided *in this part* and only for one or more of the following specified causes:

(1) conviction of a felony subsequent to the commencement of ~~such~~ employment;

(2) willful disobedience of an order or orders given by the sheriff;

(3) drinking intoxicating liquor while in uniform or while on official duty or being intoxicated in a public place while in uniform or while on official duty;

(4) sleeping while on duty;

(5) incapacity materially affecting ability to perform official duties; *or*

(6) gross inefficiency in the performance of official duties."

Section 692. Section 7-32-2108, MCA, is amended to read:

"7-32-2108. Written notice of termination of employment required. When a sheriff terminates the employment of a deputy, ~~he~~ *the sheriff* shall at the time of termination cause to be served upon ~~said~~ *the* deputy a statement in writing, subscribed and sworn to by the sheriff, setting forth the cause or causes for the discharge or termination of the deputy's employment."

Section 693. Section 7-32-2121, MCA, is amended to read:

"7-32-2121. Duties of sheriff. The sheriff ~~must~~ *shall*:

(1) preserve the peace;

(2) arrest and take before the nearest magistrate for examination all persons who attempt to commit or have committed a public offense;

(3) prevent and suppress all affrays, breaches of the peace, riots, and insurrections ~~which~~ *that* may come to ~~his~~ *the sheriff's* knowledge;

(4) perform the duties of a humane officer within the county with reference to the protection of ~~dumb~~ animals;

(5) attend all courts, except municipal, justices', and city courts, at their respective terms or sessions held within the county and obey their lawful orders and directions;

(6) command the aid of as many inhabitants of the county as are necessary in the execution of the sheriff's duties;

(7) take charge of and keep the detention center and the inmates ~~therein~~ *in the detention center*, unless the detention center is operated by a private party under an agreement entered into under 7-32-2201 or by a detention center administrator or by another local government;

(8) endorse upon all notices and process the year, month, day, hour, and minute of ~~reception~~ *receipt* and issue ~~therefor~~ to the person delivering them, on payment of fees, a certificate showing the names of the parties, the title of the paper, and the time of ~~reception~~ *receipt*;

(9) serve all process or notices in the manner prescribed by law;

(10) certify in writing upon the process or notices the manner and time of service or, if ~~he~~ *the sheriff* fails to make service, the reasons ~~of~~ *for* this failure, and return the papers without delay;

(11) take charge of and supervise search and rescue units and their officers whenever search and rescue units are called into service; and

(12) perform ~~such~~ other duties ~~as~~ *that* are required by law."

Section 694. Section 7-32-2124, MCA, is amended to read:

"7-32-2124. Service of papers on sheriff. Service of a paper, other than a process, upon the sheriff may be made by delivering it to ~~him~~ *the sheriff,* ~~or to one of his deputies or to~~ *a deputy, or* a person in charge of the office during office hours~~,~~ or, if ~~no such person~~ *if none of the enumerated individuals* is there, by leaving it in a conspicuous place in the office."

Section 695. Section 7-32-2125, MCA, is amended to read:

"7-32-2125. Operation of sheriff's vehicle. The board of county commissioners may purchase or lease motor vehicles from county funds for the use of the sheriff or any person employed by ~~him~~ *the sheriff* and may also pay for the operation and maintenance of those vehicles from county funds."

Section 696. Section 7-32-2127, MCA, is amended to read:

"7-32-2127. Prosecution of action involving county law enforcement personnel brought against executor or administrator. Any action for default or misconduct of ~~any~~ *a* sheriff, ~~his~~ *an* undersheriff, ~~his~~ detention center staff, or ~~any of his deputies~~ *a deputy* may be prosecuted against the executors or administrators of ~~such~~ *the* sheriff."

Section 697. Section 7-32-2129, MCA, is amended to read:

"7-32-2129. Misconduct of undersheriff. Any default, misfeasance, or malfeasance of ~~such~~ *an* undersheriff ~~acting as sheriff pursuant to 7-32-2122, as well as before,~~ is a breach of the condition of the bond given by the sheriff who appointed ~~him~~ *the undersheriff* and *is* also a breach of the condition of the bond given by ~~him~~ *the undersheriff* to the sheriff."

Section 698. Section 7-32-2130, MCA, is amended to read:

"7-32-2130. Liability for refusing to pay ~~over~~ money. If on demand the sheriff neglects or refuses to pay ~~over~~ *any money* to the person entitled ~~thereto any money which~~ *to money that* may come into ~~his hands~~ *the sheriff's possession* by virtue of ~~his~~ office, ~~(~~after deducting ~~his~~ legal fees~~)~~, the *person may recover the* amount ~~thereof,~~ with 25% damages and interest at the rate of 10% ~~per~~ *a* month from the time of demand~~, may be recovered by such person~~."

Section 699. Section 7-32-2131, MCA, is amended to read:

"7-32-2131. Liability in civil actions. (1) If the sheriff does not return a notice or process in ~~his~~ *the sheriff's* possession with the necessary endorsement ~~thereon~~ without delay, ~~he~~ *the sheriff* is liable to the party aggrieved for $200 and for all damages sustained by ~~him~~ *the party*.

(2) If the sheriff to whom a writ of execution or attachment is delivered neglects or refuses, after being required by the creditor or ~~his~~ *the creditor's* attorney, to levy upon or sell any property of the party charged in the writ ~~which~~ *that* is liable to be levied upon or sold, ~~he~~ *the sheriff* is liable to the creditor for the value of ~~such~~ *the* property.

(3) ~~No~~ *A* direction or authority by a party or ~~his~~ *a party's* attorney to a sheriff in respect to the execution of process or return ~~thereof~~ *of process* or any act or omission relating ~~thereto~~ *to the process* is *not* available to discharge or excuse the sheriff from a liability for neglect or misconduct unless it is contained in a writing signed by the attorney of the party or by the party.

(4) ~~"Process", as~~ *As* used in this part~~, includes all writs, warrants, summons, and orders of courts of justice or judicial officers.~~*, the following definitions apply:*

(a) "Notice" includes all papers and orders*,* ~~(~~except process~~)~~*,* required to be served in any proceeding before ~~any~~ *a* court, board, or officer or required by law to be served independently of ~~such~~ *the* proceeding.

(b) "Process" includes all writs, warrants, summons, and orders of courts of justice or judicial officers."

Section 700. Section 7-32-2143, MCA, is amended to read:

"7-32-2143. Mileage and expenses of sheriff in general. (1) Except as provided in 7-32-2144 and 7-32-2145, in addition to the fees specified in 7-32-2141 and 7-32-2142, the sheriff ~~shall~~ *may* receive for each mile actually traveled in serving any writ, process, order, or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to a detention center only ~~his~~ *the sheriff's* actual expenses when ~~such~~ *the* travel is made by railroad or airline~~; and when~~. *When* travel is *by means* other than by railroad or airline, ~~he~~ *the sheriff* ~~shall~~ *must* receive a mileage allowance as provided in 2-18-503 for each mile actually traveled ~~by him~~ both going and returning and the actual expenses incurred by ~~him~~ *the sheriff* in conveying a person under arrest before a magistrate or to a detention center. ~~He~~ *The sheriff* ~~shall~~ *must* receive the same mileage and ~~his~~ actual expenses for the person conveyed or transported under order of court within the county~~;~~. ~~the same to be~~ *The mileage and expenses are* in full payment for transporting and feeding ~~such~~

the persons during ~~such~~ transportation. Whenever more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more inmates, only one *charge for* mileage may be ~~charged~~ *made*.

(2) ~~No mileage~~ *Mileage* may *not* be paid by the county to sheriffs whose vehicles are provided and maintained by the county. All mileage paid to sheriffs whose vehicles are provided and maintained by the county ~~shall~~ *must* be paid over to the county treasurer and deposited in the county general fund.

(3) (a) ~~No mileage~~ *Mileage* may *not* be allowed on an attachment, order of arrest, order for delivery of personal property, or any other order, notice, or paper when the ~~same~~ *document* accompanies the summons and the service ~~thereof~~ *of the document* may be made at the time of the service of the summons, except for the distance actually traveled beyond that required to serve the summons. When two or more papers are served on the same person at the same time or when any paper or papers are served on more than one person on the same trip, only one *charge for* mileage may be allowed ~~or charged; and in~~. *In* the service of subpoenas, only one mileage *charge* may be ~~charged~~ *made* when the persons named ~~therein~~ *in the subpoena* live in the same place or in the same direction~~;~~*,* but mileage may be charged for the longest distance actually traveled. Any writ, order, or other paper for service must be received at any place in the county where a sheriff or a deputy is found, and mileage ~~must~~ *may* be computed only from ~~such~~ *that* place to the place of service. When two or more officers travel in the same automobile in the discharge of any duty, only one *charge for* mileage may be allowed.

(b) When ~~any~~ *a* sheriff or constable serves more than one process in the same cause, not requiring more than one journey from ~~his~~ *the* office, ~~he shall~~ *the sheriff or constable may* receive mileage only for the more distant service, and ~~no~~ mileage ~~in any case~~ may *not* be allowed for less than 1 mile actually traveled.

(4) In lieu of charging mileage for the service of items of a civil nature as provided in subsections (1) and (3), a sheriff may charge $1 for the service of each item of a civil nature that requires a return or proof of service."

Section 701. Section 7-32-2202, MCA, is amended to read:

"7-32-2202. Use of detention center in contiguous county. (1) When there is no detention center in the county or when the detention center becomes unfit or unsafe for the confinement of inmates, the district *court* judge may, by written appointment filed with the *district court* clerk, designate the detention center of a contiguous county for the confinement of the inmates of ~~his~~ *the judge's* county and may at any time modify or annul the appointment.

(2) A copy of the appointment, certified by the clerk, must be served on the detention center administrator of each county involved, who must receive into ~~his~~ *the administrator's* detention center all inmates authorized to be confined ~~therein~~ *in the detention center* pursuant to this section and who is responsible for the safekeeping of the persons ~~so~~ committed in the same manner and to the same extent as if ~~he~~ *the administrator* were the detention center administrator of the county for whose use ~~his~~ *the administrator's* detention center is designated. With respect to the persons ~~so~~ committed, ~~he~~ *the administrator* is ~~deemed~~ *considered* the detention center administrator of the county from which they were removed.

(3) When a detention center is erected in the county for the use of which the designation was made or its detention center is rendered fit and safe for the

confinement of inmates, the district *court* judge of that county ~~must~~ *shall*, by a written revocation filed with the clerk, declare that the necessity for the designation has ceased and that it is revoked.

(4) The clerk ~~must~~ *shall* immediately serve a copy of the revocation upon the detention center administrator of each county involved. The detention center administrator in the designated county ~~must thereupon~~ *shall* remove the inmates to the detention center from which ~~the removal was had~~ *they were removed*."

Section 702. Section 7-32-2207, MCA, is amended to read:

"7-32-2207. Confinement of persons on civil process. (1) Whenever a person is committed upon process in a civil action or proceeding, except when the state is a party ~~thereto~~ *to the action*, the detention center administrator is not bound to receive ~~such~~ *the* person unless security is given on the part of the party at whose instance the process is issued~~.~~ ~~by~~ *The security must be* a deposit of money, to meet the expenses for ~~him of~~ *the person's* necessary food, clothing, and bedding. ~~or~~ *The detention center administrator is not required* to detain ~~such~~ *the* person any longer than *the period for which* these expenses are provided ~~for~~.

(2) This section does not apply to cases ~~where~~ *in which* a party is committed as a punishment for disobedience to the mandates, process, writs, or orders of court."

Section 703. Section 7-32-2208, MCA, is amended to read:

"7-32-2208. Actual confinement of inmates required. An inmate committed to a detention center for trial or examination or, except as provided in 7-32-2225 through 7-32-2227, a prisoner convicted must be actually confined in the detention center until ~~he~~ *the inmate or prisoner* is legally discharged."

Section 704. Section 7-32-2211, MCA, is amended to read:

"7-32-2211. Service of papers upon detention center administrator for ~~prisoner~~ *inmate*. A detention center administrator ~~upon whom~~ *who is served with* a paper in a judicial proceeding~~,~~ *that is* directed to an inmate in ~~his~~ *the administrator's* custody~~, is served must forthwith~~ *shall immediately* deliver it to the inmate."

Section 705. Section 7-32-2234, MCA, is amended to read:

"7-32-2234. Powers of detention center administrators. A detention center administrator is responsible for the immediate management and control of the detention center subject to general policies and programs established pursuant to the agreement provided for in 7-32-2201(2) and any applicable interlocal agreement. The powers of ~~such~~ an administrator and detention center personnel employed under ~~his~~ *the administrator's* authority include control over inmates:

(1) within the confines and grounds of the detention center; and

(2) outside the detention center confines and grounds while transporting any inmate or in the hot pursuit or apprehension of any escapee."

Section 706. Section 7-32-2246, MCA, is amended to read:

"7-32-2246. Temporary release from detention center. A detention center inmate may be granted, by court order and with the consent of the sheriff, the privilege of leaving the detention center during necessary and reasonable hours for any of the following purposes:

(1) seeking employment;

(2) working at ~~his~~ employment;

(3) conducting ~~his~~ *the inmate's* own business or self-employment;

(4) attending to the needs of ~~his~~ *the inmate's* family;

(5) attending an educational institution; or

(6) obtaining medical treatment."

Section 707. Section 7-32-2248, MCA, is amended to read:

"7-32-2248. Inmate endangerment — penalty. (1) A detention center administrator or staff member commits the offense of inmate endangerment if ~~he~~ *the administrator or staff member* knowingly:

(a) places or keeps a juvenile with adult inmates;

(b) uses corporal punishment against an inmate; or

(c) uses physical force against an inmate, except as necessary for:

(i) self-defense;

(ii) control of inmates;

(iii) protection of another person from imminent physical attack; or

(iv) prevention of riot or escape.

(2) A person who commits the offense of inmate endangerment shall be fined an amount not to exceed $500."

Section 708. Section 7-32-2249, MCA, is amended to read:

"7-32-2249. False claims by detention center administrator. ~~Every~~ *A* detention center administrator who falsely represents to the governing body of a local government the actual expenses of boarding detention center inmates, furnishing food and supplies, or providing services, ~~or~~ who presents to the governing body false items in a claim or false vouchers, or~~,~~ if ~~he~~ *the administrator* is not a private detention center administrator, *who* makes any profit from the keeping of inmates in ~~his~~ *the administrator's* custody and ~~every~~ *a* person who gives a false item or false voucher to be used by the detention center administrator in any claim against the local government is guilty of a misdemeanor."

Section 709. Section 7-32-2250, MCA, is amended to read:

"7-32-2250. Liability for escape in civil actions. (1) A detention center administrator who fails to prevent the escape or rescue of a person *who was arrested in a civil action and who is* in ~~his~~ *the administrator's* custody ~~arrested in a civil action~~ without the consent or connivance of the party in whose behalf the arrest or imprisonment was made is liable as follows:

(a) When the arrest is upon an order to hold for bail or upon a surrender in exoneration of bail before judgment, the detention center administrator is liable to the plaintiff for the bail.

(b) When the arrest is on an execution or commitment to enforce the payment of money, the detention center administrator is liable for the amount expressed in the execution or commitment.

(c) When the arrest is on an execution or commitment other than to enforce the payment of money, the detention center administrator is liable for the actual damages sustained.

(2) Upon being sued for damages for an escape or rescue of a person in ~~his~~ *the detention center administrator's* custody, the ~~detention center~~ administrator may introduce evidence in mitigation or exculpation.

(3) An action may not be maintained against a detention center administrator for a rescue or for an escape of a person arrested upon an execution or commitment if, after ~~his~~ *the* rescue or escape and before the commencement of the action, the inmate returns to the detention center or is retaken by the ~~detention center~~ administrator."

Section 710. Section 7-32-4103, MCA, is amended to read:

"7-32-4103. Supervision of police department. ~~In~~ *The mayor in* all cities and towns~~, the mayor,~~ or the manager in those cities operating under the commission-manager plan~~, shall have~~ *has* charge of and supervision over the police department ~~thereof~~. ~~He~~ *The mayor or manager* shall appoint all the members and officers ~~thereof~~ *of the department*. Subject to the provisions of this part, ~~he shall have the power to~~ *the mayor or manager may* suspend or remove any member or officer of the force. ~~He~~ *The mayor or manager* shall make rules, not inconsistent with the provisions of this part, the other laws of the state, or the ordinances of the city or town council, for the government, direction, management, and discipline of the police force."

Section 711. Section 7-32-4105, MCA, is amended to read:

"7-32-4105. Duties of chief of police. (1) ~~It is the duty of the~~ *The* chief of police:

(a) ~~to~~ *shall* execute and return all process issued by the city judge or directed to ~~him~~ *the chief of police* by any legal authority and ~~to attend upon~~ *must be present and shall assist* the city court regularly;

(b) ~~to~~ *shall* arrest all persons guilty of a breach of the peace or for the violation of any city or town ordinance and bring them before the city judge for trial;

(c) ~~to~~ *must* have charge and control of all ~~policemen~~ *police officers*, subject to ~~such~~ rules ~~as~~ *that* may be prescribed by ordinance, and ~~to~~ report to the council all delinquencies or neglect of duty or official misconduct of ~~policemen~~ *police officers* for action of the council;

(d) ~~to~~ *shall* perform ~~such~~ other duties ~~as~~ *that* the council may prescribe.

(2) The chief of police has the same powers as a constable in the discharge of ~~his~~ duties, but ~~he must~~ *the chief of police may* not serve a process in ~~any~~ *a* civil action or proceeding except when a city or town is a party."

Section 712. Section 7-32-4106, MCA, is amended to read:

"7-32-4106. List of active and eligible ~~policemen~~ *police officers.* (1) The city council ~~shall have absolute and~~ *has* exclusive power to determine and limit the number of police officers and members to comprise the police force of any city, to reduce the number of the police force at any time, and to divide the police membership into two lists:

(a) one *list is* an active list~~,~~ *containing the names of individuals* who are to be actually employed and receive pay while ~~so~~ employed; and

(b) one *list is* an eligible list~~,~~ *containing the names of individuals* who ~~shall~~ *may* not receive pay while not actually employed as an officer or member.

(2) Officers or members of the active list temporarily relieved from duty ~~shall~~ *must* become members of the eligible list without pay and ~~shall~~ *must* be

first entitled to reinstatement on the active list in case of vacancy, according to their seniority in the service, and all others on the eligible list ~~shall~~ *must* be entitled to fill a vacancy in the order of their appointment.

(3) ~~Such~~ *The* action of the council ~~shall~~ *under this section is* not ~~be~~ subject to review by any court.

(4) ~~In no event shall there be any officers~~ *Officers* or members *may not be* placed on the eligible list, except in case of temporary reduction of the police force, when the number already on the eligible list ~~shall equal in number~~ *is equal to* 20% of the active list."

Section 713. Section 7-32-4107, MCA, is amended to read:

"7-32-4107. Utilization of retired officers. ~~Policemen or~~ *Police* officers on the retired list of ~~any~~ *a* city or town ~~of this state~~ shall retire from the active list of police officers of ~~such~~ *the* city or town but ~~shall~~ *must* be subject to call for police service or active duty whenever an emergency ~~shall require~~ *requires* or the active list ~~be~~ *is* temporarily insufficient for proper policing of ~~such~~ *the* city or town, all under the rules ~~as~~ *that* the board of police commissioners or city council ~~shall~~ prescribe."

Section 714. Section 7-32-4108, MCA, is amended to read:

"7-32-4108. Appointment to police force. All appointments to the police force must be ~~appointed~~ *made* by the mayor~~,~~ or*,* ~~the manager~~ in those cities operating under the commission-manager plan, *by the manager* and *must be* confirmed by the city council or commission. ~~No such~~ *An* appointment ~~must~~ *may not* be made until:

(1) an application for ~~such~~ *a* position on the police force has been filed with the mayor~~,~~ or*,* ~~the manager~~ in those cities operating under the commission-manager plan, *with the manager* and referred ~~by him~~ to the police commission, ~~where such~~ *when a* commission exists; and

(2) ~~such~~ *the* applicant has successfully passed the examination required to be held by ~~such~~ *the* police commission and a certificate from ~~such~~ *the* police commission that the applicant has qualified for ~~such~~ *the* appointment has been filed with the mayor~~,~~ or*,* ~~the manager~~ in those cities operating under the commission-manager plan *with the manager*."

Section 715. Section 7-32-4109, MCA, is amended to read:

"7-32-4109. Temporary employment for persons doing police work. The mayor of ~~any~~ *a* city ~~shall have the power and authority~~ *may*, at any time when ~~he deems it~~ *considered* expedient, ~~to~~ employ not to exceed two persons at one time for a period not to exceed 30 days to do police duty who are not members of the police department."

Section 716. Section 7-32-4110, MCA, is amended to read:

"7-32-4110. Procedure for reinstatement on police force. (1) An applicant for a position on the police force who has already served 20 years or more in the aggregate on the police force of the city or town to which ~~he~~ *the person* is applying for reinstatement may make application within 1 year from the date on which ~~his~~ *the person's* name was removed from the active list of police officers to the police commission of that city or town ~~wherein he~~ *in which the person* last served, and ~~his~~ *the* application must be considered by ~~said~~ *the* police commission within 30 days after receipt of ~~said~~ *the* application.

(2) ~~Said~~ *The* commission ~~shall~~ *may* not require the applicant to have a physical examination or other examination required of applicants for a position on the police force~~;~~. ~~and in the event that~~ *If* the police commission recommends the reinstatement of ~~said~~ *the* applicant as a member of the police force, the probationary term required of applicants for positions ~~shall~~ *must* be dispensed with ~~as to such~~ *for the* applicant for reinstatement. ~~It shall be the duty of the~~ *The* mayor ~~to~~ *shall* submit to the city council of ~~said~~ *the* city at its next regular meeting the recommendation of the police commission~~;~~. ~~and in the event that~~ *If* a majority of the city council vote in favor of adopting the recommendation of the commission, ~~said~~ *the* applicant ~~shall~~ *must* be immediately reinstated as a police officer in ~~said~~ *the* city or town."

Section 717. Section 7-32-4111, MCA, is amended to read:

"7-32-4111. Examination of applicants for position on police force. (1) All applicants for positions on the police force whose applications ~~shall have been~~ *are* referred to the police commission ~~shall~~ *must* be required to successfully undergo an examination before the police commission and to receive a certificate from ~~said~~ *the* commission that the applicant is qualified for ~~such~~ appointment for the probationary period ~~upon~~ *to* the police force.

(2) ~~Any~~ *An* applicant who ~~shall make~~ *makes* any false statement to the police commission as to ~~his~~ *the applicant's* age or other required qualifications at ~~his~~ *an* examination before the police commission ~~shall be~~ *is* subject to suspension or dismissal from the police force after trial."

Section 718. Section 7-32-4131, MCA, is amended to read:

"7-32-4131. Compensation and allowance for sick or injured ~~policemen~~ *police officers.* Whenever ~~any~~ *a* member of a police department in ~~any~~ *a* city or town ~~shall~~ *is*, on account of sickness or disability suffered or sustained while a member of ~~such~~ *the* police department and not caused or brought on by dissipation or abuse, ~~be~~ confined to any hospital or ~~his~~ *the officer's* home and ~~shall require~~ *requires* medical attention and care, the *police* officer ~~of such police department~~ may be allowed, by the city council, ~~his~~ *the police officer's* salary ~~as such police officer~~ during ~~his~~ *the* absence and an amount equal to ~~his~~ *the police officer's* expenses while confined for ~~such~~ *the* injury or sickness."

Section 719. Section 7-32-4136, MCA, is amended to read:

"7-32-4136. Assignment to light duty or another agency. (1) Whenever, in the opinion of the municipality~~,~~ *and* supported by a physician's opinion, the officer is able to perform specified types of light police duty, payment of ~~his~~ *the officer's* partial salary amount under 7-32-4132 ~~shall~~ *must* be discontinued if ~~he~~ *the officer* refuses to perform ~~such~~ *the* light police duty when it is available and offered ~~to him~~. ~~Such~~ *The* light duty ~~shall~~ *must* be consistent with the officer's status as a law enforcement officer.

(2) With ~~his~~ *the officer's* consent, the officer may be transferred to another department or agency within the municipality."

Section 720. Section 7-32-4137, MCA, is amended to read:

"7-32-4137. Effect on probationary status. If the injured officer is on probationary status at the time ~~he becomes injured~~ *of injury*, the balance of ~~his~~ *the* probationary time ~~shall~~ *must* be suspended until ~~he~~ *the officer* returns to regular duty or is discharged for cause."

Section 721. Section 7-32-4155, MCA, is amended to read:

"7-32-4155. Role of police commission in hearing and deciding appeals brought by ~~policemen~~ *police officers.* (1) The police commission ~~has jurisdiction and it is its duty to~~ *shall* hear and decide appeals brought by any member or officer of the police department who has been disciplined, suspended, removed, or discharged by an order of the mayor, city manager, or chief executive.

(2) ~~It is the duty of the~~ *The* police commission *shall*, at the time set for hearing an appeal of a police officer, ~~to~~ hear and determine the appeal according to the rules of evidence applicable to courts of record in the state."

Section 722. Section 7-32-4159, MCA, is amended to read:

"7-32-4159. Subpoena authority of police commission. The ~~chairman~~ *presiding officer* or acting ~~chairman~~ *presiding officer* of the police commission ~~shall have power to~~ *may* issue subpoenas, attested in its name, to compel the attendance of witnesses at the hearing, and any person ~~duly~~ served with a subpoena is bound to attend in obedience ~~thereto~~ *to the subpoena*. The police commission ~~shall have~~ *has* the same authority to enforce obedience to the subpoena and to punish the disobedience ~~thereof~~ *to the subpoena* as is possessed by a judge of the district court in ~~like~~ *similar* cases~~;~~. ~~provided, however~~ *However*, ~~that~~ punishment for disobedience is subject to review by the district court of the proper county."

Section 723. Section 7-33-2127, MCA, is amended to read:

"7-33-2127. Withdrawal by owner of individual tract adjacent to municipality. In lieu of the detraction procedure set forth in 7-33-2122 and 7-33-2123, whenever a person owns land adjacent to a city or town and wishes to have only that land annexed to the city or town, the land may be detracted as follows:

(1) The owner shall mail notice to the ~~chairman~~ *presiding officer* of the trustees of the fire district or, if ~~none~~ *there are no trustees*, to the board of county commissioners of ~~his~~ *the owner's* intention to request annexation.

(2) The owner shall attach a copy of this notice of intention to ~~his~~ *the* petition to the municipal governing body requesting annexation.

(3) Following adoption of the annexation order under 7-2-4714, the land is detracted from the fire district."

Section 724. Section 7-33-2312, MCA, is amended to read:

"7-33-2312. Organization of fire company. (1) ~~Every~~ *A* fire company organized pursuant to 7-33-2311 ~~must~~ *shall* choose or elect a ~~foreman, who is the~~ presiding officer, a secretary, and a treasurer and may establish and adopt bylaws and regulations and impose penalties, not exceeding $5 or expulsion, for each offense.

(2) ~~Every~~ *A* regularly organized fire department may adopt a department seal, stating the name of the particular fire department to which it belongs. The seal is under the control of and for the use of the secretary and ~~shall~~ *must* be affixed ~~by him~~ to exempt certificates, certificates of active membership, and ~~such~~ other documents ~~as~~ *that* the bylaws may provide. The secretary of ~~every~~ *a* department having a seal ~~must~~ *shall* take the constitutional oath of office and give ~~such~~ *a* bond ~~as~~ *that* the bylaws provide for the faithful performance of ~~his~~ *the secretary's* duties."

Section 725. Section 7-33-2315, MCA, is amended to read:

"7-33-2315. Certificate of membership in fire company. (1) ~~Every~~ *A* firefighter who has served 5 years in an organized company in this state is an exempt firefighter and must receive from the chief engineer of the department *or company* to which ~~he~~ *the firefighter* belonged a certificate to that effect.

(2) (a) ~~Every~~ *An* active firefighter must have a certificate of that fact, signed by the chief of the fire department or the ~~foreman~~ *presiding officer* of the company to which ~~he~~ *the firefighter* belongs. ~~Such~~ *The* certificates must be countersigned by the secretary and over the seal of the company, if one is provided.

(b) ~~In~~ *If authorized by the bylaws of the company, in* lieu of issuing certificates to exempt firefighters ~~by the chief of the fire department, on the certificate of the foreman and secretary of any fire company or the chief of the department, provision being made therefor in the bylaws of the company, "exempt certificates"~~ *exempt certificates* may be issued by the clerk *and recorder* of the county, over ~~his~~ *the clerk's* official seal and signature, which entitles the holder to ~~like~~ *an* exemption from military duty.

(3) Each certificate entitles the holder to *an* exemption from military duty. ~~Every such~~ *Each* certificate is prima facie evidence of the facts ~~therein~~ stated *in the certificate.*

(4) The secretary of the fire department or ~~fire~~ company ~~must~~ *shall* keep a record of ~~all certificates~~ *each certificate* of exemption or active membership, the date ~~thereof~~ *of the certificate* and to whom issued, and, when ~~no~~ *a* seal is *not* provided, similar entries of certificates issued to obtain ~~county clerk's~~ certificates *from the county clerk and recorder*."

Section 726. Section 7-33-4104, MCA, is amended to read:

"7-33-4104. Duties of chief and assistant chief of fire department. (1) The chief of the fire department ~~shall have~~ *has* sole command and control over all persons connected with the fire department of the city or town and ~~shall possess~~ *has* full power and authority over its organization, government, and discipline. ~~and to that end~~ *The chief* may ~~from time to time~~ establish ~~such~~ disciplinary rules ~~as he may deem~~ *that the chief considers* advisable, subject to the approval of the city or town council. ~~He shall have~~ *The chief has* charge of and ~~be~~ *is* responsible for the engines and other apparatus and the property of the town or city furnished *to* the fire department and *shall* see that they are at all times ready for use in the extinguishing of fires.

(2) The assistant chief of the fire department shall aid the chief in the work of the department and in ~~his~~ *the chief's* absence shall perform ~~his~~ *the chief's* duties."

Section 727. Section 7-33-4124, MCA, is amended to read:

"7-33-4124. Suspension procedure. (1) In all cases of suspension, the person suspended must be furnished with a copy of the charge against ~~him~~ *the person*, in writing, setting forth reasons for the suspension. ~~Such~~ *The* charges must be presented to the next meeting of the council or commission, and a hearing ~~had thereon, when~~ *must be held at which* the suspended member of the fire department may appear in person or by counsel and make ~~his~~ *a* defense to ~~said~~ *the* charges.

(2) ~~Should~~ *If* the charges *are* not ~~be~~ presented ~~to~~ *at* the next meeting of the council or commission after the suspension or ~~should~~ *if* the charges ~~be found~~ *are* not proven by the council or commission, the suspended person ~~shall~~ *must* be

reinstated and ~~be~~ *is* entitled to ~~his~~ *the person's* usual compensation for the time ~~so~~ suspended.

(3) If ~~such~~ *the* charges are ~~found~~ proven by the council or commission, the council or commission, by a vote of a majority of the whole council or commission, may impose ~~such~~ *a* penalty as it ~~shall determine~~ *determines that* the offense warrants, either in the continuation of the suspension for a limited time or in the removal of the suspended person from the fire department."

Section 728. Section 7-33-4125, MCA, is amended to read:

"7-33-4125. Reduction and subsequent increase in number of firefighters based on seniority. (1) ~~Should~~ *If* the council at any time ~~reduce~~ *reduces* the number of firefighters in the fire department, those most recently appointed ~~shall~~ *must* be selected for retirement from the fire department. The city or town clerk shall keep a list of ~~such~~ *the* retired firefighters.

(2) ~~Should~~ *If* the number of firefighters ~~be~~ *is* again increased by the council, the ~~men~~ *individuals* on ~~said~~ *the* list ~~shall~~ *must* be called into service, *with* the longest ~~service~~ *serving* firefighters being first selected for service in the fire department."

Section 729. Section 7-33-4133, MCA, is amended to read:

"7-33-4133. Payment of partial salary to firefighter injured in performance of duty. (1) A member of a fire department of a ~~first-~~ *first-class* or second-class municipality who is injured in the performance of duty must be paid by the municipality the difference between ~~his~~ *the member's* net salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the partial salary payment provided for in subsection (1), the firefighter must require medical or other remedial treatment and must be incapable of performing ~~his~~ *the firefighter's* duties as a result of the injury."

Section 730. Section 7-34-2104, MCA, is amended to read:

"7-34-2104. Details relating to petition. (1) The petition may consist of one sheet or several sheets, identical in form and fastened together after being circulated and signed so as to form a single, complete petition before being delivered to the county clerk *and recorder*. The petition ~~shall~~ *must* give the post-office address and voting precinct of each petitioner.

(2) Only persons who are qualified to sign ~~such~~ *the* petitions ~~shall be~~ *are* qualified to circulate the ~~same~~ *petitions*, and there ~~shall~~ *must* be attached to the complete petition the affidavit of ~~some~~ *a* person who circulated or assisted in circulating the petition that ~~he~~ *the person* believes the signatures ~~thereon~~ *on the petition* are genuine and the signers knew the contents ~~thereof~~ *of the petition* before signing ~~the same~~ *it*."

Section 731. Section 7-34-2105, MCA, is amended to read:

"7-34-2105. Petition to be filed with county clerk *and recorder* — clerk's certificate. The complete petition, addressed to the board of county commissioners of the county in which the proposed district is situated, ~~shall~~ *must* be filed with the county clerk and recorder, who shall, within 15 days ~~thereafter~~, carefully examine the ~~same~~ *petition* and the county records showing the qualifications of the petitioners and attach it to a certificate under ~~his~~ *the*

clerk and recorder's official signature and the seal of ~~his~~ office~~,~~. ~~which~~ *The* certificate ~~shall~~ *must* set forth:

(1) the total number of persons who are registered electors within the proposed hospital district and whose names appear upon the last-completed assessment roll for state and county taxes;

(2) which and how many of the persons whose names are subscribed to ~~such~~ *the* petition are possessed of all of the qualifications required of signers to ~~such~~ *the* petition; *and*

(3) whether ~~such~~ *the* qualified signers constitute more or less than 30% of the registered electors of the proposed hospital district who are taxpayers upon property ~~thereon~~ *in the proposed district* and whose names appear on the last-completed assessment roll for state and county taxes."

Section 732. Section 7-34-2106, MCA, is amended to read:

"7-34-2106. Presentation of petition to board of county commissioners — hearing required. (1) The county clerk and recorder shall present the petition and ~~his~~ *the clerk's* certificate to the board of county commissioners at its first meeting held after ~~he~~ *the clerk* has attached ~~his~~ *the* certificate.

(2) The board shall ~~thereupon~~ carefully examine the petition, and if it is found that the petition is in proper form and bears the requisite number of signatures of qualified petitioners, the board shall by resolution call a hearing on the creation of ~~such~~ *the* hospital district."

Section 733. Section 7-34-2118, MCA, is amended to read:

"7-34-2118. Term of office. (1) The trustees elected for the first board shall serve for terms:

(a) commencing upon their being elected and qualified; and

(b) terminating 1, 2, and 3 years, respectively, from the first district meeting following their election and until their respective successors ~~shall be~~ *are* elected and qualified.

(2) Annually ~~thereafter~~ *after the initial election* there may be elected a trustee to serve for a term of 3 years and until ~~his~~ *a* successor ~~shall be~~ *is* qualified. ~~Such~~ *The* term of 3 years ~~shall commence~~ *commences* at the first district meeting following the ~~said~~ trustee's election."

Section 734. Section 7-35-2103, MCA, is amended to read:

"7-35-2103. Hearing on creation of district. At the time fixed for ~~said~~ *the* hearing, the board shall determine whether or not it complies with the requirements ~~hereinbefore~~ set forth *in this part* and whether or not the notice required ~~herein~~ *in this part* has been published as required and must hear all competent and relevant testimony offered in support of or in opposition ~~thereto~~ *to the petition*. ~~Said~~ *The* hearing may be adjourned from time to time for the determination of ~~said~~ facts, *for a period* not to exceed 2 weeks ~~in all~~."

Section 735. Section 7-35-2133, MCA, is amended to read:

"7-35-2133. Appointment of trustees of fund. (1) The district judge shall, upon receipt of the application, appoint a trustee or a board of trustees to administer the fund from a list submitted to ~~him~~ *the judge* by the trustees of the public cemetery district.

(2) The number of trustees for the fund may not exceed five, with the exact number to be set at the discretion of the trustees of the public cemetery district. Each trustee for the fund must be a resident of the state during the time ~~he~~ *the trustee* exercises the powers of ~~such~~ *the* trust.

(3) ~~Whenever~~ *If* a person~~, so~~ *who is* chosen and appointed~~,~~ fails to qualify within 30 days after ~~his~~ appointment, a vacancy exists, and the judge of the district court shall appoint from a list submitted to ~~him~~ *the judge* by the trustees of the public cemetery district ~~some~~ *a* person possessing the ~~above~~ qualifications to fill the vacancy in the board of trustees of the fund. ~~Trustees of the fund appointed by the public cemetery district or district court prior to July 1, 1955, continue to hold office as trustees until terminated as provided in 7-35-2131 through 7-35-2150.~~"

Section 736. Section 7-35-2139, MCA, is amended to read:

"7-35-2139. Bond requirements for trustees of fund. (1) Before exercising or having any of the powers, duties, rights, titles, authorities, or franchises appertaining to ~~such~~ *the* trust or ~~to such~~ trusteeship, each person chosen to be a trustee of ~~such~~ *the* fund shall give to the public cemetery district for which the trust is maintained a bond in a sum equaling at least 1 1/3 times the value of the property on hand at the time of giving ~~such~~ *the* bond, with good and sufficient sureties ~~thereto~~ who shall justify in the aggregate in at least double the amount of ~~such~~ *the* bond~~,~~. ~~the same to~~ *The bond must* be conditioned for the due and faithful performance of ~~his~~ *the* trust until July 1 of the next even-numbered year after the year in which ~~such~~ *the* bond ~~shall be~~ *is* given and until ~~such~~ *the* trustee ~~shall give~~ *gives* a new bond as ~~hereinafter~~ provided *in this section*.

(2) On July 1 in each even-numbered year, each trustee shall give a new bond conditioned ~~in the same way~~, ~~the~~ *in an* amount ~~thereof to be determined by the same rule~~, and with sureties as ~~above~~ provided *in subsection (1).*

(3) ~~Such~~ *The* bonds ~~shall all~~ *must* be approved by a judge of the district court for the judicial district in which the cemetery for ~~such~~ *the* trust exists or some part ~~thereof shall be~~ *of the trust is* situated and ~~shall~~ *must* be filed with the clerk of the district court of the county in which ~~such~~ *the* cemetery is located."

Section 737. Section 7-35-2141, MCA, is amended to read:

"7-35-2141. Reduction of bond by deposit of money and securities. (1) For the purpose of fixing the amount of the bond, the value of the property on hand may be reduced in an amount equal to the value of the money, bonds, and securities ~~which~~ *that* the trustee or trustees of the permanent care and improvement fund ~~may elect to and do~~ deposit with the county treasurer as ~~hereinafter~~ provided *in subsection (2).*

(2) The trustee or trustees of ~~such~~ *the* fund may deposit for safekeeping ~~such~~ *the* money, bonds, and securities as ~~he or~~ they see fit with the county treasurer of the county in which ~~said~~ *the* cemetery or some part ~~thereof~~ *of the cemetery* is situated. ~~It is the duty of the~~ *The* county treasurer ~~to~~ *shall* receive and safely keep all ~~such~~ money, bonds, and securities ~~or any part thereof~~ and pay them out or deliver them ~~up~~ upon the order of ~~such~~ *the* trustee or a majority of the trustees, when countersigned by a judge of ~~said~~ *the* judicial district and not otherwise, and ~~to~~ *shall* keep an account with ~~such~~ *the* trustee or trustees of all ~~such~~ *those* transactions. For the safekeeping and payment and delivery of all ~~such~~ money, bonds, and securities as ~~herein~~ provided *in this section*, the

treasurer and ~~his~~ *the treasurer's* sureties are liable upon ~~his~~ *the treasurer's* official bond."

Section 738. Section 7-35-2144, MCA, is amended to read:

"7-35-2144. Vesting of funds in trustees. Upon the election, appointment, and qualification, as provided in this part, of the trustees of ~~such~~ *the* fund, all of the title to the funds included in ~~said~~ *the* trust and all of the rights, powers, authorities, franchises, and trusts ~~of whatsoever thereunto appertaining shall at once~~ *pertaining to the trust* vest in ~~him or them~~ *the trustees*. In case of the failure of any of those ~~so~~ chosen and appointed to qualify within 30 days after their appointment, then the ~~same shall~~ *rights, powers, authorities, franchises, and trusts* vest in ~~the one or more~~ *those* who ~~shall~~ qualify."

Approved March 27, 2007

CHAPTER NO. 62

[SB 43]

AN ACT MODIFYING LICENSING PROVISIONS FOR PETROLEUM MEASURING DEVICES WHEN OWNERSHIP OF THE DEVICES CHANGES; AND AMENDING SECTION 82-15-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-15-105, MCA, is amended to read:

"82-15-105. Licenses and fees — status of license on transfer of ownership. (1) A petroleum dealer or liquefied petroleum dealer may not do business in this state until licensed by the department. The license must be obtained by the dealer by making application to the department upon ~~blank~~ forms provided by the department. A dealer who has not been issued a license and who is found selling, offering for sale, delivering, or distributing petroleum products shall ~~upon conviction~~ be punished *upon conviction* as provided by this part.

(2) The department shall adopt rules establishing license fees based upon the measuring devices used by the dealer. The fees may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party. The fees must be deposited in the state special revenue fund of the department for use in administrating and enforcing this part.

(3) All licenses are annual and expire on the anniversary date established by rule by the board of review established in 30-16-302. There is an additional charge of 50% on all license fees that are not paid within 60 days of the licensee's anniversary date. If the fee is not paid, the equipment must be sealed and removed from service by the department. It is unlawful for anyone to use a device removed from service or to break the seal until all fees have been paid.

~~(4) If ownership of a measuring device changes and the device:~~

~~(a) remains at the same location, the license transfers to the new owner and remains in effect until December 31 of that year;~~

~~(b) is moved to a new location, the license is void, and the new owner shall:~~

~~(i) apply for a new license that will expire on the anniversary date of that year, as provided in subsection (3); and~~

~~(ii) pay the applicable fees.~~"

Approved March 27, 2007

CHAPTER NO. 63

[SB 44]

AN ACT IMPLEMENTING A 2006 RECOMMENDATION OF THE PRIVATE LAND/PUBLIC WILDLIFE ADVISORY COUNCIL BY ADDING WILD BUFFALO OR BISON, ANTELOPE, AND MOUNTAIN LION TO THE LIST OF BIG GAME LICENSES THAT THE FISH, WILDLIFE, AND PARKS COMMISSION MAY ISSUE THROUGH AN ANNUAL LOTTERY; AMENDING SECTION 87-1-271, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-271, MCA, is amended to read:

"87-1-271. Annual lottery of hunting licenses — proceeds dedicated to hunting access enhancement. (1) The commission may issue through a lottery one license each year for each of the following:

(a) deer;

(b) elk;

(c) shiras moose;

(d) mountain sheep; ~~and~~

(e) mountain goat*;*

(f) wild buffalo or bison;

(g) antelope; and

(h) mountain lion.

(2) The restriction in 87-2-702(4) that a person who receives a moose, mountain goat, or mountain sheep special license is not eligible to receive another license for that species for the next 7 years does not apply to a person who receives a license through a lottery conducted pursuant to this section.

(3) The commission shall establish rules regarding:

(a) the conduct of the lottery authorized in this section;

(b) the use of licenses issued through the lottery; and

(c) the price of lottery tickets.

(4) All proceeds from a lottery conducted pursuant to this section must be used by the department for hunting access enhancement programs and law enforcement."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 27, 2007

CHAPTER NO. 64

[SB 53]

AN ACT PROVIDING A PROCEDURE FOR CREATING A NEW PROFESSIONAL OR OCCUPATIONAL LICENSING BOARD OR PROGRAM; REQUIRING A LETTER OF INTENT TO ACCOMPANY A BILL DRAFT REQUEST FOR A NEW PROFESSIONAL OR OCCUPATIONAL LICENSING BOARD OR PROGRAM; PROVIDING CONDITIONS FOR A LETTER OF INTENT WHEN ADDING PROFESSIONS OR OCCUPATIONS TO EXISTING LICENSING BOARDS; ADDRESSING PROSPECTIVE FEES IN THE LETTER OF INTENT; AND PROVIDING A PROCEDURE FOR REVIEWING EXISTING BOARDS, CONSOLIDATING BOARDS, AND RESOLVING FINANCIAL CONSIDERATIONS FOR REPEALED BOARDS.

WHEREAS, licensing boards or programs provide for self-regulation by professions or occupations and are authorized by the state through its role of protecting public health, safety, or welfare or providing for the common good; and

WHEREAS, documentation regarding the rationale for licensing a profession or occupation is helpful for legislators to use in determining whether the potential increase in cost to the public and limitation on competition are outweighed by the prospective protection of public health, safety, or welfare or provision for the common good; and

WHEREAS, advance information on costs better serves both potential licensees and legislators in determining the cost of a board or a program.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. It is the intent of the legislature to:

(1) exercise the police power of the state through the establishment of licensing boards only when regulation of a profession or occupation benefits the public health, safety, welfare, or common good of the state's residents and that benefit outweighs the potential increased cost to the public and limitation on competition;

(2) recognize those professions or occupations that require specialized skill or training; and

(3) provide the public with a means to determine whether practitioners have met competency standards and to complain if the competency is suspect.

Section 2. Intent to create new board. (1) A bill draft request to create a licensing board must include a letter of intent not exceeding 1,000 words that addresses the criteria in subsections (2) and (3).

(2) The letter of intent must contain the following descriptions:

(a) how licensing would protect and benefit the public and, in particular, how the unregulated practice of the profession or occupation would pose a hazard to public health, safety, or welfare or the common good;

(b) the extent of practitioners' autonomy, as indicated by the degree of independent judgment that a practitioner may exercise or the extent of skill or experience required in making the independent judgment;

(c) the distinguishable scope of practice;

(d) the overlap or shared practices with an existing, licensed profession or occupation;

(e) the degree, if any, to which licensing would restrict entry into the profession or occupation for reasons other than public health, safety, or welfare or the common good;

(f) the specialized skills or training required for the profession or occupation;

(g) the proposed qualifications for licensure;

(h) whether a licensure exception would be provided to existing practitioners and whether those eligible for the exception would be required to meet proposed qualifications at a certain time;

(i) a list of other states that license the profession or occupation;

(j) regulatory alternatives other than licensing that are available to the practitioners of the profession or occupation; and

(k) previous efforts, if any, to regulate the profession or occupation.

(3) In order to help in the determination of licensing costs, the letter of intent must contain a good faith effort to provide answers to the following questions:

(a) how many licensees are anticipated, including the number of practitioners in Montana;

(b) what is the proposed makeup of the licensing board; and

(c) what are the projected annual licensing fees based on information from the department of labor and industry for all costs associated with a board of the projected size.

(4) After receiving a copy of the responses to subsections (2), (3)(a), and (3)(b), the department of labor and industry shall assist those developing the letter of intent under [section 3] or this section with the responses to subsection (3)(c) of this section.

(5) For the purposes of this section, a letter of intent is a public record.

Section 3. Intent to combine profession or occupation with existing board. (1) A bill draft request that proposes to license a profession or occupation by combining that profession or occupation with an existing board must contain a letter of intent if one of the following conditions applies:

(a) the profession or occupation to be licensed falls under the supervisory authority of a profession or occupation with an existing board; or

(b) the profession or occupation to be licensed has an overlapping scope of practice or dual licensure with a profession or occupation under an existing board.

(2) A letter of intent to combine with an existing board must contain responses to the questions provided in [section 2].

(3) A letter of intent under this section is a public record.

Section 4. Interim committee review of licensing boards and programs — criteria — repeal — consolidation. (1) (a) Before January 1 of each even-numbered year, a legislative interim committee responsible for monitoring licensing boards and programs shall notify the department to which licensing boards or programs are administratively attached if the committee plans to review one or more licensing boards or programs to determine the need for a board or a program and the financial solvency or appropriate administrative attachment of the board or program.

(b) A review under subsection (1)(a) is separate from a performance audit conducted by the legislative audit committee.

(2) The focus of a review under subsection (1)(a) is:

(a) to determine whether a board or program continues to be needed to protect public health, safety, or welfare or the common good by addressing the following questions:

(i) does the improper practice of the profession or occupation pose a physical, financial, or emotional threat to public health, safety, or welfare and is there evidence of harm from improper practice; and

(ii) does the practice of the profession or occupation require specific training or skills that make evaluation of competency difficult for the consumer; or

(b) to assess the financial solvency of the board or program and the impact on consumers and on licensees if higher fees are projected for the next biennium.

(3) After the review, the legislative interim committee may draft legislation to:

(a) repeal the board or program if the board or program is no longer needed for public health, safety, or welfare or the common good; or

(b) combine a board with other licensing boards if a board meets the criteria in subsection (2)(a) but has one of the following criteria:

(i) is expected to have higher fees than if the board operates in combination with another board with similar interests;

(ii) has fewer than 200 licensees; or

(iii) has no or a limited number of complaints each year.

(4) The legislative interim committee, after a review of the administrative attachment of a board or program, may propose legislation to administratively attach the board or program to a department that has responsibilities related to the board or program.

Section 5. Repeal of licensing board or program law — deposit of fees. (1) If the legislature repeals a licensing board or program law, the department of labor and industry may collect only delinquent licensing fees or fines, if provided by law, on behalf of the repealed licensing board or program. Continuing education and other requirements for maintaining a license cease with the effective date of the repeal.

(2) (a) Fees collected on behalf of a board or program that is proposed to be repealed must be deposited in the state special revenue fund for the use of the board or program.

(b) Fees that are not needed for satisfying debt obligations of the board or program may be used by the department to offset the costs to the department of all boards and programs.

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 2, chapter 8, and the provisions of Title 2, chapter 8, apply to [sections 1 through 5].

Section 7. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved March 27, 2007

CHAPTER NO. 65

[SB 59]

AN ACT APPLYING THE REGULATIONS OF THE FEDERAL HUMANE METHODS OF SLAUGHTER ACT OF 1978 TO THE PROVISIONS OF THE MONTANA MEAT AND POULTRY INSPECTION ACT; AMENDING SECTION 81-9-219, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-9-219, MCA, is amended to read:

"81-9-219. Application. The provisions of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 apply to persons, establishments, animals, and articles regulated under the Federal Meat Inspection Act, 21 U.S.C. 601 through 695, ~~or~~ the federal Poultry Products Inspection Act, 21 U.S.C. 451 through 470, as those acts read on October 1, 1987, *or the federal Humane Methods of Slaughter Act of 1978, 7 U.S.C. 1901, 1902, 1904, 1906, and 1907, as that act read on [the effective date of this act],* only to the extent provided for ~~therein~~ *in the federal acts*."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 27, 2007

CHAPTER NO. 66

[SB 62]

AN ACT REVISING THE DAILY PAY RATE FOR ADVISORY COUNCIL MEMBERS; AMENDING SECTION 2-15-122, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-122, MCA, is amended to read:

"2-15-122. Creation of advisory councils. (1) (a) A department head or the governor may create advisory councils.

(b) An agency or an official of the executive branch of state government other than a department head or the governor, including the superintendents of the state's institutions and the presidents of the units of the state's university system, may also create advisory councils but only if federal law or regulation requires that ~~such~~ *the* official or agency create the advisory council as a condition to the receipt of federal funds.

(c) The board of public education, the board of regents of higher education, the state board of education, the attorney general, the state auditor, the secretary of state, and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. ~~They must~~ *The creating authority shall* file a record of each council created by ~~them~~ *it* in the office of the governor and the office of the secretary of state in accordance with subsection (9) ~~of this section~~.

(2) Each advisory council created under this section ~~shall~~ *must* be known as the ".... advisory council".

(3) The creating authority shall*:*

(a) prescribe the composition and advisory functions of each advisory council created;

(b) appoint its members, who shall serve at the pleasure of the ~~governor~~ *creating authority*; and

(c) specify a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity, as defined in 2-15-102.

(5) *(a)* Unless ~~he~~ *an advisory council member* is a full-time salaried officer or employee of this state or of any political subdivision of this state, ~~each~~ *the* member is entitled to be paid in an amount to be determined by the department head, not to exceed ~~$25~~ *$50* for each day in which ~~he~~ *the member* is actually and necessarily engaged in the performance of council duties~~,~~ and ~~he is also entitled~~ to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of council duties. *The maximum daily pay rate must be adjusted for inflation annually using the formula provided in 15-6-134(2)(b)(ii) and (2)(b)(iii), except that the base income level and appropriate dollar amount must be $50 a day.*

(b) Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503.

(6) Unless otherwise specified by the creating authority, at its first meeting in each year, each advisory council shall elect a ~~chairman~~ *presiding officer* and ~~such~~ other officers ~~as~~ *that* it considers necessary.

(7) Unless otherwise specified by the creating authority, each advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor and may meet at other times on the call of the ~~chairman~~ *presiding officer* or a majority of its members. An advisory council may not meet outside the city of Helena without the express prior authorization of the creating authority.

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (1)(c) ~~of this section~~, an advisory council may not be created or appointed by a department head or any other official without the approval of the governor. In order for the creation or approval of the creation of an advisory council to be effective, the governor ~~must~~ *shall* file in ~~his~~ *the governor's* office and in the office of the secretary of state a record of the council created showing ~~the council's~~:

(a) *the council's* name, in accordance with subsection (2) ~~of this section~~;

(b) *the council's* composition;

(c) *the* names and addresses of the appointed members;

(d) *the council's* purpose; *and*

(e) *the council's* term of existence, in accordance with subsection (10) ~~of this section~~.

(10) An advisory council may not be created to remain in existence longer than 2 years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs later, unless extended by the ~~governor or by the board of public education, the board of regents of higher~~

~~education, the state board of education, the attorney general, the state auditor, the secretary of state, or the superintendent of public instruction for those advisory councils created~~ *appointing authority* in the manner set forth in subsection (1)~~(c) of this section~~. If the existence of an advisory council is extended, ~~they~~ *the appointing authority* shall specify a new date, not more than 2 years later, when the existence of the advisory council ends and file a record of the order in the office of the governor and the office of the secretary of state. The existence of any advisory council may be extended as many times as necessary."

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved March 27, 2007

CHAPTER NO. 67

[SB 70]

AN ACT REVISING THE MEMBERSHIP OF THE STATE EMERGENCY RESPONSE COMMISSION; AND AMENDING SECTION 10-3-1204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-1204, MCA, is amended to read:

"10-3-1204. State emergency response commission. (1) There is a state emergency response commission that is attached to the department for administrative purposes. The commission consists of ~~27~~ *29* members appointed by the governor. The commission must include representatives of the national guard, the air force, the department of environmental quality, the division, the department of transportation, the department of justice, the department of natural resources and conservation, the department of public health and human services, a fire service association, the fire training school, the emergency medical services and ~~injury prevention section~~ *trauma systems section* of the ~~health policy and services~~ *public health and safety* division in the department of public health and human services, the department of fish, wildlife, and parks, *the department of agriculture,* Montana hospitals, an emergency medical services association, a law enforcement association, an emergency management association, a public health-related association, a trucking association, a utility company doing business in Montana, a railroad company doing business in Montana, *Montana's petroleum industry, Montana's insurance industry,* the university system, ~~a local emergency planning committee,~~ a tribal emergency response commission, the national weather service, the Montana association of counties, the Montana league of cities and towns, and the office of the governor. *At least one representative must be a member of a local emergency planning committee.* Members of the commission serve a term of 4 years and may be reappointed. The members shall serve without compensation. The governor shall appoint two presiding officers from the appointees, who shall act as copresiding officers.

(2) The commission shall implement the provisions of this part. The commission may create and implement a state hazardous material incident response team to respond to incidents. The members of the team must be certified in accordance with the plan.

(3) The commission may enter into written agreements with each entity or person providing equipment or services to the state hazardous material incident response team.

(4) The commission or its designee may direct that the state hazardous material incident response team be available and respond, when requested by a local emergency response authority, to incidents according to the plan.

(5) The commission may contract with persons to meet state emergency response needs for the state hazardous material incident response team.

(6) The commission may advise, consult, cooperate, and enter into agreements with agencies of the state and federal government, other states and their state agencies, cities, counties, tribal governments, and other persons concerned with emergency response and matters relating to and arising out of incidents.

(7) The commission may encourage, participate in, or conduct studies, investigations, training, research, and demonstrations for and with the state hazardous material incident response team, local emergency responders, and other interested persons.

(8) The commission may collect and disseminate information relating to emergency response to incidents.

(9) The commission may accept and administer grants, gifts, or other funds, conditional or otherwise, made to the state for emergency response activities provided for in this part.

(10) The commission may prepare, coordinate, implement, and update a plan that coordinates state and local emergency authorities to respond to incidents within the state. The plan must be consistent with this part. All state emergency response responsibilities relating to an incident must be defined by the plan.

(11) The commission has the powers and duties of a state emergency response commission under the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq., except that the division shall oversee the creation, annual local review, and exercise and revision of the local emergency operations plan as provided by state law.

(12) The commission shall promulgate rules and procedures limited to cost recovery procedures, certification of state response team members, and deployment of the state hazardous material incident response team, which must be a part of the plan.

(13) The commission shall act as an all-hazard advisory board to the division by:

(a) assisting the division in carrying out its responsibilities by providing the division with recommendations on issues pertaining to all-hazard emergency management; and

(b) authorizing the establishment of subcommittees to develop and provide the recommendations called for in subsection (13)(a).

(14) The commission shall appoint the members of the Montana intrastate mutual aid committee provided for in 10-3-904.

(15) All state agencies and institutions shall cooperate with the commission in the commission's efforts to carry out its duties under this part."

Approved March 27, 2007

CHAPTER NO. 68

[SB 72]

AN ACT REQUIRING THAT MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD APPOINTED BY THE GOVERNOR BE CONFIRMED BY THE SENATE; AMENDING SECTION 2-15-1009, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the Public Employees' Retirement Board (PERB) administers and manages the assets of 10 separate retirement plans, with combined trust fund assets of over $4.2 billion and benefit payments of over $180 million to more than 18,000 retirees annually; and

WHEREAS, the PERB has a fiduciary obligation to its paying members, retirees, and taxpayers to adopt and implement investment, administrative, and other policies that safeguard the interests of the members, retirees, and taxpayers; and

WHEREAS, the Legislature has the obligation and authority to oversee and supervise those investment, administrative, and other policies; and

WHEREAS, Montana statutes now require that the Governor submit to the Montana Senate for confirmation by the Senate the appointments to at least 65 various boards, committees, councils, and commissions; and

WHEREAS, among the 65 entities for which Senate confirmation is now required are Title 37 licensing boards, such as the Board of Plumbers, and regulatory boards, such as the Board of Milk Control; and

WHEREAS, the process of investigation and confirmation used by the Senate helps ensure that appointees to the 65 boards, committees, councils, and commissions are sincerely interested in the appointment, that they are responsive to the constituencies that they serve, and that they are legally and otherwise qualified for the appointment that they seek; and

WHEREAS, the State Administration and Veterans' Affairs Interim Committee believes that the functions, responsibilities, and authority of the members of the PERB are at least equal to some of the other boards, committees, councils, and commissions for which Senate confirmation is now required; and

THEREFORE, the State Administration and Veterans' Affairs Interim Committee recommends that the gubernatorial appointments to the PERB be made subject to confirmation by the Montana Senate.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1009, MCA, is amended to read:

"2-15-1009. Public employees' retirement board — terms — allocation. (1) There is a public employees' retirement board.

(2) The board consists of seven members appointed by the governor *with the consent of the senate*. The members are:

(a) three public employees who are active members of a public retirement system (not more than one of these members may be an employee of the same department and at least one of these members must, no later than July 1, 2003, be a member of the defined contribution plan created pursuant to Title 19, chapter 3, part 21);

(b) one retired public employee who is a member of the public employees' retirement system;

(c) two members at large; and

(d) one member who has experience in investment management, counseling, or financial planning or who has other similar experience.

(3) The term of office for each member is 5 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. The board shall hire necessary employees as provided in 19-2-404.

(5) Members of the board must be compensated and receive travel expenses as provided for in 2-15-124."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to members of the public employees' retirement board appointed after [the effective date of this act].

Approved March 27, 2007

CHAPTER NO. 69

[SB 73]

AN ACT REQUIRING A FILING OFFICER TO GIVE NOTICE TO THE DEBTOR PRIOR TO REJECTING THE FILING OF OR REMOVING THE FILING OF A LIEN THAT THE FILING OFFICER HAS REASON TO BELIEVE IS IMPROPER OR FRAUDULENT; AND AMENDING SECTION 30-9A-420, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-9A-420, MCA, is amended to read:

"30-9A-420. Removal of improper or fraudulent liens — *notice to secured party and debtor.* (1) If a filing officer receives a complaint or has reason to believe that a lien submitted or filed with the filing officer's office is improper or fraudulent, the filing officer may reject the submission or remove the filing from existing files after giving notice and an opportunity to respond to the secured party *and the debtor*.

(2) A person adversely affected by a lien that is determined to be improper or fraudulent by the filing officer may recover treble damages from the person responsible for submitting the lien."

Approved March 27, 2007

CHAPTER NO. 70

[SB 76]

AN ACT AMENDING THE LAWS GOVERNING ACCESS TO TAX INFORMATION; PROVIDING FOR ACCESS TO CERTAIN TAX INFORMATION BY THE LEGISLATIVE FISCAL DIVISION AND THE OFFICE OF BUDGET AND PROGRAM PLANNING; REQUIRING CONFIDENTIALITY OF FEDERAL RETURN INFORMATION; REQUIRING THAT CONFIDENTIAL INFORMATION DISCLOSED TO THE

LEGISLATIVE FISCAL DIVISION AND THE OFFICE OF BUDGET AND PROGRAM PLANNING BE SUBJECT TO RESTRICTIONS ON DISCLOSURE; CLARIFYING THE AUTHORIZED DISCLOSURE OF CERTAIN CORPORATION TAX INFORMATION; CLARIFYING PENALTIES FOR UNAUTHORIZED DISCLOSURE; AMENDING SECTIONS 5-12-303, 15-30-303, 15-31-511, 17-1-132, AND 17-7-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Federal return information. (1) Except as provided by section 6103 of the Internal Revenue Code, 26 U.S.C. 6103, and subsection (2) of this section, it is unlawful to knowingly or purposely divulge or make known in any manner any federal tax return or federal tax return information submitted on state tax returns pursuant to state law.

(2) The department shall furnish state return information to the legislative auditor, the legislative fiscal analyst pursuant to 5-12-303, and the office of budget and program planning pursuant to 17-7-111, unless the furnishing of the information requested is specifically prohibited by federal or state law. The legislative fiscal analyst and the office of budget and program planning may disclose state return information to each other. State return information includes information on or a copy of any portion of a federal return or any information from a federal return that is required to be attached or included in a state return under state law.

(3) Income tax information held by the department, the legislative auditor, the legislative fiscal analyst, and the office of budget and program planning are solely for their official use and are not a public record.

(4) A person convicted of violating this section shall be fined not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. If a public officer or employee is convicted of violating this section, the person is dismissed from office or employment and may not hold any public office or public employment in the state for a period of 1 year after dismissal or, in the case of a former officer or employee, for 1 year after conviction.

Section 2. Section 5-12-303, MCA, is amended to read:

"5-12-303. Fiscal analysis information from state agencies. (1) The legislative fiscal analyst may investigate and examine the costs and revenue of state government activities and may examine and obtain copies of the records, books, and files of any state agency, including confidential records.

(2) When confidential records and information are obtained from a state agency, the legislative fiscal analyst and staff must be subject to the same penalties for unauthorized disclosure of the confidential records and information provided for under the laws administered by the state agency. The legislative fiscal analyst shall develop policies to prevent the unauthorized disclosure of confidential records and information obtained from state agencies.

~~(3) The legislative fiscal analyst may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns.~~

(3) (a) The department of revenue shall make Montana individual income tax information available by removing names, addresses, and social security numbers and substituting in their place a state accounting record identifier number. Except for the purposes of complying with federal law, the department may not alter the data in any other way.

(b) The department of revenue shall provide the name and address of a taxpayer on written request of the legislative fiscal analyst when the values on the requested return, including estimated payments, are considered necessary by the legislative fiscal analyst to properly analyze state revenue and are of a sufficient magnitude to materially affect the analysis and when the identity of the taxpayer is necessary to evaluate the effect of the return or payments on the analysis being performed.

~~(4)~~*(4)* Within 1 day after the legislative finance committee presents its budget analysis to the legislature, the budget director and the legislative fiscal analyst shall exchange expenditure and disbursement recommendations by second-level expenditure detail and by funding sources detailed by accounting entity. This information must be filed in the respective offices and be made available to the legislature and the public. In preparing the budget analysis for the next biennium for submission to the legislature, the legislative fiscal analyst shall use the base budget, the present law base, and new proposals as defined in 17-7-102.

~~(5)~~*(5)* This section does not authorize publication or public disclosure of information if the law prohibits publication or disclosure *or if the department of revenue notifies the fiscal analyst that specified records or information may contain confidential information*."

Section 3. Section 15-30-303, MCA, is amended to read:

"15-30-303. Confidentiality of tax records. (1) Except as provided in *5-12-303, [section 1], 17-7-111, and* subsections (7) and (8) *of this section,* ~~or~~ in accordance with a proper judicial order, or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any individual report or individual return required under this chapter or any other information secured in the administration of this chapter; or

(b) any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of this chapter or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(3) This section does not prohibit:

(a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return or report filed in connection with the taxpayer's tax;

(b) the publication of statistics classified to prevent the identification of particular reports or returns and the items of particular reports or returns; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311.

(4) Reports and returns must be preserved for at least 3 years and may be preserved until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding ~~$1,000 or by imprisonment in the county jail for a term not exceeding 1 year, or both~~ *$500*. If the offender is an officer or employee of the state, the offender must be dismissed from office *or employment* and may not hold any public office *or public employment* in this state for a period of 1 year after dismissal *or, in the case of a former officer or employee, for 1 year after conviction*.

(6) This section may not be construed to prohibit the department from providing taxpayer return information and information from employers' payroll withholding reports to:

(a) the department of labor and industry to be used for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

(b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud, and abuse under the workers' compensation program.

(7) The department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either officer to inspect the return of income of any individual or may furnish to the officer or an authorized representative an abstract of the return of income of any individual or supply the officer with information concerning an item of income contained in a return or disclosed by the report of an investigation of the income or return of income of an individual, but the permission may be granted or information furnished only if the statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(8) ~~The~~ *On written request to the director or a designee of the director, the* department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of public health and human services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of labor and industry for the purpose of prevention and detection of fraud and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs

information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and industry is an employee, an independent contractor, or self-employed;

(d) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses;

(e) to the board of regents information required under 20-26-1111;

(f) to the legislative fiscal analyst and the office of budget and program planning individual income tax information as provided in 5-12-303*, [section 1], and 17-7-111*. The information provided to the office of budget and program planning must be the same as the information provided to the legislative fiscal analyst.

(g) to the department of transportation farm income information based on the most recent income tax return filed by an applicant applying for a refund under 15-70-223 or 15-70-362, provided that notice to the applicant has been given as provided in 15-70-223 and 15-70-362. The information obtained by the department of transportation is subject to the same restrictions on disclosure as are individual income tax returns.

(h) to the commissioner of insurance's office all information necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20."

Section 4. Section 15-31-511, MCA, is amended to read:

"15-31-511. Confidentiality of tax records. (1) Except as provided in this section, in accordance with a proper judicial order, or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any return or report required under this chapter or any other information relating to taxation secured in the administration of this chapter; or

(b) any federal return or information in or disclosed on a federal return or report required by law or rule of the department of revenue under this chapter.

(2) (a) An officer or employee charged with custody of returns and reports required by this chapter may not be ordered to produce any of them or evidence of anything contained in them in any administrative proceeding or action or proceeding in any court, except:

(i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

(ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

(b) If the production of a return, report, or information contained in them is ordered, the court shall limit production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the action or proceeding.

(3) This section does not prohibit:

(a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer who filed the return or report or to the taxpayer's authorized representative;

(b) the publication of statistics prepared in a manner that prevents the identification of particular returns, reports, or items from returns or reports;

(c) the inspection of returns and reports by the attorney general or other legal representative of the state in the course of an administrative proceeding or litigation under this chapter;

(d) access to information under subsection (4);

(e) the director of revenue from permitting a representative of the commissioner of internal revenue of the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an investigation of the income or return of a corporation. The director of revenue may not furnish that information to a person representing the United States or another state unless the United States or the other state grants substantially similar privileges to an officer of this state charged with the administration of this chapter.

(f) the disclosure of information to the commissioner of insurance's office that is necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20.

(4) ~~The~~ *On written request to the director or a designee of the director, the* department shall ~~on request~~:

(a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection (1); and

(b) ~~deliver~~ *provide* corporation income tax ~~data~~ *information, including any information that may be required under Title 15, chapter 30, part 11,* to the legislative fiscal analyst*, as provided in 5-12-303 or [section 1],* and the office of budget and program planning*, as provided in [section 1] or 17-7-111*~~,~~. ~~but the~~ *The* information furnished to the legislative fiscal analyst and the office of budget and program planning is subject to the same restrictions on disclosure outside those offices as provided in subsection (1).

(5) A person convicted of violating this section shall be fined not to exceed ~~$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both~~ *$500*. If a public ~~servant, as defined in 45-2-101,~~ *officer or public employee* is convicted of violating this section, the person ~~forfeits~~ *is dismissed from* office *or employment* and may not hold any public office or public employment in the state for a period of 1 year after *dismissal or, in the case of a former officer or employee, for 1 year after* conviction."

Section 5. Section 17-1-132, MCA, is amended to read:

"17-1-132. Access to information. *(1)* The budget director ~~shall have~~ *has the* power to demand and receive from every department, officer, board, commission, or institution, at any time, any and all information requested.

(2) The budget director may investigate and examine the costs and revenue of state government activities and may examine and obtain copies of the records, books, and files of any state agency, including confidential records.

(3) When confidential records and information are obtained from a state agency, the budget director and staff are subject to the same penalties for unauthorized disclosure of the confidential records and information as are provided for under the laws administered by the state agency. The budget

director shall develop policies to prevent the unauthorized disclosure of confidential records and information obtained from state agencies.

(4) This section does not authorize publication or public disclosure of information if the law prohibits publication or disclosure or if the department of revenue notifies the budget director that specified records or information may contain confidential information."

Section 6. Section 17-7-111, MCA, is amended to read:

"17-7-111. Preparation of state budget — agency program budgets — form distribution and contents. (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.

(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:

(i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and

(ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.

(2) In the preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure the information required by subsection (3). The forms must be submitted to the budget director by the date provided in 17-7-112(2)(a) or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or the instructions given for completing the forms.

(3) The agency budget request must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary of funds subject to appropriation or enterprise funds that transfer profits to the general fund or to an account subject to appropriation for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress;

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each fund for the current biennium and estimated for the subsequent biennium;

(c) a statement of the agency mission and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives.

(d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

(e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

(f) for only agencies with more than 20 FTE, a plan to reduce the proposed base budget for the general appropriations act and the proposed state pay plan to 95% of the current base budget or lower if directed by the budget director. Each agency plan must include base budget reductions that reflect the required percentage reduction by fund type for the general fund and state special revenue fund types. Exempt from the calculations of the 5% target amounts are legislative audit costs, administratively attached entities that hire their own staff under 2-15-121, and state special revenue accounts that do not transfer their investment earnings or fund balances to the general fund. The plan must include:

(i) a prioritized list of services that would be eliminated or reduced;

(ii) for each service included in the prioritized list, the savings that would result from the elimination or reduction; and

(iii) the consequences or impacts of the proposed elimination or reduction of each service.

(g) a reference for each new information technology proposal stating whether the new proposal is included in the approved agency information technology plan as required in 2-17-523; and

(h) other information the budget director feels is necessary for the preparation of a budget.

(4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

(b) a statewide project budget summary as provided in 2-17-526;

(c) the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last-completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

~~(6) The budget director may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns.~~

(6) (a) The department of revenue shall make Montana individual income tax information available by removing names, addresses, and social security numbers and substituting in their place a state accounting record identifier number. Except for the purposes of complying with federal law, the department may not alter the data in any other way.

(b) The department of revenue shall provide the name and address of a taxpayer on written request of the budget director when the values on the requested return, including estimated payments, are considered necessary by the budget director to properly analyze state revenue and are of a sufficient magnitude to materially affect the analysis and when the identity of the taxpayer is necessary to evaluate the effect of the return or payments on the analysis being performed."

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 1, and the provisions of Title 15, chapter 1, apply to [section 1].

Section 8. Effective date. [This act] is effective on passage and approval.

Approved March 27, 2007

CHAPTER NO. 71

[SB 81]

AN ACT DEFINING "PROFESSIONAL PERSON" TO INCLUDE LICENSED PSYCHOLOGISTS; AND AMENDING SECTION 53-21-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-102, MCA, is amended to read:

"53-21-102. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

(2) "Behavioral health inpatient facility" means a licensed facility of 16 beds or less designated by the department that:

(a) may be a freestanding licensed hospital or a distinct part of another licensed hospital and that is capable of providing inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency; and

(b) has contracted with the department to provide services to persons who have been involuntarily committed for care and treatment of a mental disorder pursuant to this title.

(3) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(4) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

(5) "Court" means any district court of the state of Montana.

(6) "Department" means the department of public health and human services provided for in 2-15-2201.

(7) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

(8) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

(9) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term does not include:

(i) addiction to drugs or alcohol;

(ii) drug or alcohol intoxication;

(iii) mental retardation; or

(iv) epilepsy.

(c) A mental disorder may co-occur with addiction or chemical dependency.

(10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(11) "Mental health professional" means:

(a) a certified professional person;

(b) a physician licensed under Title 37, chapter 3;

(c) a professional counselor licensed under Title 37, chapter 23;

(d) a psychologist licensed under Title 37, chapter 17;

(e) a social worker licensed under Title 37, chapter 22; or

(f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

(12) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

(i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;

(ii) failure to follow a prescribed plan of care and treatment; or

(iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

(13) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(14) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

(16) "Professional person" means:

(a) a medical doctor;

(b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing; ~~or~~

(c) a licensed psychologist; or

~~(c)~~*(d)* a person who has been certified, as provided for in 53-21-106, by the department.

(17) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(18) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

(19) "State hospital" means the Montana state hospital."

Approved March 27, 2007

CHAPTER NO. 72

[SB 82]

AN ACT PROVIDING THAT THE RULES FOR USE OF INFORMATION TECHNOLOGY RESOURCES FOR THE LEGISLATIVE BRANCH BE INCLUDED IN THE LEGISLATIVE BRANCH COMPUTER SYSTEM PLAN; AND AMENDING SECTION 2-17-518, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-518, MCA, is amended to read:

"2-17-518. Rulemaking authority. (1) The department shall adopt rules to implement this part, including the following:

(a) rules to guide the review and approval process for state agency software and management systems that provide similar functions for multiple state agencies, which must include but are not limited to:

(i) identifying the software and management systems that must be approved;

(ii) establishing the information that state agencies are required to provide to the department; and

(iii) establishing guidelines for the department's approval decision;

(b) rules to guide the review and approval process for state agency acquisition of information technology resources, which must include but are not limited to processes and requirements for:

(i) agency submissions to gain approval for acquiring information technology resources;

(ii) approving specifications for information technology resources; and

(iii) approving contracts for information technology resources; and

(c) rules for granting exceptions from the requirements of this part, which must include but are not limited to:

(i) a process for applying for an exception; and

(ii) guidelines for determining the department's approval decision.

(2) The department may adopt rules to guide the development of state agency information technology plans. The rules may include:

(a) agency plan review procedures;

(b) agency plan content requirements;

(c) guidelines for the department's approval decision; and

(d) dispute resolution processes and procedures.

(3) Adequate rules for the use of any information technology resources must be adopted by the:

(a) supreme court for judicial branch agencies; and

(b) legislative council~~, with the concurrence of the legislative audit committee and the legislative finance committee,~~ *as a part of the legislative branch computer system plan, as provided for in 5-11-405,* for the consolidated legislative branch, as provided for in 5-2-504."

Approved March 27, 2007

CHAPTER NO. 73

[SB 83]

AN ACT CLARIFYING THE ROLE OF THE CHILD AND FAMILY SERVICES DIVISION WHEN A NONCUSTODIAL PARENT MAY BE CONSIDERED FOR CUSTODY OF A YOUTH IN NEED OF CARE; AND AMENDING SECTIONS 41-3-438, 41-3-442, AND 41-3-445, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-438, MCA, is amended to read:

"41-3-438. Disposition — hearing — order. (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

(c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.

(3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment, making any of the following dispositions to protect the welfare of the child:

(a) permit the child to remain with the child's custodial parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) order the department to evaluate the noncustodial parent as a possible caretaker;

(c) order the temporary placement of the child with the noncustodial parent, superseding any existing custodial order, and keep the proceeding open pending completion by the custodial parent of any treatment plan ordered pursuant to 41-3-443;

~~(b)~~*(d)* order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding;

~~(c)~~*(e)* grant an order of limited emancipation to a child who is 16 years of age or older, as provided in 41-1-501;

~~(d)~~*(f)* transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care of the child; or

(iii) a *nonparent* relative or other individual who *has been evaluated* ~~is~~ *and* recommended by the department or a licensed child-placing agency designated by the court and ~~who~~ *who* is found by the court to be qualified to receive and care for the child;

~~(e)~~*(g)* order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

~~(f)~~*(h)* order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for the proposed care and treatment. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-446.

(4) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member; and

(iii) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court may award custody to the extended family member who can best meet the child's needs.

(c) If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member, the department shall investigate and determine if awarding custody to the family member is in the best interests of

the child. The department shall provide the reasons for any denial to the court. If the court accepts the department's custody recommendation, the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality laws allow. The court shall include the reasons for denial in the court order if the family member who is denied temporary legal custody requests it to be included.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or subsection (5) of this section, a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 2. Section 41-3-442, MCA, is amended to read:

"41-3-442. Temporary legal custody. (1) If a child is found to be a youth in need of care under 41-3-437, the court may grant temporary legal custody under 41-3-438 if the court determines by a preponderance of the evidence that:

(a) dismissing the petition would create a substantial risk of harm to the child or would be a detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-423, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(2) An order for temporary legal custody may be in effect for no longer than 6 months.

(3) The granting of temporary legal custody to the department allows the department to place a child in care provided by a custodial or noncustodial parent, kinship foster home, youth foster home, youth group home, youth shelter care facility, or institution.

(4) Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody, not to exceed 6 months, upon a showing that:

(i) additional time is necessary for the parent or guardian to successfully complete a treatment plan; or

(ii) continuation of temporary legal custody is necessary because of the child's individual circumstances;

(b) continued temporary placement of the child with the noncustodial parent, superseding any existing custodial order;

~~(b)~~*(c)* termination of the parent-child legal relationship and ~~either~~:

(i) permanent legal custody with the right of adoption; ~~or~~

(ii) permanent placement of the child with the noncustodial parent, superseding any existing custodial order; or

~~(ii)~~*(iii)* appointment of a guardian pursuant to 41-3-607;

~~(c)~~*(d)* long-term custody when the child is in a planned permanent living arrangement pursuant to 41-3-445;

~~(d)~~*(e)* appointment of a guardian pursuant to 41-3-444; or

~~(e)~~*(f)* dismissal.

(5) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (2).

(6) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home and shall specifically find that an extension is in the child's best interests.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.

(8) In implementing the policy of this section, the child's health and safety are of paramount concern.

(9) A petition requesting temporary legal custody must be served as provided in 41-3-422."

Section 3. Section 41-3-445, MCA, is amended to read:

"41-3-445. Permanency hearing. (1) (a) (i) Subject to subsection (1)(b), a permanency hearing must be held by the court or, subject to the approval of the court and absent an objection by a party to the proceeding, by the foster care review committee, as provided in 41-3-115, or the citizen review board, as provided in 41-3-1010:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); or

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed in either an adoptive or a guardianship placement, the court or the court-approved entity holding the permanency hearing shall conduct a hearing and the court shall issue a finding as to whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency hearing is not required if the proceeding has been dismissed, the child was not removed from the home, the child has been returned to the child's parent or guardian, or the child has been legally adopted or appointed a legal guardian.

(c) The permanency hearing may be combined with a hearing that is required in other sections of this part or with a review held pursuant to 41-3-115 or 41-3-1010 if held within the applicable time limits. If a permanency hearing is combined with another hearing or a review, the requirements of the court related to the disposition of the other hearing or review must be met in addition to the requirements of this section.

(d) The court-approved entity conducting the permanency hearing may elect to hold joint or separate reviews for groups of siblings, but the court shall issue specific findings for each child.

(2) At least 3 working days prior to the permanency hearing, the department shall submit a report regarding the child to the entity that will be conducting the hearing for review. The report must address the department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.

(3) At least 3 working days prior to the permanency hearing, the guardian ad litem or an attorney or advocate for a parent or guardian may submit an informational report to the entity that will be conducting the hearing for review.

(4) (a) The court's order must be issued within 20 days after the permanency hearing if the hearing was conducted by the court. If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member or that a prior grant of temporary custody with that family member be made permanent, the department shall investigate and determine if awarding custody to that family member is in the best interests of the child. The department shall provide the reasons for any denial to the court. If the court accepts the department's custody recommendation, the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality laws allow. The court shall include the reasons for denial in the court order if the family member who is denied custody requests it to be included.

(b) If an entity other than the court conducts the hearing, the entity shall keep minutes of the hearing and the minutes and written recommendations must be provided to the court within 20 days of the hearing.

(c) If an entity other than the court conducts the hearing and the court concurs with the recommendations, the court may adopt the recommendations as findings with no additional hearing required. In this case, the court shall issue written findings within 10 days of receipt of the written recommendations.

(5) The court shall approve a specific permanency plan for the child and make written findings on:

(a) whether the permanency plan is in the best interests of the child;

(b) whether the department has made reasonable efforts to finalize the plan; and

(c) other necessary steps that the department is required to take to effectuate the terms of the plan.

(6) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the options provided in subsection (7) and that does not require an expenditure of money by

the department unless the court finds after notice and a hearing that the expenditures are reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(7) Permanency options include:

(a) reunification of the child with the child's parent or guardian;

(b) permanent placement of the child with the noncustodial parent, superseding any existing custodial order;

~~(b)~~*(c)* adoption;

~~(c)~~*(d)* appointment of a guardian pursuant to 41-3-444; or

~~(d)~~*(e)* long-term custody if the child is in a planned permanent living arrangement and if it is established by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;

(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or

(v) the child meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the best interests of the child; and

(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(8) The court may terminate a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

Approved March 27, 2007

CHAPTER NO. 74

[SB 84]

AN ACT TRANSFERRING ADMINISTRATION OF CERTAIN FOREST RESERVE AND OTHER FEDERAL FUNDS FROM THE STATE AUDITOR TO THE DEPARTMENT OF ADMINISTRATION FOR ALLOCATION TO ENTITLED COUNTIES; AMENDING SECTIONS 17-3-211 AND 17-3-212, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-3-211, MCA, is amended to read:

"17-3-211. Forest reserve money and other federal funds. (1) The state treasurer, for the purpose of carrying out the provisions of 16 U.S.C. 500, Public Law 106-393, and all acts subsequent to them, shall divide and distribute all forest reserve and Public Law 106-393 funds received by the state, plus interest earned, to and among the several counties entitled to the funds and pay the amounts to the several county treasurers of the counties within 30 days after receiving full payment, as directed by the ~~state auditor~~ *department of administration*.

(2) The forest reserve money and the Public Law 106-393 money must be invested and all investment earnings credited to the forest reserve account or the Public Law 106-393 account, as appropriate."

Section 2. Section 17-3-212, MCA, is amended to read:

"17-3-212. Apportionment of forest reserve funds and other federal funds among counties. (1) The forest reserve funds, all Public Law 106-393 funds, and earned interest are statutorily appropriated, as provided in 17-7-502, from the federal special revenue fund to the ~~state auditor~~ *department of administration*. The ~~state auditor~~ *department of administration* shall apportion all forest reserve funds, all Public Law 106-393 funds, and earned interest for allocation among the counties in which the forest reserve is situated based upon federal law and this section.

(2) The state treasurer shall pay the apportioned amounts plus interest, as provided in 17-3-211, to the respective counties."

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved March 27, 2007

CHAPTER NO. 75

[SB 85]

AN ACT REVISING THE CRIME OF ENDANGERING THE WELFARE OF CHILDREN BY INCLUDING METHAMPHETAMINE-RELATED CHILD ENDANGERMENT; PROVIDING A PENALTY FOR METHAMPHETAMINE-RELATED CHILD ENDANGERMENT; AND AMENDING SECTION 45-5-622, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-622, MCA, is amended to read:

"45-5-622. Endangering welfare of children. (1) A parent, guardian, or other person supervising the welfare of a child less than 18 years old commits

the offense of endangering the welfare of children if the parent, guardian, or other person knowingly endangers the child's welfare by violating a duty of care, protection, or support.

(2) Except as provided in 16-6-305, a parent or guardian or any person who is 18 years of age or older, whether or not the parent, guardian, or other person is supervising the welfare of the child, commits the offense of endangering the welfare of children if the parent, guardian, or other person knowingly contributes to the delinquency of a child less than:

(a) 18 years old by:

(i) supplying or encouraging the use of an intoxicating substance by the child; or

(ii) assisting, promoting, or encouraging the child to enter a place of prostitution; or

(b) 16 years old by assisting, promoting, or encouraging the child to:

(i) abandon the child's place of residence without the consent of the child's parents or guardian; or

(ii) engage in sexual conduct.

(3) A person, whether or not the person is supervising the welfare of a child less than 18 years of age, commits the offense of endangering the welfare of children if the person, in the residence of a child, in a building, structure, conveyance, or outdoor location where a child might reasonably be expected to be present, in a room offered to the public for overnight accommodation, or in any multiple-unit residential building, knowingly:

(a) produces or manufactures methamphetamine or attempts to produce or manufacture methamphetamine;

(b) possesses any material, compound, mixture, or preparation that contains any combination of the items listed in 45-9-107 with intent to manufacture methamphetamine; or

(c) causes or permits a child to inhale, be exposed to, have contact with, or ingest methamphetamine or be exposed to or have contact with methamphetamine paraphernalia.

~~(3)~~*(4)* A parent, guardian, or other person supervising the welfare of a child less than 16 years of age may verbally or in writing request a person who is 18 years of age or older and who has no legal right of supervision or control over the child to stop contacting the child if the ~~requestor~~ *requester* believes that the contact is not in the child's best interests. If the person continues to contact the child, the parent, guardian, or other person supervising the welfare of the child may petition or the county attorney may upon the person's request petition for an order of protection under Title 40, chapter 15. To the extent that they are consistent with this subsection, the provisions of Title 40, chapter 15, apply. A person who purposely or knowingly violates an order of protection commits the offense of endangering the welfare of children and upon conviction shall be sentenced as provided in subsection ~~(4)~~ *(5)(a)*.

~~(4)~~*(5) (a)* ~~A~~ *Except as provided in subsection (5)(b), a* person convicted of endangering the welfare of children shall be fined an amount not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of endangering the welfare of children shall

be fined an amount not to exceed $1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(b) A person convicted under subsection (3) is guilty of a felony and shall be imprisoned in the state prison for a term not to exceed 5 years and may be fined an amount not to exceed $10,000, or both. If a child suffers serious bodily injury, the offender shall be fined an amount not to exceed $25,000 or be imprisoned for a term not to exceed 10 years, or both. Prosecution or conviction of a violation of subsection (3) does not bar prosecution or conviction for any other crime committed by the offender as part of the same conduct.

~~(5)~~*(6)* On the issue of whether there has been a violation of the duty of care, protection, and support, the following, in addition to all other admissible evidence, is admissible: cruel treatment; abuse; infliction of unnecessary and cruel punishment; abandonment; neglect; lack of proper medical care, clothing, shelter, and food; and evidence of past bodily injury.

~~(6)~~*(7)* The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering the welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered."

Approved March 27, 2007

CHAPTER NO. 76

[SB 90]

AN ACT AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADJUST THE PER DIEM CHARGE FOR AN INSTITUTION MORE THAN ONCE A YEAR; AMENDING SECTION 53-1-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-404, MCA, is amended to read:

"53-1-404. Department to review and establish per diem charge. The per diem charge for the fiscal year must be reviewed on or before October 1 of each year by the department *and may be reviewed at additional times during the year as considered appropriate by the department*. If the review indicates that the ~~budgeted~~ costs of an institution have changed substantially since the last review, the per diem charge must be adjusted to compensate for those changes."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 27, 2007

CHAPTER NO. 77

[SB 126]

AN ACT REPEALING THE TERMINATION OF THE FUTURE FISHERIES IMPROVEMENT PROGRAM AND THE BULL TROUT AND CUTTHROAT TROUT ENHANCEMENT PROGRAM, WHICH WILL AUTHORIZE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CONTINUE TO FUND AND IMPLEMENT PROJECTS TO RESTORE AND ENHANCE FISHERIES HABITAT AND ENSURE THAT FUNDING FROM THE RESOURCE INDEMNITY TRUST FUND IS MAINTAINED; REPEALING

SECTION 5, CHAPTER 463, LAWS OF 1995, AND SECTIONS 6 AND 9, CHAPTER 529, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the future fisheries improvement program and the bull trout and cutthroat trout enhancement program have proved to be effective voluntary programs to enhance Montana fisheries, including the historical habitats of native fish; and

WHEREAS, private landowners and anglers have found both programs to be effective tools for increasing fish populations; and

WHEREAS, it is important to the future of Montana's native fish, fisheries, and anglers to make the future fisheries improvement program and the bull trout and cutthroat trout enhancement program permanent.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 5, Chapter 463, Laws of 1995, and Sections 6 and 9, Chapter 529, Laws of 1999, are repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 27, 2007

CHAPTER NO. 78

[SB 136]

AN ACT REVISING THE MEETING FREQUENCY OF THE BOARD OF VETERANS' AFFAIRS; AND AMENDING SECTION 2-15-1205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1205, MCA, is amended to read:

"2-15-1205. Board of veterans' affairs — composition — quorum — voting — compensation — allocation. (1) There is a board of veterans' affairs.

(2) (a) The board consists of 20 members. All members must be residents of this state. Eleven members are voting members, who must be confirmed by the senate, and nine members are nonvoting, ex officio members.

(b) The governor shall appoint 19 members in a manner that provides for staggered terms. The members are:

(i) five regional representatives, who must be voting members and who must have been honorably discharged from service in the military forces of the United States. Each must be appointed to represent a different geographic region of the state and must be a resident of that geographic region. The board shall establish the geographic regions by rule. A member who represents a geographic region and who changes residence to a different geographic region may no longer serve on the board unless appointed as a representative for the new location or as a representative meeting other criteria.

(ii) one honorably discharged veteran, who must be a voting member and serve as a representative of veterans at large;

(iii) one tribal member, who must be an honorably discharged veteran and who is a voting member;

(iv) three members who must have training, education, or experience related to veterans' issues, including but not limited to health and medical care, mental health care, chemical or drug dependency, homelessness, or job training and placement. These three members are voting members.

(v) a representative of the office of state coordinator of Indian affairs, who is a nonvoting member;

(vi) a representative from the department of public health and human services, who is a nonvoting member;

(vii) a representative of the United States department of veterans affairs, who is a nonvoting member;

(viii) a representative of the veterans' employment and training service office in the United States department of labor, who is a nonvoting member;

(ix) a representative of the state administration and veterans' affairs interim committee, who is a nonvoting member;

(x) three members, one representing each house and senate member of Montana's congressional delegation, who are nonvoting members; and

(xi) the director of the department of military affairs, who is a nonvoting member.

(c) The tribal leaders of the eight tribal councils in Montana may appoint one voting member who is affiliated with a Montana tribe and is an honorably discharged veteran. If a tribal member is not appointed by the Montana tribal leaders, the governor shall choose this member by lot from a pool of names submitted by the eight tribal councils in the state, with each tribal council submitting one name.

(3) A vacancy occurring on the board must be filled by the governor, subject to the conditions of subsection (2).

(4) A quorum is six voting members.

(5) A vote resulting in a tie is the same as a negative vote.

(6) Each voting member must receive meals, lodging, and travel expenses as provided for in 2-18-501 through 2-18-503. Compensation for the legislator who represents the state administration and veterans' affairs interim committee must be paid from the board of veterans' affairs budget.

(7) The board shall meet at least ~~four~~ *three* times a year. Special meetings may be called by the administrator or by a majority of voting members. Meetings may be held at different locations around the state to give local veterans an opportunity to attend. Advance notice of meetings must be provided to all veterans' groups and to any individual who requests notification.

(8) Each voting member may serve for a maximum of two terms. Each term is for 4 years.

(9) A member may be removed by the governor only for incompetence, malfeasance, or neglect of duty.

(10) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, including an administrator. The administrator shall serve as the secretary of the board and may represent the board in communications with the governor

and with other state agencies, notwithstanding the provisions of 2-15-121(3)(a)."

Approved March 27, 2007

CHAPTER NO. 79

[SB 187]

AN ACT RATIFYING THE UNITED STATES OF AMERICA, DEPARTMENT OF AGRICULTURE, AGRICULTURAL RESEARCH SERVICE, FORT KEOGH LIVESTOCK AND RANGE RESEARCH LABORATORY-MONTANA COMPACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. United States of America, Department of Agriculture, Agricultural Research Service, Fort Keogh Livestock and Range Research Laboratory-Montana compact ratified. The Compact entered into by the State of Montana and the United States of America, Department of Agriculture, Agricultural Research Service, Fort Keogh Livestock and Range Research Laboratory and filed with the Secretary of State of the State of Montana under the provisions of 85-2-702, MCA, on [date of filing] is ratified. The compact is as follows:

WATER RIGHTS COMPACT

STATE OF MONTANA

UNITED STATES OF AMERICA, DEPARTMENT OF AGRICULTURE, AGRICULTURAL RESEARCH SERVICE, FORT KEOGH LIVESTOCK AND RANGE RESEARCH LABORATORY

This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims existing on the Effective Date of This Compact to reserved water rights in the State of Montana for the United States Fort Keogh Livestock and Range Research Laboratory administered by the U.S. Department of Agriculture, Agricultural Research Service.

RECITALS

WHEREAS, the State of Montana, in 1979, pursuant to Title 85, chapter 2, of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, 85-2-703, MCA, provides that the State may negotiate compacts concerning the equitable division and apportionment of water between the State and its people and the federal government with claims to non-Indian reserved water rights within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the reservation of lands for the United States Fort Keogh Livestock and Range Research Laboratory in the State of Montana;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-17 (1968);

WHEREAS, the Secretary of the Agriculture, or a duly designated official of the United States Department of the Agriculture, has authority to execute this Compact on behalf of the United States Department of Agriculture pursuant to 7 U.S.C. 2201 note, Section 1(a);

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE I - DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

(1) "Abstracts" mean the copy of the documents entitled "Abstracts of United States Fort Keogh Livestock and Range Research Laboratory Water Rights" referenced in this Compact as Appendices 2, 3, 4, 6, and 7.

(2) "Acre-Feet per Year" means an annual quantity of water measured in acre-feet over a period of a year. "Acre-foot" or "Acre-feet" means the amount of water necessary to cover 1 acre to a depth of 1 foot and is equivalent to 43,560 cubic feet of water.

(3) "Animal Unit" means a measure of livestock numbers, where one Animal Unit equals 1 beef cow, 1 beef cow and calf, 3 pigs, 5 sheep, or 300 chickens. One dairy cow or 1 horse equals 1.5 Animal Units.

(4) "Consumptive" means a use of water which removes water from the source of supply such that the quality or quantity is reduced or the timing of return delayed, making it unusable or unavailable for use by others, and includes evaporative loss from impoundments or natural lakes.

(5) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(6) "Effective Date of This Compact" means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of Agriculture, or written approval by the United States Department of Justice, whichever is latest.

(7) "Groundwater" means water that is beneath the ground surface.

(8) "Parties" means the State of Montana and the United States.

(9) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

(10) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "State" means the Director of the Department or the Director's designee.

(11) "Stock Use" means the use of water for livestock, including but not limited to cattle, horses, pigs, sheep, and chickens. This term does not include use of water for domestic animals, such as dogs or cats, or wild animals.

(12) "Supplemental Right" means a separate water right for the same purpose, owned by the United States, and used on a common place of use.

(13) "United States" means the federal government and all officers, agencies, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of Agriculture or the Secretary's designee.

(14) "United States Fort Keogh Livestock and Range Research Laboratory" means those lands located in the State of Montana that were withdrawn from disposition and reserved by the Act of April 15, 1924, 43 Stat. 99. The lands that comprise the United States Fort Keogh Livestock and Range Research Laboratory are depicted on the map attached as Appendix 1 to this Compact.2

(15) "Water Spreading" means surface flood irrigation involving the diversion of occasional (flood or runoff) surface water from natural, usually nonperennial, watercourses by means of dams, dikes, or ditches or a combination of these. It differs from conventional irrigation because it is totally dependent on and regulated by the availability of water, not crop needs.

ARTICLE II

WATER RIGHT

The Parties agree that the following water rights are in settlement of all of the United States' federal reserved water rights for the United States Fort Keogh Livestock and Range Research Laboratory.

A. **Purpose of Reservation for the United States Fort Keogh Livestock and Range Research Laboratory.**

The United States Fort Keogh Livestock and Range Research Laboratory was created for the purpose of stock raising experiments and growing of forage crops in connection therewith. Act of April 15, 1924, 43 Stat. 99. The United States' federal reserved water rights for the United States Fort Keogh Livestock and Range Research Laboratory shall be used only for purposes relating to its experimental research regarding stock raising and crop growing on United States Fort Keogh Livestock and Range Research Laboratory lands.

B. **Quantification.**

Subject to the terms of Article III, the United States shall have the right to water for the following purposes from the sources identified on United States Fort Keogh Livestock and Range Research Laboratory lands.

1. **Irrigation Use.**

(a) **Current Irrigation Use From the Yellowstone River — Water Court Basin 42KJ.**

(i) The United States has a federal reserved water right to withdraw or divert water from the Yellowstone River in Water Court Basin 42KJ of 58 cubic feet per second for current irrigation use on 1,523 acres within United States Fort Keogh Livestock and Range Research Laboratory lands. The specific elements of this right are set forth in the Abstract attached as Appendix 2 to this Compact. Provided that, the reserved right described in this subsection is a Supplemental Right to any United States' water right under state law for irrigation use on United States Fort Keogh Livestock and Range Research Laboratory lands with a priority date senior to the reserved right described in this subsection.

(ii) The United States has a federal reserved water right for irrigation use by Water Spreading on Reservation Creek, a tributary of the Yellowstone River, in Water Court Basin 42KJ for current irrigation use on 450 acres within United States Fort Keogh Livestock and Range Research Laboratory lands. The specific elements of this right are set forth in the Abstract attached as Appendix 3 to this Compact.

(b) **Current Irrigation Use From the Tongue River Drainage — Water Court Basin 42C.**

The United States has a federal reserved water right for irrigation use by Water Spreading on an unnamed tributary of the Tongue River in Water Court Basin 42C for current irrigation use on 203 acres within United States Fort Keogh Livestock and Range Research Laboratory lands. The specific elements of this right are set forth in the Abstract attached as Appendix 4 to this Compact.

(c) **Future Irrigation Use From the Yellowstone River — Water Court Basin 42KJ.**

The United States has a federal reserved water right to withdraw or divert water from the Yellowstone River, a tributary, or Groundwater in Water Court Basin 42KJ for future irrigation use on up to a total of additional 620 acres on United States Fort Keogh Livestock and Range Research Laboratory lands with a combined flow rate of up to a total additional 23 cubic feet per second to fulfill the purposes of the United States Fort Keogh Livestock and Range Research Laboratory.

2. **Stock Use.**

(a) **Current Stock Use.**

The United States has federal reserved water rights for Consumptive use for stockwatering purposes at the locations identified in the table attached as Appendix 5 for the volume of water specified from each source, provided that the total current Stock Use on United States Fort Keogh Livestock and Range Research Laboratory lands shall not exceed the historic maximum of 3,000 Animal Units. The specific elements of these rights are set forth in the Abstracts attached as Appendix 6 to this Compact.

(b) **Future Stock Use.**

In addition to the current Stock Use described in Article II, section B.2.(a), the United States has federal reserved water rights for Consumptive use for stockwatering purposes at the same locations and the same volume of water as described in Article II, section B.2.(a) for future Stock Use on United States Fort Keogh Livestock and Range Research Laboratory lands not to exceed an additional 2,000 Animal Units.

3. **Administrative Uses.**

(a) **Current Administrative Uses.**

The United States has federal reserved rights for Consumptive use for current administrative uses on United States Fort Keogh Livestock and Range Research Laboratory lands totaling 26.70 Acre-Feet per Year. The specific elements of these rights are set forth in the Abstracts attached as Appendix 7 to this Compact.

(b) **Future Administrative Uses.**

The United States has federal reserved water rights from surface water or Groundwater for Consumptive use for future administrative uses up to a total additional volume of 18 Acre-Feet per Year to fulfill the purposes of the United States Fort Keogh Livestock and Range Research Laboratory. The types of use of the United States' federal reserved water rights for administrative uses may include but are not limited to domestic, administrative, storage, dust abatement, reclamation, and research.

4. **Emergency Fire Suppression.**

The use of water for emergency fire suppression benefits the public and is necessary for the purposes of the United States Fort Keogh Livestock and Range Research Laboratory. The United States may, as part of its reserved water right, divert or withdraw water for fire suppression on the United States Fort Keogh Livestock and Range Research Laboratory lands as needed and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be considered an exercise of the United States' water rights for Consumptive use.

5. **Period of Use.**

(a) The period of use of the United States' federal reserved water rights for Consumptive use set forth in Article II, sections B.1.(a)(i) shall be from March 15 to November 19 of each year.

(b) The period of use of the United States' federal reserved water rights for Consumptive use set forth in Article II, sections B.1.(a)(ii) and B.1.(b) shall be from January 1 to December 31 of each year.

(c) The period of use of the United States' federal reserved water rights for Consumptive use set forth in Article II, sections B.2. through B.4. shall be from January 1 to December 31 of each year.

6. **Priority Date.**

The priority date for all federal reserved water rights for the United States Fort Keogh Livestock and Range Research Laboratory is April 15, 1924.

ARTICLE III

IMPLEMENTATION

A. **Abstracts.**

Concurrent with this Compact, the Parties have prepared Abstracts, copies of which are attached as Appendices 2, 3, 4, 6, and 7 to this Compact, which specifically identify all of the United States' current use of water for the United States Fort Keogh Livestock and Range Research Laboratory described in this Compact and quantified in accordance with this Compact. The Parties prepared the Abstracts to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstracts are subject to the terms of this Compact.

B. **Enforcement and Administration of Water Right.**

1. The United States, the State, or a holder of a water right recognized under state law may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' reserved water rights described by this Compact and a holder of a water right recognized under state law. Resolution of the controversy shall be governed by the terms of this Compact where applicable or, to the extent not applicable, by appropriate state or federal law.

2. For purposes of the administration of federal reserved water rights provided for in Article II, the United States agrees that a water commissioner or other official appointed by a court of competent jurisdiction may enter the United States Fort Keogh Livestock and Range Research Laboratory lands to collect data, inspect structures for the diversion and measurement of water, and

distribute the federal reserved water rights described in Article II. The terms of entry or distribution may be limited, as appropriate, by an order of a court of competent jurisdiction. Nothing herein waives the right of the United States, with respect to a specific action or anticipated action by a water commissioner or other official under this subsection, to seek terms of entry or distribution consistent with purposes of the United States Fort Keogh Livestock and Range Research Laboratory including but not limited to terms of entry that respect the integrity of ongoing or proposed research, or to seek terms of entry or distribution consistent with federal law if in conflict with state law.

3. The Department may enter the United States Fort Keogh Livestock and Range Research Laboratory lands upon which a federal reserved water right is described in Article II for the purposes of data collection on United States Fort Keogh Livestock and Range Research Laboratory water diversions or water uses. The Department shall notify the United States by certified mail or in Person at least 24 hours prior to entry.

4. The federal reserved water right described in Article II, section B.1.(b) shall not be the basis of a call on a water right recognized under state law and shall not be enforceable by the United States in an administrative or judicial proceeding except as needed to protect against a call from a junior water right under state law.

C. **Use of Federal Reserved Water Rights.**

1. **Federal Reserved Water Rights.**

The reserved rights of the United States described in this agreement are federal water rights. Nonuse of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment or forfeiture of those rights. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the United States Fort Keogh Livestock and Range Research Laboratory.

2. **Development of Future Uses.**

The United States, without prior approval of the Department, may develop a future use after the Effective Date of This Compact as described in Article II, sections B.1.(c), B.2.(b), and B.3.(b), provided that:

(a) the purpose of use is for the use authorized under Article II, sections B.1.(c), B.2.(b), or B.3.(b);

(b) the total quantity of water shall not exceed the amount set forth in Article II, sections B.1.(c), B.2.(b), or B.3.(b);

(c) the source of supply shall be restricted as set forth in Article II, section B.1.(c);

(d) any Groundwater development pursuant to Article II, section B.1.(c) in Section 8, Township 7 North, Range 47 East, Custer County, shall not interfere with the exercise of water right number 42C 183101-00 or 42C 183102-00; and

(e) the use shall not adversely affect a senior water right recognized under state law.

D. **Change in Use of Federal Reserved Water Rights.**

1. **Irrigation Use.**

The United States may change its federal reserved water rights for irrigation use, provided that:

(a) the action shall be in fulfillment of the purposes of the United States Fort Keogh Livestock and Range Research Laboratory described in Article II, section A;

(b) the use of water is irrigation use;

(c) the total use shall not exceed the total acreage, and flow rate or volume described in Article II, sections B.1.(a) and B.1.(c) and the Abstracts attached as Appendices 2 and 3 to this Compact;

(d) the source of supply shall be restricted to the source of supply set forth in Article II, sections B.1.(a) and B.1.(c);

(e) the federal reserved water right for irrigation use described in Article II, section B.1.(b) shall not be subject to change; and

(f) the change shall not adversely affect a water right recognized under state law.

2. **Stock Use.**

The United States may change its federal reserved water rights for Stock Use, provided that:

(a) the action shall be in fulfillment of the purposes of the United States Fort Keogh Livestock and Range Research Laboratory described in Article II, section A;

(b) the total Stock Use shall not exceed the amount of water or number of Animal Units described in Article II, section B.2.; and

(c) the change shall not adversely affect a water right recognized under state law.

3. **Administrative Use.**

The United States may change its federal reserved water rights for administrative use, provided that:

(a) the action shall be in fulfillment of the purposes of the United States Fort Keogh Livestock and Range Research Laboratory described in Article II, section A;

(b) the total administrative use shall not exceed the amount of water described in Article II, section B.3.; and

(c) the change shall not adversely affect a water right recognized under state law.

4. **Emergency Fire Suppression.**

The United States' federal reserved water right to divert or withdraw water for emergency fire suppression as described in Article II, section B.4, shall not be changed to any other use.

E. **Reporting Requirements.**

The United States shall provide a report to the Department on an annual basis, or on a periodic basis agreed to by the Parties, containing specific information on:

1. the development of new uses as described in Article II, sections B.1.(c), B.2.(b), and B.3.(b);

2. changes in use as described in Article III, section D; and

3. the source of supply, the dates of use, and the estimated amount of water used for emergency fire suppression as described in Article II, section B.4.

ARTICLE IV

GENERAL PROVISIONS

A. **No Effect on Tribal Rights or Other Federal Reserved Water Rights.**

1. The relationship between the water rights of the United States described herein and any rights to water of an Indian Tribe, or of any federally derived water right of an individual, or of the United States on behalf of such Tribe or individual shall be determined by the rule of priority.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the United States Fort Keogh Livestock and Range Research Laboratory.3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any Indian Tribes and tribal members.

4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian Tribe regarding boundaries or property interests.

B. **General Disclaimers.**

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State or of the United States and any other state;

2. as a waiver by the United States on behalf of the Agricultural Research Service of its right under state law to raise objections in state court to individual water rights claimed pursuant to the State Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the State Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;

4. to establish a precedent for other agreements between the State and the United States or an Indian Tribe;

5. to determine the relative rights, inter sese, of Persons using water under the authority of state law or to limit the rights of the Parties or a Person to litigate an issue not resolved by this Compact;

6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of This Compact;

8. to limit the authority of the United States to manage its lands in accordance with the Constitution, statutes, and regulations of the United States;

9. to affect in any manner the entitlement to or quantification of other federal water rights;

10. to be binding on the United States with regard to the water rights of the United States for any area other than the United States Fort Keogh Livestock and Range Research Laboratory;

11. to affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;

12. to prevent the United States from seeking a permit to appropriate water under state law for use within or outside the United States Fort Keogh Livestock and Range Research Laboratory boundaries.

C. **Reservation of Rights.**

The Parties expressly reserve all rights not granted, described, or relinquished in this Compact.

D. **Severability.**

The provisions of this Compact are not severable.

E. **Multiple Originals.**

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

F. **Notice.**

Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as the Director may designate in writing.

2. United States: Upon the Secretary of Agriculture, the United States Fort Keogh Livestock and Range Research Laboratory Research Leader, and such other officials as the Secretary may designate in writing.

ARTICLE V

FINALITY OF COMPACT

A. **Binding Effect.**

1. The Effective Date of This Compact is the date of the ratification of this Compact by the Montana legislature, written approval by the United States Department of Agriculture, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on the Parties.

2. Following the effective date, this Compact shall not be modified without the consent of both Parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction.

3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all Persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-703, MCA, and 85-2-702(3), MCA, this Compact shall be voidable by action of and without prejudice to either party.

B. **Filing Compact with State Court.**

Subject to the following stipulations and within one hundred eighty (180) days of the Effective Date of This Compact, the Parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this

matter in an action commenced pursuant to 43 U.S.C. 666, for approval in accordance with state law and for the incorporation of the water rights described in this Compact into a decree or decrees entered therein. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

C. **Dismissal of Filed Claims.**

At the time the state courts approve the water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all water right claims specified in Appendix 8 of this Compact for the United States Fort Keogh Livestock and Range Research Laboratory. If this Compact is not approved or a water right described herein is not confirmed, these claims shall not be dismissed.

D. **Settlement of Claims.**

The Parties intend that the water rights described in this Compact are in full and final settlement of the federal reserved water right claims for the United States Fort Keogh Livestock and Range Research Laboratory land in Montana described in this Compact and administered by the Agricultural Research Service on the Effective Date of This Compact. On the Effective Date of This Compact, the United States hereby and in full settlement of any and all claims to federal reserved water rights by the United States, including all claims that the Agricultural Research Service filed or could have filed as part of the ongoing statewide adjudication process, relinquishes forever all claims to federal reserved water rights within the State of Montana for the United States Fort Keogh Livestock and Range Research Laboratory. The State agrees to recognize the water rights described and quantified herein and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the State. Nothing in this Compact precludes the Agricultural Research Service from filing for future water use permits under Montana state law.

E. **Defense of Compact.**

The Parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the _____ day of _____, 200__.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

Approved March 27, 2007

CHAPTER NO. 80

[SB 188]

AN ACT RATIFYING THE UNITED STATES OF AMERICA, DEPARTMENT OF AGRICULTURE, AGRICULTURAL RESEARCH SERVICE, SHEEP EXPERIMENT STATION-MONTANA COMPACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. United States of America, Department of Agriculture, Agricultural Research Service, Sheep Experiment Station-Montana Compact ratified. The Compact entered into by the State of Montana and the United States of America, Department of Agriculture, Agricultural Research Service, Sheep Experiment Station, and filed with the secretary of state of the State of Montana under the provisions of 85-2-702, MCA, on [date of filing] is ratified. The compact is as follows:

WATER RIGHTS COMPACT

STATE OF MONTANA

UNITED STATES OF AMERICA, DEPARTMENT OF AGRICULTURE, AGRICULTURAL RESEARCH SERVICE, SHEEP EXPERIMENT STATION

This Compact is entered into by the State of Montana ("State") and the United States of America ("United States") to settle for all time any and all claims existing on the Effective Date of this Compact to reserved water rights in the State for the United States Sheep Experiment Station ("U.S. Sheep Experiment Station") administered by the United States Department of Agriculture, Agricultural Research Service.

RECITALS

WHEREAS, the State, in 1979, pursuant to Title 85, chapter 2, of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State, including all federal reserved and appropriative water rights;

WHEREAS, 85-2-703, MCA, provides that the State may negotiate compacts concerning the equitable division and apportionment of water between the State and its people and the federal government with claims to non-Indian reserved water rights within the State;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the reservation of lands for the U.S. Sheep Experiment Station in the State;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516 and 517;

WHEREAS, the Secretary of Agriculture, or a duly designated official of the United States Department of Agriculture, has authority to execute this Compact on behalf of the United States Department of Agriculture pursuant to 7 U.S.C. 2201 note, Section 1(a).

NOW, THEREFORE, the State and the United States agree as follows:

ARTICLE I

DEFINITIONS

For purposes of this Compact only, the following definitions apply:

(1) "Abstracts" means the copy of the document entitled "Abstracts of U.S. Sheep Experiment Station Water Rights" referenced in this Compact as Appendix 3.

(2) "Consumptive" means a use of water that removes water from the source of supply such that the quality or quantity is reduced or the timing of return

delayed, making it unusable or unavailable for use by others, and includes evaporative loss from impoundments or natural lakes.

(3) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(4) "Effective Date of this Compact" means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of Agriculture, or written approval by the United States Department of Justice, whichever is latest.

(5) "Groundwater" means water that is beneath the ground surface.

(6) "Parties" means the State and the United States.

(7) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

(8) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "State" means the Director of the Department or the Director's designee.

(9) "United States" means the federal government and all officers, agencies, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of Agriculture or the Secretary's designee.

(10) "U.S. Sheep Experiment Station" means those lands within Montana that were withdrawn and reserved by Executive Order No. 3767, dated December 19, 1922, as depicted on the map attached as Appendix 1 to this Compact. For purposes of this Compact, it does not include portions of the U.S. Sheep Experiment Station located in the State of Idaho that the United States owns and the U.S. Department of Agriculture, Agricultural Research Service, administers.

ARTICLE II

WATER RIGHT

The Parties agree that the following water rights are in settlement of all of the United States' federal reserved water rights for the U.S. Sheep Experiment Station.

A. **Purpose of Reservation for the U.S. Sheep Experiment Station.**

The U.S. Sheep Experiment Station was created for agricultural experiment purposes, and the land in Montana was set aside for experimental sheep grazing by Executive Order No. 3767, dated December 19, 1922.

B. **Quantification.**

Subject to the terms of Article III, the United States has federal reserved water rights from sources located on the U.S. Sheep Experiment Station as described below.

1. **Current Stockwater Use.**

The United States has federal reserved rights on U.S. Sheep Experiment Station lands for Consumptive use for stockwatering purposes at the 53 locations identified in the table attached as Appendix 2 for the volume of water identified. Abstracts for each of these federal reserved water rights are attached

as Appendix 3 to this Compact. In the event of a discrepancy between the summary of U.S. Sheep Experiment Station water rights in Appendix 2 and the Abstracts contained in Appendix 3, the Abstracts in Appendix 3 control. The period of use of the United States' water rights for Consumptive use set forth in Article II, section B.1., shall be from May 1 to October 31 of each year.

2. **Future Uses.**

In addition to the current stockwater uses identified in Article II, section B.1., the United States has a federal reserved water right to develop uses of surface water or Groundwater consistent with Article II, section B.5., to fulfill the purposes of the U.S. Sheep Experiment Station up to a total additional volume of 15 acre feet per year for uses within the U.S. Sheep Experiment Station.

3. **Emergency Fire Suppression.**

The use of water for emergency fire suppression benefits the public and is necessary for the purposes of the U.S. Sheep Experiment Station. The United States has a federal reserved water right to divert or withdraw water for fire suppression on U.S. Sheep Experiment Station lands as needed and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be considered an exercise of the United States' water rights for current or future uses described in Article II, section B.1. and 2.

4. **Priority Date.**

The priority date for all federal reserved water rights for the U.S. Sheep Experiment Station is December 19, 1922.

5. **Purposes.**

The United States' reserved water rights for the U.S. Sheep Experiment Station shall be used for purposes as described in Article II, section A. The types of use may include but are not limited to: stockwater, domestic, irrigation, storage, dust abatement, reclamation, and research.

ARTICLE III

IMPLEMENTATION

A. **Abstracts.**

Abstracts for all the United States' federal reserved water rights for current stockwater uses are set forth in Appendix 3. The Parties prepared the Abstracts to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstracts are subject to the terms of this Compact.

B. **Enforcement and Administration of Water Right.**

1. The United States, the State, or a holder of a water right recognized under state law may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' reserved water rights described by this Compact and a holder of a water right recognized under state law. Resolution of the controversy shall be governed by the terms of this Compact where applicable or, to the extent not applicable, by appropriate state or federal law.

2. For purposes of the administration of federal reserved water rights provided for in Article II, the United States agrees that a water commissioner, or other official appointed by a court of competent jurisdiction, may enter the U.S.

Sheep Experiment Station to collect data, inspect structures for the diversion and measurement of water, and distribute the federal reserved water rights in Article II. The terms of entry or distribution may be limited, as appropriate, by an order of a court of competent jurisdiction. Nothing herein waives the right of the United States, with respect to a specific action or anticipated action by a water commissioner or other official under this subsection, to seek terms of entry or distribution consistent with purposes of the U.S. Sheep Experiment Station, including but not limited to terms of entry that respect the integrity of ongoing or proposed research, or to seek terms of entry or distribution consistent with federal law if in conflict with state law.

3. The Department may enter the U.S. Sheep Experiment Station lands upon which a federal reserved water right is described in Article II for the purposes of data collection on U.S. Sheep Experiment Station water diversions or water uses. The Department shall notify the United States by certified mail or in person at least 72 hours prior to entry.

C. **Use of Reserved Water Rights.**

The reserved rights of the United States described in this agreement are federal water rights. Nonuse of all or a part of the federal water rights described in this Compact shall not constitute abandonment or forfeiture of those rights. The federal water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the U.S. Sheep Experiment Station.

D. **Change in Use.**

1. The United States may make a change in the use of its reserved water rights described in Article II, sections B.1. and 2., provided that:

(a) the use must fulfill the purposes of the U.S. Sheep Experiment Station described in Article II, section A;

(b) the total use shall not exceed the amount described in this Compact; and

(c) the change shall not adversely affect a senior water right recognized under state law.

2. The United States' federal reserved water right to divert or withdraw water for emergency fire suppression as described in Article II, section B.3., shall not be changed to any other use.

E. **Reporting Requirements.**

The United States shall provide a report to the Department on an annual basis, or on a periodic basis agreed to by the Parties, containing specific information on:

1. the development of new uses as described in Article II, section B.2.;

2. changes in use as described in Article III, section D; and

3. the source of supply, the dates of use, and the estimated amount of water used for emergency fire suppression as described in Article II, section B.3.

ARTICLE IV

GENERAL PROVISIONS

A. **No Effect on Tribal Rights or Other Federal Reserved Water Rights.**

1. The relationship between the water rights of the United States described herein and any rights to water of an Indian Tribe, or of any federally derived

water right of an individual, or of the United States on behalf of such tribe or individual shall be determined by the rule of priority.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the U.S. Sheep Experiment Station.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any Indian Tribes and tribal members.

4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian Tribe regarding boundaries or property interests.

B. **General Disclaimers.**

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State or of the United States and any other state;

2. as a waiver by the United States on behalf of the Agricultural Research Service of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use;

4. to establish a precedent for other agreements between the State and the United States or an Indian tribe;

5. to determine the relative rights, inter sese, of Persons using water under the authority of state law or to limit the rights of the Parties or a Person to litigate an issue not resolved by this Compact;

6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of this Compact;

8. to limit the authority of the United States to manage its lands in accordance with the Constitution, statutes, and regulations of the United States;

9. to affect in any manner the entitlement to or quantification of other federal water rights;

10. to be binding on the United States with regard to the water rights of the United States for any area other than the U.S. Sheep Experiment Station;11. to affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;

12. to prevent the United States from seeking a permit to appropriate water under state law for use within or outside the U.S. Sheep Experiment Station boundaries.

C. **Reservation of Rights.**

The Parties expressly reserve all rights not granted, described, or relinquished in this Compact.

D. **Severability.**

The provisions of this Compact are not severable.

E. **Multiple Originals.**

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

F. **Notice.**

Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as the Director may designate in writing.

2. United States: Upon the Secretary of Agriculture, the U.S. Sheep Experiment Station Director, and such other officials as the Secretary may designate in writing.

ARTICLE V

FINALITY OF COMPACT

A. **Binding Effect.**

1. The Effective Date of this Compact is the date of the ratification of this Compact by the Montana legislature, written approval by the United States Department of Agriculture, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on the Parties.

2. Following the Effective Date of this Compact, this Compact shall not be modified without the consent of both Parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction.

3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all Persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-702(3) and 85-2-703, MCA, this Compact shall be voidable by action of and without prejudice to either party.

B. **Filing Compact with State Court.**

Subject to the following stipulations and within one hundred eighty (180) days of the Effective Date of this Compact, the Parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666 for approval in accordance with state law and for the incorporation of the water rights described in this Compact into a decree or decrees entered therein. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

C. **Dismissal of Filed Claims.**

At the time the state courts approve the water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all water right claims specified in Appendix 4 of this Compact for the U.S. Sheep Experiment Station. If this Compact is not approved or a water right described herein is not confirmed, these claims shall not be dismissed.

D. **Settlement of Claims.**

The Parties intend that the water rights described in this Compact are in full and final settlement of the federal reserved water right claims for the U.S. Sheep Experiment Station land in Montana described in this Compact and administered by the Agricultural Research Service on the Effective Date of this Compact. On the Effective Date of this Compact, the United States hereby and in full settlement of any and all claims to federal reserved water rights by the United States, including all claims that the Agricultural Research Service filed or could have filed as part of the ongoing statewide adjudication process, relinquishes forever all claims to federal reserved water rights within the State for the U.S. Sheep Experiment Station. The State agrees to recognize the water rights described and quantified herein and shall, except as expressly provided for herein, treat them in the same manner as a water right under Montana state law. Nothing in this Compact precludes the Agricultural Research Service from filing for future water use permits under Montana state law.

E. **Defense of Compact.**

The Parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF, the representatives of the State of Montana and the United States have signed this Compact on the _____ day of _____, 2007.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

Approved March 27, 2007

CHAPTER NO. 81

[HB 13]

AN ACT GENERALLY REVISING LAWS GOVERNING STATE EMPLOYEE CLASSIFICATION AND COMPENSATION; REQUIRING THAT EMPLOYEES BE PLACED ON THE NEW BROADBAND PAY PLAN; PROVIDING FOR IMPLEMENTATION OF THE BROADBAND PAY PLAN BY STATE AGENCIES; REPLACING STATUTORY SALARIES FOR LEGISLATORS AND CERTAIN PUBLIC OFFICIALS WITH SALARIES BASED UPON THE BROADBAND PAY PLAN; INCREASING THE EMPLOYER CONTRIBUTION FOR GROUP BENEFITS; APPROPRIATING FUNDS TO IMPLEMENT PAY AND BENEFIT REVISIONS, FOR PERSONAL SERVICES CONTINGENCIES, AND FOR A LABOR-MANAGEMENT TRAINING INITIATIVE; AMENDING SECTIONS 2-6-110, 2-15-131, 2-18-101, 2-18-201, 2-18-202, 2-18-203, 2-18-204, 2-18-206, 2-18-207, 2-18-301, 2-18-303, 2-18-304, 2-18-703, 2-18-1011, 2-18-1204, 5-2-301,

5-2-302, 13-37-106, 15-2-102, 39-51-301, AND 44-1-504, MCA; REPEALING SECTIONS 2-18-205 AND 2-18-312, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-6-110, MCA, is amended to read:

"2-6-110. Electronic information and nonprint records — public access — fees. (1) (a) Except as provided by law, each person is entitled to a copy of public information compiled, created, or otherwise in the custody of public agencies that is in electronic format or other nonprint media, including but not limited to videotapes, photographs, microfilm, film, or computer disk, subject to the same restrictions applicable to the information in printed form. All restrictions relating to confidentiality, privacy, business secrets, and copyright are applicable to the electronic or nonprint information.

(b) The provisions of subsection (1)(a) do not apply to collections of the Montana historical society established pursuant to 22-3-101.

(2) Except as provided by law and subject to subsection (3), an agency may charge a fee, not to exceed:

(a) the agency's actual cost of purchasing the electronic media used for transferring data, if the person requesting the information does not provide the media;

(b) expenses incurred by the agency as a result of mainframe and midtier processing charges;

(c) expenses incurred by the agency for providing online computer access to the person requesting access;

(d) other out-of-pocket expenses directly associated with the request for information, including the retrieval or production of electronic mail; and

(e) the hourly *market* rate for *an administrative assistant in pay band 3 of the broadband pay plan, as provided for in 2-18-301, in* the current fiscal year ~~for a state employee classified as grade 10, market salary, under 2-18-312~~ for each hour, or fraction of an hour, after one-half hour of copying service has been provided.

(3) (a) In addition to the allowable fees in subsection (2), the department of revenue may charge an additional fee as reimbursement for the cost of developing and maintaining the property valuation and assessment system database from which the information is requested. The fee must be charged to persons, federal agencies, state agencies, and other entities requesting the database or any part of the database from any department property valuation and assessment system. The fee may not be charged to the governor's office of budget and program planning, the state tax appeal board, or any legislative agency or committee.

(b) The department of revenue may not charge a fee for information provided from any department property valuation and assessment system database to a local taxing jurisdiction for use in taxation and other governmental functions or to an individual taxpayer concerning the taxpayer's property.

(c) All fees received by the department of revenue under subsection (2) and this subsection (3) must be deposited in a state special revenue fund as provided in 15-1-521.

(d) Fees charged by the secretary of state pursuant to this section must be set and deposited in accordance with 2-15-405.

(4) For the purposes of this section, the term "agency" has the meaning provided in 2-3-102 but includes legislative, judicial, and state military agencies.

(5) An agency may not charge more than the amount provided under subsection (2) for providing a copy of an existing nonprint record.

(6) An agency shall ensure that a copy of information provided to a requester is of a quality that reflects the condition of the original if requested by the requester.

(7) This section does not authorize the release of electronic security codes giving access to private information."

Section 2. Section 2-15-131, MCA, is amended to read:

"2-15-131. Rights of state personnel. Unless otherwise provided in this chapter, each state officer or employee affected by the reorganization of the executive branch of state government under this chapter is entitled to all rights ~~which he~~ possessed as a state officer or employee before the effective date of the applicable part of this chapter, including rights to tenure in office and of ~~rank or grade~~ *pay*, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy. This section is not intended to create any new rights for any state officer or employee but to continue only those rights in effect before the effective date of the applicable part of this chapter or an amendment to this chapter."

Section 3. Section 2-18-101, MCA, is amended to read:

"2-18-101. Definitions. As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

~~(2) "Anniversary date", except as modified in part 3 of this chapter, means the month and day on which an employee began the most recent period of uninterrupted state service.~~

~~(3)~~*(2)* "Base salary" means the amount of compensation paid to an employee, excluding:

(a) state contributions to group benefits provided in 2-18-703;

(b) overtime;

(c) fringe benefits as defined in 39-2-903; and

(d) the longevity allowance provided in 2-18-304.

(3) "Benchmark" means a representative position in a specific occupation that is used to illustrate the application of the job evaluation factor used to determine the pay band for an occupation.

(4) "Board" means the board of personnel appeals established in 2-15-1705.

(5) "Broadband classification plan" means a job evaluation method that measures the difficulty of the work and the knowledge or skills required to perform the work.

(6) "Broadband pay plan" means a pay plan using a pay hierarchy of broad pay bands based on the broadband classification plan.

~~(5) "Class" means one or more positions substantially similar with respect to the kind or nature of duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may be used to designate each position allocated to the class, similar qualifications may be required of persons appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.~~

~~(6) "Class series benchmark" means a representative position within a class series that is used to illustrate the application of the job evaluation factors that are used to classify positions in the classification plan. A benchmark description describes the duties and responsibilities assigned and the factors applied to the class series benchmark.~~

~~(7) "Class specification" means a written descriptive statement of the duties and responsibilities characteristic of a class of positions and includes the education, experience, knowledge, skills, abilities, and qualifications necessary to perform the work of the class.~~

~~(8)~~*(7)* "Compensation" means the annual or hourly wage or salary and includes the state contribution to group benefits under the provisions of 2-18-703.

~~(9)~~*(8)* "Competencies" means sets of measurable and observable knowledge, skills, ~~abilities,~~ and behaviors that contribute to success in a job.

~~(10)~~*(9)* "Department" means the department of administration created in 2-15-1001.

~~(11)~~*(10)* (a) Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 or 2-18-104 ~~from the statewide classification system~~.

(b) The term does not include a student intern.

~~(12)~~*(11)* "Entry salary" means the entry-level base salary for each ~~grade provided in 2-18-312~~ *occupational pay range*.

~~(13) "Grade" means the number assigned to a pay range within a pay schedule in part 3 of this chapter.~~

(12) "Job evaluation factor" means a measure of the complexities of the predominant duties of the job.

~~(14)~~*(13)* "Job sharing" means the sharing by two or more persons of a position.

~~(15) "Market ratio" means an employee's base salary divided by the market salary for the employee's pay grade.~~

~~(16)~~*(14)* "Market salary" means the midpoint in ~~a~~ *an occupational* pay ~~grade provided in 2-18-312~~ *range*, based on the average base salary that other employers pay to employees in comparable occupations as determined by the department's salary survey of the relevant labor market.

(15) "Occupation" means a generalized family of jobs having substantially similar duties and requiring similar qualifications, education, and experience.

(16) "Occupational pay range" means a range of pay, including an entry salary, market salary, and maximum salary, for a specific occupation within a

specific pay band. An occupation may have more than one occupational pay range. An occupational pay range must fit within the appropriate pay band.

(17) "Pay band" means a wide salary range covering a number of different occupations.

~~(17)~~*(18)* "Permanent employee" means an employee who is designated by an agency as permanent and who has attained or is eligible to attain permanent status.

~~(18)~~*(19)* "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period.

~~(19)~~*(20)* "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

~~(20)~~*(21)* "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

~~(21)~~*(22)* "Program" means a combination of planned efforts to provide a service.

~~(22)~~*(23)* "Seasonal employee" means a permanent employee who is designated by an agency as seasonal, who performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits accrued during the preceding season.

~~(23)~~*(24)* "Short-term worker" means a person who:

(a) is hired by an agency for an hourly wage established by the agency;

(b) may not work for the agency for more than 90 days in a continuous 12-month period;

(c) is not eligible for permanent status;

(d) may not be hired into another position by the agency without a competitive selection process; and

(e) is not eligible to earn the leave and holiday benefits provided in part 6 of this chapter or the group insurance benefits provided in part 7 of this chapter.

~~(24)~~*(25)* "Student intern" means a person who:

(a) has been accepted in or is currently enrolled in an accredited school, college, or university and is hired directly by an agency in a student intern position;

(b) is not eligible for permanent status;

(c) is not eligible to become a permanent employee without a competitive selection process;

(d) must be covered by the hiring agency's workers' compensation insurance;

(e) is not eligible to earn the leave and holiday benefits provided for in part 6 of this chapter or the group insurance benefits provided in part 7 of this chapter; and

(f) may be discharged without cause.

~~(25)~~*(26)* "Telework" means a flexible work arrangement where a designated employee may work from home within the state of Montana or an alternative

worksite within the state of Montana 1 or more days a week instead of physically traveling to a central workplace.

~~(26)~~*(27)* "Temporary employee" means an employee who:

(a) is designated as temporary by an agency for a definite period of time not to exceed 12 months;

(b) performs temporary duties or permanent duties on a temporary basis;

(c) is not eligible for permanent status;

(d) is terminated at the end of the employment period; and

(e) is not eligible to become a permanent employee without a competitive selection process."

Section 4. Section 2-18-201, MCA, is amended to read:

"2-18-201. ~~Development~~ *Implementation and maintenance* of ~~personnel~~ *broadband* classification plan. *(1)* The department shall ~~develop~~ *implement and maintain* a ~~personnel~~ *broadband* classification plan for all state positions ~~and classes of positions~~ in state service ~~following hearings involving affected employees and employee organizations,~~ except those exempt in 2-18-103 and 2-18-104.

(2) The legislative council shall in a like manner ~~develop~~ *implement and maintain* a *broadband* classification plan for employees of the legislative branch, other than those of the office of consumer counsel."

Section 5. Section 2-18-202, MCA, is amended to read:

"2-18-202. Guidelines for classification. (1) In providing for the *broadband* classification plan, the department shall group all positions in ~~the~~ state service into defined ~~classes~~ *occupations* based on similarity of ~~duties~~ *work* performed, responsibilities assumed, ~~and complexity~~ *difficulty* of work*, required knowledge, and required skills.* ~~so that:~~

~~(a) similar qualifications of education, experience, knowledge, skill, and ability can be required of applicants for each position in the class;~~

~~(b) the same title can be used to identify each position in the class;~~

~~(c)~~*(2)* ~~similar~~ *Similar* pay may be provided ~~under the same conditions with equity to each position within the class~~ *to individuals with the same occupation within an occupational pay range*.

~~(2) A class may consist of only one position.~~"

Section 6. Section 2-18-203, MCA, is amended to read:

"2-18-203. Review of positions — change in ~~classification~~ *pay band allocation*. (1) The department shall ~~continuously~~ review ~~all~~ *the job evaluation factor of* positions on a regular basis and *may* adjust ~~classifications~~ *the occupations for the positions* to reflect significant changes in duties and responsibilities. ~~In the event that~~ *If* adjustments are to be made to ~~class specifications, class series~~ benchmarks~~,~~ or criteria used for allocating positions to ~~classes~~ *pay bands* affecting employees within a bargaining unit, the department shall consult with the representative of the bargaining unit prior to implementation of the adjustments, except for *positions factored in the* blue-collar ~~and teachers' classification plans~~ *pay plan*, which ~~plans~~ must remain *a* mandatory negotiable ~~items~~ *item* under Title 39, chapter 31.

(2) Employees and employee organizations must be given the opportunity to appeal the allocation or reallocation of a position to a ~~class~~ *pay band*. The ~~grade~~

pay band assigned to ~~a class~~ *an occupation* and ~~factors assigned to class series~~ benchmarks are not appealable subjects under 2-18-1011 through 2-18-1013.

(3) The period of time for which retroactive pay for a ~~classification~~ *pay band allocation* appeal may be awarded under 2-18-1011 through 2-18-1013 or under parts 1 through 3 of this chapter may not extend beyond 30 days prior to the date on which the appeal was filed."

Section 7. Section 2-18-204, MCA, is amended to read:

"2-18-204. Determination of number and ~~classes~~ *occupations* of employees in each agency. (1) ~~Based on documentation to be submitted by each agency, the~~ *The* department shall determine the ~~classes of~~ *occupations for* positions of employees ~~of~~ *in* each agency ~~or program thereof before the beginning of each fiscal year~~. At any time, upon request of ~~the~~ *an* agency, the department may amend the ~~classes of positions of employees in any~~ *list of occupations for the requesting* agency ~~or program thereof~~.

(2) Based on documentation to be submitted by each agency, the budget director shall determine the number of positions and employees (full-time equivalents) of each agency or program ~~thereof~~ prior to preparation of the executive budget and before the beginning of each fiscal year. At any time, upon the request of the agency, the budget director may amend the number of positions or employees (full-time equivalents) in any agency or program ~~thereof~~.

(3) This section does not limit legislative authority to amend the determinations of the department or the budget director."

Section 8. Section 2-18-206, MCA, is amended to read:

"2-18-206. List of positions maintained. To facilitate state budgeting and as directed by the budget director, each agency shall maintain a list of current authorized positions, the number of positions in each ~~class~~ *occupation*, and the salaries or wages being paid, appropriated, or proposed for each ~~class~~ *position*."

Section 9. Section 2-18-207, MCA, is amended to read:

"2-18-207. Department authorization for increase of ~~salary or wage of class~~ *occupational pay range*. An agency may not increase the ~~salary or wage~~ *occupational pay range* of any ~~class of positions~~ *occupation* without authorization of the department."

Section 10. Section 2-18-301, MCA, is amended to read:

"2-18-301. Purpose and intent of part — rules. (1) The purpose of this part is to provide the market-based compensation necessary to attract and retain competent and qualified employees in order to perform the services that the state is required to provide to its citizens.

(2) It is the intent of the legislature that compensation plans for state employees, excluding those employees excepted under 2-18-103 or 2-18-104, be based on an analysis of the labor market as provided by the department in a *biennial* salary survey. The salary survey must be submitted to the office of budget and program planning as a part of the information required by 17-7-111.

(3) Except as provided in 2-18-110, pay adjustments ~~and pay schedules~~ provided for in 2-18-303 ~~and in 2-18-312~~ supersede any other plan or systems established through collective bargaining after the adjournment of the ~~59th~~ legislature.

(4) Pay ~~levels~~ provided for in ~~2-18-312~~ *2-18-303* may not be increased through collective bargaining after adjournment of the ~~59th~~ legislature.

(5) Total funds required to implement the pay ~~schedules~~ *increases* provided for in ~~2-18-312~~ *2-18-303* for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the ~~59th~~ legislature.

(6) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(7) The broadband pay plan must consist of nine pay bands. Each pay band must contain a salary range with a minimum salary and a maximum salary. The department shall adopt an entry salary, market salary, and maximum salary for each occupation within each pay band. These salary ranges are also known as occupational pay ranges.

(8) Based on the biennial salary survey, the department shall:

(a) identify current market rates for all occupations;

(b) establish pay band levels; and

(c) set occupational pay ranges for all occupations.

~~(7)~~*(9)* The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part.

~~(8)~~*(10)* Nothing in this part prohibits the board of regents from engaging in negotiations with the collective bargaining units representing the classified staff of the university system."

Section 11. Section 2-18-303, MCA, is amended to read:

"2-18-303. Procedures for ~~using~~ *administering broadband* pay ~~schedules~~ *plan*. ~~(1) The pay schedule provided in 2-18-312 must be implemented as follows:~~

~~(a) The pay schedule provided in 2-18-312 indicates the entry salary and market salary for each grade for positions classified under the provisions of part 2 of this chapter.~~

~~(b) Each employee newly hired by the state of Montana must be hired at the entry rate, except as provided in subsections (5) through (9).~~

~~(c)~~*(1) (a)* On the first day of the first complete pay period in fiscal year ~~2006~~ *2008*, each employee is entitled to the amount of the employee's base salary as it was on June 30, ~~2005~~ *2007*.

~~(d)~~*(b)* Effective on the first day of the first complete pay period that includes ~~an employee's anniversary date during the fiscal year ending June 30, 2006~~ *October 1, 2007*, the base salary of each employee must be increased by ~~3.5% or $1,005, based upon 2,080 annual hours in a pay status, whichever is greater~~ *3%*. Effective on the first day of the first complete pay period that includes ~~an~~ employee's anniversary date during the fiscal year ending June 30, 2007 *October 1, 2008*, the base salary of each employee must be increased by ~~4% or $1,188, based upon 2,080 annual hours in a pay status, whichever is greater~~ *3%*. ~~For employees hired on or before September 30, 2005, the anniversary date is October 1.~~

(2) (a) Effective October 1, 2007, and October 1, 2008, the appropriation that represents 6/10 of 1% of the salary for each full-time equivalent position must be allocated to each agency to distribute to its employees for reasons including but not limited to market progression, job performance, or employee competencies.

(b) To the extent that this distribution applies to employees within a collective bargaining unit, the distribution is a negotiable subject under Title 39, chapter 31. The amount of money allocated to agencies and available to distribute to members of each bargaining unit must be determined by multiplying the salaries of the total number of full-time equivalents in the bargaining unit by 6/10 of 1%.

(c) The allocation described in subsection (2)(b) may not be distributed to members of a collective bargaining unit until the employer's collective bargaining representative receives written notice that the employee's collective bargaining unit has ratified a pay addendum to the collective bargaining agreement specifying the distribution.

~~(c)~~*(3)* An employee's base salary may be no less than the *pay band* entry salary for the employee's assigned ~~grade~~ *occupation*.

~~(2) The pay schedule provided in 2-18-312 and the provisions of subsections (1)(a) through (1)(d) of this section do not apply to those employees who are members of collective bargaining units that have collectively bargained to participate in a separate or alternative classification and pay plan or who are covered under subsections (5) and (6) of this section.~~

~~(3)~~*(4)* (a) (i) ~~If the legislature authorizes a pay increase for state employees, a~~ *A* member of a bargaining unit may not receive ~~a~~ *the* pay increase *provided for in subsection (1)(b)* until the employer's collective bargaining representative receives written notice that the employee's *collective* bargaining unit has ratified a ~~completely integrated~~ collective bargaining agreement.

(ii) If ratification of a ~~completely integrated~~ collective bargaining agreement, as required by subsection ~~(3)(a)(i)~~ *(4)(a)(i)*, is not completed by the date on which a legislatively authorized pay increase is implemented, members of the bargaining unit must continue to receive the compensation that they were receiving until an agreement is ratified.

(b) Methods of administration ~~not inconsistent~~ *consistent* with the purpose of this part and necessary to properly implement the pay ~~schedules and~~ adjustments provided *for* in ~~2-18-312 and~~ this section may be provided for in collective bargaining agreements.

~~(4)~~*(5)* The current wage or salary of an employee may not be reduced by the implementation of the *broadband* pay ~~schedules~~ *plan* ~~provided for in 2-18-312~~.

~~(5) The department may authorize a separate pay schedule for classes of medical professionals if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified professionals.~~

~~(6) (a) The department may develop and implement an alternative pay and classification plan for certain classes, occupations, and work units. Pay for employees in the alternative pay and classification plan may be established and changed based on demonstrated competencies and accomplishments, on the labor market, and on other situations defined by the department.~~

~~(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.~~

~~(7) The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. To the extent that the program applies to employees within a collective bargaining unit, it is a negotiable subject under 39-31-305.~~

~~(8) The department shall review the competitiveness of the compensation provided to all occupations under this part. If the department finds that substantial problems exist with recruitment and retention because of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. To the extent that these adjustments apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305.~~

~~(9)~~*(6)* (a) Montana highway patrol officer base salaries and biennial salary increases must be established through ~~an alternative pay and classification~~ *the broadband pay* plan. Before January 1 of each odd-numbered year, the department shall, after seeking the advice of the Montana highway patrol, conduct a salary survey to be used in establishing the base salary and any biennial salary increase for existing and entry-level highway patrol officer positions. The county sheriff's offices in the following consolidated governments and counties are the labor market for purposes of the survey: Butte-Silver Bow, Cascade, Yellowstone, Missoula, Lewis and Clark, Gallatin, Flathead, and Dawson. The base salary and biennial salary increases for existing and entry-level highway patrol officer positions must then be determined by the department of justice, using the results of the salary survey and the department of justice pay plan guidelines. Base or biennial salary increases under this subsection are exclusive of and not in addition to any increases otherwise awarded to other state employees after July 1, 2006.

(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.

(c) The *department of justice shall submit the* salary survey ~~must be submitted~~ to the office of budget and program planning as a part of the information required by 17-7-111.

(d) ~~(i) Except as provided in subsection (9)(d)(ii), the~~ *The salary* survey and plan must be completed at least 6 months before the start of each regular legislative session.

~~(ii) The first survey must be completed by January 1, 2006, for the plan to be implemented for the first full pay period in fiscal year 2007.~~"

Section 12. Section 2-18-304, MCA, is amended to read:

"2-18-304. Longevity allowance. (1) (a) In addition to the compensation provided for in 2-18-303 ~~or 2-18-312~~, each employee who has completed 5 years of uninterrupted state service must receive 1.5% of the employee's base salary multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.

(b) In addition to the longevity allowance provided under subsection (1)(a), each employee who has completed *10 years of uninterrupted state service,* 15 years of uninterrupted state service*,* or ~~completed~~ 20 years of uninterrupted state service must receive an additional 0.5% of the employee's base salary for each of those additional 5 years of uninterrupted service.

(c) Service to the state is not interrupted by authorized leaves of absence.

(2) (a) For the purpose of determining years of service under this section, an employee must be credited with 1 year of service for each period of:

(i) 2,080 hours of service following the employee's date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which the employee is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or

(ii) 12 uninterrupted calendar months following the employee's date of employment in which the employee was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any month. An employee of a school at a state institution or the university system must be credited with 1 year of service if the employee is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, shall use the method provided in subsection (2)(a)(i) to calculate years of service under this section.

(3) For the purposes of calculating longevity, employment as a short-term worker does not apply toward years of service."

Section 13. Section 2-18-703, MCA, is amended to read:

"2-18-703. Contributions. (1) Each agency, as defined in 2-18-601, and the state compensation insurance fund shall contribute the amount specified in this section toward the group benefits cost.

(2) For employees defined in 2-18-701 and for members of the legislature, the employer contribution for group benefits is ~~$460 a month for the period from July 2005 through December 2005, $506 a month for the period from January 2006 through December 2006, and~~ $557 a month ~~for~~ *from* January 2007 *through December 2007, $590 a month from January 2008 through December 2008, and $626 for January 2009* and for each succeeding month. For employees of the Montana university system, the employer contribution for group benefits is ~~$506 a month for the period from July 2005 through June 2006 and~~ $557 a month ~~for~~ *from* July 2006 *through June 2007, $590 a month from July 2007 through June 2008, and $626 for July 2008* and for each succeeding month. If a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 a month. Subject to the public hearing requirement provided in 2-9-212(2)(b), the increase in a local government's property tax levy for premium contributions for group benefits beyond the amount of contributions in effect on the first day of the last fiscal year is not subject to the mill levy calculation limitation provided for in 15-10-420.

(4) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(5) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

(6) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents."

Section 14. Section 2-18-1011, MCA, is amended to read:

"2-18-1011. ~~Classification~~ *Pay band allocation* or compensation grievance — retaliation — hearing on complaint. (1) An employee or ~~his~~ *the employee's* representative affected by the operation of parts 1 through 3 of this chapter is entitled to file a complaint with the board of personnel appeals provided for in 2-15-1705 and to be heard under the provisions of a grievance procedure to be prescribed by the board.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the agency for which the employee works or by any other agency of state government against an employee because the employee has filed or attempted to file a complaint with the board ~~shall~~ *is* also ~~be~~ *the* basis for a complaint and ~~shall entitle~~ *entitles* the employee to file a complaint with the board and to be heard under the provisions of the grievance procedure prescribed by the board.

(3) An action ~~attempting~~ *that attempts* to revise the ~~class specifications of or series of class specifications~~ *determination of a pay band* ~~involving~~ *and that involves* an employee exercising a right conferred by 2-18-1011 through 2-18-1013 in a way ~~which~~ *that* would adversely affect the employee prior to final resolution or entry of a final order with respect ~~thereto~~ *to the action* is presumed to be ~~an~~ interference, restraint, coercion, or retaliation prohibited by subsection (2) of this section unless ~~such~~ *the* review was commenced or scheduled prior to filing of the appeal and was not prompted by the grievance appealed from. The presumption is rebuttable."

Section 15. Section 2-18-1204, MCA, is amended to read:

"2-18-1204. Salary and benefits protection — employee transfer. An employee whose position is eliminated as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature and who is subsequently transferred to a different position in a state agency is entitled to:

(1) the same hourly salary as previously received if the new position is ~~at the same grade level~~ *in the same occupational pay range* or higher as the one previously held;

(2) retain all accrued sick leave credits;

(3) retain, cash out, or use accrued vacation leave credits to extend the employee's effective layoff date; and

(4) relocation expenses as provided in agency policy."

Section 16. Section 5-2-301, MCA, is amended to read:

"5-2-301. Compensation and expenses for members while in session. (1) Legislators are entitled to a salary commensurate to that of the daily rate ~~of an entry grade 10 classified state employee~~ *for an employee earning $10.33 an hour* ~~in effect~~ when the regular session of the legislature in which they serve is convened under 5-2-103 for those days during which the legislature is in session. *The hourly rate must be adjusted by any statutorily required pay increase.* The president of the senate and the speaker of the house must receive an additional $5 a day in salary for those days during which the legislature is in session.

(2) Legislators may serve for no salary.

(3) Subject to subsection (4), legislators are entitled to a daily allowance, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments must stop when the legislature recesses for more than 3 days and resume when the legislature reconvenes.

(4) After November 15, and prior to December 15 of each even-numbered year, the department of administration shall conduct a survey of the allowance for daily expenses of legislators for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include the average daily expense allowance for Montana legislators in determining the average daily rate for legislators. The department shall include only states with specific daily allowances in the calculation of the average. If the average daily rate is greater than the daily rate for legislators in Montana, legislators are entitled to a new daily rate for those days during which the legislature is in session. The new daily rate is the daily rate for the prior legislative session, increased by the percentage rate increase as determined by the survey, a cost of living increase to reflect inflation that is calculated pursuant to 15-6-134, or 5%, whichever is less. The expense allowance is effective when the next regular session of the legislature in which the legislators serve is convened under 5-2-103.

(5) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel to the place of the holding of the session and to return to their place of residence at the conclusion of the session.

(6) In addition to the mileage allowance provided for in subsection (5), legislators, upon submittal of an appropriate claim for mileage reimbursement to the legislative services division, are entitled to:

(a) three additional round trips to their place of residence during each regular session; and

(b) additional round trips as authorized by the legislature during special session.

(7) Legislators are not entitled to any additional mileage allowance under subsection (5) for a special session if it is convened within 7 days of a regular session."

Section 17. Section 5-2-302, MCA, is amended to read:

"5-2-302. Compensation and expenses when legislature not in session. When the legislature is not in session, a member of the legislature, while engaged in legislative business with prior authorization of the appropriate funding authority, is entitled to:

(1) a mileage allowance as provided in 2-18-503;

(2) expenses as provided in 2-18-501 and 2-18-502; and

(3) a salary equal to one full day's pay at the rate ~~of a classified state employee,~~ described in 5-2-301(1) for each 24-hour period of time (from midnight to midnight), or portion ~~thereof~~ *of a 24-hour period*, spent away from home on authorized legislative business. However, if time spent for business other than authorized legislative business results in lengthening a legislator's stay away from home into an additional 24-hour period, ~~he~~ *the legislator* may not be compensated for the additional day."

Section 18. Section 13-37-106, MCA, is amended to read:

"13-37-106. Salary. (1) The commissioner of political practices ~~is entitled to receive an annual salary of $31,551 and beginning October 1, 1997,~~ is entitled to receive a salary ~~equal to the market salary of a grade 18 classified employee as provided in 2-18-312~~ *within the occupational pay range, as defined in 2-18-101, determined by the department of administration as provided in subsection (4).*

(2) The commissioner is also entitled to longevity, expense reimbursement, leave, insurance, and other benefits provided to classified state employees under Title 2, chapter 18.

(3) The salary of the commissioner may not be reduced during the term for which the commissioner is appointed.

(4) The department of administration shall determine the appropriate occupation and occupational pay range for the commissioner of political practices in the same manner that it determines the occupation and occupational pay range for employees in state government pursuant to Title 2, chapter 18.

(5) The governor shall set the salary of the commissioner of political practices within the occupational pay range established by the department of administration.

(6) The commissioner of political practices must receive pay adjustments consistent with those required by the legislature for state employees in 2-18-303 and 2-18-304."

Section 19. Section 15-2-102, MCA, is amended to read:

"15-2-102. Qualification and compensation. (1) To be appointed a member of the state tax appeal board, a person ~~must~~ *shall* possess knowledge of the subject of taxation and skill in matters ~~pertaining thereto~~ *relating to taxation*. ~~No person so appointed~~ *A member* may *not* hold any other state *office* or any office under the government of the United States or under the government of any other state. The person shall devote the entire time to the duties of the office and ~~shall~~ *may* not hold any other position of trust or profit or engage in any occupation or business interfering or inconsistent with the person's duties. The state tax appeal board is ~~transferred~~ *allocated* to the department of administration for administrative purposes only as is specified in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(2) State tax appeal board members ~~shall~~ *must* be paid a salary ~~equivalent to that of a grade 17 salary as provided in 2-18-312~~ *within the occupational pay range, defined in 2-18-101, determined by the department of administration as provided in subsection (3).* State tax appeal board members must receive pay and pay adjustments consistent with those required by the legislature for ~~classified~~ state employees in 2-18-303 and 2-18-304. The member designated as presiding officer as provided for in 15-2-103 must ~~have~~ *receive* an additional 5%

~~added to the~~ *in* salary. All members of the board ~~shall~~ *must* receive travel expenses as provided for in 2-18-501 through 2-18-503~~, as amended,~~ when away from the capital on official business.

(3) The department of administration shall determine the appropriate occupation and occupational pay range for the state tax appeal board members in the same manner that it determines the occupation and occupational pay range for employees in state government pursuant to Title 2, chapter 18.

(4) The governor shall set the salary of the state tax appeal board members within the occupational pay range established by the department of administration."

Section 20. Section 39-51-301, MCA, is amended to read:

"39-51-301. Administration — duties and powers of department. (1) It is the duty of the department to administer this chapter and it may adopt, amend, or rescind rules to employ persons, make expenditures, require reports, make investigations, and take action that it considers necessary or suitable in administering this chapter.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and must have an official seal, which is judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly inform the governor and the legislature and make recommendations with respect to the change.

(4) The department and the board may issue subpoenas and compel testimony and the production of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

(5) Employees transferring from the department of revenue to the department as a result of the termination of the delegation of duties associated with unemployment insurance contribution functions are entitled to all rights, including those under 2-15-131, possessed as a state officer or employee before transferring, including rights ~~to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights~~ under any law or administrative policy including the State Employee Protection Act. Employees transferring must be considered internal applicants by the department of revenue for recruitment purposes for 1 year from the date of the termination of the delegation of duties associated with unemployment insurance contribution functions.

(6) The department shall succeed the department of revenue in its rights to property relating to the termination of the delegation of duties associated with unemployment insurance contribution functions to the extent that is consistent with federal property transfer policy. The property includes real property, records, office equipment, forms, supplies, and contracts other than the program budget plan with the United States department of labor.

(7) (a) The termination of the delegation of duties associated with unemployment insurance contribution functions does not affect the validity of any pending judicial or administrative proceeding.

(b) All appeals that have not been heard prior to the termination of the delegation of duties associated with unemployment insurance contribution

functions must be made in accordance with the procedures identified in 39-51-1109.

(c) The department must be substituted for the department of revenue and succeed to all audits, determinations, and other actions following the date of the termination of the delegation of duties associated with unemployment insurance contribution functions.

(8) The rights, privileges, and duties of the holders of bonds and other obligations issued and of the parties to contracts, leases, indentures, and other transactions entered into before the termination of the delegation of duties associated with unemployment insurance contribution functions remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the delegation of duties. The department is substituted for the department of revenue and succeeds to the rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions. The provisions of this subsection do not apply to the program budget plan agreement between the department and the United States department of labor."

Section 21. Section 44-1-504, MCA, is amended to read:

"44-1-504. Special revenue account to partially fund highway patrol officers' salaries — statutory appropriation. (1) There is an account in the state special revenue fund provided for in 17-2-102.

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of justice to fund, pursuant to ~~2-18-303(10)~~ *2-18-303(6)*:

~~(a) an increase in the base salary for the number of highway patrol officer positions existing on June 30, 2006;~~

~~(b)~~*(a)* the base salary and associated operating costs for ~~new~~ highway patrol officer positions created after June 30, 2006; and

~~(c)~~*(b)* biennial salary increases ~~after June 30, 2006,~~ for highway patrol officers."

Section 22. Appropriations for broadband classification plan pay implementation. (1) The following money for the indicated fiscal years is appropriated to the listed agencies to implement the adjustments provided for in 2-18-303 and 2-18-703:

	Fiscal Year 2008		Fiscal Year 2009	
	General Fund	Other Funds	General Fund	Other Funds
Legislative Branch	$200,389	$44,742	$462,984	$92,250
Consumer Council		$12,502		$28,965
Judicial Branch	$601,880	$27,673	$1,437,967	$66,623
Executive Branch	$6,295,995	$9,732,127	$14,945,346	$22,195,176
University System	$6,721,057	$128,372	$15,194,084	$279,930
Total	$13,819,321	$9,945,416	$32,040,381	$22,662,994

(2) The following money is appropriated for the biennium to the office of budget and program planning to be distributed, on October 1 of the fiscal year, to the entities listed in subsection (1) based upon the ratio of FTE in each entity to the ratio of state FTE to be used for market progression and pay for performance or competency:

	Fiscal Year 2008		Fiscal Year 2009	
	General Fund	Other Funds	General Fund	Other Funds
Legislative Branch	$30,883	$6,315	$74,329	$13,973
Consumer Council		$2,030		$4,817
Judicial Branch	$97,429	$4,539	$231,499	$10,767
Executive Branch	$935,251	$1,393,501	$2,237,827	$3,297,003
University System	$944,684	$15,629	$2,210,575	$37,157
Total	$2,008,247	$1,422,014	$4,754,230	$3,363,717

(3) The following money is appropriated to move employee pay to a minimum of 80% of the market salary for each occupational wage range after pay adjustments are made in October 2007. The appropriation is allocated as follows:

	Fiscal Year 2008		Fiscal Year 2009	
	General Fund	Other Funds	General Fund	Other Funds
Judicial Branch	$148,750	$33,690	$198,333	$44,919
Executive Branch	$1,097,186	$730,365	$1,462,913	$973,820
Total	$1,245,936	$764,055	$1,661,246	$1,018,739

(4) The following money is appropriated for the biennium to the office of budget and program planning, from the designated state fund, to be distributed to agencies when personnel vacancies do not occur, retirement costs exceed agency resources, or other contingencies arise:

	Fiscal Year 2008			
	General Fund	State Special	Federal Special	Proprietary
Personal Services Contingency	$3,000,000	$2,400,000	$500,000	$100,000

(5) The following money is appropriated for the biennium to the department of administration for a labor-management training initiative:

	Fiscal Year 2008
	General Fund
Labor-Management Training Initiative	$75,000

Section 23. Repealer. Sections 2-18-205 and 2-18-312, MCA, are repealed.

Section 24. Effective dates. (1) [Sections 1 through 11, 13 through 23, and 25 and this section] are effective July 1, 2007.

(2) [Section 12] is effective on the first day of the first full pay period in fiscal year 2008.

Section 25. Applicability. (1) [Section 12] applies to all current state employees who have 10 or more years of uninterrupted service.

(2) [Sections 16 and 17] apply to legislators for the legislative session convening in January 2009.

Approved March 28, 2007

CHAPTER NO. 82

[SB 16]

AN ACT SUBMITTING A 6-MILL LEVY FOR SUPPORT OF THE MONTANA UNIVERSITY SYSTEM TO THE ELECTORATE; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Tax levy for university system. There is levied upon the taxable value of all real estate and personal property subject to taxation in the state of Montana 6 mills for the support, maintenance, and improvement of the Montana university system. The funds raised from the levy must be deposited in the state special revenue fund.

Section 2. Codification instruction. Section 1 is intended to be codified as an integral part of Title 15, chapter 10, part 1, and the provisions of Title 15, chapter 10, part 1, apply to section 1.

Section 3. Effective dates. (1) Except as provided in subsection (2), this act is effective upon approval by the electorate.

(2) If approved by the electorate, section 1 is effective January 1, 2009.

Section 4. Termination. Section 1 terminates January 1, 2019.

Section 5. Submission to electorate. This act shall be submitted to the qualified electors of Montana at the general election to be held in November 2008 by printing on the ballot the full title of this act and the following:

☐ FOR imposing a levy of 6 mills for the support of the Montana university system.

☐ AGAINST imposing a levy of 6 mills for the support of the Montana university system.

CHAPTER NO. 83

[HB 28]

AN ACT REVISING LAWS GOVERNING SUSPENSION AND REVOCATION OF A DRIVER'S LICENSE; SUBJECTING UNLICENSED DRIVERS TO SUSPENSION OR REVOCATION OF THE PRIVILEGE TO APPLY FOR A DRIVER'S LICENSE; REVISING THE OFFENSE OF DRIVING WHILE A LICENSE IS SUSPENDED OR REVOKED; AMENDING SECTIONS 61-1-101, 61-5-203, AND 61-5-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-101, MCA, is amended to read:

"61-1-101. Definitions. As used in this title, unless the context indicates otherwise, the following definitions apply:

(1) (a) "Authorized agent" means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department's motor vehicle titling, registration, or driver records, using an approved automated interface, for specific functions or purposes upon behalf of a third party.

(b) For purposes of this subsection (1), "person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.

(2) "Authorized agent agreement" means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent must operate in performing specific motor vehicle or driver-related record functions.

(3) "Bus" means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(4) (a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(b) The term does not include a truck canopy cover or topper.

(5) "Certificate of title" means the paper record issued by the department or by the appropriate agency of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons and the motor vehicle specifically described in the record and that provides notice of a perfected security interest in the motor vehicle.

(6) "Commercial driver's license" means:

(a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; and

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.

(7) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(i) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(iii) is designed to transport at least 16 passengers, including the driver;

(iv) is a school bus; or

(v) is of any size and is used in the transportation of hazardous materials as defined in 61-8-801.

(b) The following vehicles are not commercial motor vehicles:

(i) an authorized emergency service vehicle:

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) entitled to the exemptions granted under 61-8-107;

(ii) a vehicle:

(A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;

(B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and

(C) not used to transport goods for compensation or for hire; or

(iii) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in part-time national guard training, and national guard military technicians, or active duty United States coast guard personnel.

(c) For purposes of this subsection (7):

(i) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;

(ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle;

(iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; and

(iv) "school bus" has the meaning provided in 49 CFR 383.5.

(8) "Commission" means the state transportation commission.

(9) "County where a vehicle is domiciled" means the county in which the vehicle owner permanently resides or, if a vehicle is owned by a corporation or is leased or used for commercial purposes, the county in which the vehicle is permanently assigned or most frequently used, dispatched, or controlled.

(10) "Custom vehicle" means a motor vehicle other than a motorcycle that:

(a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or

(ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(11) (a) "Dealer" means a person, firm, association, or corporation that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker, as defined in 61-4-131, of new or used motor vehicles, trailers, semitrailers, or pole trailers that are not registered in the name of the person, firm, association, or corporation and that are required to be licensed under chapter 4 of this title.

(b) The term does not include the following:

(i) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(ii) employees of the persons included in subsection (11)(b)(i) when engaged in the specific performance of their duties as employees; or

(iii) public officers while performing or in the operation of their duties.

(12) "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.

(13) "Department" means the department of justice acting directly or through its duly authorized officers or agents.

(14) "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.

(15) "Driver" means a person who drives or is in actual physical control of a vehicle.

(16) "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

(a) any temporary license or instruction permit;

(b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;

(c) any nonresident's driving privilege;

(d) a motorcycle endorsement; or

(e) a commercial driver's license.

(17) "Electric personal assistive mobility device" means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour.

(18) "For hire" means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(19) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

(20) "Highway" or "public highway" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

(21) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(22) "Implement of husbandry" means a vehicle that is designed for agricultural purposes and exclusively used by the owner of the vehicle in the conduct of the owner's agricultural operations.

(23) "Kit vehicle" is a motor vehicle assembled from a manufactured kit either as:

(a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle; or

(b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain, commonly referred to as a donor vehicle.

(24) "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

(25) "Manufactured home" has the meaning provided in 15-1-101.

(26) "Manufacturer" includes any person, firm, corporation, or association engaged in the manufacture of motor vehicles, trailers, or semitrailers as a regular business.

(27) "Manufacturer's certificate of origin" means the original paper record produced and issued by the manufacturer of a vehicle or, if in a medium authorized by the department, an electronic record created and transmitted by the manufacturer of a vehicle to the manufacturer's agent or a licensed dealer. The record must establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of ownership of the vehicle to the person or persons named in the certificate.

(28) "Mobile home" or "housetrailer" has the meaning provided in 15-1-101.

(29) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

(30) (a) "Motor carrier" means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles upon a public highway in this state for the transportation of property for hire on a commercial basis.

(b) The term does not include motor carriers regulated under Title 69, chapter 12.

(31) (a) "Motorcycle" means a motor vehicle having not more than three wheels in contact with the ground and a saddle on which the operator sits or a platform on which the operator stands and a driving wheel in contact with the ground in addition to the wheels of the vehicle itself. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.

(b) The term does not include a tractor, a bicycle as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.

(32) (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.

(b) The term does not include a bicycle, as defined in 61-8-102, or a motorized nonstandard vehicle.

(33) "Motor home" means a motor vehicle:

(a) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

(b) containing permanently installed independent life support systems that meet the ANSIA/A119.2 standard; and

(c) providing at least four of the following types of facilities:

(i) cooking, refrigeration, or icebox;

(ii) self-contained toilet;

(iii) heating or air-conditioning, or both;

(iv) potable water supply, including a faucet and sink; or

(v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply; or both.

(34) (a) "Motorized nonstandard vehicle" means a vehicle, upon or by which a person may be transported, that:

(i) is propelled by its own power, using an internal combustion engine or an electric motor;

(ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(c) The term does not include an electric personal assistive mobility device or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(35) (a) "Motor vehicle" means a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state.

(b) The term does not include a bicycle as defined in 61-8-102 or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

(36) "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.

(37) "Nonresident" means a person who is not a resident of this state.

(38) (a) "Not used for general transportation purposes" means the operation of a motor vehicle, registered as a collector's item, a custom vehicle, or a street rod, to or from a car club activity or event or an exhibit, show, cruise night, or parade, or other occasional transportation activity.

(b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.

(39) (a) "Off-highway vehicle" means a self-propelled vehicle used for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) The term does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) vehicles otherwise issued a certificate of title and registered under the laws of the state, unless the vehicle is used for off-road recreation on public lands.

(40) "Operator" means a person who is in actual physical control of a motor vehicle.

(41) "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested the right of possession or control.

(42) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

(43) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

(44) "Pole trailer" means a vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

(45) "Police officer" means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(46) (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor capable of producing not more than 50 horsepower.

(b) The term does not include golf carts.

(47) "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

(48) (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated upon rails.

(b) The term does not include streetcars.

(49) "Recreational vehicle" includes self-propelled vehicles originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use.

(50) "Registration" or "register" means the act or process of creating an electronic record, maintained by the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records.

(51) "Registration decal" means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county

treasurer to the owner of a motor vehicle, trailer, semitrailer, or pole trailer as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department under 61-3-101.

(52) "Registration receipt" means a paper record that is produced and issued or, if authorized by the department, an electronic record that is transmitted by the department, its authorized agent, or a county treasurer to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the vehicle for the registration period indicated in the receipt.

(53) "Retail sale" means the sale of a new motor vehicle or used motor vehicle, a recreational vehicle, a trailer, a travel trailer, a motorcycle, a quadricycle, or special mobile equipment by a dealer to a person for purposes other than resale.

(54) "Revocation" means ~~that~~ the *termination by action of the department of a person's* driver's license*,* ~~and~~ privilege to drive a motor vehicle on the public highways*, and privilege to apply for and be issued a driver's license for a period of time designated by law, during which the license or privilege* ~~are terminated and~~ may not be renewed*,* ~~or~~ restored*, or exercised.* An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.

(55) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways, the term refers to any roadway separately but not to all roadways collectively.

(56) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

(57) "Semitrailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.

(58) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, that is designed primarily for travel on snow or ice, that may be steered by skis or runners, and that is not otherwise registered or licensed under the laws of the state of Montana.

(59) "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this subsection is partial and does not exclude other vehicles that are within the general terms of this subsection.

(60) (a) "Specially constructed vehicle" means a motor vehicle, including a motorcycle, that:

(i) was not originally constructed under a distinctive make, model, or type by a generally recognized manufacturer of motor vehicles;

(ii) has been structurally modified so that it does not have the same appearance as similar vehicles from a generally recognized manufacturer of motor vehicles;

(iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from other vehicles;

(iv) has been constructed or assembled by using major component parts from one or more manufactured vehicles and that cannot be identified as a specific make or model; or

(v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.

(b) The term does not include a motor vehicle that has been repaired or restored to its original design by replacing parts.

(61) (a) "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use.

(b) The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.

(62) (a) "Stop", when required, means complete cessation from movement.

(b) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrol officer, or traffic control sign or signal.

(63) "Street" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

(64) "Street rod" means a motor vehicle, other than a motorcycle, that:

(a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949, including a kit vehicle intended to resemble a vehicle manufactured before 1949; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(65) "Suspension" means ~~that~~ the *temporary withdrawal by action of the department of a person's* driver's license, ~~and~~ privilege to drive a motor vehicle on the public highways*, and privilege to apply for or be issued a driver's license* ~~are temporarily withdrawn, but only during the~~ *for a* period of ~~suspension~~ *time designated by law*.

(66) "Temporary registration permit" means a paper record:

(a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:

(i) required vehicle and owner information; and

(ii) the purpose for which the record was generated; and

(b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for 40 days from the date

the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs.

(67) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

(68) (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

(69) "Transaction summary receipt" means an electronic record produced and issued by the department, its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain a unique transaction record number and summarize and verify the electronic filing of the transaction described in the receipt on the electronic record of title maintained under 61-3-101.

(70) "Travel trailer" means a vehicle:

(a) that is 40 feet or less in length;

(b) that is of a size or weight that does not require special permits when towed by a motor vehicle;

(c) with gross trailer area of less than 320 square feet; and

(d) that is designed to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.

(71) "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

(72) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

(73) "Under the influence" has the meaning provided in 61-8-401.

(74) "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, given away, or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as "secondhand" within the ordinary meaning of that term.

(75) "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.

(76) (a) "Vehicle" means a device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.

(b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

(77) "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the motor vehicle or a component part of the motor vehicle.

(78) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(79) "Wholesaler" means a person, firm, partnership, association, or corporation that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, recreational vehicle, trailer, semitrailer, pole trailer, special mobile equipment, motorcycle, or quadricycle only to vehicle dealers and auto auctions licensed under chapter 4, part 1."

Section 2. Section 61-5-203, MCA, is amended to read:

"61-5-203. Suspending privileges of nonresidents *and unlicensed persons.* *(1)* The privilege of driving a motor vehicle on the highways of this state given to a nonresident *pursuant to 61-5-104(2) through (4)* is subject to suspension or revocation by the department in like manner and for like causes as a driver's license issued under this chapter ~~may be suspended or revoked~~.

(2) An unlicensed person's privilege to apply for and be issued a driver's license in this state is subject to suspension or revocation by the department in like manner and for like causes as a driver's license issued under this chapter."

Section 3. Section 61-5-212, MCA, is amended to read:

"61-5-212. Driving while license suspended or revoked — penalty — seizure of vehicle or rendering vehicle inoperable. (1) (a) A person commits the offense of driving a motor vehicle during a suspension or revocation period if the person drives:

(i) a motor vehicle on any public highway of this state at a time when the person's privilege to ~~do so~~ *drive or apply for and be issued a driver's license* is suspended or revoked in this state or any other state; or

(ii) a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled in this state or any other state or the person is disqualified from operating a commercial motor vehicle ~~under federal regulations~~ *or from obtaining a commercial driver's license*.

(b) A person convicted of the offense of driving a motor vehicle during a suspension or revocation period shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than $500, except that if the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-401 or 61-8-406 or a similar offense under the laws of any other state or the suspension was under 61-8-402 or 61-8-409 or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the person shall be punished by imprisonment for a term of not less than 2 days or more than 6 months or a fine not to exceed $2,000, or both, and in addition, the court may order the person to perform up to 40 hours of community service.

(2) ~~(a) The department upon receiving a record of the conviction of any person under this section upon a charge of driving a noncommercial vehicle~~

~~while the person's driver's license or privilege to drive was suspended or revoked shall extend the period of suspension or revocation for an additional 1-year period.~~

~~(b)~~*(a) Upon receiving a record of the conviction of any person under this section upon a charge of driving a noncommercial vehicle while the person's driver's license, privilege to drive, or privilege to apply for and be issued a driver's license was suspended or revoked, the department shall extend the period of suspension or revocation for an additional 1-year period.*

(b) Upon receiving a record of the conviction of any person under this section upon a charge of driving a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or canceled or the person was disqualified from operating a commercial motor vehicle under federal regulations, the department shall suspend the person's commercial driver's license in accordance with 61-8-802.

(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, or 61-8-410 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.

(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who is determined to be without fault.

(6) A court may not suspend or defer imposition of penalties provided by this section."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [Sections 1 and 2] apply retroactively, within the meaning of 1-2-109, to any suspension or revocation imposed against an unlicensed person prior to [the effective date of this act].

Approved March 30, 2007

CHAPTER NO. 84

[HB 31]

AN ACT REVISING NEW VEHICLE WARRANTY LAWS BY INCREASING THE WEIGHT LIMIT FOR TRUCKS EXEMPT FROM THE DEFINITION OF "MOTOR VEHICLE" FROM 10,000 POUNDS TO 15,000 POUNDS; INCREASING CONSUMER AND MANUFACTURER ARBITRATION FILING FEES; AMENDING SECTIONS 61-4-501 AND 61-4-517, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-4-501, MCA, is amended to read:

"61-4-501. Definitions. For purposes of this part, the following definitions apply:

(1) "Collateral charge" means all governmental charges, including but not limited to sales tax, property tax, license and registration fees, and fees in lieu of tax.

(2) "Consumer" means the purchaser *or lessee*, other than for purposes of resale *or lease*, of a *passenger* motor vehicle *used for personal, family, or household purposes* that has not been brought into nonconformity as the result of abuse, neglect, or unauthorized modifications or alterations ~~by the purchaser, any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle, or any other person entitled by the terms of the warranty to the benefits of its provisions~~. *The term includes any person to whom the passenger motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to the passenger motor vehicle and any other person entitled by the terms of the warranty to enforce the obligations of the warranty.*

(3) "Incidental damage" means incidental and consequential damage as defined in 30-2-715.

(4) "Manufacturer" has the meaning applied to that word in 61-4-201.

(5) (a) "Motor vehicle" means a vehicle, including the nonresidential portion of a motor home, propelled by its own power, designed primarily to transport persons or property upon the public highways, and sold or registered in this state.

(b) The term does not include:

(i) a truck with ~~10,000~~ *15,000* pounds or more gross vehicle weight rating; or

(ii) components, systems, fixtures, appliances, furnishings, accessories, and features that are designed, used, and maintained primarily for residential purposes.

(6) "Reasonable allowance for use" is an amount directly attributable to use of the motor vehicle by the consumer and any previous consumers prior to the first written notice of the nonconformity to the manufacturer or its agent and during any subsequent period when the motor vehicle is not out of service because of nonconformity. The reasonable allowance for use must be computed by multiplying the total contract price of the motor vehicle by a fraction having as its denominator 100,000 and having as its numerator the number of miles that the motor vehicle traveled prior to the manufacturer's acceptance of its return.

(7) "Warranty period" means the period ending 2 years after the date of the original delivery to the consumer of a new motor vehicle or during the first 18,000 miles of operation, whichever is earlier."

Section 2. Section 61-4-517, MCA, is amended to read:

"61-4-517. Implementation of arbitration. (1) A consumer may initiate a request for arbitration by filing a notice with the department. The consumer shall file, on a form prescribed by the department, any information considered relevant to the resolution of the dispute and shall return the form, along with a ~~$50~~ *$100* filing fee, within 5 days after receiving the form. The form must offer the consumer the choice of presenting any subsequent testimony orally or in writing, but not both.

(2) The department shall determine whether the complaint alleges the violation of any applicable warranty under this part. If the department determines that a complaint does not allege a warranty violation, it shall refund the filing fee.

(3) Upon acceptance of a complaint, the department shall notify the manufacturer of the filing of a request for arbitration and shall obtain from the manufacturer, on a form prescribed by the department, any information considered relevant to the resolution of the dispute. The manufacturer shall return the form within 15 days of receipt, with a filing fee of ~~$250~~ *$750*.

(4) Fees collected under this section must be deposited in a special revenue account for the use of the department in administering this part.

(5) The manufacturer's fee provided in subsection (3) is due only if the department's arbitration procedures are used."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2007

CHAPTER NO. 85

[HB 51]

AN ACT FORMALLY ELIMINATING STATE ADMINISTRATION OF THE MONTANA CONSERVATION CORPS BY REPEALING OBSOLETE STATUTES THAT PLACE THE MONTANA CONSERVATION CORPS WITHIN THE PARKS DIVISION OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS, SUBJECT TO THE OVERSIGHT OF THE OFFICE OF COMMUNITY SERVICE; AMENDING SECTION 90-14-103, MCA; REPEALING SECTIONS 23-1-301, 23-1-302, 23-1-303, 23-1-311, 23-1-312, 23-1-313, AND 23-1-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in 1989, the Montana Conservation Corps was statutorily placed under the Parks Division of the Department of Fish, Wildlife, and Parks, subject to the oversight of the Office of Community Service; and

WHEREAS, in about 1993, the Montana Conservation Corps was reorganized as a nonprofit organization and removed from direct state governmental oversight, yet the statutes related to the Montana Conservation Corps were not addressed to reflect the revised status of the Montana Conservation Corps; and

WHEREAS, it is appropriate to repeal the obsolete statutes to accurately reflect the current purpose and structure of the Montana Conservation Corps.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-14-103, MCA, is amended to read:

"90-14-103. Office of community service. (1) There is an office of community service, which is headed by a director and established in the office of the governor.

(2) The purpose of this office is to:

(a) renew the ethic of civic responsibility in the state;

(b) encourage the citizens of the state, regardless of age or income, to engage in full-time or part-time service to the state;

(c) call young people to serve in projects that will benefit the state and improve their life chances through the acquisition of literacy, job skills, and interpersonal skills;

(d) build on the existing organizational framework of state and local governmental entities to expand full-time and part-time service opportunities in a wide variety of programs for all citizens, particularly youth and older Montanans;

(e) involve participants in activities that would not otherwise be performed by employed workers; and

(f) establish programs to accomplish labor-intensive improvements to public or low-income properties or to provide services for the benefit of the state, its communities, and its people through service contracts that specify the work to be performed.

(3) The director must be appointed by the governor, after consultation with the commission. The director serves at the pleasure of the governor.

(4) The director shall, with the advice of the commission, assist the governor in the planning, coordination, operation, and evaluation of programs within state government or under grants, donations, bequests, or other resources received by and administered through state government for Montana community services.

(5) The director is responsible for the submission of applications for federal grants and for funding from any other sources for the creation or operation of volunteer projects. The director shall ensure accountability for all resources received.

(6) The director, together with the commission, shall integrate and develop state plans for all services provided under this part, including but not limited to the office of public instruction's service learning program, the Montana university system innovative projects, ~~the Montana conservation corps established in 23-1-301,~~ the department of military affairs' service involvement, and other community and volunteer service programs."

Section 2. Repealer. Sections 23-1-301, 23-1-302, 23-1-303, 23-1-311, 23-1-312, 23-1-313, and 23-1-314, MCA, are repealed.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2007

CHAPTER NO. 86

[HB 58]

AN ACT INCREASING THE MAXIMUM UNEMPLOYMENT WEEKLY BENEFIT AMOUNT AND INCREASING THE MINIMUM UNEMPLOYMENT WEEKLY BENEFIT IF THE UNEMPLOYMENT INSURANCE CONTRIBUTIONS SCHEDULE IS SCHEDULE I; PROVIDING THAT AN INDIVIDUAL IS NOT DISQUALIFIED FROM RECEIVING UNEMPLOYMENT BENEFITS IF THE INDIVIDUAL LEAVES EMPLOYMENT AS A RESULT OF THE MANDATORY MILITARY TRANSFER OF THE INDIVIDUAL'S SPOUSE; AND AMENDING SECTIONS 39-51-2201 AND 39-51-2302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-2201, MCA, is amended to read:

"39-51-2201. Weekly benefit amount — determination of average weekly wage. (1) An individual's weekly benefit amount must be an amount equal to 1% of the total base period wages or equal to 1.9% of the total wages paid in the 2 calendar quarters in which wages were the highest during the base period. The weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount. However, the amount may not be less than the minimum or more than the maximum weekly benefit amount.

(2) On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before that date for the preceding calendar year must be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on the contribution reports. The amount obtained is the average annual wage. The average annual wage divided by 52, rounded to the nearest cent, is the average weekly wage. ~~The maximum weekly benefit amount is 66.5% of the average weekly wage and must be applied to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year. The maximum weekly benefit amount, if not a multiple of $1, must be computed to the nearest lower full dollar amount.~~

~~(3) The minimum weekly benefit amount must be 19% of the average weekly wage. The minimum weekly benefit amount, if not a multiple of $1, must be computed to the nearest lower full dollar amount.~~

(3) The maximum and minimum weekly benefit amounts are computed in the following manner:

(a) (i) If the unemployment insurance contributions schedule provided for in 39-51-1218 is Schedule II or higher, the maximum weekly benefit amount is 66.5% of the average weekly wage and must be applied to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year.

(ii) The minimum weekly benefit amount must be 19% of the average weekly wage.

(iii) The minimum weekly benefit amount, if not a multiple of $1, must be computed to the nearest lower full dollar amount.

(b) (i) If the unemployment insurance contributions schedule provided for in 39-51-1218 is Schedule I, the maximum weekly benefit amount is 67.5% of the average weekly wage and must be applied to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year.

(ii) The minimum weekly benefit amount must be 20% of the average weekly wage.

(iii) The minimum weekly benefit amount, if not a multiple of $1, must be computed to the nearest lower full dollar amount."

Section 2. Section 39-51-2302, MCA, is amended to read:

"39-51-2302. Disqualification for leaving work without good cause. (1) An individual must be disqualified for benefits if the individual has left work without good cause attributable to the individual's employment.

(2) The individual may not be disqualified *for any of the following reasons* ~~if the individual leaves~~:

(a) *The individual leaves* employment because of personal illness or injury not associated with misconduct upon the advice of a licensed and practicing physician and, after recovering from the illness or injury when recovery is certified by a licensed and practicing physician, the individual returned to and offered service to the individual's employer and the individual's regular or comparable suitable work was not available, as determined by the department, provided the individual is otherwise eligible;.

(b) *The individual leaves* temporary work accepted during a period of unemployment caused by a lack of work with the individual's regular employer if upon leaving the temporary work the individual returned immediately to work for the individual's regular employer, provided that the individual is unemployed for nondisqualifying reasons;. ~~or~~

(c) *The individual leaves* employment because of being ordered to military service, as defined in 10-1-1003, for a period of less than 6 weeks and the individual upon checking with the employer finds that the individual's prior employment has terminated due to the military service or for other nondisqualifying reasons. Any benefits paid under this subsection (2)(c) are not chargeable to the employer's account.

(d) The individual leaves employment because of the mandatory military transfer of the individual's spouse. Any benefits paid under this subsection (2)(d) are not chargeable to the employer's account.

(3) To requalify for benefits, an individual shall perform services for which remuneration is received equal to or in excess of six times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless the individual has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of the act that caused the disqualification. The services must constitute employment as defined in 39-51-203 and 39-51-204."

Approved March 30, 2007

CHAPTER NO. 87

[HB 67]

AN ACT AMENDING PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT TO CLARIFY STATUTES REGARDING A POLL OF THE LEGISLATURE CONCERNING ADMINISTRATIVE RULES; AMENDING SECTIONS 2-4-306, 2-4-403, AND 2-4-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-306, MCA, is amended to read:

"2-4-306. Filing, format, and adoption and effective dates — dissemination of emergency rules. (1) Each agency shall file with the secretary of state a copy of each rule adopted by it or a reference to the rule as contained in the proposal notice. A rule is adopted on the date that the adoption notice is filed with the secretary of state and is effective on the date referred to in subsection (4), except that if the secretary of state requests corrections to the adoption notice, the rule is adopted on the date that the revised notice is filed with the secretary of state.

(2) Pursuant to 2-15-401, the secretary of state may prescribe rules to effectively administer this chapter, including rules regarding the format, style, and arrangement for notices and rules that are filed pursuant to this chapter, and may refuse to accept the filing of any notice or rule that is not in compliance with this chapter. The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, that must be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing copies.

(3) If the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be published with the rule *if the rule is adopted by the agency*.

(4) Each rule is effective after publication in the register, as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date is the effective date;

(b) subject to applicable constitutional or statutory provisions:

(i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and

(ii) an emergency rule is effective at a stated date following publication in the register or immediately upon filing with the secretary of state if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons for the finding must be filed with the rule. The agency shall, in addition to the required publication in the register, take appropriate and extraordinary measures to make emergency rules known to each person who may be affected by them.

(c) if, following written administrative rule review committee notification to an agency under 2-4-305(9), the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the *proposed* rule is adopted, the *proposed* rule or portion of the *proposed* rule objected to is not effective until the day after final adjournment of the regular session of the legislature that begins after the notice proposing the rule was published by the secretary of state~~,~~ unless, following the committee's objection under 2-4-406(1):

(i) the committee withdraws its objection under 2-4-406 before the *proposed* rule is adopted; or

(ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the committee members, as communicated in writing to the committee presiding officer and staff, make it comply with the committee's objection and concerns."

Section 2. Section 2-4-403, MCA, is amended to read:

"2-4-403. Legislative intent — poll. (1) If the legislature is not in session, the committee may poll all members of the legislature by mail to determine whether a proposed rule is consistent with the intent of the legislature.

(2) ~~Should~~ *If* 20 or more legislators object to ~~any~~ *a proposed* rule, the committee shall poll the members of the legislature.

(3) The poll ~~shall~~ *must* include an opportunity for the agency to present a written justification for the *proposed* rule to the members of the legislature."

Section 3. Section 2-4-404, MCA, is amended to read:

"2-4-404. Evidentiary value of legislative poll. ~~In the event that~~ *If* the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be admissible in any court proceeding involving the validity of the *proposed rule or the validity of the adopted* rule *if the rule was adopted by the agency*. ~~In the event that~~ *If* the poll determines that a majority of the members of both houses find that the proposed rule *or adopted rule* is contrary to the intent of the legislature, the *proposed rule or adopted* rule must be conclusively presumed to be contrary to the legislative intent in any court proceeding involving its validity."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to a rule proposed for adoption after [the effective date of this act] or a rule proposed for adoption before but adopted after [the effective date of this act].

Approved March 30, 2007

CHAPTER NO. 88

[HB 70]

AN ACT REVISING REQUIREMENTS RELATING TO THE PREPARATION OF MODEL ADMINISTRATIVE RULES AND THE PUBLICATION AND DISTRIBUTION OF ADMINISTRATIVE RULES; AND AMENDING SECTIONS 2-4-202, 2-4-302, 2-4-312, AND 2-4-313, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-202, MCA, is amended to read:

"2-4-202. Model rules. (1) The ~~attorney general~~ *secretary of state* shall prepare a model form for a rule describing the organization of agencies and model rules of practice for agencies to use as a guide *for the rulemaking process and* in fulfilling the requirements of 2-4-201. *The attorney general shall prepare model rules of practice for agencies to use as a guide for contested case hearings and declaratory rulings.* The *secretary of state and* attorney general shall add to, amend, or revise the model rules from time to time as ~~he considers~~ necessary for the proper guidance of agencies.

(2) The model rules and additions, amendments, or revisions ~~thereto shall~~ *must* be appropriate for the use of as many agencies as is practicable and ~~shall~~ *must* be filed with the secretary of state and provided to any agency upon request. The adoption by an agency of all or part of the model rules does not relieve the agency from following the rulemaking procedures required by this chapter."

Section 2. Section 2-4-302, MCA, is amended to read:

"2-4-302. Notice, hearing, and submission of views. (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasonable necessity for the intended action, and the time when, place where, and manner in which interested persons may present their views on the intended action. The reasonable necessity must be written in plain, easily understood language. If the agency proposes to adopt, increase, or decrease a

monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

(a) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and

(b) the number of persons affected.

(2) (a) The notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312, and ~~mailed~~ *sent* within 3 days of publication to the sponsor of the legislative bill that enacted the section that is cited as implemented in the notice if the notice is the initial proposal to implement the section, to interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the appropriate administrative rule review committee when the request has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection if it includes in the notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(b) The appropriate administrative rule review committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to the agencies that the committee oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The notice required by subsections (1) and (2)(a) must be published and ~~mailed~~ *sent* at least 30 days in advance of the agency's intended action. In addition to publishing and ~~mailing~~ *sending* the notice under subsection (2)(a), the agency shall post the notice on a state electronic access system or other electronic communications system available to the public.

(d) The agency shall also, at the time that its personnel begin to work on the substantive content and the wording of the initial rule proposal to implement one or more statutes, notify the sponsor of the legislative bill that enacted the section.

(3) If a statute provides for a method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained in this section. However, the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate administrative rule review committee, or by an association having not less than 25 members who will be directly affected. If the

proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of a hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the "Notice of Function of Administrative Rule Review Committee" appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.

(8) For purposes of notifying sponsors under subsections (2)(a) and (2)(d) who are no longer members of the legislature, a former legislator who wishes to receive notice may keep the former legislator's name, address, *e-mail address,* and telephone number on file with the secretary of state. An agency proposing rules shall consult the register when providing sponsor notice."

Section 3. Section 2-4-312, MCA, is amended to read:

"2-4-312. Publication and arrangement of register. (1) The secretary of state shall publish in the register all notices, rules, and interpretations filed with the secretary of state at least once a month but not more often than twice a month.

(2) The secretary of state shall send the register without charge to each person listed in 2-4-313(1) and to each member of the legislature requesting the register. The secretary of state shall send the register to any other person who pays a subscription fee, which must be established and deposited in accordance with 2-15-405. *The register must be sent in electronic format unless a hard copy is requested.*

(3) The register must contain three sections, a rules section, a notice section, and an interpretation section, as follows:

(a) The rules section of the register must contain all rules filed since the compilation and publication of the preceding issue of the register, together with the concise statement of reasons required under 2-4-305(1).

(b) The notice section of the register must contain all rulemaking notices filed with the secretary of state pursuant to 2-4-302 since the compilation and publication of the preceding register.

(c) The interpretation section of the register must contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication of the preceding register.

(4) Each issue of the register must contain the issue number and date of the register and a table of contents. Each page of the register must contain the issue number and date of the register of which it is a part. The secretary of state may include with the register information to help the user in relating the register to the ARM."

Section 4. Section 2-4-313, MCA, is amended to read:

"2-4-313. Distribution, costs, and maintenance. (1) The secretary of state shall distribute copies of the ARM and supplements or revisions to the ARM to the following *in an electronic format unless a hard copy is requested*:

(a) attorney general, one copy;

(b) clerk of United States district court for the district of Montana, one copy;

(c) clerk of United States court of appeals for the ninth circuit, one copy;

(d) county commissioners or governing body of each county of this state, for use of county officials and the public, at least one but not more than two copies, which may be maintained in a public library in the county seat or in the county offices as the county commissioners or governing body of the county may determine;

(e) state law library, one copy;

(f) state historical society, one copy;

(g) each unit of the Montana university system, one copy;

(h) law library of the university of Montana-Missoula, one copy;

(i) legislative services division, two copies;

(j) library of congress, one copy;

(k) state library, one copy.

(2) The secretary of state, each county in the state, and the librarians for the state law library and the university of Montana-Missoula law library shall maintain a complete, current set of the ARM, including supplements or revisions to the ARM. The designated persons shall also maintain the register issues published during the preceding 2 years. The secretary of state shall maintain a permanent set of the registers.

(3) The secretary of state shall make copies of and subscriptions to the ARM and supplements or revisions to the ARM and the register available to any person for a fee set in accordance with subsection (5). Fees are not refundable.

(4) The secretary of state may charge agencies a filing fee for all material to be published in the ARM or the register.

(5) The secretary of state shall set and deposit the fees authorized in this section in accordance with 2-15-405."

Approved March 30, 2007

CHAPTER NO. 89

[HB 75]

AN ACT STATUTORILY APPROPRIATING BENTONITE TAXES FOR DISTRIBUTION AS PROVIDED BY LAW; PROVIDING FOR A REMITTANCE AND DISTRIBUTION OF TAXES ON BENTONITE PRODUCTION OCCURRING BEFORE JANUARY 1, 2007; AMENDING SECTIONS 15-39-110 AND 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-39-110, MCA, is amended to read:

"15-39-110. Distribution of taxes. (1) (a) For each semiannual period, the department shall determine the amount of tax, late payment interest, and penalties collected under this part from bentonite mines that produced bentonite before January 1, 2005. The tax is distributed as provided in subsections (2) through ~~(12)~~ *(11)*.

(b) For each semiannual period, the department shall determine the amount of tax, late payment interest, and penalties collected under this part from bentonite mines that first began producing bentonite after December 31, 2004. The tax is distributed as provided in subsection ~~(13)~~ *(12)*.

(2) ~~For the production of bentonite occurring after December 31, 2004, and before January 1, 2006,~~ *The percentage of* the tax determined under subsection (1)(a) *and specified in subsections (3) through (11)* is allocated according to the following schedule:

(a) 2.33% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423;

(b) 18.14% to the state general fund to be appropriated for the purposes of the tax levies as provided in 20-9-331, 20-9-333, and 20-9-360;

(c) 3.35% to Carbon County to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under 20-9-331, 20-9-333, 20-9-360, and 20-25-423; and

(d) 76.18% to Carter County to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under 20-9-331, 20-9-333, 20-9-360, and 20-25-423.

~~(3) For the production of bentonite occurring after December 31, 2005, and before January 1, 2007, 90% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 10% must be distributed as provided in subsection (13).~~

~~(4)~~*(3)* For the production of bentonite occurring after December 31, 2006, and before January 1, 2008, 80% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 20% must be distributed as provided in subsection ~~(13)~~ *(12)*.

~~(5)~~*(4)* For the production of bentonite occurring after December 31, 2007, and before January 1, 2009, 70% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 30% must be distributed as provided in subsection ~~(13)~~ *(12)*.

~~(6)~~*(5)* For the production of bentonite occurring after December 31, 2008, and before January 1, 2010, 60% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 40% must be distributed as provided in subsection ~~(13)~~ *(12)*.

~~(7)~~*(6)* For the production of bentonite occurring after December 31, 2009, and before January 1, 2011, 50% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 50% must be distributed as provided in subsection ~~(13)~~ *(12)*.

~~(8)~~*(7)* For the production of bentonite occurring after December 31, 2010, and before January 1, 2012, 40% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 60% must be distributed as provided in subsection ~~(13)~~ *(12)*.

~~(9)~~*(8)* For the production of bentonite occurring after December 31, 2011, and before January 1, 2013, 30% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 70% must be distributed as provided in subsection ~~(13)~~ *(12)*.

~~(10)~~*(9)* For the production of bentonite occurring after December 31, 2012, and before January 1, 2014, 20% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 80% must be distributed as provided in subsection ~~(13)~~ *(12)*.

~~(11)~~*(10)* For the production of bentonite occurring after December 31, 2013, and before January 1, 2015, 10% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 90% must be distributed as provided in subsection ~~(13)~~ *(12)*.

~~(12)~~*(11)* For the production of bentonite occurring in tax years beginning after December 31, 2014, 100% of the tax determined under subsection (1)(a) must be distributed as provided in subsection ~~(13)~~ *(12)*.

~~(13)~~*(12)* For the production of bentonite, 100% of the tax determined under subsection (1)(b) and the distribution percentages determined under subsections (3) through ~~(12)~~ *(11)* are allocated according to the following schedule:

(a) 1.30% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423;

(b) 20.75% to the state general fund to be appropriated for the purposes of the tax levies as provided in 20-9-331, 20-9-333, and 20-9-360;

(c) 77.95% to the county in which production occurred to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under 15-10-107, 20-9-331, 20-9-333, 20-9-360, and 20-25-423.

~~(14)~~*(13)* The department shall remit the amounts to be distributed in this section to the county treasurer by the following dates:

(a) On or before October 1 of each year, the department shall remit the county's share of bentonite production tax payments received for the semiannual period ending June 30 of the current year to the county treasurer.

(b) On or before April 1 of each year, the department shall remit the county's share of bentonite production tax payments received to the county treasurer for the semiannual period ending December 31 of the previous year.

~~(15)~~*(14)* (a) The department shall also provide to each county the amount of gross yield of value from bentonite, including royalties, for the previous calendar year. Thirty-three and one-third percent of the gross yield of value must be treated as taxable value for county classification purposes under 7-1-2111 and for determining school district debt limits under 20-9-406.

(b) The percentage amount of the gross yield of value determined under subsection ~~(15)(a)~~ *(14)(a)* must be treated as assessed value under 15-8-111 for

the purposes of local government debt limits and other bonding provisions as provided by law.

(15) The bentonite tax proceeds are statutorily appropriated, as provided in 17-7-502, to the department for distribution as provided in this section."

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; *15-39-110;* 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 3. Transition remittance. The department of revenue is authorized to remit a county's share of taxes collected on the production of

bentonite occurring after June 30, 2006, and before January 1, 2007. The department shall remit the taxes for that period as if the statutory appropriation under 17-7-502 were in effect for that period. The distribution of taxes for that period must be made under 15-39-110, as that section read on December 31, 2006.

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [Section 3] applies retroactively, within the meaning of 1-2-109, to bentonite produced after June 30, 2006, and before January 1, 2007.

Approved March 30, 2007

CHAPTER NO. 90

[HB 81]

AN ACT GENERALLY REVISING TEACHERS' RETIREMENT SYSTEM LAWS; CLARIFYING THAT PARAPROFESSIONALS MUST BE MEMBERS OF THE TEACHERS' RETIREMENT SYSTEM; REQUIRING ELECTED COUNTY SUPERINTENDENTS TO FILE A MEMBERSHIP ELECTION FORM UNDER CERTAIN CIRCUMSTANCES; CLARIFYING THAT MEMBERS CANNOT CONCURRENTLY PARTICIPATE IN BOTH THE TEACHERS' RETIREMENT SYSTEM AND THE OPTIONAL RETIREMENT SYSTEM; REVISING THE REQUIREMENTS OF FAMILY LAW ORDERS TO PROVIDE FOR THE PAYMENT OF BENEFITS FOR THE LIFE OF THE ALTERNATE PAYEE; CLARIFYING THAT ONLY ACTIVE MEMBERS OR INACTIVE VESTED MEMBERS MAY PURCHASE SERVICE CREDIT; REQUIRING THAT ACCOUNTS REINSTATED FROM DORMANT STATUS INCLUDE INTEREST; PROVIDING FOR THE PAYMENT OF INTEREST ON CORRECTED ERRORS; CLARIFYING THE DATE OF TERMINATION FOR THE PURPOSE OF TERMINATION PAY; CLARIFYING THAT LUMP-SUM AMOUNTS DUE AN ESTATE MAY BE PAID TO THE PERSONAL REPRESENTATIVE OR EXECUTOR; REQUIRING EMPLOYERS TO USE THE SYSTEM'S ONLINE REPORTING SYSTEM FOR AUTHORIZING VOLUNTARY INSURANCE PREMIUM DEDUCTIONS; AMENDING SECTIONS 19-20-101, 19-20-104, 19-20-202, 19-20-302, 19-20-305, 19-20-414, 19-20-427, 19-20-501, 19-20-503, 19-20-602, 19-20-603, 19-20-605, 19-20-705, 19-20-716, 19-20-717, 19-20-731, 19-20-805, AND 19-20-1101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-20-101, MCA, is amended to read:

"19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings ~~fund~~ *account*, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) "Average final compensation" means the average of a member's earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under 19-20-716(1)(b).

(4) "Beneficiary" means one or more persons formally designated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.

(5) "Creditable service" is that service defined by 19-20-401.

(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation.

(b) Earned compensation does not mean:

(i) direct employer premium payments on behalf of members for health or dependent care expense accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for:

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

(E) automobile, travel, lodging, or entertaining expenses; or

(F) any similar payment for any form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or

(iv) any noncash benefit provided by an employer to or on behalf of an employee.

(c) Unless included pursuant to 19-20-716, earned compensation does not include termination pay.

(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(e) Earned compensation does not include:

(i) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);

(ii) payment for sick, annual, or other types of leave that is allowed to a member and that is accrued in excess of that normally allowed; or

(iii) incentive or bonus payments paid to a member that are not part of a series of annual payments.

(7) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state that employs a person who is designated a member of the retirement system.

(8) "Full-time service" means service that is full-time and that extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, full-time service means service that is full-time and that totals at least 9 months in any year.

(9) "Internal Revenue Code" has the meaning provided in 15-30-101.

(10) "Member" means a person who has an individual account in the annuity savings ~~fund~~ *account*. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

(11) "Normal retirement age" means an age no earlier than the age at which the member is eligible to retire:

(a) by virtue of age, length of service, or both;

(b) without disability; and

(c) with the right to receive immediate retirement benefits without an actuarial reduction in the benefits.

(12) "Part-time service" means service that is less than full-time or that totals less than 180 days in a normal academic year. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

(13) "Prior service" means employment of the same nature as service but rendered before September 1, 1937.

(14) "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).

(15) "Retired member" means a person who has terminated employment that qualified the person for membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant to this chapter.

(16) "Retirement allowance" means a monthly payment due to a person who has qualified for service or disability retirement or due to a beneficiary as provided in 19-20-1001.

(17) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

(18) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

(19) "Service" means the performance of instructional duties or related activities that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(20) "Termination" or "terminate" means that the member has severed the employment relationship with the member's employer and that all, if any,

payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

(21) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment and on which employee and employer contributions have been paid as required by 19-20-716.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

(22) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, as required by 19-20-602 and 19-20-605, and who has a right to a future retirement benefit.

(23) "Written application" or "written election" means a written instrument, required by statute or the rules of the board, properly signed, and filed with the board, that contains all the required information, including documentation that the board considers necessary."

Section 2. Section 19-20-104, MCA, is amended to read:

"19-20-104. Guarantee by state. Regular interest charges payable, the creation and maintenance of reserves in the pension accumulation ~~fund~~ *account*, and the maintenance of accumulated contributions in the annuity savings ~~fund~~ *account*, as provided for in this chapter, and the payment of all retirement allowances, refunds, and other benefits granted under the retirement system are obligations of the state of Montana."

Section 3. Section 19-20-202, MCA, is amended to read:

"19-20-202. Per diem and expenses of board members. The members of the retirement board shall serve without direct or indirect compensation except that each appointed member shall receive $50 per day and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day in attendance at the meetings of ~~such~~ *the* board or in the execution of ~~his~~ duties as a member of the retirement board. All per diem and expenses paid under the provisions of this section ~~shall~~ *must* be paid from the expense ~~fund~~ *account* of the retirement system."

Section 4. Section 19-20-302, MCA, is amended to read:

"19-20-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system:

(a) a person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) a person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the optional retirement program under Title 19, chapter 21;

(c) a person employed as a speech-language pathologist, school nurse, *paraprofessional who provides instructional support,* or school psychologist or in a teaching capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) a person who is an administrative officer or a member of the instructional staff of the board of public education;

(e) the superintendent of public instruction or a person employed in an instructional services capacity by the office of public instruction; and

(f) a person elected to the office of county superintendent of schools.

(2) A retired member elected to the office of county superintendent of schools or appointed to complete the term of an elected county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 and ~~may~~ *shall*, within 30 days of taking office, ~~elect~~ *file an irrevocable written election* to become or to not become an active member of the teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for the person's creditable service totally paid by an employer.

(4) (a) A substitute teacher or a part-time teacher's aide:

(i) shall file an irrevocable written election determining whether to become an active member of the retirement system on the first day of employment; or

(ii) is required to become an active member of the retirement system after completing 210 hours of employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership under subsection (4)(a)(i).

(b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute teacher is required to remain a member as long as the teacher is available for employment in that capacity.

~~(c) A person employed as a substitute teacher on July 1, 1999, who has not elected to become a member by that date shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a substitute in the next school year after July 1, 1999.~~

~~(d) A person employed as a part-time teacher's aide on July 1, 2001, who is not a member of the retirement system shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a part-time teacher's aide after July 1, 2001.~~

~~(e)~~*(c)* The employer shall give written notification to a substitute teacher or part-time teacher's aide on the first day of employment of the option to elect membership under subsection (4)(a)(i).

~~(f)~~*(d)* If a substitute teacher or part-time teacher's aide declines to elect membership during the election period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving membership and the employer shall retain the statement.

(5) A school district clerk or business official may not become a member of the teachers' retirement system. A school district clerk or business official who is a member of the system on July 1, 2001, is required to remain an active member of the system while employed in that capacity, and any postretirement earnings from employment as a school district clerk or school business official are subject to the limit on earnings provided in 19-20-731.

(6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must be treated alike.

(7) As used in this section, "part-time teacher's aide" means an individual who works less than 7 hours a day assisting a certified teacher in a classroom.

(8) (a) An active member of the system concurrently employed in a position identified in subsection (1)(b) may not elect to participate in the optional retirement program under Title 19, chapter 21.

(b) An employee of the Montana university system who is a participant in the optional retirement program under Title 19, chapter 21, and who is concurrently employed in a position identified in subsections (1)(a) or (1)(c) through (1)(f) is ineligible to be an active member of this system."

Section 5. Section 19-20-305, MCA, is amended to read:

"19-20-305. Alternate payees — family law orders. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "alternate payee" means the former spouse of the member or retiree, who is entitled to an actuarially equivalent portion or a fixed amount of the member's or retiree's retirement benefit;

~~(a) "participant" means a member, retiree, or an actual or potential beneficiary, survivor, or contingent annuitant of the retirement system designated pursuant to this chapter; and~~

(b) "family law order" means a certified copy of a judgment, decree, or order of a court with competent jurisdiction concerning ~~child support, parental support,~~ spousal maintenance~~,~~ or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section*; and*

(c) "participant" means a member or retiree of the retirement system.

(3) A family law order must identify an alternate payee by full name, current address, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's

rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the ~~appropriate~~ retirement system; or

(b) an amount ~~or duration~~ of payment greater than that available to a participant ~~under the appropriate retirement system~~.

(5) ~~A family law order may only provide for payment to an alternate payee as follows:~~

(a) ~~Service~~ *The service, disability, or survivor* retirement benefit payments or withdrawals of member contributions may be apportioned *to an alternate payee* by directing payment of*:*

(i) ~~a percentage of the~~ *an actuarially equivalent* amount payable*;* or

(ii) ~~payment of~~ a fixed amount of no more than the amount payable to the participant. *A fixed amount must be payable for a determinate period of time not greater than the life of the participant.*

~~(b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.~~

~~(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.~~

~~(d) Payments must be limited to the life of the appropriate participant. The duration of payments to an alternate payee may be further limited only to a specified maximum time, the life of the alternate payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific amount per month if the number of payments is specified. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.~~

~~(e) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system allows for that option.~~

(b) (i) The actuarially equivalent service, disability, or survivor retirement benefit payable to the alternate payee must be calculated by taking the total years of service the benefit was earned during the marriage divided by the total years of creditable service used in the calculation of the retirement benefit, multiplied by a percentage share of the benefit payable to the alternate payee, multiplied by the total amount payable to the participant.

(ii) The amount payable must be actuarially adjusted to provide a benefit payable for the alternate payee's lifetime.

(c) The participant's benefit must be reduced by the amount determined under subsection (5)(b)(i).

(6) The duration of payments to an alternate payee may be limited only to a specified maximum time or for the life of the alternate payee.

(7) If a participant elects to withdraw the accumulated contributions and forfeit all rights to service, disability, or survivor benefits, the alternate payee is entitled to a percentage of the amount payable as determined by the formula in subsection (5)(b)(i).

(8) Retirement benefit adjustments for which a participant is eligible after retirement must be apportioned in the same manner as determined under subsection (5)(b)(i).

(9) Payments of monthly benefits to the alternate payee must commence on the latest of the following dates:

(a) the date the participant begins receiving benefits; or

(b) the first day of the month following receipt of a certified family law order.

~~(6)~~*(10)* The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

~~(7)~~*(11)* Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(12) If the participant retired on a disability retirement benefit and the benefit is subsequently canceled pursuant to 19-20-903 or 19-20-905, the alternate payee's payments also terminate. When the participant again qualifies for retirement benefits, the amount payable to the alternate payee must be recalculated pursuant to this section."

Section 6. Section 19-20-414, MCA, is amended to read:

"19-20-414. Payment methods for purchase of service credit. (1) ~~A~~ *An active or vested* member who is eligible to purchase service under this chapter may at any time before retirement apply to purchase the service credit by making payment as provided in this section.

(2) Subject to subsection (3), service credit may be purchased by one or a combination of the following methods:

(a) a lump-sum payment;

(b) installment payments;

(c) direct rollover of eligible distributions from a retirement plan in section 402(c)(8)(B)(iii) or 402(c)(8)(B)(iv) of the Internal Revenue Code;

(d) rollover of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be included in gross income;

(e) a direct trustee-to-trustee transfer from a governmental 457(b) deferred compensation plan or a 403(b) tax-sheltered annuity for permissive service credit, as defined in section 415(n) of the Internal Revenue Code.

(3) (a) The total amount transferred or rolled over to the retirement system pursuant to subsection (2) may not exceed the amount due to purchase the service.

(b) If, in the case of a transfer, the transferred account includes both tax-deferred and taxed amounts, the transferring agency shall identify the member's tax-deferred and taxed amounts at the time the transfer is made.

(4) To the extent permitted by section 401(a)(31) of the Internal Revenue Code and as limited by this section, the board shall accept a direct rollover of eligible distributions from another eligible retirement plan.

(5) If the member dies before having completed the payment required to purchase the service that the member had applied to purchase, the member's surviving spouse may, subject to the rules and regulations of the Internal Revenue Code, apply to complete the member's service purchase as provided in this section. The surviving spouse must apply to complete the payments and pay the balance due to the system prior to the distribution of benefits."

Section 7. Section 19-20-427, MCA, is amended to read:

"19-20-427. Redeposit of contributions previously withdrawn. In addition to the normal contributions required under 19-20-602, subject to the approval of the retirement board, and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, a member may redeposit in the annuity savings ~~fund~~ *account*, by a single payment or by an increased rate of contribution, an amount equal to the accumulated contributions that the member has previously withdrawn, plus interest in the amount that the contributions would have earned had the contributions not been withdrawn. The redeposit must be made in accordance with 19-20-415."

Section 8. Section 19-20-501, MCA, is amended to read:

"19-20-501. Financial administration of money. The members of the retirement board are the trustees of all money collected for the retirement system, and as trustees, they shall provide for the financial administration of the money as provided in Article VIII, section 15, of the Montana constitution in the following manner:

(1) The money must be invested and reinvested by the state board of investments.

(2) The retirement board shall annually establish the rate of regular interest. The rate established by the board may not be less than 4%.

(3) ~~The retirement board shall annually divide among the several reserves of the retirement system an amount equal to the average balance of the reserves during the preceding fiscal year multiplied by the rate of regular interest.~~ In accordance with the provisions of 19-20-605(5), the amount to be credited to each reserve must be allocated from the interest and other earnings on the money of the retirement system actually realized during the preceding fiscal year, less the amount allocated to administrative expenses. The administrative expenses of the retirement system, less amortization of intangible assets, may not exceed 1.5% of retirement benefits paid.

(4) The state treasurer is the custodian of the collected retirement system money and of the securities in which the money is invested.

(5) For purposes of Article VIII, section 12, of the Montana constitution, all the reserves established by part 6 of this chapter must be accounts in the pension trust fund type of the treasury fund structure of the state.

(6) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination."

Section 9. Section 19-20-503, MCA, is amended to read:

"19-20-503. Transfer of dormant or unclaimed accounts. (1) The retirement board may, in its discretion, transfer the amount in the annuity savings account of an inactive member to the pension accumulation ~~fund~~ *account* if the *annuity savings* account has been dormant for a period of 7 years. A right of the member may not be jeopardized by the transfer, and the amount, *including the interest the amount would have earned had the amount remained in the annuity savings account,* must be transferred back to the member's annuity savings account upon the member's request.

(2) Retirement benefits must be claimed within 5 years of the date of the member's death. If the named beneficiary for the account or the heirs at law fail to claim and accept the benefits, the member's account balance reverts to the pension trust fund."

Section 10. Section 19-20-602, MCA, is amended to read:

"19-20-602. Annuity savings ~~fund~~ *account* — member's contribution. (1) The annuity savings ~~fund~~ *account* is ~~a fund~~ *an account* in which the contributions for the members to provide for their retirement allowance or benefits must be accumulated in individual accounts for each member. The normal contribution of each member is 7.15% of the member's earned compensation.

(2) Contributions to and payments from the annuity savings ~~fund~~ *account* must be made in the following manner:

(a) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code:

(i) shall pick up and pay the contributions that would be payable by the member under this subsection (2) for service rendered after June 30, 1985;

(ii) shall pick up and pay the contributions that would be paid in the manner provided in 19-20-716; and

(iii) may pick up and pay the contributions that would be payable by the member pursuant to 19-20-415.

(b) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's earned compensation as defined in 19-20-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the retirement board.

(d) The deductions must be made notwithstanding that the minimum compensation provided by law for a member may be reduced by the deductions. Each member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims for the services rendered by the member during the period covered by the payment, except as to the benefits provided by the retirement system.

(3) The accumulated contributions of a member withdrawn by the member or paid to the member's estate or to the member's designated beneficiary in event of the member's death must be paid from the annuity savings ~~fund~~ *account*. Upon the retirement of a member, the member's accumulated contributions must be transferred from the annuity savings ~~fund~~ *account* to the pension accumulation ~~fund~~ *account*."

Section 11. Section 19-20-603, MCA, is amended to read:

"19-20-603. Withdrawal of accumulated contributions — options. An inactive member electing to do so or a person whose membership terminates without a prospect or anticipation that the member will return to work for an employer within 60 days of termination may withdraw the member's accumulated contributions from the annuity savings ~~fund~~ *account* in the retirement system in accordance with the following provisions:

(1) An inactive member under the provisions of 19-20-303(1) or (3) may elect, without right of revocation, to withdraw the member's accumulated contributions. If the member does not withdraw the accumulated contributions, the member remains an inactive member of the retirement system with the right to qualify for its benefits.

(2) Upon recovery from a disabling illness or separation from the armed forces, a person qualifying as an inactive member under the provisions of 19-20-303(2) may withdraw the member's accumulated contributions unless the member returns to active membership.

(3) Upon written application to the board, a terminating member may have the payment of all or any portion of the member's accumulated contributions rolled over or transferred into another qualified plan designated by the member. The portion not rolled over or transferred must be paid directly to the terminating member. The board shall provide forms for filing the written application. The terminating member is responsible for correctly designating an account or plan eligible to receive the tax-deferred amount in order to continue the tax-deferred status of the amount. To the extent required by section 401(a)(31) of the Internal Revenue Code, the board shall allow members and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

(4) If a nonvested member terminates with accumulated contributions of less than $200, the board shall pay the accumulated contributions in a lump sum as soon as administratively feasible without a written application from the member unless there is a return to service. Upon the payment of accumulated contributions, the member is considered to have withdrawn from the system."

Section 12. Section 19-20-605, MCA, is amended to read:

"19-20-605. Pension accumulation ~~fund~~ *account* — employer's contribution. The pension accumulation ~~fund~~ *account* is the ~~fund~~ *account* in which the reserves for payment of retirement allowances and benefits must be accumulated and from which retirement allowances and benefits must be paid to retirees or their beneficiaries. Contributions to and payments from the pension accumulation ~~fund~~ *account* must be made as follows:

(1) Each employer shall pay into the pension accumulation ~~fund~~ *account* an amount equal to 7.47% of the earned compensation of each member employed during the whole or part of the preceding payroll period.

(2) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

(3) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

(4) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(5) All interest and other earnings realized on the money of the retirement system must be credited to the pension accumulation ~~fund~~ *account*, and the amount required to allow regular interest on the annuity savings ~~fund~~ *account* must be transferred to that ~~fund~~ *account* from the pension accumulation ~~fund~~ *account*.

(6) The retirement board may transfer from the pension accumulation ~~fund~~ *account* to the expense ~~fund~~ *account* an amount necessary to cover expenses of administration."

Section 13. Section 19-20-705, MCA, is amended to read:

"19-20-705. Correction of errors. (1) If a change or error in the records results in a member or beneficiary receiving from the retirement system more or less than the member or beneficiary would have been entitled to receive had the records been correct, then, on discovery of the error, the retirement board shall correct the error and, as far as practicable, shall adjust the payments so that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled will be paid.

(2) If the amount of a contribution payment is incorrect, the board may reject the payment or accept the payment and approve an arrangement to collect the correct amount, including any or all of the following arrangements:

(a) adjustment of subsequent payments to the board from a member or an employer;

(b) collection of installment payments or a lump-sum payment from an employer; or

(c) collection of installment payments, a lump-sum payment, or a rollover payment from a member.

(3) Upon discovery of a forged signature on a retirement benefit application, the benefit must be corrected as provided in subsection (1).

(4) Interest accrues on contributions not reported or amounts overpaid to members at the actuarially assumed rate. Interest accrues from the date the contributions were due or the date the benefits were paid in error. If the board finds that the error was caused by the teachers' retirement system, interest must be waived."

Section 14. Section 19-20-716, MCA, is amended to read:

"19-20-716. Termination pay. (1) If a member terminates and receives termination pay at the time of retirement, the member shall select, subject to subsections ~~(4)~~ *(5)* and ~~(5)~~ *(6)*, by signing a binding, irrevocable written election

at least 90 days before the member's termination date, one of the following options:

(a) Option 1—The member may use the total termination pay in the calculation of the member's average final compensation. The member and the employer shall pay contributions to the retirement system as determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time of termination.

(b) Option 2—The member may use a yearly amount of the total termination pay added to each of the 3 consecutive years' salary used in the calculation of the member's average final compensation. To determine the amount of termination pay used in the calculation of average final compensation, termination pay must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602 and 19-20-605(1). The contributions must be made at the time of termination.

(c) Option 3—The member may exclude the termination pay from the average final compensation. A contribution is not required of either the member or the employer.

(2) A binding, irrevocable written election required by this section must be signed by both the member and the employer at least 90 days prior to the member's termination date and must contain statements with regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:

(a) the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the system in lieu of contributions by the member and that the picked up contributions are paid from the same source as compensation is paid;

(b) the member may not choose to directly receive the amounts deducted from the member's termination pay instead of having them paid by the employer to the system;

(c) the member may not prepay any portion of the contributions; and

(d) the effective date of the pickup is the date that the irrevocable written election is signed by both the member and employer. The effective date must be at least 90 days prior to the date of the member's termination. The pickup does not apply to a contribution made before the effective date of the pickup.

(3) For the purpose of this section, the date of termination is the last day the member is performing any services covered under this chapter.

~~(3)~~*(4)* Pursuant to subsection (2), contributions required under subsection (1)(a) or (1)(b) must be:

(a) deducted from the portion of termination pay that:

(i) constitutes wages for the purposes of section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) can be included in the member's gross income for federal tax purposes; and

(b) picked up by the employer, except as provided in subsections ~~(4)~~ *(5)* and ~~(5)~~ *(6)*.

~~(4)~~*(5)* A member's contributions greater than the total amount of the member's termination pay may not be picked up by the employer and are subject to the limitations of section 415 of the Internal Revenue Code.

~~(5)~~*(6)* If a member and the member's employer fail to sign the written election within the time period required in subsection (1), the member may contribute for the purposes specified in subsections (1)(a) and (1)(b) on all or any part of the termination pay received. A contribution made pursuant to this subsection may not be picked up by the employer and is subject to the limitations of section 415 of the Internal Revenue Code."

Section 15. Section 19-20-717, MCA, is amended to read:

"19-20-717. Effect of no designation or no surviving beneficiary. (1) If a beneficiary is not designated or if no designated beneficiary survives the payment recipient, the estate of the payment recipient is the beneficiary and is entitled to any lump-sum payment or retirement benefit accrued but not received prior to the death of the payment recipient. If the estate would not be probated but for the amount due from the retirement system, all of the amount due must be paid directly, without probate, to the surviving next of kin of the deceased or to the ~~guardians~~ *personal representative or executor* of the survivor's estate~~, share and share alike~~.

(2) Payment must be made in the same order in which the following groups are listed:

(a) husband or wife;

(b) children;

(c) father and mother;

(d) grandchildren;

(e) brothers and sisters; or

(f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at the date of payment there is a living person in any of the groups preceding the group of which the person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied by the system, that there are no living individuals in the groups preceding the group of which the person is a member and that the estate of the deceased will not be probated.

(4) The payment must be in full and complete discharge and acquittance of the board and system on account of the member's or payment recipient's death."

Section 16. Section 19-20-731, MCA, is amended to read:

"19-20-731. Postretirement employment limitations — cancellation and recalculation of benefits. (1) Except as otherwise provided in this section, a retired member may be employed part-time by a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

(a) one-third of the sum of the member's average final compensation; or

(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in subsection (5), the retirement benefit of a retired member:

(a) employed in a part-time position or earning more than allowed by subsections (1) and (2) must be temporarily reduced by $1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be canceled if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in a full-time position must be canceled beginning in the month in which the retired member returns to full-time employment.

(4) Upon termination and retirement subsequent to a cancellation of benefits pursuant to subsection (3), the retirement benefit of a member:

(a) who was reemployed and earned less than 1 year of creditable service must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later. The reinstated retirement benefit is the amount and option that the retired member would have been entitled to receive had the retired member not returned to employment.

(b) who was reemployed and earned at least 1 year of creditable service must be recalculated under 19-20-804 if the member has attained normal retirement age or under 19-20-802 if the member has not attained normal retirement age but is eligible for early retirement. The recalculated benefit ~~is based on~~ *must include* the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated normal form benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were canceled.

(5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled.

(6) For purposes of this section, "position eligible to participate in the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor, as those terms are defined in 39-8-102.

(7) The retirement allowance of any retired member who is employed in a position and who elects to participate in the optional retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the optional retirement program."

Section 17. Section 19-20-805, MCA, is amended to read:

"19-20-805. Earned compensation — part-time service. (1) The earned compensation of a member who retired under 19-20-802 or 19-20-804 and had less than 3 consecutive years of full-time service during the 5 years immediately preceding the member's termination is the compensation that the member would have earned in the 3 years used to calculate average final compensation had the member's part-time service been full-time service. To determine the compensation that the member would have earned, the compensation reported must be divided by the part-time service credited to the member's account.

(2) (a) Subject to subsection (2)(b), if a member has transferred service from the public employees' retirement system as provided under 19-20-409 and does not have 3 consecutive years of full-time service reported to the teachers' retirement system, the member's average final compensation may be calculated as follows:

(i) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals 1 year in any of the fiscal years used in determining average final compensation, then the member's annual salary for that fiscal year must be the member's salary as a member of the public employees' retirement system plus the member's salary as a member of the teachers' retirement system; or

(ii) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals less than 1 year in any of the fiscal years used to determine average final compensation, then the member's part-time salary as a member of the public employees' retirement system plus the member's part-time salary as a member of the teachers' retirement system must be divided by the sum of the member's part-time teachers' retirement system service credit and the member's part-time public employees' retirement system service credit~~, divided by the member's part-time teachers' retirement system service credit~~.

(b) Compensation reported to the public employees' retirement system used to calculate average final compensation must be adjusted to exclude any compensation that would be considered termination pay under this chapter."

Section 18. Section 19-20-1101, MCA, is amended to read:

"19-20-1101. Withholding of group insurance premium from retirement allowance. (1) A retired member who is a participant in an *approved* employer-sponsored group insurance plan may elect to have the monthly premium for the group insurance withheld from the member's retirement allowance by the retirement system. ~~and~~ *Premiums withheld may be paid* paid directly to the insurance carrier or employer of record at the time of retirement.

(2) Upon the death of a retired member, the beneficiary, if eligible, may elect to continue to have the monthly insurance premium withheld from a monthly retirement benefit and paid directly to the employer or the employer's insurance carrier.

(3) Each month, using the retirement system's online employer reporting system, the employer shall verify that all authorized insurance deductions are correct and notify the retired member of any changes."

Section 19. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2007

CHAPTER NO. 91

[HB 86]

AN ACT GENERALLY REVISING THE LEGISLATIVE AUDIT ACT TO REFLECT CURRENT PROFESSIONAL STANDARDS AND AUDITING PRACTICES; PROVIDING FOR REPORTING OF APPARENT VIOLATIONS OF THE STATE CODE OF ETHICS TO THE COMMISSIONER OF POLITICAL PRACTICES; PROVIDING FOR AUDIT SELECTION BASED ON RISK; REQUESTING THE GOVERNOR, BOARD OF REGENTS, AND JUDICIARY TO FURNISH RECOMMENDATIONS FOR AUDITS; PROVIDING EMPLOYMENT PROTECTION TO EMPLOYEES WHO PROVIDE INFORMATION TO THE LEGISLATIVE AUDIT COMMITTEE; AND AMENDING SECTIONS 5-13-101, 5-13-304, 5-13-308, 5-13-309, AND 5-13-321, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-13-101, MCA, is amended to read:

"5-13-101. Title and purpose of chapter. (1) This chapter may be cited as "The Legislative Audit Act".

(2) Because the legislature is responsible for authorizing the expenditure of public ~~moneys~~ *money*, designating the sources from which ~~moneys~~ *money* may be collected, and shaping the administration to perform the work of state government and is held finally accountable for fiscal policy, the legislature should also be responsible for the audit of ~~fiscal~~ *books,* accounts*, activities,* and records so that it may be assured that its directives have been ~~faithfully~~ carried out. It is the intent of this chapter that each agency of state government be audited for the purpose of furnishing the legislature with factual information vital to the discharge of its legislative duties."

Section 2. Section 5-13-304, MCA, is amended to read:

"5-13-304. Powers and duties. The legislative auditor shall:

(1) conduct a financial and compliance audit of every state agency every 2 years covering the 2-year period since the last audit, unless otherwise required by state law;

(2) conduct ~~a special~~ *an* audit *to meet the standards and accomplish the objectives required in 5-13-308* whenever the legislative auditor determines it necessary and shall ~~so~~ advise the members of the legislative audit committee;

(3) make a complete written report of each audit. A copy of each report must be furnished to the department of administration, the state agency that was audited, each member of the committee, and the legislative services division.

(4) report immediately in writing to the attorney general and the governor any apparent violation of penal statutes disclosed by the audit of a state agency and furnish the attorney general with all information available relative to the violation;

(5) report immediately in writing to the governor any instances of misfeasance, malfeasance, or nonfeasance by a state officer or employee disclosed by the audit of a state agency;

(6) report immediately to the commissioner of political practices any instances of apparent violations of the state code of ethics provided for in Title 2, chapter 2, part 1;

~~(6)~~*(7)* report immediately to the surety upon the bond of an official or employee when an audit discloses a shortage in the accounts of the official or employee. Failure to notify the surety does not release the surety from any obligation under the bond.

~~(7)~~*(8)* have the authority to audit records of organizations and individuals receiving grants from or on behalf of the state to determine that the grants are administered in accordance with the grant terms and conditions. Whenever a state agency enters into an agreement to grant resources under its control to others, the agency shall obtain the written consent of the grantee to the audit provided for in this subsection."

Section 3. Section 5-13-308, MCA, is amended to read:

"5-13-308. Audit standards and objectives. The objectives of *financial compliance, performance, and information system* audits of state agencies *or their programs* conducted by the legislative auditor are *formulated, defined, and conducted in accordance with industry standards established for auditing* to determine whether:

(1) the agency is carrying out only those activities or programs authorized by the legislature and is conducting them efficiently, ~~and~~ effectively*, and in accordance with legislative intent*;

(2) expenditures are made only in furtherance of authorized activities and in accordance with the requirements of applicable laws and regulations;

(3) the agency collects and accounts properly for all revenues and receipts arising from its activities;

(4) the assets*, including information technology,* of the agency or in its custody are adequately safeguarded and controlled and utilized in an efficient manner;

(5) reports and financial statements by the agency to the governor, the legislature, and central control agencies disclose fully the nature and scope of the activities conducted and provide a proper basis for evaluating the agency's operations."

Section 4. Section 5-13-309, MCA, is amended to read:

"5-13-309. Information from state agencies. (1) All state agencies shall aid and assist the legislative auditor in the auditing of books, accounts, *activities,* and records.

(2) The legislative auditor may examine at any time the books, accounts, *activities,* and records, confidential or otherwise, of a state agency. This ~~shall~~ *section may* not be construed as authorizing the publication of information ~~which the~~ *prohibited by* law ~~prohibits publishing~~.

(3) The head of each state agency shall immediately notify both the attorney general and the legislative auditor in writing upon the discovery of any theft, actual or suspected, involving state ~~moneys~~ *money* or property under ~~his~~ *that agency's* control or for which ~~he~~ *the agency* is responsible."

Section 5. Section 5-13-321, MCA, is amended to read:

"5-13-321. Joint audits ~~of medicaid program.~~ (1) The legislative auditor ~~shall~~ *may* participate with ~~the United States department of health and human services office of the inspector general in a program of joint audits of the Montana medicaid program authorized by Title 53, chapter 6~~ *audit oversight organizations on joint audits of Montana programs or services*. For the purpose

of the joint audits, the legislative auditor may cooperate with the ~~inspector general~~ *audit oversight organizations*, accept and provide information necessary to the success of the joint audits, and enter into contracts for the performance of the joint audits. Audits authorized by this section may examine all or any part of the financing or performance of ~~the medicaid~~ *a* program, whether operated directly by ~~the department of public health and human services, by another~~ *a* state agency~~,~~ or by a contractor with a state agency. Joint audits are subject to the audit standards, objectives, and reporting procedures required by state law and as required in applicable federal laws, regulations, and policies.

(2) Audit costs of the legislative auditor for conducting joint audits authorized by subsection (1) are considered direct costs of the state agency or program subject to the audit. Funds for the payment of the expenses of the legislative auditor must be deposited in the state special revenue fund as provided in 5-13-403. To the maximum extent allowable under federal regulations, the legislative auditor shall charge audit costs of joint audits to federal funds.

(3) Audits conducted pursuant to this section must be approved by the committee as part of the operational plan of the legislative auditor."

Section 6. Audit selection based on risk. (1) In selecting and prioritizing the agencies or programs for audit under 5-13-304, the legislative auditor shall consider the agency's or program's financial, operational, and technological risks associated with meeting its intended purpose, goals, objectives, and legal mandates.

(2) To aid in identifying agencies and programs for audit, the committee shall, before July 1 of each odd-numbered year, request that the governor, the board of regents, and the judiciary furnish the committee with a list of any recommendations for agencies and programs within the governor's, board of regents', or judiciary's respective jurisdiction to be considered for audit during the next biennium pursuant to this chapter. The list may be prioritized and must set forth the reasons for recommending each agency or program to be considered based on the risk criteria in subsection (1).

(3) The legislative auditor shall review the lists, suggestions from legislators and legislative committees, staff recommendations, and any other relevant information and consult with the committee as necessary.

Section 7. Employment protection. An employee of the state of Montana or an authorized contractor who provides information to the committee, the legislative auditor, or the legislative auditor's authorized designee may not be subject to any penalties, sanctions, retaliation, or restrictions in connection with the employee's or contractor's employment as a result of the disclosure of information unless the employee or contractor disclosing the information has violated state law.

Section 8. Codification instruction. [Sections 6 and 7] are intended to be codified as an integral part of Title 5, chapter 13, part 3, and the provisions of Title 5, chapter 13, part 3, apply to [sections 6 and 7].

Approved March 30, 2007

CHAPTER NO. 92

[HB 87]

AN ACT PROVIDING FOR WATER COMMISSIONER DISTRIBUTION OF WATER BASED ON A CHANGE IN APPROPRIATION RIGHT; AMENDING SECTIONS 85-5-101, 85-5-201, AND 85-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-5-101, MCA, is amended to read:

"85-5-101. Appointment of water commissioners. (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, including temporary preliminary, preliminary, and final decrees issued by a water judge, it is the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water rights affected by the decree, in the exercise of the judge's discretion, to appoint one or more commissioners. The commissioners have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates*,* ~~and~~ permits*, and changes in appropriation right* issued under chapter 2 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a temporary preliminary decree, preliminary decree, or final decree issued under chapter 2 of this title, the judge of the district court may, upon application by both the department of natural resources and conservation and one or more holders of valid water rights in the source, appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department or any other owner of stored waters may petition the court to have stored waters distributed by the water commissioners appointed by the district court. The court may order the commissioner or commissioners appointed by the court to distribute stored water when and as released to water users entitled to the use of the water.

(4) At the time of the appointment of a water commissioner or commissioners, the district court shall fix their compensation, require a commissioner or commissioners to purchase a workers' compensation insurance policy and elect coverage on themselves, and require the owners and users of the distributed waters, including permittees*,* ~~and~~ certificate holders*, and holders of a change in appropriation right*, to pay their proportionate share of fees and compensation, including the cost of workers' compensation insurance purchased by a water commissioner or commissioners. The judge may include the department in the apportionment of costs if it applied for the appointment of a water commissioner under subsection (2).

(5) Upon the application of the board or boards of one or more irrigation districts entitled to the use of water stored in a reservoir that is turned into the natural channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the district court of the judicial district where the most irrigable acres of the irrigation district or districts are situated may appoint a water commissioner to equitably admeasure and distribute stored water to the irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter, limited only by the purposes of this subsection. A commissioner's compensation is set by the appointing judge and paid by each district and other users of stored water affected by the admeasurement and distribution of the stored water. In all other matters, the provisions of this chapter apply so long as they are consistent with this subsection.

(6) A water commissioner appointed by a district court is not an employee of the judicial branch, a local government, or a water user.

(7) A water commissioner who fails to obtain workers' compensation insurance coverage required by subsection (4) is precluded from receiving benefits under Title 39, chapter 71, as a result of the performance of duties as a water commissioner."

Section 2. Section 85-5-201, MCA, is amended to read:

"85-5-201. Distribution of water and related expenses. ~~Every~~ *Each* water commissioner appointed by the judge of the district court for ~~that~~ *the* purpose *of distributing water* ~~shall have~~ *has* the authority to admeasure and distribute to the parties interested, under ~~such~~ *a* decree, permit, ~~or~~ certificate, *or change in appropriation right,* the water to which those who are parties to the decree or holders of a permit, ~~or~~ certificate, *or change in appropriation right*, or privy ~~thereto~~ *to a permit, certificate, or change in appropriation right*, are entitled, according to their priority as established by the decree, permit, ~~or~~ certificate, *or change in appropriation right*. The water commissioner, in case the parties fail or refuse to do so, may incur necessary expenses in the making of headgates or dams for the distribution of the waters. ~~Such expense shall~~ *Expenses associated with making headgates or dams for the distribution of water must* be assessed against and paid by the party or parties for whom *the ditch or ditches were repaired or the dams or headgates were made.* ~~such services in the repair of the ditch or ditches and the making of any dams or headgates were necessary.~~ In the discretion of the court, ~~such~~ *the* costs or expenses may be assessed against the land upon which or for the benefit of which ~~such~~ *the* expense had been incurred."

Section 3. Section 85-5-301, MCA, is amended to read:

"85-5-301. Complaint by dissatisfied user. (1) A person owning or using any of the waters of the stream or ditch or extension of the ditch who is dissatisfied with the method of distribution of the waters of the stream or ditch by the water commissioner or water commissioners and who claims to be entitled to more water than ~~he~~ *the person* is receiving or to a right prior to that allowed ~~him~~ *the person* by the water commissioner or water commissioners may file ~~his~~ *a* written complaint, duly verified, setting forth the facts of the claim. ~~Thereupon~~

(2) Upon receipt of the complaint, the judge shall fix a time for the hearing of ~~such~~ *the* petition and shall direct that ~~such~~ notice be given to the parties interested in the hearing as the judge considers necessary. At the time fixed for

the hearing, the judge ~~must~~ *shall* hear and examine the complainant and other parties ~~as may~~ *who* appear to support or resist ~~such~~ *the* claim and examine the water commissioner or water commissioners and witnesses ~~as to~~ *regarding* the charges contained in the complaint.

~~(2)~~*(3)* Upon the determination of the hearing, the judge shall make ~~such~~ findings and *issue an* order ~~as he~~ *that the judge* considers just and proper. If it appears to the judge that the water commissioner or water commissioners have not properly distributed the water according to the provisions of the decree, *a permit, a certificate, or a change in appropriation right,* the judge shall give the proper instructions for ~~such~~ distribution *of the water*.

(4) The judge may remove any water commissioner and appoint ~~some other person in his stead if he~~ *a new water commissioner if the judge* ~~considers~~ *determines* that the interests of the parties in the waters mentioned in the decree*, a permit, a certificate, or a change in appropriation right* will be best ~~subserved thereby~~ *served by appointing a new water commissioner.*~~, and if~~ *If* it appears to the judge that the water commissioner has willfully failed to perform ~~his~~ *the water commissioner's* duties, ~~he~~ *the water commissioner* may be proceeded against for contempt of court, as provided in contempt cases. The judge shall make ~~such~~ *an* order ~~as to~~ *regarding* the payment of costs of the hearing ~~as appears to him to be~~ *that the judge determines is* just and proper."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2007

CHAPTER NO. 93

[HB 102]

AN ACT REVISING SPECIAL PURPOSE DISTRICT LAWS; MODIFYING THE PROTEST PROVISIONS FOR CITY PROPERTIES INCLUDED IN A PROPOSED RURAL SPECIAL IMPROVEMENT DISTRICT; MODIFYING THE PROTEST PROVISIONS FOR PROPERTIES OUTSIDE A CITY THAT ARE INCLUDED IN A PROPOSED SPECIAL IMPROVEMENT DISTRICT; CREATING AN EXCEPTION TO THE NOTICE REQUIREMENTS FOR A RESOLUTION OF INTENTION TO CREATE A SPECIAL IMPROVEMENT DISTRICT; CREATING AN EXCEPTION TO THE PROTEST AGAINST PROPOSED WORK OR AGAINST THE EXTENT OR CREATION OF A SPECIAL IMPROVEMENT DISTRICT; MODIFYING A CITY COUNCIL'S AUTHORITY TO ORDER IMPROVEMENTS; MODIFYING VOTER QUALIFICATIONS TO VOTE ON THE CREATION OF A COUNTY WATER OR SEWER DISTRICT; ELIMINATING THE PROPERTY TAX LIMITATIONS FOR IRRIGATION DISTRICT BONDING; PROHIBITING THE BOARD OF COMMISSIONERS OF AN IRRIGATION DISTRICT OR BOARD OF COUNTY COMMISSIONERS ON BEHALF OF AN IRRIGATION DISTRICT FROM LEVYING PROPERTY TAXES AS PROVIDED IN TITLE 15, CHAPTER 6, FOR IRRIGATION DISTRICT PURPOSES; AMENDING SECTIONS 7-12-2102, 7-12-4102, 7-12-4106, 7-12-4110, 7-12-4114, 7-13-2212, 7-13-2328, 85-7-206, 85-7-1953, 85-7-1973, 85-7-2104, 85-7-2117, 85-7-2134, AND 85-7-2136, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2102, MCA, is amended to read:

"7-12-2102. Authorization to create rural improvement districts — property owners may petition for creation. (1) Whenever the public interest or convenience may require, the board of county commissioners may order and create special improvement districts outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase one or more of the improvements of the kind described in 7-12-4102, in or for the benefit of the special improvement district.

(2) The board of county commissioners may order and create a special improvement district upon the receipt of a petition to create a special improvement district that contains the consent of all of the owners of property to be included in the district.

(3) The board of county commissioners may order and create special improvement districts covering projects abutting the city limits and include properties inside the city where the rural improvement district abuts and benefits that property. ~~Property owners~~ *Properties* within the proposed district boundaries inside the city may not be included in the rural special improvement district if ~~40% of those property owners~~, *under the assessment methodology provided in the resolution of intention, the owners of lots, tracts, or parcels in the city representing not less than 40% of the total projected assessments against properties in the city* protest the creation of the rural special improvement district. The property inside the city must be treated in a similar manner as to improvements, notices, and assessments as the property outside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the rural special improvement district prior to passing the resolution of intention or resolution creating the rural special improvement district. A copy of the resolution of intention and the resolution creating the rural special improvement district must be provided to the city clerk upon the passage of the respective resolutions."

Section 2. Section 7-12-4102, MCA, is amended to read:

"7-12-4102. Authorization for creation of special improvement districts — *petition for creation*. (1) The city or town council may:

(a) create special improvement districts, designating them by number;

(b) extend the time for payment of assessments levied upon the districts for district improvements for a period not exceeding 20 years or, if refunding bonds are issued pursuant to 7-12-4194, for a period not exceeding 30 years;

(c) make the assessments payable in installments; and

(d) pay all expenses of whatever character incurred in making the improvements with special improvement warrants or bonds.

(2) Whenever the public interest or convenience requires, the city council may:

(a) create special improvement districts for acquiring by purchase, building, constructing, or maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(b) create special improvement districts for acquiring by purchase or building and constructing municipal swimming pools and other recreation facilities;

(c) create special improvement districts and order the whole or a portion, either in length or width, of one or more of the streets, avenues, alleys, or places or public ways of the city:

(i) graded or regraded to the official grade;

(ii) planked or replanked;

(iii) paved or repaved;

(iv) macadamized or remacadamized;

(v) graveled or regraveled;

(vi) piled or repiled;

(vii) capped or recapped;

(viii) surfaced or resurfaced;

(ix) oiled or reoiled;

(d) create special improvement districts and order the acquisition, construction, or reconstruction within the districts of:

(i) sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings (including the planting of grassplots and setting out of trees);

(ii) sewers, ditches, drains, conduits, and channels for sanitary or drainage purposes, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances;

(iii) waterworks, water mains, and extensions of water mains;

(iv) pipes, hydrants, and hose connections for irrigating purposes;

(v) appliances for fire protection;

(vi) tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect them from overflow or injury by water;

(vii) the opening of streets, avenues, and alleys and the planting of trees on the streets, avenues, and alleys;

(e) create special improvement districts and order the construction or reconstruction in, over, or through property or rights-of-way owned by the city of:

(i) tunnels, sewers, ditches, drains, conduits, and channels for sanitary or drainage purposes, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances;

(ii) pipes and hose connections for irrigating and hydrants and appliances for fire protection;

(iii) breakwaters, levees, retaining walls, and bulkheads; and

(iv) walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in the city from overflow by water;

(f) create special improvement districts to make monetary advances or contributions to aid in the construction of additional natural gas and electric distribution lines and telecommunications facilities in order to extend those public utility services;

(g) create special improvement districts and order work to be done that is considered necessary to improve the whole or a portion of the streets, avenues, sidewalks, alleys, places, or public ways, property, or right-of-way of the city;

(h) create special improvement districts to acquire and improve by purchase, gift, bequest, lease, or other means land to be designated as public park or open-space land;

(i) create special improvement districts for the conversion of overhead utilities to underground locations in accordance with 69-4-311 through 69-4-314;

(j) create special improvement districts for the purchase, installation, maintenance, and management of alternative energy production facilities; and

(k) maintain, preserve, and care for any of the improvements authorized in this section.

(3) The city governing body may order and create a special improvement district upon the receipt of a petition to create a special improvement district that contains the consent of all of the owners of property to be included in the district.

~~(3)~~*(4)* The city governing body may order and create special improvement districts covering projects abutting the city limits and include properties outside the city when the special improvement district abuts and benefits that property. ~~Property owners~~ *Properties* within the proposed district boundaries outside the city may not be included in the special improvement district if ~~40% of those property owners~~*, under the assessment methodology provided in the resolution of intention, the owners of lots, tracts, or parcels outside the city representing not less than 40% of the total projected assessments against properties outside the city* protest the creation of the special improvement district. The property outside the city must be treated in a similar manner as to improvements, notices, and assessments as the property inside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the special improvement district prior to passing the resolution of intention or the resolution creating the special improvement district. A copy of the resolution of intention and the resolution creating the special improvement district must be provided to the county commissioners upon the passage of the respective resolutions."

Section 3. Section 7-12-4106, MCA, is amended to read:

"7-12-4106. Notice of passage of resolution of intention — *exception.* (1) ~~Upon~~ *Except as provided in subsection (4), upon* having passed the resolution of intention pursuant to 7-12-4104, the council shall give notice of the passage of the resolution of intention.

(2) The notice must be published as provided in 7-1-2121. A copy of the notice must be mailed to each person, firm, or corporation or the agent of the person, firm, or corporation having real property within the proposed district listed in the owner's name upon the last-completed assessment roll for state, county, and school district taxes, at the owner's last-known address, upon the same day that the notice is first published or posted.

(3) (a) The notice must describe the general character of the proposed improvements, state the estimated cost of the improvements, describe generally the method by which the costs of the improvements will be assessed, and designate the time when and the place where the council will hear and pass upon all written protests that may be made against the making or acquisition of the improvements or the creation of the district.

(b) If the revolving fund is to be pledged to secure the payment of bonds and warrants, the notice must include a statement that, subject to the limitations in 7-12-4222:

(i) the general fund of the city or town may be used to provide loans to the revolving fund; or

(ii) a general tax levy may be imposed on all taxable property in the city or town to meet the financial requirements of the revolving fund.

(c) The notice must refer to the resolution on file in the office of the city clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice must state the exact purchase price of the existing improvement.

(4) The provisions of this section do not apply to a district that is created under 7-12-4114 following receipt of a petition as provided in 7-12-4102(3)."

Section 4. Section 7-12-4110, MCA, is amended to read:

"7-12-4110. Protest against proposed work or district. (1) (a) Except as provided in ~~subsection~~ *subsections* (1)(b) *and (2)*, at any time within 15 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for the work may make written protest against the proposed work or against the extent or creation of the district to be assessed, or both.

(b) If the period described in subsection (1)(a) includes a holiday as enumerated in 1-1-216, other than a Sunday, the period must be extended for an additional 2 days.

(2) The provisions of subsection (1) do not apply to a district created under 7-12-4114 as a result of a petition submitted as provided in 7-12-4102(3).

~~(2)~~*(3)* A protest must be in writing, identify the property in the district owned by the protestor, and be signed by all the owners of the property. The protest must be delivered to the clerk of the city or town council or commission not later than 5 p.m. of the last day within the protest period. The clerk shall endorse on the protest document the date and hour of its receipt by the clerk.

~~(3)~~*(4)* (a) For purposes of this section, "owner" means, as of the date a protest is filed, the record owner of fee simple title to the property.

(b) The term does not include a tenant of or other holder of a leasehold interest in the property."

Section 5. Section 7-12-4114, MCA, is amended to read:

"7-12-4114. Resolution creating special improvement district. (1) The council may order proposed improvements after:

(a) no protests have been delivered to the clerk of the city council within the time prescribed in 7-12-4110 after the date of the first publication of the notice of the passing of the resolution of intention;

(b) a protest has been found to be insufficient or has been overruled; ~~or~~

(c) a protest against the extent of the proposed district has been heard and denied*; or*

(d) a resolution creating the district following receipt of a petition as provided in 7-12-4102(3) has been passed.

(2) Before ordering any of the proposed improvements, the council shall pass a resolution creating the special improvement district in accordance with the resolution of intention introduced and passed by the council."

Section 6. Section 7-13-2212, MCA, is amended to read:

"7-13-2212. Qualifications to vote on question of creating district. (1) Except as provided in subsection (2), an individual is not entitled to vote at any election under the provisions of part 23 and this part unless the individual possesses all the qualifications required of electors under the general election laws of the state and is a resident of the proposed district or the owner of taxable real property located within the county in which the individual proposes to vote and situated within the boundaries of the proposed district.

(2) An individual who is the owner of the real property described in subsection (1) need not possess the qualifications required of an elector in 13-1-111(1)(c), provided that the elector is qualified if registered to vote in any state of the United States and files proof of registration with the election administrator at least ~~20~~ *40* days prior to the election in which the individual intends to vote."

Section 7. Section 7-13-2328, MCA, is amended to read:

"7-13-2328. Sufficient vote required to issue bonds. (1) (a) When the board of directors canvasses the vote of a bond election, ~~it~~ *the board* shall determine the approval or rejection of the bond proposition as provided in subsections (1)(b) through (1)(d) after calculating the percentage of qualified electors voting in the bond election in the following manner:

(i) determine the total number of electors of the district who were qualified to vote at the bond election;

(ii) determine the total number of qualified electors who voted at the bond election;

(iii) calculate the percentage of qualified electors voting at the bond election by dividing the amount determined in subsection (1)(a)(ii) by the amount determined in subsection (1)(a)(i).

(b) When the calculated percentage in subsection (1)(a)(iii) is 40% or more, the bond proposition is approved and adopted if a majority of the votes are cast in favor of the proposition; otherwise it must be rejected.

(c) When the calculated percentage in subsection (1)(a)(iii) is more than 30% but less than 40%, the bond proposition is approved and adopted if 60% or more of the votes have been cast in favor of the proposition; otherwise it must be rejected.

(d) When the calculated percentage in subsection (1)(a)(iii) is 30% or less, the bond proposition must be rejected.

(2) For purposes of this section, the total number of electors of the district who are qualified to vote at the bond election equals the sum of:

(a) the individuals who possess all the qualifications required of electors under the general election laws of the state and who are residents of the district; and

(b) the individuals who have satisfied the requirements of 7-13-2212(2) with respect to the particular bond election.

~~(2)~~*(3)* If the canvass of the vote establishes the approval and adoption of the bond proposition, then the board of directors may by resolution provide for the form and execution of the bonds and for the issuance of the bonds."

Section 8. Section 85-7-206, MCA, is amended to read:

"85-7-206. Basis and apportionment of annual tax. ~~Subject to 15-10-420, the~~ *The* annual tax levy and the apportionment and distribution of

the total amount required to be raised in any year must be determined and imposed in accordance with *85-7-2104 and* the provisions and limitations of law applicable to irrigation districts organized under the provisions of parts 1 and 15 of this chapter."

Section 9. Section 85-7-1953, MCA, is amended to read:

"85-7-1953. Amount owed United States — lien and special tax. All amounts to be paid to the United States under any contract made pursuant to this part between the district and the United States are a general obligation of the district, and the amounts to be paid to the United States are a lien upon the irrigation system of the district. ~~Subject to 15-10-420, all~~ *All* lands within the district or added to the district must be subject to a special tax or assessment *authorized under 85-7-2104* for the payment of all amounts to be paid to the United States under the contract between the district and the United States. The special tax or assessment constitutes a first and prior lien on the land against which the tax or assessment is levied to the same extent and with like force and effect as taxes levied for state and county purposes."

Section 10. Section 85-7-1973, MCA, is amended to read:

"85-7-1973. Amount owed state — lien and special tax. All amounts owed to the state under any contract made under 85-7-1971 through 85-7-1975 between the district and the state of Montana establish a general obligation of the district for payment, and any amounts to be paid to the state of Montana constitute a lien upon the irrigation system of the district. ~~Subject to 15-10-420, all~~ *All* lands now within the district or added to the district are subject to a special tax or assessment *under 85-7-2104* for the payment of all amounts owed to the state under the contract between the district and the state of Montana. The special tax or assessment constitutes a first and prior lien on the land against which it is levied to the same extent and with the same force and effect as taxes levied for state and county purposes."

Section 11. Section 85-7-2104, MCA, is amended to read:

"85-7-2104. Annual tax levy — apportionment when tracts divided. (1) (a) On or before the first Monday in August each year, the board of commissioners of each irrigation district organized under parts 1 and 15 shall ascertain:

(i) the total amount required to be raised in that year for the general administrative expenses of the district, including the cost of maintenance and repairs; and

(ii) the total amount to be raised that year for interest on and principal of the outstanding bonded or other indebtedness of the district for which bonds of the district have not been deposited with the United States as provided in 85-7-1906.

(b) ~~Subject to 15-10-420, the~~ *The* board shall levy against each 40-acre tract or fractional lot, as designated by United States government survey, or platted lot if land is subdivided in lots and blocks (or where land is owned in less than 40-acre tracts or in less than the platted lot, against each tract) in the district, that portion of the respective total amounts to be raised that the total irrigable area of any tract or lot bears to the total irrigable area of the lands in the district, so that each acre of irrigable land in the district is assessed and required to pay the same amount as every other acre of irrigable land in the district, unless otherwise specifically provided by the board. The board may also charge the administrative charge authorized in 85-7-2103(1).

(c) Indebtedness under subsection (1) includes debt incurred under any contract between the district and the United States but excludes any indebtedness incurred by the district on behalf of a subdistrict.

(2) (a) On or before the first Monday in August each year, the board of commissioners of each irrigation district organized under parts 1 and 15 for which a subdistrict has been created pursuant to 85-7-404 shall determine the total amount to be raised that year for interest and principal payments on the outstanding bonded or other indebtedness of the district incurred on behalf of the subdistrict.

(b) The board shall levy against each 40-acre tract or fractional lot, as designated by United States government survey, or platted lot if land is subdivided in lots and blocks (or where land is owned in less than 40-acre tracts or in less than the platted lot, against each tract) in the subdistrict, the portion of the total amount to be raised apportioned according to the ratio of the total irrigable area of the tract or lot to the total irrigable area of the lands in the subdistrict, so that each acre of irrigable land in the subdistrict is assessed and required to pay the same amount as every other acre of irrigable land in the subdistrict, unless otherwise specifically provided by the board. The board may also charge the administrative charge authorized in 85-7-2103(1).

(3) ~~In the event that~~ *If* the ownership of any 40-acre tract or other subdivision of land in the district or subdistrict is divided after a special tax or assessment against the land has been levied, each of the owners of a tract or subdivision is entitled to have the special tax or assessment equitably apportioned to and against the divisions of the tract or subdivision, so that each owner is enabled to pay a special tax or assessment against the owner's portion of the tract or subdivision and have the land discharged from the lien. The charge against any separately owned tract of land may not be less than $5.

(4) The board of commissioners of an irrigation district or the board of county commissioners on behalf of a district may not levy property taxes as provided in Title 15, chapter 6, for district administration, operations, debt service, or any other district purpose."

Section 12. Section 85-7-2117, MCA, is amended to read:

"85-7-2117. Conclusiveness of tax or assessment. In determining the proper and just tax or assessment to be levied against any land for district purposes, the finding of the board of commissioners of the district, in the absence of fraud or mistake ~~and subject to 15-10-420~~, are conclusive and final, except as otherwise provided in this part."

Section 13. Section 85-7-2134, MCA, is amended to read:

"85-7-2134. Levy of taxes and assessments by county commissioners. If for any reason a levy of taxes or assessments *under 85-7-2104* is not made for any irrigation district in any year by the board of commissioners of the district within the time provided by 85-7-2104, the board of county commissioners of the county in which the district is situated shall, not later than the second Monday in August, ascertain the total amount to be raised for all purposes of the district. ~~Subject to 15-10-420, the~~ *The* board of county commissioners shall make the levy *pursuant to 85-7-2104* that should have been made by the board of commissioners of the district and shall furnish the county clerk with a list of the lands and the amount of taxes or assessments as provided in 85-7-2136. The levy has the same force and effect as though made by the board of commissioners of the district. This section applies only to irrigation districts having a bonded

indebtedness and actually in possession of a dependable water supply system and furnishing substantial amounts of water to bona fide users."

Section 14. Section 85-7-2136, MCA, is amended to read:

"85-7-2136. Collection of taxes or assessment. (1) ~~Subject to 15-10-420 and on~~ *On* or before the third Monday in August of each year, the board of commissioners shall furnish to the department of revenue a correct list of all the district lands in the county, together with the amount of the total taxes or assessments against the lands for district purposes. The department of revenue shall immediately upon receipt of the list enter the assessment roll in the property tax record of the county *subject to taxation or assessment under 85-7-2104* for each year.

(2) The county treasurer of each county in which any irrigation district is located, in whole or in part, shall collect and receipt for all taxes and assessments levied by the district, in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. The treasurer shall receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not.

(3) During the water delivery season, as determined by the irrigation district commissioners, the county treasurer shall make available to the board of commissioners of an irrigation district notice of the receipt of payments of district assessments by 9 a.m. on the day following receipt of those payments.

(4) If requested in writing by a board of commissioners of an irrigation district, the county treasurer may receive assistance from an employee of the irrigation district or a commissioner of the district for the purpose of collecting district assessments as provided in 15-16-102, investing district funds as directed by the board of commissioners of the district, and preparing district assessment notices.

(5) When any real estate on account of which the district taxes and assessments have been levied has been sold to the county and tax certificate of sale is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of the district tax or assessment, together with the penalty and interest to date of payment on the installment. However, the payment may not be considered a redemption of the property from the tax sale but must be credited on account of any redemption that may be made. In case of any payment pursuant to this subsection, a separate tax receipt must be issued showing exactly what assessments have been paid and showing that no other tax on the real estate has been received by the treasurer. The county treasurer may not collect, receive, or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any irrigation district upon which an assessment for the purposes of the irrigation district has been levied unless the assessment levied for irrigation district purposes is either paid as permitted in this section and the receipt for the payment is presented to the county treasurer at the time the taxes are paid or paid at the time the irrigation district taxes are paid."

Section 15. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2007

CHAPTER NO. 94

[HB 128]

AN ACT ELIMINATING OUTMODED REQUIREMENTS FOR PRIOR REVIEW OR APPROVAL BY THE ATTORNEY GENERAL OF LOCAL GOVERNMENT AND SCHOOL BOND ACTIONS, LAW ENFORCEMENT MUTUAL AID AGREEMENTS, SPECIAL EDUCATION COOPERATIVE CONTRACTS, AND TEXTBOOK SURETY BONDS; AMENDING SECTIONS 7-7-104, 7-7-2213, 7-7-4212, 20-7-454, 20-7-455, 20-7-457, 20-7-604, 20-9-327, 20-9-461, 20-9-464, 20-9-466, 20-15-404, AND 44-11-310, MCA; AND REPEALING SECTIONS 7-7-101, 7-7-102, 7-7-103, 20-7-453, 20-9-462, 20-9-463, AND 44-11-309, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-104, MCA, is amended to read:

"7-7-104. Limitation on action to test bond validity. A local government general obligation bond of any issue~~, in which the preliminary proceedings have been submitted to and approved by the attorney general,~~ may not be held invalid because of any defect or failure to comply with ~~any~~ *a* statutory provision relating to the authorization, issuance, or sale of the bonds unless an action to contest the validity of the bonds is brought within 30 days after the date of the adoption of the resolution calling for the sale of bonds of the local government."

Section 2. Section 7-7-2213, MCA, is amended to read:

"7-7-2213. Citizen bonds — procedural requirements prior to issuance. ~~(1) Prior to the final passage of the resolution provided for in 7-7-2238, a county shall notify the attorney general of its intention to issue citizen bonds.~~

~~(2)~~ Prior to issuing citizen bonds, a county shall make available to interested investors:

~~(a)~~*(1)* a preliminary official statement, a draft-form legal opinion from a recognized bond counsel, and a comparison to taxable yields at various income levels; *and*

~~(b)~~*(2)* application forms for the purchase of citizen bonds that must specify at a minimum:

~~(i)~~*(a)* the time, date, and place that applications will be received, the manner in which applications will be processed, and the conditions under which the sale may be canceled if the issue is not fully subscribed during the application period;

~~(ii)~~*(b)* the issue date, maturity dates, and the dates on which interest will be earned and paid;

~~(iii)~~*(c)* the denominations of the bonds and the maximum amount of the bonds that one buyer may purchase;

~~(iv)~~*(d)* the approximate yield on the bonds if held to maturity and the manner in which interest rates have been calculated; and

~~(v)~~*(e)* the provision made for the transfer of ownership of outstanding bonds~~; and~~

~~(c) other information that the attorney general may require~~."

Section 3. Section 7-7-4212, MCA, is amended to read:

"7-7-4212. Citizen bonds — procedural requirements prior to issuance. ~~(1) Prior to final passage of the resolution provided for in 7-7-4236, a city or town shall notify the attorney general of its intention to issue citizen bonds.~~

~~(2)~~ Prior to issuing citizen bonds, a city or town shall make available to interested investors:

~~(a)~~*(1)* a preliminary official statement, a draft-form legal opinion from a recognized bond counsel, and a comparison to taxable yields at various income levels; *and*

~~(b)~~*(2)* application forms for the purchase of citizen bonds, which must specify at a minimum:

~~(i)~~*(a)* the time, date, and place that applications will be received, the manner in which applications will be processed, and the conditions under which the sale may be canceled if the issue is not fully subscribed during the application period;

~~(ii)~~*(b)* the issue date, maturity dates, and the dates on which interest will be earned and paid;

~~(iii)~~*(c)* the denominations of the bonds and the maximum amount of bonds that any one buyer may purchase;

~~(iv)~~*(d)* the approximate yield on the bonds if held to maturity and the manner in which interest rates have been calculated; and

~~(v)~~*(e)* the provision made for the transfer of ownership of outstanding bonds~~; and~~

~~(c) any other information that the attorney general may require~~."

Section 4. Section 20-7-454, MCA, is amended to read:

"20-7-454. Final approval and filing of full service education cooperative contract. ~~Within 10 days after approval by the attorney general and prior~~ *Prior* to commencement of its performance, a full service education cooperative contract made pursuant to 20-7-451*, 20-7-452, and 20-7-454* through 20-7-456 must be:

(1) submitted to the superintendent of public instruction who has final approval authority pursuant to the policies of the board of public education;

(2) filed with the county clerk and recorder of the county or counties in which the school districts involved are located; and

(3) filed with the secretary of state."

Section 5. Section 20-7-455, MCA, is amended to read:

"20-7-455. Authorization to appropriate funds for purpose of full service education cooperative contract. A school district entering into a full service education cooperative contract pursuant to 20-7-451*, 20-7-452, and 20-7-454* through 20-7-456 may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative officer, management board, or joint board created for the purpose of performance of the cooperative contract ~~such~~ *any* material, personnel, or services ~~as may be~~ *that are* within its legal power to furnish."

Section 6. Section 20-7-457, MCA, is amended to read:

"20-7-457. Funding provisions for special education purposes of cooperatives or joint boards. (1) The superintendent of public instruction shall pay directly to a cooperative or to a joint board formed under 20-3-361 prior

to July 1, 1992, for special education purposes the special education allowable cost payments determined pursuant to 20-9-321.

(2) A school district that elects to participate in a cooperative for special education purposes shall agree in the cooperative contract to participate for a period of at least 3 years.

(3) A school district that elects to participate in a joint board formed under 20-3-361 for special education purposes shall confirm in writing to the joint board by October 1 of the current school fiscal year the district's intention to participate or to not participate in a joint board agreement for the next school fiscal year.

(4) A cooperative that has not met the requirements of ~~20-7-453 and~~ 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction. The superintendent shall adopt rules for approval of full service education cooperatives.

(5) A full service education cooperative may establish a retirement fund, a miscellaneous programs fund, and a transportation fund, as provided for in 20-9-201, for the purposes of a full service education cooperative contract and the purposes allowed by law.

(6) ~~Before July 1, 1994, the~~ *The* superintendent of public instruction, after consulting with regional representatives, shall define boundaries for cooperatives established for special education programs that incorporate the territory of all public school districts.

(7) Restructuring of cooperatives established for providing special education services must:

(a) be limited to a statewide total of no more than 23;

(b) include districts that are adjacent to each other and not overlapping into another cooperative's territory; and

(c) provide that all districts located within a cooperative's boundary may voluntarily become a cooperative member."

Section 7. Section 20-7-604, MCA, is amended to read:

"20-7-604. Licensing textbook dealers. (1) Textbook dealers ~~shall~~ *must* be licensed to sell textbooks by the superintendent of public instruction. To obtain a license, a textbook dealer shall first file with the superintendent of public instruction ~~his~~ *the dealer's* written agreement to:

(a) guarantee that textbooks ~~shall~~ *must* be supplied to any district at the listed, uniform sales prices in effect for schools, except that ~~such~~ *the* prices may be reduced in accordance with this section;

(b) guarantee that at no time ~~shall~~ *will* any textbook sale price in Montana be a larger amount than the sale price to schools anywhere else in the United States under similar conditions of transportation and marketing; and

(c) reduce automatically the listed, uniform sales price to schools whenever reductions of these prices are made anywhere in the United States.

(2) Textbook dealers filing the written agreement with the superintendent of public instruction shall also file a surety bond with the secretary of state. The surety bond ~~shall~~ *must* run to the state of Montana and be conditioned on the faithful performance of all duties imposed upon textbook dealers for the purpose of regulating the supply of textbooks to districts. The amount of the surety bond ~~shall~~ *must* be set by the superintendent of public instruction and ~~shall be~~ *may*

not *be* less than $2,000 ~~but not~~ *or* more than $10,000. ~~The bond shall be approved by the attorney general.~~ It ~~shall be~~ *is* the responsibility of the textbook dealer to maintain the surety bond on a current basis.

(3) When the textbook dealer has complied with the written agreement and surety bond requirements for licensing, the superintendent of public instruction shall issue a license to the textbook dealer."

Section 8. Section 20-9-327, MCA, is amended to read:

"20-9-327. Quality educator payment. (1) (a) The state shall provide a quality educator payment to:

(i) public school districts, as defined in 20-6-101 and 20-6-701;

(ii) special education cooperatives, as described in 20-7-451;

(iii) the Montana school for the deaf and blind, as described in 20-8-101; and

(iv) state youth correctional facilities, as defined in 41-5-103.

(b) A special education cooperative that has not met the requirements of ~~20-7-453 and~~ 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction.

(2) (a) The quality educator payment for special education cooperatives must be distributed directly to those entities by the superintendent of public instruction.

(b) The quality educator payment for the Montana school for the deaf and blind must be distributed to the Montana school for the deaf and blind.

(c) The quality educator payment for Pine Hills and Riverside youth correctional facilities must be distributed to those facilities by the department of corrections.

(3) The quality educator payment is $2,000 times the number of full-time equivalent educators, as reported to the superintendent of public instruction for accreditation purposes in the previous school year, each of whom:

(a) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in subsection (1) *of this section* in a position that requires an educator license in accordance with the administrative rules adopted by the board of public education; or

(b) (i) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-23-201, 37-24-301, or 37-25-302; and

(ii) is employed by an entity listed in subsection (1) to provide services to students."

Section 9. Section 20-9-461, MCA, is amended to read:

"20-9-461. Purpose. ~~Sections 20-9-461 through~~ *Section* 20-9-464 *and this section* are intended to improve the marketability of bonds issued by school districts in order that ~~said~~ *the* bonds may be sold upon the most favorable terms."

Section 10. Section 20-9-464, MCA, is amended to read:

"20-9-464. Statute of limitations — action to test validity. A bond of any issue~~, in which the preliminary proceedings have been submitted to and approved by the attorney general,~~ may not be held invalid because of any defect or failure to comply with ~~any~~ *a* statutory provision relating to the authorization, issuance, or sale of the bonds~~,~~ unless an action to contest the validity of the

bonds is brought within 30 days after the date of the adoption of the resolution calling for the sale of bonds of the school district."

Section 11. Section 20-9-466, MCA, is amended to read:

"20-9-466. School district bonds — state loan — qualifications for state loan. (1) The department of administration shall make a loan from the coal severance tax school bond contingency loan fund, established in 17-5-703, to a school district in an amount equal to the principal and interest payment on qualifying bonds when due in accordance with the provisions contained in the bonds. In order to receive a loan, the school district must:

(a) have issued bonds between January 21, 1992, and January 1, 1993, pursuant to 20-9-421 through *20-9-446, 20-9-461, and* 20-9-464;

(b) be prevented from making principal and interest payments on the bonds because the debt service levy for the bonds:

(i) has been declared invalid or unenforceable under Article II, section 4, or Article X, section 1, of the Montana constitution by a final court order; or

(ii) is prevented by an injunction;

(c) have exhausted the debt service reserve for the bonds; and

(d) have complied with all the requirements for the bonds contained in 20-9-467 and this section.

(2) To qualify for the state loan described in subsection (1), a school district, before issuing its bonds, must have:

(a) received voter approval for bonds pursuant to 20-9-421;

(b) following voter approval, received a certificate of eligibility from the board of public education stating that after consultation with the superintendent of public instruction, the board has determined that a minimum of 75% of the principal amount of the proposed bonds will be used to:

(i) restore, rebuild, or replace a destroyed or severely damaged school building;

(ii) correct one or more building deficiencies that affect the health and safety of school children;

(iii) correct one or more deficiencies that prevent the school district from meeting current accreditation standards; or

(iv) address any combination of circumstances described under subsections (2)(b)(i) through (2)(b)(iii); and

(c) received a final certificate of allocation from the department of administration pursuant to subsection (5).

(3) The board of public education shall:

(a) maintain a record of the total principal amount of bonds for which certification has been issued; and

(b) immediately furnish to the department a copy of each certificate issued.

(4) Upon receipt of a copy of the certificate from the board of public education, the department shall temporarily allocate loan authority to the school district equal to the principal amount of bonds indicated in the board's certificate. The principal amount of bonds for which final certification is issued may be less than the principal amount of bonds approved by the voters pursuant to subsection (2)(a).

(5) To obtain a final certificate of allocation, a school district shall provide the department, on a form provided by the department, the following information:

(a) the tentative date of sale of the school district's bonds;

(b) the principal amount of the bonds to be issued;

(c) the name and addresses of bond counsel and the financial ~~advisor~~ *adviser*; and

(d) other information as requested by the department.

(6) Upon issuance of the bonds, a school district shall forward to the department a copy of the district's bond resolution, the final opinion of bond counsel on the bonds, and a schedule of principal and interest payments on the bonds to maturity. The bond resolution must include a covenant agreeing to:

(a) defend any lawsuit challenging the school district's authority to sell and issue the bonds and to levy a tax for payment of the principal of and interest on the bonds;

(b) provide to the department before August 1 of each year a report of the school district's outstanding principal balance as of the preceding June 30 on the bonds secured by state loans;

(c) refund the bonds on any normal call date if, during the term of the bonds, the school district can refund its bonds without the state loan security and without increasing its total debt service costs on the bonds; and

(d) enter into a contract with the department establishing a schedule to repay the state if the state loans the school district money to make payments on district bonds. Notwithstanding other provisions of law, the loan must be repaid by the school district at a rate equivalent to the average yield of the pooled investment fund established in 17-6-203(3), commonly known as the short-term investment pool, for the period of the loan. The loan must be repaid in full within 10 years from the date the first loan is issued to a school district. Repayment must be paid from the sources designated for repayment of the bonds or from any other revenue and assets of the school district, including state equalization funds currently distributed or which may be distributed to the district. Loan repayments received by the department must be deposited in the coal severance tax school bond contingency loan fund.

(7) The department shall maintain a record of the total principal amount of bonds secured by state loans.

~~(8) A school district issuing bonds subject to 20-9-467 and this section may apply to the attorney general for a determination as to whether its bonds are affected by a court order declaring that the bonds of another district are invalid or unenforceable.~~

~~(9)~~*(8)* A school district whose authority to levy a property tax to pay principal of and interest on bonds has been challenged shall, upon notification of the challenge, immediately notify ~~the attorney general and~~ the department."

Section 12. Section 20-15-404, MCA, is amended to read:

"20-15-404. Trustees to adhere to certain other laws. Unless the context clearly indicates otherwise, the trustees of a community college district shall adhere to:

(1) the teachers' retirement provisions of Title 19, chapter 20;

(2) the provisions of 20-1-201, 20-1-205, 20-1-211, and 20-1-212;

(3) the school property provisions of 20-6-604, 20-6-605, 20-6-621, 20-6-622, 20-6-624, 20-6-631, and 20-6-633 through 20-6-636;

(4) the adult education provisions of Title 20, chapter 7, part 7;

(5) the administration of finances provisions of 20-9-115, 20-9-134, 20-9-207, 20-9-208, 20-9-210, 20-9-215, 20-9-221, 20-9-223, and 20-9-512;

(6) the school bond provisions of 20-9-401 through 20-9-408, 20-9-410 through 20-9-412, 20-9-421 through 20-9-446, ~~and~~ 20-9-461*,* ~~through~~ *20-9-464, and* 20-9-465;

(7) the special purpose funds provisions of 20-9-502, 20-9-503, 20-9-507, 20-9-508, and 20-9-511;

(8) the educational cooperative agreements provisions of 20-9-701 through 20-9-704;

(9) the school elections provisions of Title 20, chapter 20;

(10) the students' rights provisions of 20-25-511 through 20-25-516; and

(11) the health provisions of 50-1-206."

Section 13. Section 44-11-310, MCA, is amended to read:

"44-11-310. Filing of agreement. Within 20 days after *the final* approval by the ~~attorney general~~ *governing bodies of all parties to the agreement*, an agreement made pursuant to this part must be filed in the office of:

(1) each clerk and recorder of each county of this state where the principal office of one of the parties to the agreement is located; and

(2) the secretary of state."

Section 14. Repealer. Sections 7-7-101, 7-7-102, 7-7-103, 20-7-453, 20-9-462, 20-9-463, and 44-11-309, MCA, are repealed.

Approved March 30, 2007

CHAPTER NO. 95

[HB 132]

AN ACT RELATING TO STATE PUBLICATIONS; MODIFYING THE DEFINITIONS OF "STATE AGENCY" AND "STATE PUBLICATION"; DEFINING "DEPOSITORY LIBRARY"; PROVIDING FOR THE ADMINISTRATION OF THE STATE PUBLICATIONS DEPOSITORY LIBRARY PROGRAM; MODIFYING THE NOTIFICATION AND AVAILABILITY REQUIREMENTS FOR STATE PUBLICATIONS; MAINTAINING PERMANENT PUBLIC ACCESS TO STATE PUBLICATIONS; ADDING THE MONTANA UNIVERSITY SYSTEM TO THE LIST OF PUBLICATION EXEMPTIONS; AMENDING SECTIONS 1-11-301, 22-1-211, 22-1-212, 22-1-213, AND 22-1-218, MCA; AND REPEALING SECTIONS 22-1-214, 22-1-215, 22-1-216, AND 22-1-217, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-11-301, MCA, is amended to read:

"1-11-301. Publication and sale of Montana Code Annotated — free distribution. (1) The legislative council, with the advice of the code

commissioner, shall decide on the quantity, quality, style, format, and grade of all publications prior to having the code commissioner call for bids for the printing and binding and contract for their publication. The code commissioner shall follow the requirements of state law relating to contracts and bids, except as provided in this section.

(2) The methods of sale to the public of the Montana Code Annotated and supplements or other subsequent and ancillary publications may be included as an alternative specification and bid and as a part of a contract to be let by bids by the code commissioner.

(3) The sales price to the public of all Montana Code Annotated material must be fixed by the legislative council but may not exceed the cost price plus 25%. All revenue generated from the sale of the Montana Code Annotated or ancillary publications must be deposited in the state special revenue fund. Appropriations from the fund may be made for the use of the office and facilities of the legislative council under this chapter.

(4) Sets of the Montana Code Annotated purchased by the state, Montana local governmental agencies that are supported by public funds, and nonprofit organizations may not exceed the cost price of the sets plus 5%.

(5) (a) One copy of the Montana Code Annotated and supplements, and other subsequent and ancillary publications except annotations, must be provided at no cost to each library designated as a depository library ~~under 22-1-214~~ *as defined in 22-1-211.*

(b) The state law library in Helena must be provided with four copies of the Montana Code Annotated and supplements, including annotations and other subsequent and ancillary publications.

(c) The legislative council shall include in the cost price of the code the cost of providing the copies under this subsection."

Section 2. Section 22-1-211, MCA, is amended to read:

"22-1-211. Definitions. As used in this part, the following definitions apply:

~~(1) "Print" includes all forms of printing and duplicating, regardless of format or purpose, with the exception of correspondence and interoffice memoranda.~~

(1) "Depository library" means a library contracted by the state library under 22-1-212(2) to provide the general public access to state publications.

(2) "State agency" ~~includes every~~ *means any entity established or authorized by law to govern operations of the state, such as a* state office, officer, department, division, *section,* bureau, board, commission, *council,* and agency of the state and~~, where applicable,~~ all subdivisions of each.

(3) *(a)* "State publication" ~~includes any document, compilation, journal, law, resolution, bluebook, statute, code, register, pamphlet, list, book, proceedings, report, memorandum, hearing, legislative bill, leaflet, order, regulation, directory, periodical, or magazine issued in print or purchased for distribution by the state, the legislature, constitutional officers, any state department, committee, or other state agency supported wholly or in part by state funds.~~ *means any information originating in or produced by the authority of a state agency or at the total or partial expense of a state agency that the agency intends to distribute outside the agency, regardless of format or medium, source or copyright, license, or trademark.*

(b) The term does not include information intended only for distribution to contractors or grantees of the agency, persons within the agency, or members of the public under 2-6-102 or information produced by a state agency that is intended strictly for internal administrative or operational purposes."

Section 3. Section 22-1-212, MCA, is amended to read:

"22-1-212. ~~Creation~~ *Administration* of ~~distribution center~~ *state publications depository library program — rulemaking.* *(1)* ~~There is hereby created, as a division of the state library and under the direction of the state librarian, a state publications library distribution center. The center shall promote the establishment of an orderly depository library system.~~ *The state library shall administer a state publications depository library program to identify, acquire, catalog, preserve, and provide access to state publications.*

(2) The state library may enter into contracts with other libraries to carry out the provisions of the state publications depository library program.

(3) ~~To this end the~~ *The* state library commission shall ~~make such~~ *adopt* rules necessary to carry out the provisions of this part."

Section 4. Section 22-1-213, MCA, is amended to read:

"22-1-213. State ~~agency~~ publications ~~to be deposited in state library — interlibrary loan — sale publications~~ — *notification and availability requirements.* ~~Every state agency shall deposit upon release at least four copies of each of its state publications with the state library for record and depository purposes. Additional copies shall also be deposited in quantities certified to the agencies by the state library as required to meet the needs of the depository library system and to provide interlibrary loan service to those libraries without depository status.~~ *State agencies shall notify the state library of their state publications and shall make available their state publications to the state library as provided by rule.* ~~Additional copies of sale publications required by the state library shall be furnished only upon reimbursement to the state agency of the full cost of such sale publications, and the~~ *The* state library shall*, if requested by the agency,* ~~also~~ reimburse any state agency for ~~additional~~ *state* publications ~~so~~ required ~~where~~ *to be made available when* the quantity desired will necessitate ~~additional printing or other~~ *unreasonable* expense to ~~such~~ *the* agency."

Section 5. Permanent public access to state publications. The state library shall routinely notify depository libraries of recently acquired state publications. The state library shall coordinate with state agencies and depository libraries to ensure permanent public access to state publications. The state library shall offer state publications that it removes from its collection to the Montana historical society, which shall determine which state publications must be preserved as provided for in 22-3-203.

Section 6. Section 22-1-218, MCA, is amended to read:

"22-1-218. Exemptions. *(1)* This part does not apply to ~~officers of or affect the duties concerning publications distributed by~~:

~~(1)~~*(a)* the state law library *in connection with the collection described under 22-1-501*;

~~(2)~~*(b)* the code commissioner in connection with duties under Title 1, chapter 11, as amended; and

~~(3)~~*(c)* the legislative services division in connection with ~~its~~ duties under 5-11-203, as amended~~.~~*; and*

(d) the Montana university system.

(2) The state library may, at its option and without causing the university system to incur expense, collect, catalog, and make available selected publications of units of the Montana university system."

Section 7. Repealer. Sections 22-1-214, 22-1-215, 22-1-216, and 22-1-217, MCA, are repealed.

Section 8. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 22, chapter 1, part 2, and the provisions of Title 22, chapter 1, part 2, apply to [section 5].

Approved March 30, 2007

CHAPTER NO. 96

[HB 140]

AN ACT PROVIDING THAT IF A DECLARATION FOR NOMINATION IS FILED ELECTRONICALLY WITH THE SECRETARY OF STATE, THE DECLARATION DOES NOT HAVE TO BE ACKNOWLEDGED; AND AMENDING SECTION 13-10-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-10-201, MCA, is amended to read:

"13-10-201. Declaration for nomination. (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of chapter 14, shall file a declaration for nomination with the secretary of state or election administrator. A candidate may not file for more than one public office. Each candidate for governor shall file a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination must be filed in the office of:

(a) the secretary of state for placement of a name on the ballot for the presidential preference primary, a congressional office, a state or district office to be voted for in more than one county, a member of the legislature, or a judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. ~~The~~ *Unless filed electronically with the secretary of state, the* declaration for nomination must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by the elector's party. For a partisan election, an elector may not file a declaration for more than one party's nomination.

(5) (a) The declaration for nomination must be in the form and contain the information prescribed by the secretary of state.

(b) A person seeking nomination to the legislature shall provide the secretary of state with a street address, legal description, or road designation to

indicate the person's place of residence. If a candidate for the legislature changes residence, the candidate shall, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.

(c) The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.

(6) Declarations for nomination must be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.

(7) A declaration for nomination form may be sent by facsimile transmission if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state."

Approved March 30, 2007

CHAPTER NO. 97

[HB 144]

AN ACT REVISING THE WASTE MANAGEMENT LAWS; AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ENJOIN THE TRANSPORTATION OF SOLID WASTE IF THERE IS A VIOLATION; REVISING CERTAIN DEFINITIONS AND DEFINING CERTAIN TERMS UNDER THE INFECTIOUS WASTE MANAGEMENT ACT; MAKING A VIOLATION OF THE INFECTIOUS WASTE MANAGEMENT ACT A MISDEMEANOR; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES GOVERNING THE INSPECTION AND REGULATION OF THE TRANSPORTATION AND MANAGEMENT OF INFECTIOUS WASTE; AND AMENDING SECTIONS 75-10-231, 75-10-1003, 75-10-1004, AND 75-10-1006, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-231, MCA, is amended to read:

"75-10-231. Actions. The department may, through the attorney general or appropriate county attorney, initiate and maintain in district court enforcement actions as provided in this part, including actions to collect a criminal penalty or to enjoin *the transportation of solid waste or* the operation of a solid waste management system that is in violation of this part or a rule adopted by the department or order issued as provided in this part."

Section 2. Section 75-10-1003, MCA, is amended to read:

"75-10-1003. Definitions. As used in this part, the following definitions apply:

~~(1) "Department" means the department of environmental quality established in 2-15-3501.~~

(1) "Disposal" or "dispose" has the meaning provided in 75-10-203.

~~(2) "Generator" means an individual, firm, facility, or company that produces infectious waste.~~

(2) "Generate" or "generation" means to produce infectious waste.

(3) "Infectious" means capable of producing disease. To be infectious, the following four factors simultaneously must be present:

(a) virulence, which is the ability of microorganisms to cause disease;

(b) dose, which is microorganisms in a quantity sufficient to cause infection;

(c) portal of entry, which is an opening or route of access into a human body; and

(d) host susceptibility, which means the host's natural resistance is incapable of preventing infection.

(4) "Infectious waste" means waste capable of producing infectious disease. Infectious waste includes but is not limited to:

(a) cultures and stocks of infectious agents and associated biologicals;

(b) human pathological waste, including tissues, organs, and body parts removed during surgery or an autopsy;

(c) free-flowing waste human blood and products of blood, including serum, plasma, and other blood components and items soaked or saturated with blood; and

(d) sharps that have been used in patient care, medical research, or industrial laboratories.

(5) "Intermediate point" means a place where infectious waste is not treated or disposed of.

(6) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local government entity, federal agency, or any other governmental or private entity, whether organized for profit or not.

~~(5)~~*(7)* "Sharps" means any discarded health care article that may cause punctures or cuts, including but not limited to *broken glass that may be contaminated with blood,* needles, *and* scalpel blades~~, and broken glass that may be contaminated with blood~~.

~~(6)~~*(8)* "Steam sterilization" means a treatment method for infectious waste using saturated steam within a pressure vessel (known as a steam sterilizer, autoclave, or retort) at a time, for a period of time, and at a temperature sufficient to kill infectious agents within the waste.

~~(7)~~*(9)* "Storage" *or "store"* means ~~the actual or intended containment of wastes on either a temporary basis or a long-term basis~~ *to hold for a temporary period.*

~~(8)~~*(10)* ~~"Transportation"~~ *"Transport" or "transportation"* means ~~the movement of~~ *to move* infectious waste *from the point of generation to any intermediate point or to the point of ultimate treatment or disposal.* ~~from the point of generation to any intermediate points or to the point of ultimate treatment or disposal.~~

~~(9)~~*(11)* ~~"Treatment"~~ *"Treat" or "treatment"* means ~~the application of~~ *to apply* a method, technique, or process, including incineration, designed to render infectious waste sterile."

Section 3. Section 75-10-1004, MCA, is amended to read:

"75-10-1004. Prohibition. *(1)* ~~A~~ *Except as provided in subsection (2), a* person may not *generate,* treat, store, transport, or dispose of infectious waste in a manner not authorized under the provisions of this part or rules adopted under the provisions of this part.

(2) The prohibition in subsection (1) does not apply to the generation of infectious waste by an individual in reasonable association with the individual's household operations."

Section 4. Section 75-10-1006, MCA, is amended to read:

"75-10-1006. ~~Licensing~~ *Generation licensing* and regulation — rulemaking authority. (1) A *person that is required to obtain a license from a* board or department of the state *to operate a health care facility, as defined in 50-5-101, or to engage in a profession or occupation:*

(a) may not generate infectious waste, store infectious waste at a place where infectious waste is generated, or transport infectious waste from the point of generation to an intermediate point without a license; and

(b) shall comply with the rules adopted under this part by the board or department responsible for licensing that person. ~~that licenses a profession, occupation, or health care facility that generates infectious waste shall require each licensee to comply with this part as a condition of licensure.~~

(2) ~~The~~ *A* board or department *of the state that issues a license to a person that generates infectious waste:*

(a) shall adopt rules to implement this part *governing the following activities by a licensee:*

(i) generation of infection waste;

(ii) storage of infectious waste at a place where infectious waste is generated;

(iii) transportation of infectious waste from the place of generation to an intermediate point; and

(b) may impose and adjust annual fees commensurate with the costs of regulation.

~~(2) A profession, occupation, or health care facility that generates or transports infectious waste or that operates treatment, storage, or disposal facilities regulated by this part that is not already licensed by a board or department under subsection (1) must obtain a permit annually from the department. The department shall adopt rules to implement this part and may establish an annual fee commensurate with the costs of regulation. Fees collected under the provisions of this part must be deposited in the solid waste management account established in 75-10-117.~~"

Section 5. Criminal penalty. A person who violates this part or a rule adopted pursuant to this part is guilty of a misdemeanor. Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

Section 6. Department rulemaking authority for infectious waste. (1) Except as provided in subsection (2), the department shall adopt rules governing the inspection and regulation of the transportation and management of infectious waste as defined in 75-10-1003.

(2) The department may not adopt rules to regulate:

(a) the generation of infectious waste; or

(b) infectious waste storage or transportation that is regulated under 75-10-1006.

Section 7. Codification instruction. (1) [Section 5] is intended to be codified as an integral part of Title 75, chapter 10, part 10, and the provisions of Title 75, chapter 10, part 10, apply to [section 5].

(2) [Section 6] is intended to be codified as an integral part of Title 75, chapter 10, part 2, and the provisions of Title 75, chapter 10, part 2, apply to [section 6].

Approved March 30, 2007

CHAPTER NO. 98

[HB 145]

AN ACT GENERALLY REVISING BUILDING CODE ENFORCEMENT PROVISIONS FOR COUNTIES, CITIES, AND TOWNS CERTIFIED TO ENFORCE BUILDING CODES; REVISING PROVISIONS GOVERNING INSPECTIONS BY CERTIFIED COUNTIES, CITIES, AND TOWNS OF BUILDINGS OUTSIDE THEIR JURISDICTION; AMENDING SECTION 50-60-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-60-106, MCA, is amended to read:

"50-60-106. Powers and duties of counties, cities, and towns. (1) ~~The~~ *As allowed by Title 50, chapter 60, part 3, the* examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, ~~licenses,~~ *licenses,* certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the limits of a city or town are the responsibility of the city or town ~~of the state~~. The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, ~~licenses,~~ *licenses,* certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the portion of a county that is covered by a county building code *enforcement program* are the responsibility of the county.

(2) Each county, city, or town certified under 50-60-302 shall, within its jurisdictional area:

(a) examine, approve, or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the applicable provisions of the state building code or county, city, or town building code, and direct the inspection of the buildings during and in the course of construction;

(b) require that construction of buildings be in accordance with the applicable provisions of the state building code or county, city, or town building code, subject to the powers of variance or modification granted to the department;

(c) make available to building contractors at a price that is commensurate with reproduction costs a checklist devised by the department pursuant to 50-60-118 for single-family dwellings and provide to contractors who attach a completed checklist to the plans submitted for examination the relevant building permit or notice of plan disapproval within 10 working days of the contractor's submission;

(d) during and in the course of construction, order in writing the remedying of any condition found to exist in, on, or about any building that is being constructed in violation of the state building code or county, city, or town

building code. Orders may be served upon the owner or the owner's authorized agent personally or by sending by certified mail a copy of the order to the owner or the owner's authorized agent at the address set forth in the application for permission for the construction of the building. A ~~local building department~~ *county, city, or town certified pursuant to 50-60-302*, by action of ~~an authorized officer~~ *its building official*, may grant in writing time as may be reasonably necessary for achieving compliance with the order. For the purposes of *subsection (2)(a) and* this subsection (2)(d), the phrase "during and in the course of construction" refers to the construction of a building until all necessary building permits have been obtained and ~~the municipality or county has issued formal written approvals or has issued a certificate of occupancy for the building~~ *all work authorized by those permits has been fully approved by the building official having jurisdiction*.

(e) issue certificates of occupancy as provided in 50-60-107;

(f) issue permits~~, licenses~~,, *licenses,* and other required documents in connection with the construction of a building;

(g) ensure that all construction-related fees or charges imposed and collected by the ~~municipality or~~ county*, city, or town* are necessary, reasonable, and uniform and are:

(i) except as provided in subsection (2)(g)(iii), used only for building code enforcement, which consists of those necessary and reasonable costs directly and specifically identifiable for the enforcement of building codes, plus indirect costs charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges. If indirect costs are waived for any local government proprietary fund, they must also be waived for the program established in this section. Indirect charges are limited to the charges that are allowed under federal cost accounting principles that are applicable to a local government.

(ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce building codes for 12 months. The excess must be placed in a reserve account and may ~~only~~ be used *only* for building code enforcement. Collection and expenditure of fees and charges must be fully documented.

(iii) allocated and remitted to the department, in an amount not to exceed 0.5% of the building fees or charges collected, for the building codes education program established in 50-60-116.

(3) Each county, city, or town with a building code enforcement program that has been certified under 50-60-302 may, within the area of its jurisdiction:

(a) make, amend, and repeal rules for the administration and enforcement of the provisions of this section and for the collection of fees and charges related to construction; *and*

(b) prohibit the commencement of construction until a permit has been issued by the ~~local building department~~ *building code enforcement authority having jurisdiction* after a showing of compliance with the requirements of the applicable provisions of the state building code or county, city, or town building code *or other county, city, or town ordinance or resolution that pertains to the proposed construction.*~~; and~~

~~(c) enter into a private contract with the owner or builder of a building that is not or will not be within the jurisdiction of the county, city, or town under which the county, city, or town will provide reviews, inspections, orders, and~~

~~certificates of occupancy for a fee and under conditions agreed upon by the parties. County, city, or town powers of enforcement may not be exercised.~~

(4) Each county, city, or town with a building code enforcement program that has been certified under 50-60-302 may perform inspections of buildings that are outside its jurisdictional limits, subject to the following conditions:

(a) The inspections are requested in writing by the owners or builders of the buildings to be inspected.

(b) The inspections are not done in lieu of inspections by another county, city, or town that has jurisdiction over the buildings to be inspected.

(c) (i) The county, city, or town powers of enforcement possessed as a result of building code enforcement certification by the department may not be exercised in conjunction with the requested inspections.

(ii) Similar powers of building code enforcement may not be contractually created or required by the requester and the inspecting jurisdiction.

(5) In situations in which buildings may be annexed into an inspecting city's or town's jurisdiction subsequent to a requested inspection, the city or town may not require owners or builders to have duplicative inspections of those buildings prior to annexation as a condition precedent to receiving any public services or utilities."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2007

CHAPTER NO. 99

[HB 149]

AN ACT INCREASING THE AMOUNT OF HOMESTEAD EXEMPT FROM EXECUTION OR FORCED SALE FROM $100,000 TO $250,000; AMENDING SECTION 70-32-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-32-104, MCA, is amended to read:

"70-32-104. Limitation on value. (1) A homestead may not exceed ~~$100,000~~ *$250,000* in value. In a proceeding instituted to determine the value of the homestead, the assessed value of the land with included appurtenances, if any, and of the dwelling house as it appears on the last-completed assessment roll preceding the institution of the proceeding is prima facie evidence of the value of the property claimed as a homestead.

(2) If a claimant who is an owner of an undivided interest in real property claims a homestead exemption, the claimant is limited to an exemption amount proportional to the claimant's undivided interest."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2007

CHAPTER NO. 100

[HB 176]

AN ACT SUBSTITUTING THE TERM "ETHANOL-BLENDED GASOLINE" FOR "GASOHOL"; AMENDING AND MAKING UNIFORM DEFINITIONS OF AND REFERENCES TO ETHANOL AND RELATED TERMS; REMOVING THE PERCENTAGE OF ETHANOL IN GASOLINE THAT STATE EMPLOYEES ARE REQUESTED TO USE WHEN FUELING STATE VEHICLES; AMENDING SECTIONS 2-17-414, 15-6-135, 15-70-201, 15-70-202, 15-70-204, 15-70-221, 15-70-501, 15-70-502, 15-70-503, 15-70-511, 15-70-512, 15-70-513, 15-70-514, 15-70-521, 15-70-522, 15-70-523, 15-70-527, 17-6-317, 75-11-302, AND 75-11-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-414, MCA, is amended to read:

"2-17-414. State vehicles to use ethanol-blended ~~fuel~~ *gasoline* — definition. (1) A department, agency, institution, office, board, and commission of the executive, legislative, and judicial branches of state government and a state institution of higher education owning or operating a motor vehicle capable of burning ethanol-blended ~~fuel~~ *gasoline* shall take all reasonable steps to ensure that the operators of those vehicles use ethanol-blended ~~fuel~~ *gasoline* in the vehicles if ethanol-blended ~~fuel~~ *gasoline* is commercially available within the operating area of the vehicle and is priced competitively with the ~~motor vehicle fuel~~ *gasoline* otherwise used by the vehicle.

(2) For purposes of this section, "ethanol-blended ~~fuel~~ *gasoline*" means a fuel mixture ~~that is 90%~~ *of* gasoline and ~~10% anhydrous~~ ethanol produced from agricultural products, including grain and wood or wood products, and that is used for the purpose of effectively and efficiently operating internal combustion engines.

(3) An entity subject to the requirements of subsection (1) may not take any disciplinary, judicial, administrative, or other adverse action against the operator of a motor vehicle for failing to purchase ethanol-blended ~~fuel~~ *gasoline* for the operation of the motor vehicle."

Section 2. Section 15-6-135, MCA, is amended to read:

"15-6-135. Class five property — description — taxable percentage. (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in 15-6-137(1)(a);

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of ~~gasohol~~ *ethanol-blended gasoline* during construction and for the first 3 years of its operation;

(e) all land and improvements and all personal property owned by a research and development firm, provided that the property is actively devoted to research and development;

(f) machinery and equipment used in electrolytic reduction facilities;

(g) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telecommunications services exclusively to rural areas or to rural areas and cities and towns of 1,200 permanent residents or less.

(2) (a) "Air and water pollution control equipment" means that portion of identifiable property, facilities, machinery, devices, or equipment designed, constructed, under construction, or operated for removing, disposing, abating, treating, eliminating, destroying, neutralizing, stabilizing, rendering inert, storing, or preventing the creation of air or water pollutants that, except for the use of the item, would be released to the environment. Reduction in pollutants obtained through operational techniques without specific facilities, machinery, devices, or equipment is not eligible for certification under this section.

(b) Requests for certification must be made on forms available from the department of revenue. Certification may not be granted unless the applicant is in substantial compliance with all applicable rules, laws, orders, or permit conditions. Certification remains in effect only as long as substantial compliance continues.

(c) The department of environmental quality shall promulgate rules specifying procedures, including timeframes for certification application, and definitions necessary to identify air and water pollution control equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of qualifying air and water pollution control equipment. The department of environmental quality shall identify and track compliance in the use of certified air and water pollution control equipment and report continuous acts or patterns of noncompliance at a facility to the department of revenue. Casual or isolated incidents of noncompliance at a facility do not affect certification.

(d) A person may appeal the certification, classification, and valuation of the property to the state tax appeal board. Appeals on the property certification must name the department of environmental quality as the respondent, and appeals on the classification or valuation of the equipment must name the department of revenue as the respondent.

(3) (a) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(b) New industrial property does not include:

(i) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);

(ii) a plant that will create adverse impact on existing state, county, or municipal services; or

(iii) property used or employed in an industrial plant that has been in operation in this state for 3 years or longer.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials;

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared by the United States office of management and budget;

(iv) engage in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of an industry's gross sales or receipts are earned from outside the state; or

(v) earn 50% or more of their annual gross income from out-of-state sales.

(5) Class five property is taxed at 3% of its market value."

Section 3. Section 15-70-201, MCA, is amended to read:

"15-70-201. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state for:

(i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;

(ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or

(iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.

(b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) a person in Montana who blends ~~alcohol~~ *ethanol* with gasoline.

(7) "Ethanol" means nominally anhydrous ethyl alcohol that has been denatured as specified in 27 CFR parts 20 and 21 and that meets the standards for ethanol adopted pursuant to 82-15-103.

(8) "Ethanol-blended gasoline" means gasoline blended with ethanol. The percentage of ethanol in the blend is identified by the letter "E" followed by the percentage number. A blend that is 10% denatured ethanol and 90% gasoline would be reflected as E-10. A blend that is 85% denatured ethanol and 15% gasoline would be reflected as E-85.

~~(7)~~*(9)* "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

~~(8)~~*(10)* "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

~~(9) "Gasohol" means a gasoline fuel that is blended with denatured ethanol. Typically gasohol is a blend of 10% denatured ethanol and 90% gasoline, but the blended amounts may differ. The percentage of ethanol in the blend is identified by the letter "E" followed by the percentage number. A blend that is 10% denatured ethanol and 90% gasoline would be reflected as E-10.~~

~~(10)~~*(11)* (a) "Gasoline" includes:

(i) all petroleum products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) except for ~~alcohol~~ *ethanol* blended into ~~gasohol~~ *ethanol-blended gasoline*, any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

~~(11)~~*(12)* "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

~~(12)~~*(13)* "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

~~(13)~~*(14)* "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and ~~(10)~~ *(11)* that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

~~(14)~~*(15)* "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

~~(15)~~*(16)* "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

~~(16)~~*(17)* "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state."

Section 4. Section 15-70-202, MCA, is amended to read:

"15-70-202. License and security of gasoline distributors — denial or revocation of license. (1) (a) Each gasoline distributor, including an exporter and importer, as those terms are defined in 15-70-201, prior to the commencement of doing business, shall file:

(i) an application for a license with the department on forms prescribed and furnished by the department setting forth the information that may be requested by the department; and

(ii) security with the department in an amount to be determined by the department.

(b) (i) Except as provided in subsection (1)(b)(ii), the required amount of security may not exceed twice the estimated amount of gasoline taxes that the distributor will pay to this state each month.

(ii) The minimum required security for a distributor who imports or exports gasoline, or both, is $25,000.

(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or canceled.

(2) The department may deny the issuance of a gasoline distributor license or revoke a gasoline distributor license if it determines that the applicant or distributor:

(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;

(b) fails to provide the security required by the department;

(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;

(d) is not in compliance with motor fuels laws in other jurisdictions; or

(e) fails to pay the gasoline license tax.

(3) If an application for a gasoline distributor license is denied or revoked, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.

(4) As used in this section "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) a deposit made by the distributor with the department, under the conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(5) Failure to obtain a gasoline distributor license as required in this section subjects the distributor to the provisions of 15-70-233 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

(6) The owner of a commercial motor vehicle that is engaged in transporting fuel for a distributor is not subject to the provisions of this section.

(7) A distributor *may not* ~~who blends~~ *blend* ~~gasohol~~ *ethanol-blended gasoline* ~~must be~~ *unless* licensed ~~with~~ *by* the department. If a distributor cannot be licensed, the distributor is required to buy preblended ~~gasohol~~ *ethanol-blended gasoline*."

Section 5. Section 15-70-204, MCA, is amended to read:

"15-70-204. (Temporary) Gasoline license tax — rate. (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

(3) ~~Gasohol~~ *Ethanol-blended gasoline*, as defined in 15-70-201, is subject to 85% of the tax imposed in subsection (1)(b).

(4) Beginning *on* the date that the requirement for use of ~~gasohol~~ *ethanol-blended gasoline* contained in 82-15-121 occurs, ~~gasohol~~ *ethanol-blended gasoline* is subject to the tax imposed in subsection (1)(b). (Terminates on occurrence of contingency—sec. 21, Ch. 452, L. 2005.)

15-70-204. (Effective on occurrence of contingency) Gasoline license tax — rate. (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

(3) ~~Gasohol, as defined in 15-70-201,~~ *Ethanol-blended gasoline* is subject to 85% of the tax imposed in subsection (1)(b)."

Section 6. Section 15-70-221, MCA, is amended to read:

"15-70-221. Refund or credit authorized. (1) A person who purchases and uses any gasoline on which the Montana gasoline license tax has been paid for denaturing ~~alcohol~~ *ethanol* to be used in ~~gasohol~~ *ethanol-blended gasoline*, for operating stationary gasoline engines used off the public highways and streets, or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the gasoline. The refund may not exceed the tax paid or to be paid to the state. Except as provided in subsection (5), a refund is not allowed for the tax per gallon upon aviation fuel allocated to the department of transportation by 67-1-301.

(2) A distributor who pays the gasoline license tax to this state erroneously is allowed a credit or refund of the amount of tax paid erroneously.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline with a tax liability of $200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor may not have declared the accounts of the purchaser worthless more than once during a 3-year period, and the distributor must have claimed those accounts as bad debts for federal or state income tax purposes.

(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(4) A person who purchases and exports for sale, use, or consumption outside Montana gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state the fuel is destined for. The credit or refund must be made upon completion of the information reports required under 15-70-209 and presentation to the department of proof of delivery outside Montana as it may by rule require.

(5) A scheduled passenger air carrier certified under 14 CFR, part 121 or 135, may claim a refund of 2 cents on each gallon of aviation fuel purchased by the carrier on which the Montana gasoline license tax has been paid."

Section 7. Section 15-70-501, MCA, is amended to read:

"15-70-501. Short title. This part may be cited as the ~~"Alcohol~~ *"Ethanol* Tax Incentive and Administration Act of 1983"."

Section 8. Section 15-70-502, MCA, is amended to read:

"15-70-502. Purpose. The purpose of this part is to establish schedules for the tax incentive for the production of ~~alcohol~~ *ethanol* to be blended for ~~gasohol~~ *ethanol-blended gasoline* and to provide for the proper administration and

enforcement of the tax incentive. The schedules for the tax incentive are designed to stimulate the development of ~~alcohol fuel~~ *ethanol* production in Montana while limiting the cost to the state of the tax incentive to amounts that are reasonable in relation to the highway revenue needs of Montana."

Section 9. Section 15-70-503, MCA, is amended to read:

"15-70-503. Definitions. As used in this part, the definitions in 15-70-201 and the following definitions apply:

~~(1) "Alcohol distributor" means any person who, for the purpose of making gasohol, engages in the business of producing alcohol for sale, use, or distribution.~~

~~(2)~~*(1)* "Department" means the department of transportation.

(2) "Ethanol distributor" means any person who, for the purpose of making ethanol-blended gasoline, engages in the business of producing ethanol for sale, use, or distribution.

(3) "Ethanol-blended gasoline dealer" means any person who blends ethanol with gasoline to produce ethanol-blended gasoline for sale from a wholesale or retail outlet, for use, or for distribution in this state.

~~(3)~~*(4)* "Export" means to transport out of Montana from any point of origin within Montana by any means other than in the fuel supply tank of a motor vehicle.

~~(4) "Gasohol" means a gasoline fuel that is blended with denatured ethanol. Typically gasohol is a blend of 10% denatured ethanol and 90% gasoline, but the blended amounts may differ. The percentage of ethanol in the blend is identified by the letter "E" followed by the percentage number. A blend that is 10% denatured ethanol and 90% gasoline would be reflected as E-10.~~

~~(5) "Gasohol dealer" means any person who blends alcohol with gasoline to produce gasohol for sale, use, or distribution in this state.~~"

Section 10. Section 15-70-511, MCA, is amended to read:

"15-70-511. Licensing of ~~alcohol~~ *ethanol* distributors. ~~Every alcohol~~ *An ethanol* distributor, prior to doing business, shall file with the department an application for a license, using forms prescribed and furnished by the department and setting forth ~~such~~ information ~~as~~ *that* may be requested by the department. Upon approval of the application, the department shall issue the distributor a nonassignable license that continues in force until surrendered or canceled."

Section 11. Section 15-70-512, MCA, is amended to read:

"15-70-512. Distributor's statement. Each ~~alcohol~~ *ethanol* distributor shall, not later than the 25th day of each calendar month, render to the department a statement, signed by ~~him~~ *the distributor*, that includes the following:

(1) the number of gallons of ~~alcohol~~ *ethanol* manufactured or imported by the distributor during the preceding calendar month;

(2) the name of each ~~gasohol~~ *ethanol-blended gasoline* dealer to whom ~~he~~ *the distributor* sold ~~alcohol~~ *ethanol* and the number of gallons sold to each dealer; and

(3) ~~such~~ other information ~~as~~ *that* the department may reasonably require to administer the tax laws of this state."

Section 12. Section 15-70-513, MCA, is amended to read:

"15-70-513. Recordkeeping requirements. The records of each ~~alcohol~~ *ethanol* distributor and ~~gasohol~~ *ethanol-blended gasoline* dealer must be kept for a period of not more than 3 years and must include receipts, invoices, and ~~such~~ other information ~~as~~ *that* the department may require."

Section 13. Section 15-70-514, MCA, is amended to read:

"15-70-514. Examination of records. The department or its authorized representative may examine the books, papers, records, and equipment of any ~~alcohol~~ *ethanol* distributor or ~~gasohol~~ *ethanol-blended gasoline* dealer."

Section 14. Section 15-70-521, MCA, is amended to read:

"15-70-521. Denaturing ~~alcohol~~ *ethanol* — refund authorized. ~~Any alcohol~~ *An ethanol* distributor who, for the purpose of denaturing ~~alcohol~~ *ethanol* distilled in Montana, purchases gasoline on which the Montana gasoline tax has been paid is entitled to a refund, computed as allowed in 15-70-221, of tax paid on the gasoline used."

Section 15. Section 15-70-522, MCA, is amended to read:

"15-70-522. Tax incentive for production of ~~alcohol~~ *ethanol* — rules. (1) (a) If the ~~alcohol~~ *ethanol* was produced in Montana from Montana agricultural products, including Montana wood or wood products, or if the ~~alcohol~~ *ethanol* was produced from non-Montana agricultural products when Montana products are not available, there is a tax incentive payable to ~~alcohol~~ *ethanol* distributors for distilling ~~alcohol~~ *ethanol* that:

(i) is to be blended with gasoline for sale as ~~gasohol~~ *ethanol-blended gasoline* in Montana;

(ii) was exported from Montana to be blended with gasoline for sale as ~~gasohol~~ *ethanol-blended gasoline*; or

(iii) is to be used in the production of ethyl butyl ether for use in reformulated gasoline.

(b) Payment must be made by the department out of the amount collected under 15-70-204.

(2) Except as provided in subsections (3) and (4), the tax incentive on each gallon of ~~alcohol~~ *ethanol* distilled in accordance with subsection (1) is 20 cents a gallon for each gallon that is 100% produced from Montana products, with the amount of the tax incentive for each gallon reduced proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used in the production of the ~~alcohol~~ *ethanol*. The tax incentive is available to a facility for the first 6 years from the date that the facility begins production. The facility shall file a business plan with the department at least 2 years before the estimated beginning date of production. After the initial business plan is filed, the facility shall provide the department with quarterly updates regarding any changes to the business plan.

(3) Regardless of the ~~alcohol~~ *ethanol* tax incentive provided in subsection (2):

(a) the total payments made for the incentive under this part may not exceed $6 million in any consecutive 12-month period;

(b) a plant or facility is not eligible to receive the tax incentive unless the facility paid the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), during the construction phase; and

(c) an ~~alcohol~~ *ethanol* distributor is not eligible to receive the tax incentive unless at least:

(i) 20% Montana product is used to produce ~~alcohol~~ *ethanol* at the facility in the first year of production;

(ii) 25% Montana product is used to produce ~~alcohol~~ *ethanol* at the facility in the second year of production;

(iii) 35% Montana product is used to produce ~~alcohol~~ *ethanol* at the facility in the third year of production;

(iv) 45% Montana product is used to produce ~~alcohol~~ *ethanol* at the facility in the fourth year of production;

(v) 55% Montana product is used to produce ~~alcohol~~ *ethanol* at the facility in the fifth year of production; and

(vi) 65% Montana product is used to produce ~~alcohol~~ *ethanol* at the facility in the sixth year of production.

(4) (a) An ~~alcohol~~ *ethanol* distributor may not receive tax incentive payments under subsection (2) that exceed $2 million in any consecutive 12-month period. Subject to subsections (5) and (6), an ~~alcohol~~ *ethanol* distributor may receive tax incentive payments commencing the first quarter after a facility begins production. The distributor shall report its production to the department pursuant to 15-70-205.

(b) The distributor's report must include:

(i) the total number of gallons produced for the month;

(ii) the total amount of products purchased for the production of ~~alcohol~~ *ethanol*;

(iii) the percentage of the total amount of products purchased that are Montana products; and

(iv) other information that the department determines is necessary.

(5) (a) A plant shall apply for the incentive payment by submitting an application to the department when the plant has proof of commitment from lenders to finance the plant. Subject to subsection (5)(b), the department shall respond to the applicant with approval of the application within 45 days of receipt of the application, after confirming the lending commitment. Upon approval of the application, the department shall enter into a contract with the plant that ensures the state's commitment to pay incentive payments to qualifying ethanol plants.

(b) If the department is not able to confirm a lending commitment, the department shall deny the application.

(6) After the department has verified production, the application provisions of subsection (5) are met, and the plant owner presents proof of financing, the department shall begin payments of the ~~alcohol~~ *ethanol* tax incentives based on actual production according to the terms of subsections (2) and (4).

(7) The department shall ~~prescribe~~ *adopt* rules necessary to carry out the provisions of this section ~~within 1 year of April 28, 2005~~. The department shall coordinate and request information and input from the ~~alcohol~~ *ethanol* production industry as a part of the rulemaking process and shall follow the procedures provided in Title 2, chapter 4."

Section 16. Section 15-70-523, MCA, is amended to read:

"15-70-523. Application for payment of tax incentive. (1) The claimant shall apply for payment of *the* tax incentive by signed statement~~,~~ on a form furnished by the department. The form must be accompanied by:

(a) the original production records and invoices issued to the ~~gasohol~~ *ethanol-blended gasoline* dealer at the time of sale and delivery, showing total gallons of ~~alcohol~~ *ethanol* sold; and

(b) a certificate of blending issued by the ~~alcohol~~ *ethanol* purchaser showing the total gallons of ~~alcohol~~ *ethanol* blended and the date of blending.

(2) Application for the payment of the tax incentives must be filed with the department not later than the 25th day of the calendar month following the month for which the claim is being made."

Section 17. Section 15-70-527, MCA, is amended to read:

"15-70-527. Penalty for failure to file. ~~Any alcohol~~ *An ethanol* distributor who fails to obtain a license under 15-70-511 or to file the statements required by 15-70-512 in the manner or within the time provided in 15-70-512 or who makes any false statement is guilty of a misdemeanor and upon conviction ~~must~~ *shall* be fined not more than $1,000 or imprisoned in the county jail for not more than 6 months, or both."

Section 18. Section 17-6-317, MCA, is amended to read:

"17-6-317. Participation by private financial institutions — rulemaking. (1) (a) The board may jointly participate with private financial institutions in making loans to a business enterprise if the loan will:

(i) result in the creation of a business estimated to employ at least 10 people in Montana on a permanent, full-time basis;

(ii) result in the expansion of a business estimated to employ at least an additional 10 people in Montana on a permanent, full-time basis; or

(iii) prevent the elimination of the jobs of at least 10 Montana residents who are permanent, full-time employees of the business.

(b) Loans under this section may be made only to business enterprises that are producing or will produce value-added products or commodities.

(c) A loan made pursuant to this section does not qualify for a job credit interest rate reduction under 17-6-318.

(2) A loan made pursuant to this section may not exceed 1% of the coal severance tax permanent fund and must comply with each of the following requirements:

(a) (i) The business enterprise seeking a loan must have a cash equity position equal to at least 25% of the total loan amount.

(ii) A participating private financial institution may not require the business to have an equity position greater than 50% of the total loan amount.

(iii) If additional security or guarantees, exclusive of federal guarantees, are required to cover a participating private financial institution, then the additional security or guarantees must be proportional to the amount loaned by all participants, including the board of investments.

(b) The board shall provide 75% of the total loan amount.

(c) The term of the loan may not exceed 15 years.

(d) The board shall charge interest at the following annual rate:

(i) 2% for the first 5 years if 15 or more jobs are created or retained;

(ii) 4% for the first 5 years if 10 to 14 jobs are created or retained;

(iii) 6% for the second 5 years; and

(iv) the board's posted interest rate for the third 5 years, but not to exceed 10% a year.

(e) (i) The interest rates in subsections (2)(d)(i) and (2)(d)(ii) become effective when the board receives certification that the required number of jobs has been created or as provided in subsection (2)(e)(ii). If the board disburses loan proceeds prior to creation of the required jobs, the loan must bear interest at the board's posted rate.

(ii) In establishing interest rates under subsections (2)(d)(i) and (2)(d)(ii) for preventing the elimination of jobs, the board shall require the submission of financial data that allows the board to determine if the loan and interest rate will in fact prevent the elimination of jobs.

(f) If a business entitled to the interest rate in subsection (2)(d)(i) or (2)(d)(ii) reduces the number of required jobs, the board may apply a graduated scale to increase the interest rate, not to exceed the board's posted rate.

(g) For purposes of calculating job creation or retention requirements, the board shall use the state's average weekly wage, as defined in 39-71-116, multiplied by the number of jobs required. This calculated number is the minimum aggregate salary threshold that is required to be eligible for a reduced interest rate. If individual jobs created pay less than the state's average weekly wage, the borrower shall create more jobs to meet the minimum aggregate salary threshold. If fewer jobs are created or retained than required in subsection (2)(d)(i) or (2)(d)(ii) but aggregate salaries meet the minimum aggregate salary threshold, the borrower is eligible for the reduced interest rate. A job paying less than the minimum wage, provided for in 39-3-409, may not be included in the required number of jobs.

(h) (i) A participating private financial institution may charge interest in an amount equal to the national prime interest rate, adjusted on January 1 of each year, but the interest rate may not be less than 6% or greater than 12%.

(ii) At the borrower's discretion, the borrower may request the lead lender to change this prime rate to an adjustable or fixed rate on terms acceptable to the borrower and lender.

(iii) A participating private financial institution, or lead private financial institution if more than one is participating, may charge a 0.5% annual service fee.

(i) The business enterprise may not be charged a loan prepayment penalty.

(j) The loan agreement must contain provisions providing for pro rata lien priority and pro rata liquidation provisions based upon the loan percentage of the board and each participating private lender.

(3) If a portion of a loan made pursuant to this section is for construction, disbursement of that portion of the loan must be made based upon the percentage of completion to ensure that the construction portion of the loan is advanced prior to completion of the project.

(4) A private financial institution shall participate in a loan made pursuant to this section to the extent of 85% of its lending limit or 25% of the loan,

whichever is less. However, the board's participation in the loan must be 75% of the loan amount.

(5) (a) Except as provided in subsection (5)(b), a business enterprise receiving a loan under the provisions of this section may not pay bonuses or dividends to investors until the loan has been paid off, except that incentives may be paid to employees for achieving performance standards or goals.

(b) A business enterprise for the production of ~~alcohol~~ *ethanol* to be used as provided in Title 15, chapter 70, part 5, may pay dividends to investors and bonuses to employees if the business enterprise is current on its loan payments and has available funds equal to at least 15% of the outstanding principal balance of the loan.

(6) The board may adopt rules that it considers necessary to implement this section."

Section 19. Section 75-11-302, MCA, is amended to read:

"75-11-302. Definitions. Except as provided in subsections (2), (15), and (25), the following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third-party bodily injury or property damage.

(2) "Aviation gasoline" means aviation fuel as defined in 15-70-201. For the purposes of this chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(3) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(5) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Distributor" means a person who is licensed to sell gasoline, as provided in 15-70-202, and who:

(a) in the state of Montana, engages in the business of producing, refining, manufacturing, or compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

(b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in this state;

(c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in this state;

(d) is an exporter;

(e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) either blends gasoline with ~~alcohol~~ *ethanol* or blends heating oil with waste oil.

(9) "Double-walled tank system" means a petroleum storage tank and associated product piping that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that is capable of being monitored for leakage. The design and construction of these tank systems must meet standards of the department and the department of justice fire prevention and investigation bureau. The material used in construction must be compatible with the liquid to be stored in the system, and the system must be designed to prevent the release of any stored liquid.

(10) "Eligible costs" means expenses reimbursable under 75-11-307.

(11) "Export" means to transport out of the state of Montana, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana.

(12) "Exporter" means a person who transports, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

(13) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

(14) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

(15) "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(16) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(17) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or transported into this state from a point of origin outside this state, other than in the fuel supply tank of a motor vehicle.

(18) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

(19) (a) "Owner" means:

(i) a person that holds title to, controls, or possesses an interest in a petroleum storage tank; or

(ii) a person that owns the property on which a petroleum storage tank from which a release occurred was located.

(b) The term does not include a person that holds an interest in a storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(20) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(21) "Petroleum" or "petroleum products" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as ~~gasohol~~ *ethanol-blended gasoline*, and that is not augmented or compounded by more than a de minimis amount of another substance.

(22) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-11-503;

(b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) an aboveground storage tank with a capacity less than 30,000 gallons; or

(d) aboveground or underground pipes associated with tanks under subsections (22)(b) and (22)(c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) state law comparable to the provisions of law referred to in subsections (22)(d)(i) and (22)(d)(ii), if the facility is intrastate.

(23) "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

(24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

(25) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel supply center."

Section 20. Section 75-11-314, MCA, is amended to read:

"75-11-314. Petroleum storage tank cleanup fee — collection — penalties — warrant for distraint — statute of limitations. (1) Except as provided in subsection (4), each distributor shall pay to the department of transportation a petroleum storage tank cleanup fee for each gallon of gasoline, aviation gasoline, special fuel, or heating oil distributed by the distributor within the state and upon which the fee has not been paid by any other distributor. The fee must equal:

(a) 1 cent for each gallon of gasoline distributed from July 1, 1989, through June 30, 1991;

(b) 0.75 cent for each gallon of gasoline distributed after July 1, 1991;

(c) 0.75 cent for each gallon of aviation gasoline distributed after July 1, 1993;

(d) 0.75 cent for each gallon of special fuel distributed after July 1, 1993; and

(e) 0.75 cent for each gallon of heating oil distributed after July 1, 1993.

(2) Gasoline, aviation gasoline, special fuel, and heating oil exported or sold for export out of the state must be included in the measure of a distributor's fee.

(3) ~~Alcohol~~ *Ethanol* that is blended with gasoline to be sold as ~~gasohol~~ *ethanol-blended gasoline* is subject to the fee provided in subsection (1).

(4) A fee may not be imposed or collected beginning on the first day of the first month in the first calendar quarter after the unobligated balance in the fund equals or exceeds $8 million. Whenever the unobligated fund balance, less claims anticipated for board approval within the next 90 days, is less than $4 million, the department of transportation shall, within 30 days, notify distributors by mail that the fee is reinstated beginning on the first day of the first month that begins no less than 30 days after the date of the notice. Once reinstated, the fee must be imposed and collected until the unobligated fund balance again equals or exceeds $8 million.

(5) The department of transportation shall collect the fee in the same manner as the basic gasoline license tax under Title 15, chapter 70, part 2. The provisions of 15-70-103, 15-70-111, 15-70-202, 15-70-205, 15-70-206, 15-70-208 through 15-70-212, 15-70-221(2), and 15-70-232 apply to the fee. The provisions of 15-70-204, 15-70-207, 15-70-221(1), and 15-70-222 through 15-70-224 do not apply to the fee."

Section 21. Name change — directions to code commissioner. If legislation enacted by the 60th legislature contains a reference to gasohol, the code commissioner shall change the reference to ethanol-blended gasoline.

Section 22. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2007

CHAPTER NO. 101

[HB 190]

AN ACT GENERALLY REVISING THE LAWS RELATING TO CARD GAMES; AMENDING SECTIONS 23-5-112, 23-5-306, 23-5-308, 23-5-313, 23-5-317, AND 23-5-710, MCA; REPEALING SECTION 23-5-319, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-112, MCA, is amended to read:

"23-5-112. Definitions. Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. More than 75 numbers may not be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover one or more previously designated arrangements of numbers on the bingo card.

(5) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(6) "Card game table" or "table" means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

(7) "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

(8) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

(9) "Department" means the department of justice.

(10) "Distributor" means a person who:

(a) purchases or obtains from a licensed manufacturer, distributor, or route operator equipment of any kind for use in gambling activities; and

(b) sells the equipment to a licensed distributor, route operator, or operator.

(11) (a) "Gambling" or "gambling activity" means risking any money, credit, deposit, check, property, or other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise.

(b) The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(c) The term does not include social card games played solely for prizes of minimal value, defined as class I gaming by 25 U.S.C. 2703.

(12) "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

(13) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(14) (a) "Gift enterprise" means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services.

(b) The term does not mean:

(i) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

(ii) a promotional game of chance; or

(iii) an amusement game regulated under Title 23, chapter 6.

(15) "Gross proceeds" means gross revenue received less prizes paid out.

(16) "House player" means a person participating in a card game who has a financial relationship with the operator, card room contractor, or dealer or who has received money or chips from the operator, card room contractor, or dealer to participate in a card game.

~~(16)~~*(17)* "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under Title 23, chapter 7, or under part 5 of this chapter or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, or craps table or a slot machine except as provided in 23-5-153.

~~(17)~~*(18)* "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, including craps, hazard, or chuck-a-luck, but not including activities authorized by 23-5-160;

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in Title 23, chapter 4, and parts 2, 5, and 8 of this chapter;

(d) credit gambling; and

(e) internet gambling.

~~(18)~~*(19)* (a) "Internet gambling", by whatever name known, includes but is not limited to the conduct of any legal or illegal gambling enterprise through the use of communications technology that allows a person using money, paper checks, electronic checks, electronic transfers of money, credit cards, debit cards, or any other instrumentality to transmit to a computer information to assist in the placing of a bet or wager and corresponding information related to the display of the game, game outcomes, or other similar information.

(b) The term does not include the operation of a simulcast facility allowed by Title 23, chapter 4, or the state lottery provided for in Title 23, chapter 7. If all aspects of the gaming are conducted on Indian lands in conformity with federal

statutes and with administrative regulations of the national Indian gaming commission, the term does not include class II gaming or class III gaming as defined by 25 U.S.C. 2703.

~~(19)~~*(20)* "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

~~(20)~~*(21)* "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

~~(21)~~*(22)* "License" means a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab game seller, manufacturer of electronic live bingo or keno equipment, other manufacturer, distributor, or route operator that is issued to a person by the department.

~~(22)~~*(23)* "Licensee" means a person who has received a license from the department.

~~(23)~~*(24)* "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

~~(24)~~*(25)* (a) "Lottery" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance.

(b) The term does not mean lotteries authorized under Title 23, chapter 7.

~~(25)~~*(26)* "Manufacturer" means a person who:

(a) assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device and who sells the equipment directly to a licensed distributor, route operator, or operator; or

(b) possesses gambling devices or components of gambling devices for the purpose of testing them.

~~(26)~~*(27)* "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established for purposes other than to conduct a gambling activity.

~~(27)~~*(28)* "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public a gambling device or gambling enterprise authorized under parts 1 through 8 of this chapter.

~~(28)~~*(29)* "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter.

~~(29)~~*(30)* "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

~~(30)~~*(31)* "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

~~(31)~~*(32)* "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it. The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by the department that was manufactured or intended for use for purposes other than gambling.

~~(32)~~*(33)* "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

~~(33)~~*(34)* "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

~~(34)~~*(35)* "Route operator" means a person who:

(a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in a gambling activity;

(b) leases the equipment to a licensed operator for use by the public; and

(c) may sell to a licensed operator equipment that had previously been authorized to be operated on a premises.

~~(35)~~*(36)* "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of public health and human services.

~~(36)~~*(37)* (a) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner.

(b) This definition does not apply to video gambling machines authorized under part 6 of this chapter.

~~(37)~~*(38)* "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

Section 2. Section 23-5-306, MCA, is amended to read:

"23-5-306. Live card game table — permit — fees — disposition of fees. (1) (a) A person who has been granted an operator's license under 23-5-177 and who holds an appropriate license to sell alcoholic beverages for consumption on the premises, as provided in 23-5-119, may be granted an annual permit for the placement of live card game tables.

(b) A permit is not required for social games played for prizes of minimal value, defined as class I gaming by 25 U.S.C. 2703.

~~(b)~~*(c)* The department may issue an annual permit for the placement of live card game tables to a person operating a premises not licensed to sell alcoholic beverages for consumption on the premises if:

(i) one or more live card game tables were legally operated on the premises on January 15, 1989;

(ii) the premises were licensed on January 15, 1989, to sell food, cigarettes, or any other consumable product;

(iii) the person has been granted an operator's license under 23-5-177; and

(iv) at the time of application for the permit:

(A) the person has continuously operated a live card game table on the premises since January 15, 1989; and

(B) the natural person or persons who own the business operated on the premises are the same as on January 15, 1989.

(2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed operator's premises may not be prorated and must be:

(a) $250 for the first table; and

(b) $500 for each additional table.

(3) The department shall retain for administrative purposes $100 of the fee collected under this part for each live card game table.

(4) The department shall forward on a quarterly basis the remaining balance of the fee collected under subsection (2) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the live card game table is located for deposit to the county or municipal treasury. A county is not entitled to proceeds from fees assessed on live card game tables located in incorporated cities and towns within the county. The local government portion of this fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury."

Section 3. Section 23-5-308, MCA, is amended to read:

"23-5-308. Card game dealers — license. (1) Except as provided in 23-5-318, a person may not deal cards in a live card game of panguingue or poker without being licensed annually by the department.

(2) The fee for the first year in which the license is effective is $75, and the annual renewal fee is $25. The fee may not be prorated.

(3) The department shall retain for administrative purposes the license fee charged for the issuance of a dealer's license.

(4) A licensed dealer shall ~~have~~ *keep* on ~~his~~ *the dealer's* person~~,~~ and display ~~upon request~~ *upon request*~~, his~~ *the* dealer's license when ~~he is~~ working as a dealer.

(5) (a) The department shall adopt rules to implement temporary licensing procedures until a permanent license is issued to a dealer.

~~(b) The rules must provide that:~~

~~(i) a temporary license may be obtained at the place where a person locally applies for a driver's license; and~~

~~(ii) the receipt received upon mailing by certified mail a completed license application and the fee required under subsection (2), return receipt requested, constitutes a temporary license.~~

~~(c) The department may not assess a fee for the temporary license.~~

(b) The rules must provide that a temporary license:

(i) may be issued at a local department office or at another public location designated by the department; and

(ii) may only be issued upon the payment of the license application fee and submission of an application, required fingerprints, and proof that the applicant for a temporary license has a verifiable offer of employment from a licensed operator or card room contractor."

Section 4. Section 23-5-313, MCA, is amended to read:

"23-5-313. Rules of play to be posted — rake-off approved. *(1)* ~~Rules governing the conduct of each game must be prominently posted within the sight of the players at a live card game table on the premises of a licensed operator.~~ *A licensed operator shall prominently display the following information within the sight of the players at a live card game table:*

(a) rules governing the conduct of each game;

(b) notice of the maximum percentage rake-off; and

(c) rules governing the prohibition of credit gambling.

(2) The department may adopt rules specifying the size, display, and content of rules as provided in this part and the manner of taking the rake-off. The rules must include notice of the maximum percentage rake-off, if any, and must require that the person taking the rake-off do so in an obvious manner."

Section 5. Section 23-5-317, MCA, is amended to read:

"23-5-317. Tournaments. (1) Subject to the department's approval, a licensed operator who has a permit for placing at least 1 live card game table on the operator's premises may conduct up to 12 live card game tournaments a year on ~~his~~ *the operator's* premises. Each tournament may be conducted for no more than 5 consecutive days. If an operator conducts more than one tournament a year, at least 7 days must lapse between the conclusion of one tournament and the beginning of the next tournament.

(2) (a) Before the start of a tournament, the operator shall submit to the department an application for a tournament permit. The permit application must be accompanied by a $10 fee. The department shall retain the fee for administrative purposes.

(b) If a tournament is to be conducted on the premises of more than one licensed operator, each operator shall submit a permit application and processing fee. The permit is applied toward each operator's annual 12-tournament limit.

(c) A licensed operator may participate in a progressive card game tournament in which the ultimate prize is not awarded until the final round of the tournament is completed.

(d) At least 50% of the total of all entrance fees for any tournament that is represented as a charitable tournament must be paid to a charitable, educational, or recreational nonprofit organization.

(3) Permits for placement of additional live card game tables, as provided in 23-5-306, are not required for additional tables authorized under a tournament permit.

(4) Tournament participants must be provided with a copy of the tournament rules before the start of the tournament. A copy of the rules must be posted in a conspicuous location in each area where the tournament is conducted.

(5) A person must be present on the premises during the tournament to oversee the conduct of the card games and to settle disputes among players. This person may be a dealer licensed under 23-5-308.

(6) Only a dealer licensed under 23-5-308 may deal cards at a poker or panguingue tournament.

(7) A licensed operator may charge a tournament participant an entry fee, which may include a fee to cover expenses incurred in conducting the tournament. A participant who has been eliminated from competition during the tournament may reenter the tournament by paying an additional fee if permitted to do so under tournament rules. A rake-off may not be taken during a tournament card game.

(8) The face value of the chips used does not govern the value of the pot awarded at the end of the tournament.

(9) The prize for a tournament may be the right to participate in another tournament if the value of a seat in the higher-level tournament is equivalent to the value of the expected top prize for the tournament.

(10) The total amount paid by an individual to enter a tournament, including any additional purchase of chips or other payment during the tournament, may not exceed $2,500.

~~(9)~~*(11)* The provisions of this part and the department rules governing live card games apply to live card games conducted as part of a tournament unless otherwise provided."

Section 6. Section 23-5-710, MCA, is amended to read:

"23-5-710. Requirements for conducting casino nights. A nonprofit organization that has obtained a permit under 23-5-706 shall conduct a casino night in compliance with the following conditions:

(1) (a) Except as provided in subsection (1)(b), a casino night may not last more than 12 consecutive hours.

(b) A casino night may be split into two separate, 6-consecutive hour sessions that may not be held on the same day but must be held in the same calendar year.

(2) The casino night must be managed and operated only by members of the nonprofit organization that was issued the permit under 23-5-706. The members may not be compensated for their services.

(3) Only merchandise or cash may be awarded as prizes.

(4) Proceeds derived from the casino night, after payment of reasonable administrative expenses, may be used only for a civic, charitable, or educational purpose, and administrative expenses may not exceed 50% of the proceeds.

(5) If cash prizes are awarded, the prizes for bingo and keno may not exceed the prize limits established in 23-5-412. Live card games must be limited to those authorized in 23-5-311, and the prizes may not exceed the prize amount established in 23-5-312.

(6) A casino night may not include a card game tournament provided for in 23-5-317."

Section 7. Regulation of house players. (1) The department shall provide rules to regulate the use of house players by licensed operators and licensed card room contractors.

(2) House players may be used only for the purpose of starting a card game or maintaining a sufficient number of players in a card game.

(3) Any chips or money advanced by an operator, card room contractor, or dealer to a house player may not become a debt of the player.

(4) The operator, card room contractor, or dealer shall identify house players upon request.

Section 8. Repealer. Section 23-5-319, MCA, is repealed.

Section 9. Codification instruction. [Section 7] is intended to be codified as an integral part of Title 23, chapter 5, part 3, and the provisions of Title 23, chapter 5, part 3, apply to [section 7].

Section 10. Effective date. [This act] is effective July 1, 2007.

Approved March 30, 2007

CHAPTER NO. 102

[HB 193]

AN ACT AUTHORIZING A PERSON WHO IS CERTIFIED AS DISABLED AND CARRIES A PERMIT TO HUNT FROM A VEHICLE THAT IS ISSUED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO HUNT FROM AN OFF-HIGHWAY VEHICLE OR SNOWMOBILE IN AREAS WHERE HUNTING AND MOTORIZED USE ARE PERMITTED, AS LONG AS THE OFF-HIGHWAY VEHICLE OR SNOWMOBILE IS PROPERLY MARKED; AMENDING SECTIONS 87-2-803 AND 87-3-125, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-803, MCA, is amended to read:

"87-2-803. Persons with disabilities — service members — definitions. (1) Persons with disabilities are entitled to fish and to hunt game birds, not including turkeys, with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule. A person who has purchased a conservation license and a resident fishing license or game bird license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the fishing license or game bird license previously purchased for that license year. A

person who is certified as disabled pursuant to subsection (3) and who was issued a permit to hunt from a vehicle for license year 2000 or a subsequent license year is automatically entitled to a permit to hunt from a vehicle for subsequent license years if the criteria for obtaining a permit does not change.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase a Class A-3 deer A tag for $6.50 and a Class A-5 elk tag for $8. A person who has purchased a conservation license and a resident deer license or resident elk license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the deer license or elk license previously purchased and reissuance of the license for that license year at the rate established in this subsection.

(3) A person may be certified as disabled by the department and issued a permit to hunt from a vehicle, on a form prescribed by the department, if the person establishes one or more of the disabilities pursuant to subsection (9). The department shall adopt rules to establish a voluntary board or boards of review to resolve any disputes over whether a person meets the criteria established in subsection (9). Each board must have at least one Montana-licensed physician as a member.

(4) *(a)* A person with a disability carrying a permit to hunt from a vehicle, referred to in this subsection *(4)* as a permitholder, may hunt by shooting a firearm from*:*

(i) the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-101, except a state or federal highway~~, or may hunt by shooting a firearm from~~*;*

(ii) within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted*; or*

(iii) an off-highway vehicle or snowmobile, as defined in 61-1-101, in any area where hunting is permitted and that is open to motorized use, unless otherwise prohibited by law, as long as the off-highway vehicle or snowmobile is marked as described in subsection (4)(d) of this section.

(b) This subsection *(4)* does not allow a permitholder to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner.

(c) A permitholder must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the permitholder by hunting a game animal that has been wounded by the permitholder when the permitholder is unable to pursue and kill the wounded game animal.

(d) Any vehicle from which a permitholder is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle, or as prescribed by the department.

(5) A veteran who meets the qualifications in subsection (9) as a result of a combat-connected injury may apply at a fish, wildlife, and parks office for a regular Class A-3 deer A tag, a Class A-4 deer B tag, a Class B-7 deer A tag, a Class B-8 deer B tag, and a special antelope license at one-half the license fee. Fifty licenses of each license type must be made available annually. Licenses issued to veterans under this part do not count against the number of special

antelope licenses reserved for people with permanent disabilities, as provided in 87-2-706.

(6) (a) A resident of Montana who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of $10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure.

(b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses, in the manner provided in subsection (2) *of this section*, and must be accompanied by a companion, as provided in subsection (4)*(c) of this section*.

(7) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.

(8) As used in this section, "disabled person", "person with a disability", or "disabled" means or refers to a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.

(9) A person is entitled to a permit to hunt from a vehicle if the person:

(a) is certified by a licensed physician to be dependent on an oxygen device or dependent on a wheelchair, crutch, or cane for mobility;

(b) is an amputee above the wrist or ankle; or

(c) is certified by a licensed physician to be unable to walk, unassisted, 600 yards over rough and broken ground while carrying 15 pounds within 1 hour and to be unable to handle and maneuver up to 25 pounds.

(10) Certification by a licensed physician under subsection (9) must be on a form provided by the department.

(11) A person who disagrees with a determination of eligibility for a permit to hunt from a vehicle may request a review by a voluntary board of review pursuant to subsection (3).

(12) (a) A Montana resident who is a member of the Montana national guard or the federal reserve as provided in 10 U.S.C. 10101 or who was otherwise engaged in active duty and who participated in a contingency operation as provided in 10 U.S.C. 101(a)(13) that required the member to serve at least 6 months outside of the state, upon request and upon presentation of the documentation described in subsection (12)(b), must be issued a free resident wildlife conservation license or a Class AAA resident combination sports license, which may not include a bear license, for $29, plus the resident hunting access enhancement fee provided for in 87-2-202(3)(c), in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in the license year after the member's election. A member who participated in a contingency operation between September 11, 2001, and February 28, 2006, that required the member to serve at least 6 months outside of the state may make an election in 2006 or 2007 and be entitled to a free resident wildlife conservation license or a $25 Class AAA resident combination sports license in the year of election and the license year after the member's election.

(b) To be eligible for the free resident wildlife conservation license or reduced-rate Class AAA resident combination sports license provided for in subsection (12)(a), an applicant shall, in addition to the written application and proof of residency required in 87-2-202(1), provide to any regional department office or to the department headquarters in Helena, by mail or in person, the member's DD form 214 verifying the member's release or discharge from active duty. The applicant is responsible for providing documentation showing that the applicant participated in a contingency operation as provided in 10 U.S.C. 101(a)(13)."

Section 2. Section 87-3-125, MCA, is amended to read:

"87-3-125. Restrictions on use of motor vehicles while hunting. (1) ~~No~~ *Except as provided in 87-2-803(4)(a)(iii), a* person, while hunting game animals or game birds, may *not* use a motor-driven vehicle other than on an established road or trail unless ~~he~~ *the person* has reduced a big game animal to possession and cannot easily retrieve the big game animal. In that case a motor-driven vehicle may be used to retrieve the big game animal, except in areas where more restrictive regulations apply or where the landowner has not granted ~~such~~ permission. After the retrieval, the motor-driven vehicle is to be returned to an established road or trail by the shortest possible route. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to a road or trail.

(2) ~~No~~ *A* person, while hunting game animals or game birds, may *not* drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass ~~any~~ *a* game animal or game bird with the use or aid of any motor-driven vehicle.

(3) ~~No~~ *A* person, while hunting game animals or game birds, may *not* drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail*,* unless written permission has been given by the landowner and is in possession of the hunter.

(4) ~~It is unlawful for a~~ *A* person ~~to~~ *may not* use a self-propelled vehicle to intentionally concentrate, drive, rally, stir up, or harass wildlife, except predators of this state~~, providing that this~~. *This* subsection does not apply to landowners and their authorized agents engaged in the immediate protection of that landowner's property.

(5) The restrictions in subsections (1) through (3) on motor-driven vehicle use off an established road or trail apply only to hunting on state or private land, not to hunting on federal land unless the federal agency specifically requests or approves state enforcement."

Section 3. Effective date. [This act] is effective March 1, 2008.

Approved March 30, 2007

CHAPTER NO. 103

[HB 244]

AN ACT EXPANDING THE PROMOTIONAL ACTIVITIES THAT MAY BE CONDUCTED BY A REGULATED TELECOMMUNICATIONS SERVICE PROVIDER WITHOUT ADVANCE APPROVAL OF THE PUBLIC SERVICE

COMMISSION; AMENDING SECTION 69-3-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-305, MCA, is amended to read:

"69-3-305. Deviations from scheduled rates, tolls, and charges. (1) ~~A~~ *Except as provided in subsection (5)(a), a* public utility may not:

(a) charge, demand, collect, or receive a greater or less compensation for a utility service performed by it within the state or for any service in connection with a utility service than is specified in the printed schedules, including schedules of joint rates, that may at the time be in force;

(b) demand, collect, or receive a rate, toll, or charge not specified in the schedules; or

(c) grant a rebate, concession, or special privilege to a consumer or user that, directly or indirectly, has or may have the effect of changing the rates, tolls, charges, or payments.

(2) The rates, tolls, and charges named in the printed schedules are the lawful rates, tolls, and charges until the rates, tolls, and charges are changed, as provided in this chapter.

(3) The commission may order refunds or credits of rates, tolls, or charges collected in violation of this section and may order payment of interest at a reasonable rate on the refunded amount.

(4) The provisions of this section do not prohibit the sharing of profits or revenues with customers in conjunction with an alternative form of regulation approved under 69-3-809.

(5) (a) A provider of regulated telecommunications service may offer, for a limited period of time, rebates, price reductions, or waivers of charges in conjunction with promotions, market trials, or other sales-related activities that are common business practices. Promotional pricing for services ~~other than basic local exchange access~~ to end users does not require advance approval of the commission. Informational price lists must be filed with the commission on or before the date that the promotion begins. ~~Promotional offerings for basic local exchange access to end users and packaged services that include basic local exchange access to end users require advance approval of the commission. The commission shall approve, deny, or upon a showing of good cause set for hearing an application for a promotional discount within 30 days of the filing of the application. If the commission has not acted on the application within the permitted time period, the application is considered granted.~~

(b) A public utility providing electricity or natural gas may offer grants and subsidized loans to install energy conservation and nonfossil forms of energy generation systems in dwellings.

(c) The commission may define the appropriate scope of promotions, rebates, market trials, and grants and subsidized loans, either by rule or in response to complaints. The commission may determine whether a particular sales activity or grant or subsidized loan program under this subsection is unfairly discriminatory or is not cost-effective. Costs and expenses incurred or revenue foregone with respect to sales activities and grant and subsidized loan programs that the commission determines are unfairly discriminatory or not cost-effective are the responsibility of the provider's shareholders in rates set by the commission.

(6) A public utility violating the provisions of this section is subject to the penalty prescribed in 69-3-206. However, this does not have the effect of suspending, rescinding, invalidating, or in any way affecting existing contracts."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2007

CHAPTER NO. 104

[HB 286]

AN ACT REVISING INCENTIVES UNDER THE BIG SKY ECONOMIC DEVELOPMENT PROGRAM TO ASSIST HIGH-POVERTY COUNTIES IN WORKFORCE TRAINING AND OTHER ECONOMIC DEVELOPMENT OPPORTUNITIES; AMENDING SECTIONS 90-1-201, 90-1-202, AND 90-1-204, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-1-201, MCA, is amended to read:

"90-1-201. Big sky economic development program — definitions. (1) (a) There is a big sky economic development program that consists of:

(i) the big sky economic development fund established in 17-5-703; and

(ii) the economic development special revenue account provided for in 90-1-205.

(b) Interest and income from the big sky economic development fund may be used to administer the big sky economic development program and to provide financial assistance for qualified economic development purposes under this part.

(2) As used in this part, the following definitions apply:

(a) "Certified regional development corporation" has the meaning provided in 90-1-116.

(b) "Department" means the department of commerce provided for in 2-15-1801.

(c) "Economic development organization" means:

(i) (A) a private, nonprofit corporation, as provided in Title 35, chapter 2, that is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) or 501(c)(6);

(B) an entity certified by the department under 90-1-116; or

(C) an entity established by a local government; or

(ii) an entity actively engaged in economic development and business assistance work in a region of the state.

(d) "High-poverty county" means a county in this state in which 14% or more of people of all ages are in poverty as determined by the U.S. bureau of the census estimates for the most current year available.

~~(d)~~*(e)* "Local government" means a tribal government, county, consolidated government, city, town, or district or local public entity with the authority to spend or receive public funds."

Section 2. Section 90-1-202, MCA, is amended to read:

"90-1-202. Purpose. The legislature finds and declares that economic development is a public purpose. The purpose of the big sky economic development program is to assist in economic development for Montana that will:

(1) create good-paying jobs for Montana residents;

(2) promote long-term, stable economic growth in Montana;

(3) encourage local economic development organizations;

(4) create partnerships between the state, local governments, and local economic development organizations that are interested in pursuing these same economic development goals;

(5) retain or expand existing businesses; ~~and~~

(6) provide a better life for future generations through greater economic growth and prosperity in Montana*; and*

(7) encourage workforce development, including workforce training and job creation, in high-poverty counties by providing targeted assistance."

Section 3. Section 90-1-204, MCA, is amended to read:

"90-1-204. Priorities for funding — rulemaking. (1) The department must receive proposals for grants and loans from local governments. A local government shall work with an economic development organization on a proposal. The department shall work with the local government and the economic development organization in preparing cost estimates for a proposed project. In reviewing proposals, the department may consult with other state agencies with expertise pertinent to the proposal.

(2) (a) The department shall adopt rules necessary to implement the big sky economic development program. In adopting rules, the department shall look to the rules adopted for the treasure state endowment program and other similar state programs. To the extent feasible, the department shall make the rules compatible with those other programs. To the extent feasible, the department shall employ an approach pertaining to the use of funds so that*, except as provided in subsection (2)(b),* the needs of rural areas are balanced with the needs of the state's urban centers.

(b) For high-poverty counties, the department shall employ an approach pertaining to the use of funds that is intended to lower poverty levels in the county to a percentage at which the county no longer is defined as a high-poverty county.

~~(b)~~*(c)* The rules must provide for the types of uses of funds available under the big sky economic development program. The types of uses of funds by:

(i) local governments include but are not limited to:

(A) a reduction in the interest rate of a commercial loan for the expansion of a basic sector company;

(B) a grant or low-interest loan for relocation expenses for a basic sector company; and

(C) rental assistance or lease buy-downs for a relocation or expansion project for a basic sector company~~.~~*;*

(ii) a certified regional development corporation include:

(A) support for business improvement districts and central business district redevelopment;

(B) industrial development;

(C) feasibility studies;

(D) creation and maintenance of baseline community profiles; and

(E) matching funds for federal funds, including but not limited to brownfields funds and natural resource damage funds.

~~(c)~~*(d) (i)* The rules must provide for distribution methods for financial assistance available to local governments. The rules must provide for distribution based upon the number of jobs expected to be created because of the funding.

(ii) Funding may not exceed $5,000 for each expected job*, except that funding for a project in a high-poverty county may not exceed $7,500 for each expected job*.

(iii) The rules must require equal matching funds for a grant or loan*, except that the rules for a grant or a loan in a high-poverty county may allow a 50% to 100% match requirement for the high-poverty county*.

(e) The rules may provide for greater incentives for a high-poverty county.

~~(d)~~*(f)* The rules must provide for the full or partial repayment of a grant if the new jobs or some of the new jobs for which a grant is given are not created.

~~(e)~~*(g)* A grant or loan may be made only for a new job that has an average weekly wage that meets or exceeds the current average weekly wage of the county in which the employees are to be principally employed."

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 5. Effective date. [This act] is effective July 1, 2007.

Approved March 30, 2007

CHAPTER NO. 105

[HB 332]

AN ACT ADOPTING NATIONALLY ACCEPTED NOISE LIMITS FOR MOTORCYCLES AND QUADRICYCLES; REQUIRING MOTORCYCLES AND QUADRICYCLES TO BE EQUIPPED WITH SPARK ARRESTERS; AND AMENDING SECTION 61-9-418, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-9-418, MCA, is amended to read:

"61-9-418. Motorcycle *and quadricycle* noise suppression devices — *motorcycle and quadricycle spark arrester.* *(1)* All motorcycles or quadricycles operated on the streets and highways of this state ~~shall~~ *must* be equipped at all times with noise suppression devices, including an exhaust muffler, in good working order and in constant operation. In addition, all motorcycles and quadricycles operating on streets and highways ~~shall~~ *must* meet the following noise decibel limitations, on the standard A scale, ~~such decibel limitations~~ to be measured at 50 feet ~~distant~~ from the closest point to the motorcycle or quadricycle:

~~(1)~~*(a)* any cycle manufactured prior to 1970.....92 db(A)

~~(2)~~*(b)* any cycle manufactured after 1969 but prior to 1973.....88 db(A)

~~(3)~~*(c)* any cycle manufactured after 1972 but prior to 1975.....86 db(A)

~~(4)~~*(d)* any cycle manufactured after 1974 but prior to 1978 .....80 db(A)

~~(5)~~*(e)* any cycle manufactured after 1977 but prior to 1988.....75 db(A)

~~(6)~~*(f)* any cycle manufactured after 1987 .....70 db(A)

(2) (a) Except as provided in subsection (2)(b), a motorcycle or quadricycle may be operated off of a highway on the public lands only if the motorcycle's or quadricycle's noise emissions do not exceed 96 db(A), using test procedures established by the society of automotive engineers under standard J-1287.

(b) The noise limitations in subsection (2)(a) do not apply to motorcycles or quadricycles that are operated for special events permitted on closed courses by a state entity or local government.

(c) A motorcycle or quadricycle may not be operated off of a highway unless it is equipped with an adequate spark arrester to prevent the escape of sparks or other burning material from the motorcycle's or quadricycle's engine."

Approved March 30, 2007

CHAPTER NO. 106

[HB 347]

AN ACT INCREASING THE AMOUNTS FOR WHICH A CONTRACT IS NOT REQUIRED FOR BUILDING, FURNISHING, REPAIRING, OR OTHER WORK FOR THE BENEFIT OF A SCHOOL DISTRICT OR PURCHASING OF SUPPLIES FOR A SCHOOL DISTRICT; AMENDING SECTION 20-9-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-204, MCA, is amended to read:

"20-9-204. Conflicts of interests, letting contracts, and calling for bids. (1) It is unlawful for a trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by the trustee while acting in that official capacity or by the board of trustees of which the trustee is a member; or

(b) be employed in any capacity by the trustee's own school district.

(2) For the purposes of subsection (1):

(a) "pecuniary interest" does not include holding an interest of 10% or less in a corporation; and

(b) "contract" does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions that are in the business of loaning or receiving money when the investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services, other than salaried services, or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of the lack of availability are entered in the minutes of the board meeting at which the contract is considered.

(3) *(a)* Except for district needs that must be met because of an unforeseen emergency, as defined in 20-3-322(5), or as provided in subsections (4) and (7) of this section, whenever ~~the estimated cost of~~ any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district ~~exceeds the sum of $25,000~~ *is necessary*, the work done or the purchase made must be by contract *if the sum exceeds $50,000*.

(b) Except as provided in Title 18, chapter 2, part 5, each contract must be let to the lowest responsible bidder after advertisement for bids. The advertisement must be published in the newspaper that will give notice to the largest number of people of the district as determined by the trustees. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section is void. The bidding requirements applicable to services performed for the benefit of the district under this section do not apply to:

~~(a)~~*(i)* a registered professional engineer, surveyor, real estate appraiser, or registered architect;

~~(b)~~*(ii)* a physician, dentist, pharmacist, or other medical, dental, or health care provider;

~~(c)~~*(iii)* an attorney;

~~(d)~~*(iv)* a consulting actuary;

~~(e)~~*(v)* a private investigator licensed by any jurisdiction;

~~(f)~~*(vi)* a claims adjuster;

~~(g)~~*(vii)* an accountant licensed under Title 37, chapter 50; or

~~(h)~~*(viii)* a project, as defined in 18-2-501, for which a governing body, as defined in 18-2-501, enters into an alternative project delivery contract pursuant to Title 18, chapter 2, part 5.

(4) A district may enter into a cooperative purchasing contract for the procurement of supplies or services with one or more districts. The award of a contract to a successful bidder must comply with the requirements of subsection (5). The request for bids must be advertised in a daily newspaper of general circulation in each county in which a district participating in the cooperative purchasing contract is located. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids.

(5) Except as provided in Title 18, chapter 2, part 5, whenever bidding is required, the contract must be awarded to the lowest responsible bidder, except that any or all bids may be rejected.

(6) This section may not require the board of trustees to let a contract for any routine and regularly performed maintenance or repair project or service that can be accomplished by district staff whose regular employment with the school district is related to the routine performance of maintenance for the district.

(7) Subsection (3) does not apply to the solicitation or award of a contract for an investment grade energy audit or an energy performance contract pursuant to Title 90, chapter 4, part 11, including construction and installation of conservation measures pursuant to the energy performance contract."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2007

CHAPTER NO. 107

[HB 378]

AN ACT CLARIFYING AND REVISING THE MAKEUP OF THE BOARD OF NURSING HOME ADMINISTRATORS; ESTABLISHING LEGISLATIVE FINDINGS AND PURPOSE FOR THE BOARD; AND AMENDING SECTION 2-15-1735, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings — purpose. The legislature finds that the profession of nursing home administration affects the lives of an often frail and vulnerable population that includes older and disabled Montanans who are unable to live independently. The purpose of this chapter is to regulate and control the profession to protect the public health, welfare, and safety by ensuring the ethical, qualified, and professional practice of nursing home administration.

Section 2. Section 2-15-1735, MCA, is amended to read:

"2-15-1735. Board of nursing home administrators. (1) There is a board of nursing home administrators.

(2) The board consists of ~~five~~ *six* voting members appointed by the governor with the consent of the senate. ~~No more than two~~ *Three* members ~~may~~ *must* be nursing home administrators. One member shall represent the public at large and must be 55 years of age or older at the time of appointment. The other two members must be representatives of professions or institutions concerned with the care of chronically ill and infirm aged patients and may not be from the same profession or have a financial interest in a nursing home.

(3) The director of the department of public health and human services or the director's designee is an ex officio, nonvoting member of the board.

(4) Each appointed member shall serve for a term of 5 years. Any vacancy occurring in the position of an appointive member must be filled by the governor for the unexpired term.

(5) Appointive members may be removed by the governor only for cause.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 9, part 1, and the provisions of Title 37, chapter 9, apply to [section 1].

Approved March 30, 2007

CHAPTER NO. 108

[HB 449]

AN ACT TRANSFERRING BUPRENORPHINE FROM A SCHEDULE V DRUG TO A SCHEDULE III DRUG; AMENDING SECTIONS 50-32-226 AND 50-32-232, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-32-226, MCA, is amended to read:

"50-32-226. Specific dangerous drugs included in Schedule III. Schedule III consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including salts, isomers (whether optical, position, or geometric), and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) benzphetamine;

(b) chlorphentermine;

(c) clortermine; and

(d) phendimetrazine.

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system:

(a) any compound, mixture, or preparation containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs and one or more other active medicinal ingredients that are not listed in any schedule;

(b) any suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs approved by the federal food and drug administration for marketing only as a suppository;

(c) any substance that contains any quantity of a derivative of barbituric acid or any salt of barbituric acid;

(d) chlorhexadol;

(e) lysergic acid;

(f) lysergic acid amide;

(g) methyprylon;

(h) sulfondiethylmethane;

(i) sulfonethylmethane;

(j) sulfonmethane; and

(k) tiletamine and zolazepam or any of their salts. A trade or other name for a tiletamine-zolazepam combination product is telazol. A trade or other name for tiletamine is 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. A trade or other name for zolazepam is 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one, flupyrazapon.

(3) Nalorphine.

(4) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following is a narcotic drug, including its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(b) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(c) not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(e) not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(f) not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(g) not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; ~~or~~

(h) not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts*; or*

(i) any material, compound, mixture, or preparation containing buprenorphine.

(5) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances is an anabolic steroid, including salts, isomers, and salts of isomers whenever the existence of those salts of isomers is possible within the specific chemical designation:

(a) boldenone;

(b) chlorotestosterone, also known as 4-chlortestosterone;

(c) clostebol;

(d) dihydrochlormethyltestosterone;

(e) dihydrotestosterone, also known as 4-dihydrotestosterone;

(f) drostanolone;

(g) ethylestrenol;

(h) fluoxymesterone;

(i) formebulone, also known as formebolone;

(j) mesterolone;

(k) methandienone;

(l) methandranone;

(m) methandriol;

(n) methandrostenolone;

(o) methenolone;

(p) methyltestosterone;

(q) mibolerone;

(r) nandrolone;

(s) norethandrolone;

(t) oxandrolone;

(u) oxymestrone;

(v) oxymetholone;

(w) stanolone;

(x) stanozolol;

(y) testolactone;

(z) testosterone; or

(aa) trenbolone."

Section 2. Section 50-32-232, MCA, is amended to read:

"50-32-232. Specific dangerous drugs included in Schedule V. Schedule V consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

~~(1) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing buprenorphine and its salts is included in this category.~~

~~(2)~~*(1)* Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following is a narcotic drug, including its salts, calculated as the free anhydrous base or alkaloid in limited quantities as set forth in subsections ~~(2)(a)~~ *(1)(a)* through ~~(2)(f)~~ *(1)(f)*, which include one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(a) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(b) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(c) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(d) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(e) not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and

(f) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

~~(3)~~*(2)* Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of pyrovalerone is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2007

CHAPTER NO. 109

[HB 531]

AN ACT ESTABLISHING THE WARRIOR TRAIL HIGHWAY ON U.S. HIGHWAY 212 FROM THE 510 EXIT AT INTERSTATE 90 TO THE U.S. HIGHWAY 212 INTERSECTION WITH THE WYOMING BORDER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, southeastern Montana is rich in cultural history and has been inhabited by industrious and resourceful people from the time of the first Montanans, the Indians, and pioneers and homesteaders, to the present day; and

WHEREAS, this culture is kept alive today through spirited community events, such as the Northern Cheyenne powwow, Crow fair, rodeos, and historical recreations; and

WHEREAS, the Legislature recognizes the importance of tourism to economic development and small business development.

Be it enacted by the Legislature of the State of Montana:

Section 1. Warrior trail highway. (1) There is established the warrior trail highway composed of existing U.S. highway 212 from the 510 exit at interstate 90 to the U.S. highway 212 intersection with the Wyoming border.

(2) When existing road signs along U.S. highway 212, as described in subsection (1), need replacement, the department shall erect road signs reflecting the name designation in subsection (1).

(3) The department shall erect signs, consistent in size with interstate directional signs, in northbound and southbound locations on interstate 90 so as to alert motorists of the exit to the warrior trail highway.

(4) Maps that identify roadways in Montana must reflect the name designation in subsection (1) when maps are updated or replaced.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2007

CHAPTER NO. 110

[HB 623]

AN ACT CLARIFYING THE NATURE OF PROPERTY TAX LIEN SALES; CORRECTING TERMINOLOGY TO ENSURE THAT SALES AND SALES CERTIFICATES REFLECT THAT WHAT IS SOLD UPON NONPAYMENT OF PROPERTY TAXES IS A LIEN UPON THE PROPERTY; PROVIDING THAT PROPERTY TAX LIEN SALES ARE CONDUCTED AT A COUNTY TREASURER'S OFFICE; AMENDING SECTIONS 7-2-2722, 7-6-4423, 15-16-101, 15-17-121, 15-17-122, 15-17-124, 15-17-131, 15-17-211, 15-17-212, 15-17-213, 15-17-214, 15-17-317, 15-17-321, 15-17-323, 15-17-324, 15-17-325, 15-17-326, 15-18-111, 15-18-113, 15-18-114, 15-18-211, 15-18-212, 15-18-213, 15-18-214, 15-18-215, 15-18-217, 15-18-218, 39-3-501, 85-7-2136, 85-7-2152, 85-7-2157, 85-7-2158, 85-7-2159, 85-7-2162, 85-7-2163, AND 85-8-601, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-2722, MCA, is amended to read:

"7-2-2722. Disposition of property. Each county to which any part of the territory of an abandoned county is attached and made a part ~~shall~~:

(1) *shall* succeed to, *must* have, *must* possess, and *shall* own all real estate, all improvements ~~thereon~~ *on the property*, all tangible property, and all county highways situated within the territory of the abandoned county attached to ~~such~~ *the* county and all certificates of tax ~~sale~~ *lien sales* to lands and improvements ~~thereon~~ *on the lands* situated within ~~such~~ *the* territory; and

(2) ~~have~~ *has* the same right and power to sell and assign ~~such~~ *the* certificates and to apply for and obtain tax deeds to ~~such~~ *the* lands and improvements and to sell and dispose of the ~~same~~ *lands and improvements* as were or would have been possessed by the abandoned county if it had not been abandoned."

Section 2. Section 7-6-4423, MCA, is amended to read:

"7-6-4423. Sales for delinquent taxes when municipality collects municipal tax. (1) (a) In a city or town that collects its own taxes or special assessments when any taxes or assessments become delinquent, a tax *lien* sale may not be held by the city or town unless the city treasurer or town clerk, within 10 working days after the date on which the taxes or assessments become delinquent, certifies the delinquent taxes and assessments to the county treasurer of the county in which the city or town is situated.

(b) The certificate must contain:

(i) the description of each lot or parcel of land on which any tax or assessment has become delinquent;

(ii) the name and address of the person taxed or assessed;

(iii) the date when the tax or assessment became delinquent;

(iv) the amount of the delinquent tax or assessment~~,~~ and the penalty to be added, if any.

(c) If any special assessment is payable in installments and any installment becomes delinquent, the amount of the delinquent installment must be included in the certificate. If the city or town council, by the adoption of an appropriate resolution, declares the total assessment remaining unpaid to be delinquent, as provided in 7-12-4182, then that total must be included in the certificate.

(2) Upon receipt of the certificate, the county treasurer shall enter the delinquent taxes and assessments in the delinquent tax list of the county, and the county treasurer in selling property for delinquent taxes shall include all city and town delinquent taxes and assessments. There may be only one sale for each piece of property. The sale must cover the aggregate of the city, town, county, and state taxes and special assessments, including penalties, interest, and costs provided by law."

Section 3. Section 15-16-101, MCA, is amended to read:

"15-16-101. Treasurer to publish notice — manner of publication. (1) Within 10 days after the receipt of the property tax record, the county treasurer shall publish a notice specifying:

(a) that one-half of all taxes levied and assessed will be due and payable before 5 p.m. on the next November 30 or within 30 days after the notice is postmarked and that unless paid prior to that time the amount then due will be delinquent and will draw interest at the rate of 5/6 of 1% ~~per~~ *a* month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty;

(b) that one-half of all taxes levied and assessed will be due and payable on or before 5 p.m. on the next May 31 and that unless paid prior to that time the taxes will be delinquent and will draw interest at the rate of 5/6 of 1% ~~per~~ *a* month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty; and

(c) the time and place at which payment of taxes may be made.

(2) (a) The county treasurer shall send to the last-known address of each taxpayer a written notice, postage prepaid, showing the amount of taxes and assessments due for the current year and the amount due and delinquent for other years. The written notice must include:

(i) the taxable value of the property;

(ii) the total mill levy applied to that taxable value;

(iii) itemized city services and special improvement district assessments collected by the county;

(iv) the number of the school district in which the property is located; and

(v) the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax.

(b) If the property is the subject of a tax *lien* sale for which a tax ~~sale~~ *lien sale* certificate has been issued under 15-17-212, the notice must also include, in a manner calculated to draw attention, a statement that the property is the subject of a tax *lien* sale and that the taxpayer may contact the county treasurer for complete information.

(3) The municipality shall, upon request of the county treasurer, provide the information to be included under subsection (2)(a)(iii) ready for mailing.

(4) The notice in every case must be published once a week for 2 weeks in a weekly or daily newspaper published in the county, if there is one, or if there is not, then by posting it in three public places. Failure to publish or post notices does not relieve the taxpayer from any tax liability. Any failure to give notice of the tax due for the current year or of delinquent tax will not affect the legality of the tax.

(5) If the department revises an assessment that results in an additional tax of $5 or less, an additional tax is not owed and a new tax bill does not need to be prepared."

Section 4. Section 15-17-121, MCA, is amended to read:

"15-17-121. Definitions. Except as otherwise specifically provided, when terms mentioned in Title 15, chapters 17 and 18, are used in connection with taxation, they are defined in the following manner:

(1) "Certificate" or "tax ~~sale~~ *lien sale* certificate" means the document described in 15-17-212.

(2) (a) "Cost" means the cost incurred by the county as a result of a taxpayer's failure to pay taxes when due. It includes but is not limited to any actual out-of-pocket expenses incurred by the county plus the administrative cost of:

(i) preparing the list of delinquent taxes;

(ii) preparing the notice of pending tax *lien* sale;

(iii) conducting the tax *lien* sale;

(iv) assigning the county's interest in a tax lien to a third party;

(v) identifying interested persons entitled to notice of the pending issuance of a tax deed;

(vi) notifying interested persons;

(vii) issuing the tax deed; and

(viii) any other administrative task associated with accounting for or collecting delinquent taxes.

(b) The term includes receipted costs that are required by law and incurred by the purchaser of a property tax lien other than the county. The purchaser of the property tax lien shall provide receipts to the county treasurer upon issuance of a tax ~~sale~~ *lien sale* certificate as required in 15-17-212 and notification that a tax deed may be issued as required by 15-18-212 and 15-18-216.

(c) The term does not include interest for payments for the following:

(i) postage for certified mailings and certified mailings with return receipt requested;

(ii) a title search, to the extent necessary to identify interested persons entitled to notice of the pending issuance of a tax deed;

(iii) publishing costs for required publications; and

(iv) filing costs for proof of notice.

(3) "County" means any county government and includes those classified as consolidated governments.

(4) "Property tax lien" means a lien acquired by the payment at a tax *lien* sale of all outstanding delinquent taxes, including penalties, interest, and costs.

(5) "Purchaser" means any person, other than the person to whom the property is assessed, who pays at the tax *lien* sale the delinquent taxes, including penalties, interest, and costs, and receives a certificate representing a lien on the property or who is otherwise listed as the purchaser. An assignee is a purchaser.

(6) "Tax", "taxes", or "property taxes" means all ad valorem property taxes, property assessments, fees related to property, and assessments for special improvement districts and rural special improvement districts.

(7) "Tax *lien* sale" means:

(a) with respect to real property and improvements, the offering for sale by the county treasurer of a property tax lien representing delinquent taxes, including penalties, interest, and costs; and

(b) with respect to personal property, the offering for sale by the county treasurer of personal property on which the taxes are delinquent or other personal property on which the delinquent taxes are a lien."

Section 5. Section 15-17-122, MCA, is amended to read:

"15-17-122. Notice of pending tax *lien* sale. (1) The county treasurer shall publish or post a notice of *a* pending tax *lien* sale. The notice must include:

(a) the specific time, date, and place an interest in the property on which the taxes are delinquent will be offered for sale;

(b) a statement that the delinquent taxes, including penalties, interest, and costs, are a lien upon the property and that unless the delinquent taxes, penalties, interest, and costs are paid prior to the time of the tax *lien* sale, the lien will be offered for sale at the time and place specified in subsection (1)(a).

(2) The notice required in subsection (1) must also include a statement that a list of each property on which the taxes are delinquent is on file in the office of the county treasurer and open to inspection. The list must include:

(a) the name and address of the person to whom the delinquent taxes are assessed;

(b) the amounts of the delinquent taxes, all accrued penalties, interest, and other costs; and

(c) a statement that penalties, interest, and costs will be added to delinquent taxes.

(3) The notice must be published once a week for 3 consecutive weeks in the newspaper designated for county printing as provided in 7-5-2411. If no newspaper is published in the county, the notice must be posted by the county treasurer in three public places. The notice must be first published or posted on or before the last Monday in June.

(4) Except as provided in 15-17-211(2), the *tax lien* sale may not be held less than 21 days or more than 28 days from the date of first publication or first day the notice is posted.

(5) The sale must be held at the ~~county courthouse~~ *office of the county treasurer*.

(6) Property on which taxes are delinquent but for which proper notification was not made may not be included in the current year's notice and *tax lien* sale. In the event of improper notification, the *tax lien* sale may be held on all property properly noticed.

(7) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17."

Section 6. Section 15-17-124, MCA, is amended to read:

"15-17-124. Irregular assessment. If the county treasurer discovers, prior to the tax *lien* sale, that property on which the taxes are delinquent has been irregularly assessed, the county treasurer may not offer the property or a property tax lien for sale. The taxes on the property must be listed on the property tax record as uncollected for the year in which they were due, and they must be assessed and collected during the succeeding year as taxes are regularly assessed and collected."

Section 7. Section 15-17-131, MCA, is amended to read:

"15-17-131. Common undivided ownership interest — separate assessment — property tax payments. (1) Except as provided in subsection (2), payment of all property taxes on a parcel by any co-owner is considered payment by all owners, whether or not the property is assessed and taxed separately to co-owners or to a single owner. Any payment by a co-owner in excess of the amount assessed to the co-owner must be the total amount due on the parcel or a partial payment amounting to a year of deficiency, as provided in 15-16-102(5)(a). The nonpayment of taxes by a co-owner who is separately assessed and taxed subjects only the interest of the nonpaying co-owner to a tax *lien* sale.

(2) (a) A co-owner may receive a tax lien on property in which the co-owner has an undivided interest if:

(i) the co-owner pays the proportional amount of taxes on that co-owner's interest and on another co-owner's interest;

(ii) the paying co-owner has notified the nonpaying co-owner of the property tax payments and annually demands reimbursement in writing by certified mail, return receipt requested, addressed to the nonpaying co-owner's last-known mailing address; and

(iii) the paying co-owner has paid the property taxes for 3 consecutive years without reimbursement.

(b) Upon proof that a co-owner has complied with the provisions of this subsection (2), the paying co-owner is considered the purchaser of a tax lien on the ownership interest of the nonpaying co-owner and the county treasurer shall prepare a tax ~~sale~~ *lien sale* certificate with the paying co-owner as the purchaser. The certificate shall conform to the provisions of 15-17-212, except the certificate need not contain the information required in 15-17-212(1)(a) and (1)(b). The treasurer shall comply with the provisions of 15-17-212(2) regarding the certificate.

(c) For the purposes of this subsection (2), if there are more than two co-owners, single and multiple paying co-owners can receive a tax lien on the undivided interests of single and multiple nonpaying co-owners."

Section 8. Section 15-17-211, MCA, is amended to read:

"15-17-211. Conduct of tax *lien* sale. (1) On the date and at the time and place specified in the notice, the county treasurer shall, except as provided in 15-17-124, begin the tax *lien* sale of all property described in the list required in 15-17-122(2). The tax *lien* sale must continue until the county treasurer declares it over, but must continue for a period of not less than 1 day. The treasurer is not required to read the list but shall make a copy of the list available for public inspection during regular business hours.

(2) The treasurer may postpone the day of commencing the *tax lien* sale on a day-to-day basis without publishing a new notice~~, provided that~~ *if* the sale is held within 3 weeks from the day first fixed.

(3) Property assessed under 15-17-324 that has not been sold to a purchaser other than the county may, at the discretion of the county treasurer, be offered for sale at tax *lien* sales subsequent to the *tax lien* sale at which it was first offered."

Section 9. Section 15-17-212, MCA, is amended to read:

"15-17-212. Tax ~~sale~~ *lien sale* certificate. (1) After receiving proof of mail notice to the person to whom the property was assessed, as required by subsection (3), and upon receipt of all delinquent taxes, penalties, interest, and costs, the county treasurer shall prepare a tax ~~sale~~ *lien sale* certificate that must contain:

(a) the date on which the property taxes became delinquent;

(b) the date on which a property tax lien was sold at a tax *lien* sale;

(c) the name and address of record of the person to whom the taxes were assessed;

(d) a description of the property on which the taxes were assessed;

(e) the name and mailing address of the purchaser;

(f) the amount paid to liquidate the delinquency, including a separate listing of the amount of the delinquent taxes, penalties, interest, and costs;

(g) a statement that the certificate represents a lien on the property that may lead to the issuance of a tax deed for the property;

(h) a statement specifying the date on which the purchaser will be entitled to a tax deed; and

(i) an identification number corresponding to the tax ~~sale~~ *lien sale* certificate number recorded by the county treasurer as required in 15-17-213.

(2) The certificate must be signed by the county treasurer and delivered to the purchaser. A copy of the certificate must be filed by the treasurer in the office of the county clerk. A copy of the certificate must also be mailed to the person to whom the taxes were assessed, at the address of record, together with a notice that the person may contact the county treasurer for further information on property tax *lien* sales.

(3) Prior to paying delinquent taxes, penalties, interests, and costs received by the county treasurer under subsection (1), a person shall send notice of the proposed payment, by certified mail, to the person to whom the property was assessed. The form of the notice must be adopted by the department by rule. The notice must have been mailed at least 2 weeks prior to the date of the payment. The person making the payment shall provide proof of the mailing."

Section 10. Section 15-17-213, MCA, is amended to read:

"15-17-213. Treasurer to record tax *lien* sales. Prior to delivering the tax ~~sale~~ *lien sale* certificate to the purchaser, the county treasurer shall make a record of the tax *lien* sale. The record must include:

(1) the name and address of the purchaser;

(2) the date on which the tax lien was purchased;

(3) a description of the property on which the certificate is a lien, which description must correspond to the description listed on the certificate;

(4) the amount paid to liquidate the delinquency, including a separate listing of the amount of the delinquent taxes, penalties, interest, and costs; and

(5) a number identifying the tax ~~sale~~ *lien sale* certificate issued upon payment of the delinquency."

Section 11. Section 15-17-214, MCA, is amended to read:

"15-17-214. County as purchaser — assignment. (1) If no person pays the delinquent taxes, including penalties, interest, and costs, on the first day of the tax *lien* sale, the county is considered to be the purchaser.

(2) (a) After ~~the 21st day following the first day of~~ the tax *lien* sale, the county treasurer shall identify and list all property *tax liens* that ~~was~~ *were* sold at the tax *lien* sale. ~~He~~ *The county treasurer* shall also record that the county is the purchaser of all property remaining unsold and upon which the taxes remain delinquent.

(b) The record of the property in which the county is listed as the purchaser may be made by the treasurer by a separate tax ~~sale~~ *lien sale* certificate of each property or by reference to the property as recorded in the list required under 15-16-301.

(3) A property tax lien of the county in any property acquired by the county under subsection (1) must be assigned by the county treasurer*,* as provided in 15-17-323*,* upon the payment of all delinquent taxes, including penalties, interest, and costs specified in 15-17-323."

Section 12. Section 15-17-317, MCA, is amended to read:

"15-17-317. Municipality as purchaser. Whenever property that has been struck off to the county at a tax *lien* sale under 15-17-214 is subject to the lien of delinquent special assessments and has not been assigned under 15-17-214 or 15-17-323 at the request of the municipality, the county treasurer shall assign all of the rights of the county acquired in the property at the *tax lien* sale to the municipality upon payment of any delinquent taxes*,* ~~(~~excluding assessments~~)~~*,* and costs, without penalty or interest. The duplicate certificate of sale must be delivered to the treasurer of the municipality, who shall file it. A charge may not be made for the duplicate certificate when the municipality is the purchaser, and the county treasurer shall make an entry "sold to the municipality" on the property tax record opposite the tax. The county treasurer must be credited with the delinquent amount in the settlement. Property sold to the municipality must be held in trust by the municipality for the improvement fund into which the delinquent special assessments are payable."

Section 13. Section 15-17-321, MCA, is amended to read:

"15-17-321. Resale for nonpayment. (1) If a purchaser other than the county does not pay the delinquent taxes, including penalties, interest, and costs, before 10 a.m. on the next business day following the day of purchase at a tax *lien* sale, the property must be made available for sale for the amount of the delinquent taxes, including penalties, interest, and costs, on the following business day of the *tax lien* sale, except as provided in subsection (2).

(2) If the sale was made on the last day of the tax *lien* sale and payment was not received as provided in subsection (1), the county is considered to be the purchaser as provided in 15-17-214."

Section 14. Section 15-17-323, MCA, is amended to read:

"15-17-323. Assignment of rights — form. (1) A tax *lien* sale certificate or other official record in which the county is listed as the purchaser must be assigned by the county treasurer to any person who, after providing proof of mail notice to the person to whom the property was assessed, as required by subsection (5), pays to the county the amount of the delinquent taxes, including penalties, interest, and costs, accruing from the date of delinquency.

(2) (a) The assignment made under subsection (1) must be in the form of an assignment certificate in substantially the following form:

I, ..., the treasurer of ..... County, state of Montana, hereby certify that a tax sale for tax year 20..., in the county of ....., was held on ..... (date), for the purpose of liquidating delinquent assessments, and I further certify that a property tax lien for delinquent taxes in the following property ..... (insert property description) was offered for sale and that there was no purchaser of the property tax lien. Accordingly, the county was listed as the purchaser as required by 15-17-214, MCA. As of the date of this certificate, the delinquency, including penalties, interest, and costs amounting to $ ....., has not been liquidated by the person to whom the property was assessed, nor has the delinquency been otherwise redeemed.

Because there has been no liquidation of the delinquency or other redemption, I hereby assign all rights, title, and interest of the county of ....., state of Montana, acquired in ~~such~~ *the* property by virtue of the *tax lien* sale to ..... (name and address of assignee) to proceed to obtain a tax deed to the property or receive payment in case of redemption as provided by law.

Witness my hand and official seal of office this ..... day of ....., 20...

..... County Treasurer

..... County

(b) A copy of an assignment certificate must be mailed to the person to whom the taxes were assessed, at the address of record, together with a notice that the person may contact the county treasurer for further information on lien assignments and property tax sales.

(3) An assignment made by a purchaser other than the county, by an assignee of the county, or by a previous assignee may be made for any consideration whatsoever. An assignment so made is legal and binding only upon filing with the county treasurer a statement that the purchaser's or other assignee's interest in the property has been assigned. The statement must contain:

(a) the name and address of the new assignee;

(b) the name and address of the original purchaser of the tax ~~sale~~ *lien sale* certificate;

(c) the name and address of each previous assignee, if any;

(d) a description of the property upon which the property tax lien was issued, which must contain the same information as contained in the tax ~~sale~~ *lien sale* certificate or assignment certificate, as appropriate;

(e) the signature of the party, whether it is the purchaser or the assignee, making the assignment;

(f) the signature of the new assignee; and

(g) the date on which the statement was signed.

(4) If the certificate described in subsection (1) or the statement described in subsection (3) is lost or destroyed, the county treasurer shall, upon adequate proof and signed affidavit by the assignee that loss or destruction has occurred, issue a duplicate certificate to the assignee.

(5) Prior to making a payment under subsection (1), a person shall send notice of the proposed payment, by certified mail, to the person to whom the property was assessed. The form of the notice must be adopted by the department by rule. The notice must have been mailed at least 2 weeks prior to the date of the payment. The person making the payment shall provide proof of the mailing.

(6) The provisions of this section apply to any sale of land for which a treasurer's deed was not issued on or before March 5, 1917, or for which a tax deed was not issued on or before April 23, 1987, and the holder of any certificate described in subsection (1) has the same rights, powers, and privileges with regard to securing a deed as any purchaser of land at a tax *lien* sale may now have."

Section 15. Section 15-17-324, MCA, is amended to read:

"15-17-324. Assessment of property sold at tax *lien* sale. (1) The assessment of property on which a tax ~~sale~~ *lien sale* certificate has been issued or for which the county is listed as the purchaser, as provided in 15-17-214, continues in the same manner as other property is assessed.

(2) If any assessed taxes are not paid when due, they are delinquent."

Section 16. Section 15-17-325, MCA, is amended to read:

"15-17-325. Sale not voided by misnomer of ownership. When a tax ~~sale~~ *lien sale* certificate is acquired, as provided in 15-17-212, or when the county is listed as the purchaser, as provided in 15-17-214, and the taxes were properly assessed on the property of a particular person, no misnomer of ownership or other mistake relating to ownership affects the sale or renders it void or voidable."

Section 17. Section 15-17-326, MCA, is amended to read:

"15-17-326. Voided *tax lien* sale — refund — limitation on action for royalty interest. (1) If a tax *lien* sale held under the provisions of this chapter is declared void by a court for irregularity in the assessment, levy, or sale, the money paid by the purchaser at the *tax lien* sale or by any assignee must be refunded, with interest at the rate payable upon delinquencies, as provided in 15-16-102, from the date of the payment, to the purchaser or owner of the tax ~~sale~~ *lien sale* certificate, together with any penalty paid by the purchaser.

(2) Following the payment of a refund as provided in subsection (1), the county is considered the purchaser and has a property tax lien upon the property for the legal taxes on the property accruing from the date of delinquency, plus penalties and interest as provided in 15-16-102. Any money refunded that was received, as provided in 15-17-212, and distributed by the treasurer to the state or a city, town, or district must be charged to the state, city, town, or district, respectively, by the treasurer and deducted from the next money due the state, city, town, or district on account of taxes paid or collected. A purchaser of a property tax lien or owner ~~thereof~~ *of a property tax lien* by assignment ~~where~~ *when* sales have been made by a city or town ~~which~~ *that* by resolution or ordinance collects its own taxes instead of having the ~~same~~ *taxes*

collected by the county treasurer must be reimbursed in similar manner and in similar circumstances out of the city or town treasury upon order of the mayor or, ~~where~~ *when* applicable, the city manager or ~~chairman~~ *presiding officer* of the city commission. The city or town clerk or city or town treasurer, as appropriate, shall make proper charges and deductions against the respective funds of the city or town upon the next collection of taxes by the city or town.

(3) The purchaser has a lien upon the property for the amount of taxes, penalties, interest, and costs paid, with the interest to be at the rate specified for delinquencies in 15-16-102. If the purchaser is in possession of the property and resides ~~thereon~~ *on the property*, ~~he~~ *the purchaser* may not be ejected from the property until ~~his~~ *the purchaser's* lien has been liquidated.

(4) All affirmative defenses at law or equity, including but not limited to estoppel, laches, and adverse possession, may apply in a suit brought to challenge the title to a royalty interest in land claimed to have been acquired by a county by tax deed.

(5) An action against a county to recover a royalty interest in land acquired by the county by tax deed must be brought within the period prescribed in 27-2-210."

Section 18. Section 15-18-111, MCA, is amended to read:

"15-18-111. Time for redemption — interested party. (1) Except as provided in subsection (2), redemption of a property tax lien acquired at a tax *lien* sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest, the occupant of the property, or any interested party within 36 months from the date of the first day of the tax *lien* sale or within 60 days following the giving of the notice required in 15-18-212, whichever is later.

(2) For property subdivided as a residential or commercial lot upon which special improvement district assessments or rural special improvement district assessments are delinquent and upon which no habitable dwelling or commercial structure is situated, redemption of a property tax lien acquired at a tax *lien* sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest, or any interested party within 24 months from the date of the first day of the tax *lien* sale or within 60 days following the giving of the notice required in 15-18-212, whichever is later.

(3) For the purposes of this chapter, an "interested party" includes a mortgagee, vendor of a contract for deed or the vendor's successor in interest, lienholder, or other person who has a properly recorded interest in the property. A person who has an interest in property on which there is a property tax lien but which interest is not properly recorded is not an interested party for the purposes of this chapter."

Section 19. Section 15-18-113, MCA, is amended to read:

"15-18-113. Treasurer to record redemptions. (1) Upon payment of all delinquent taxes, including penalties, interest, and costs, by the person to whom taxes were assessed or the person's agent to the county treasurer and refunded to the person listed as purchaser, as provided in 15-17-212(1)(e), 15-17-213, or 15-17-214, or distributed, as provided in 15-18-114, the word "redeemed", the date, and the name of the redemptioner must be marked by the county treasurer on the tax ~~sale~~ *lien sale* certificate or in the record required in 15-17-214. Upon redemption, the county treasurer shall execute a certificate of redemption to be filed or recorded with the county clerk and recorder.

(2) The form of the certificate of redemption may be made as follows:

CERTIFICATE OF REDEMPTION

I, ..., the treasurer of ..... County, certify the following:

1. For tax years ..... (years), the taxes were delinquent on the following real property: ..... (description of the property).

2. The tax lien on the property was sold on.....(date of the tax *lien* sale). Tax ~~Sale~~ *Lien Sale* Certificate No. ..... or Tax Lien Assignment No. ..... (if applicable).

3. The tax lien was redeemed on ..... (date of redemption) by the payment of:

Taxes	.....
Penalty	.....
Interest	.....
Cost	.....
Total	.....
Receipt Number	.....

4. The redemption was made by ..... (name of redemptioner).

Date:.....

.....

Signature"

Section 20. Section 15-18-114, MCA, is amended to read:

"15-18-114. Distribution of redemption proceeds. (1) When a property tax lien for which the county is listed as purchaser is redeemed, the money received from the redemption, including penalties and interest but not costs, must be distributed to the credit of the various funds to which the taxes would have originally been distributed and in the same proportion as the taxes would have originally been distributed.

(2) (a) When a property tax lien for which the recorded purchaser is other than the county is redeemed, the county treasurer shall distribute to the person listed as the purchaser on the tax ~~sale~~ *lien sale* certificate and in the record kept by the county treasurer the amount the purchaser paid the county for the property tax lien plus any subsequent amount paid pursuant to 15-18-112 plus interest, as specified in 15-16-102, from the date of payment until the date of redemption. Any money remaining after distributing redemption proceeds to the purchaser other than the county must be distributed pursuant to subsection (1).

(b) (i) The distribution must be made by certified mail, return receipt requested, by the county treasurer to the purchaser at the address listed on the tax ~~sale~~ *lien sale* certificate as provided in 15-17-212(1)(e).

(ii) If the money distributed to the purchaser is returned unopened to the county treasurer, the treasurer shall publish once a week for 2 consecutive weeks in the official newspaper of the county a notice stating that:

(A) the county treasurer is in possession of money belonging to the purchaser for the redemption of the delinquency on the property named in the tax ~~sale~~ *lien sale* certificate;

(B) the money ~~will~~ *must* be held by the county treasurer for a period of 1 year from the date of publication; and

(C) if the money is not claimed by the purchaser within the 1-year period, the purchaser relinquishes all claim to the money and the money ~~will~~ *must* be credited to the county general fund.

(3) The publication required in subsection (2)(b)(ii) must be made at least annually, but the 1-year period described in subsection (2)(b)(ii)(B) may not begin until the date of publication.

(4) The county treasurer shall keep an accurate account of all money paid in redemption, including a separate accounting of other delinquent taxes, interest, penalties, and costs, and when and to whom distributed."

Section 21. Section 15-18-211, MCA, is amended to read:

"15-18-211. Tax deed — fee. (1) Except as provided in subsection (3), if the property tax lien is not redeemed in the time allowed under 15-18-111, the county treasurer shall grant the purchaser a tax deed for the property. The deed must contain the same information as is required in a tax ~~sale~~ *lien sale* certificate under 15-17-212, except the description of the property must be the full legal description, and a statement that the property tax lien was not redeemed during the redemption period provided in 15-18-111.

(2) (a) Except as provided in subsection (2)(b), the county treasurer shall charge the purchaser $25 plus all actual costs incurred by the county in giving the notice or assisting another purchaser or assignee in giving the notice required in 15-18-212 for making the deed, which fee must be deposited in the county general fund.

(b) If the purchaser is the county, no fee may be charged for making the deed.

(c) Reasonable costs incurred by the county in searching the county records to identify persons entitled to notice are considered part of the actual costs of the notice provided in subsection (2)(a).

(3) If the purchaser is the county and no assignment has been made, the county treasurer may not issue a tax deed to the county unless the board of county commissioners, by resolution, directs ~~him~~ *the county treasurer* to issue a tax deed.

(4) Deeds issued to purchasers must be recorded by the county clerk as provided in Title 7, chapter 4, part 26, except that when the county is the purchaser and subsequent tax deed holder, the county clerk may not charge a fee for recording the deed."

Section 22. Section 15-18-212, MCA, is amended to read:

"15-18-212. Notice — proof of notice — penalty for failure to notify. (1) Not more than 60 days prior to and not more than 60 days following the expiration of the redemption period provided in 15-18-111, a notice must be given as follows:

(a) for each property for which there has been issued to the county a tax ~~sale~~ *lien sale* certificate or for which the county is otherwise listed as the purchaser or assignee, the county clerk shall notify all persons considered interested parties in the property and the current occupant of the property, if any, that a tax deed may be issued to the county unless the property tax lien is redeemed prior to the expiration date of the redemption period; or

(b) for each property for which there has been issued a tax ~~sale~~ *lien sale* certificate to a purchaser other than the county or for which an assignment has been made, the purchaser or assignee, as appropriate, shall notify all persons considered interested parties in the property, if any, that a tax deed will be issued to the purchaser or assignee unless the property tax lien is redeemed prior to the expiration date of the redemption period.

(2) (a) Except as provided in subsection (2)(b), if the county is the purchaser, an assignment has not been made, and the board of county commissioners has not directed the county treasurer to issue a tax deed during the period described in subsection (1) but the board of county commissioners at a time subsequent to the period described in subsection (1) does direct the county treasurer to issue a tax deed, the county clerk shall provide notification to all interested parties and the current occupant, if any, in the manner provided in subsection (1)(a). The notification required under this subsection must be made not less than 60 days or more than 120 days prior to the date on which the county treasurer will issue the tax deed.

(b) If the county commissioners direct the county treasurer to issue a tax deed within 6 months after giving the notice required by subsection (1)(a), additional notice need not be given.

(3) (a) If a purchaser other than the county or an assignee fails or neglects to give notice as required by subsection (1)(b) and the failure or neglect is evidenced by failure of the purchaser or assignee to file proof of notice with the county clerk as required in subsection (7), the county treasurer shall notify the purchaser or assignee of the obligation to give notice under subsection (1)(b). The notice of obligation may be sent by certified mail, return receipt requested, to the purchaser or assignee at the address contained on the tax ~~sale~~ *lien sale* certificate provided for in 15-17-212 or on the assignment form provided for in 15-17-323.

(b) If within 120 days after the county treasurer mails the notice of obligation the purchaser or assignee fails to give notice as required by subsection (1)(b), as evidenced by failure to file proof of notice with the county clerk as required in subsection (7), the county treasurer shall cancel the property tax lien evidenced by the tax ~~sale~~ *lien sale* certificate or the assignment. Upon cancellation of the property tax lien, the county treasurer shall file or record with the county clerk and recorder a notice of cancellation on a form provided for in 15-18-217.

(4) The notice required under subsections (1) and (2) must be made by certified mail, return receipt requested, to each interested party and the current occupant, if any, of the property. The address to which the notice must be sent is, for each interested party, the address disclosed by the records in the office of the county clerk and, for the occupant, the street address or other known address of the subject property.

(5) In all cases in which the address of an interested party is not known, the person required to give notice shall, within the period described in subsection (1) or not less than 60 days or more than 120 days prior to the date upon which the county treasurer will otherwise issue a tax deed, whichever is appropriate, commence publishing once a week for 2 successive weeks, in the official newspaper of the county or another newspaper as the board of county commissioners may by resolution designate, a notice containing the information contained in subsection (6), plus:

(a) the name of the interested party for whom the address is unknown;

(b) a statement that the address of the interested party is unknown;

(c) a statement that the published notice meets the legal requirements for notice of a pending tax deed issuance; and

(d) a statement that the interested party's rights in the property may be in jeopardy.

(6) The notices required by subsections (1), (2), and (5) must contain the following:

(a) a statement that a property tax lien exists on the property as a result of a property tax delinquency;

(b) a description of the property on which the taxes are or were delinquent, which must be the same as the description of the property on the tax ~~sale~~ *lien sale* certificate or in the record described in 15-17-214(2)(b);

(c) the date that the property taxes became delinquent;

(d) the date that the property tax lien attached as the result of a tax *lien* sale;

(e) the amount of taxes due, including penalties, interest, and costs, as of the date of the notice of pending tax deed issuance, which amount must include a separate listing of the delinquent taxes, penalties, interest, and costs that must be paid for the property tax lien to be liquidated;

(f) the name and address of the purchaser;

(g) the name of the assignee if an assignment was made as provided in 15-17-323;

(h) the date that the redemption period expires or expired;

(i) a statement that if all taxes, penalties, interest, and costs are not paid to the county treasurer on or prior to the date on which the redemption period expires or on or prior to the date on which the county treasurer will otherwise issue a tax deed, ~~that~~ a tax deed may be issued to the purchaser on the day following the date on which the redemption period expires or on the date on which the county treasurer will otherwise issue a tax deed; and

(j) the business address and telephone number of the county treasurer who is responsible for issuing the tax deed.

(7) Proof of notice in whatever manner given must be filed with the county clerk. If the purchaser or assignee is other than the county, the proof of notice must be filed with the county clerk within 30 days of the mailing or publishing of the notice. If the purchaser or assignee is the county, the proof of notice must be filed before the issuance of the tax deed under this chapter. Once filed, the proof of notice is prima facie evidence of the sufficiency of the notice.

(8) A county or any officer of a county may not be held liable for any error of notification."

Section 23. Section 15-18-213, MCA, is amended to read:

"15-18-213. Form of tax deed — prima facie evidence. (1) The form of a tax deed issued under the provisions of this chapter, executed by a county treasurer, must be made in substance as follows:

This deed is made by ..... (name of county treasurer), county treasurer of the county of ..... (name of county), in the state of Montana, to ..... (name of purchaser, the purchaser's agent, or assignee), as provided by the laws of the state of Montana:

Whereas, there was assessed for ..... (year) the following real property ..... (description of the property); and

Whereas, the taxes for ..... (year) levied against the property amounted to $.....; and

Whereas, the taxes were not paid and a property tax lien for the payment of the taxes attached and was sold to ..... (name of purchaser or the purchaser's agent or assignee) on ..... (date, including year) for the sum of $....., which amount included delinquent taxes in the amount of $....., penalties in the amount of $....., interest in the amount of $....., and other costs in the amount of $.....; and

Whereas, a tax ~~sale~~ *lien sale* certificate was ~~duly~~ issued and filed or the sale otherwise recorded as required by law; and

Whereas, notice was given to interested parties in accordance with 15-18-212 that the issuance of a tax deed was pending; and

Whereas, the property tax lien has not been redeemed by ..... (name of former owner) or any other person entitled to redeem it.

Now, therefore, I, ... (treasurer's name), county treasurer of the county of ....., in the state of Montana, in consideration of the sum of $..... paid, hereby grant to ..... (name of purchaser or the purchaser's agent or assignee) all the property situated in ..... County, state of Montana, described in this document.

Witness my hand on this date ..... (date, including year).

.....County Treasurer

.....County

(2) A tax deed executed in substantially the form provided in subsection (1) is prima facie evidence that:

(a) the property was assessed as required by law;

(b) the taxes were levied in accordance with law;

(c) the taxes were not paid when due;

(d) notice of tax *lien* sale was given and a property tax lien was sold at the proper time and place as provided by law;

(e) the property was not redeemed, and proper notice of a pending tax deed issuance was made as required by law;

(f) the person who executed the deed was legally authorized to do so; and

(g) if the real property was sold to pay delinquent taxes on personal property, the real property belonged to the person liable to pay the personal property tax."

Section 24. Section 15-18-214, MCA, is amended to read:

"15-18-214. Effect of deed. (1) A deed issued under this chapter conveys to the grantee absolute title to the property described ~~therein~~ *in the deed* as of the date of the expiration of the redemption period, free and clear of all liens and encumbrances, except:

(a) when the claim is payable after the execution of the deed and:

(i) a property tax lien attaches subsequent to the tax *lien* sale; or

(ii) a lien of any special, rural, local improvement, irrigation, or drainage assessment is levied against the property;

(b) when the claim is an easement, servitude, covenant, restriction, reservation, or similar burden lawfully imposed on the property; or

(c) when the land is owned by the United States, this state, or a subdivision of this state.

(2) Under the conditions described in subsection (1), the deed is prima facie evidence of the right of possession accrued as of the date of expiration of the period for redemption or the date upon which a tax deed was otherwise issued."

Section 25. Section 15-18-215, MCA, is amended to read:

"15-18-215. Form of notice that tax deed may issue. Section 15-18-212 requires that notice be given to all persons considered interested parties and to the current occupant of property that may be lost to a tax deed. The notice may be made as follows:

NOTICE THAT A TAX DEED MAY BE ISSUED

TO:..... .....

(Name) (Address, when unknown, so state)

Pursuant to section 15-18-212, Montana Code Annotated, NOTICE IS HEREBY GIVEN:

1. As a result of a property tax delinquency, a property tax lien exists on the following described real property in which you may have an interest:

.....

.....

2. The property taxes became delinquent on ..... .

3. The property tax lien was attached as the result of a tax *lien* sale held on ..... .

4. The property tax lien was purchased at a tax *lien* sale on ..... by ..... (Name) ..... (Address).

5. The lien was subsequently assigned to ..... .

6. As of the date of this notice, the amount of tax due is:

TAXES: .....

PENALTY: .....

INTEREST: .....

COST: .....

TOTAL: .....

7. For the property tax lien to be liquidated, the total amount listed in paragraph 6 must be paid by ....., which is the date that the redemption period expires or expired.

8. If all taxes, penalties, interest, and costs are not paid to the county treasurer on or prior to ....., which is the date the redemption period expires, or on or prior to the date on which the county treasurer will otherwise issue a tax deed, a tax deed may be issued to the purchaser on the day following the date that the redemption period expires or on the date the county treasurer will otherwise issue a tax deed.

9. The business address and telephone number of the county treasurer who is responsible for issuing the tax deed is: ..... County Treasurer, ... (Address), ... (Telephone).

FURTHER NOTICE FOR THOSE PERSONS LISTED ABOVE WHOSE ADDRESSES ARE UNKNOWN:

1. The address of the interested party is unknown.

2. The published notice meets the legal requirements for notice of a pending tax deed issuance.

3. The interested party's rights in the property may be in jeopardy.

DATED at ..... this ..... (Date).

.....

Signature"

Section 26. Section 15-18-217, MCA, is amended to read:

"15-18-217. Form of cancellation. The notice of cancellation required by 15-18-212 of a tax lien as evidenced by a tax ~~sale~~ *lien sale* certificate or assignment may be made as follows:

I, ..., the treasurer of ..... County, certify that ..... (name of the purchaser or the purchaser's agent or assignee) of ..... (address), purchased a tax lien ..... (tax ~~sale~~ *lien sale* certificate no. or tax lien assignment no.) on property owned by ..... (name of owner of record). See legal description attached as exhibit "A", Tax Receipt No. ..... on ..... (date).

I further certify that pursuant to 15-18-212(3)(a), notice was given to ..... (name of purchaser or the purchaser's agent or assignee) that the tax lien will be canceled if the purchaser does not comply with provisions of 15-18-212 within 120 days from ..... (date of mailing of certified letter).

I further certify that the treasurer of ..... County has no record of notice by the owner of the tax lien in accordance with 15-18-212(7).

Therefore, noncompliance by the assignee has caused the tax lien to be canceled this ..... (date).

.....

Name of County Treasurer"

Section 27. Section 15-18-218, MCA, is amended to read:

"15-18-218. Charge not allowed for filings or recordings made by county treasurer. The county clerk and recorder may not impose a charge for tax lien assignments, tax ~~sale~~ *lien sale* certificates, certificates of redemption, or any other form that the county treasurer is required to file or record with the county clerk and recorder."

Section 28. Section 39-3-501, MCA, is amended to read:

"39-3-501. Certain laws extended to certain employers in mineral and oil industry. For the purposes of this part, all the provisions of part 2 of this chapter extend to and govern every person, firm, partnership, or corporation engaged in the business of extracting or of extracting and refining or reducing metals and minerals or mining for coal or drilling for oil, except ~~such~~ persons, firms, partnerships, or corporations ~~as~~ *that* have a free and unencumbered title to not less than one-half the fee of the property being

worked. For this purpose, an outstanding unpaid or unredeemed tax ~~sale~~ *lien sale* certificate is not considered an encumbrance."

Section 29. Section 85-7-2136, MCA, is amended to read:

"85-7-2136. Collection of taxes or assessment. (1) Subject to 15-10-420 and on or before the third Monday in August of each year, the board of commissioners shall furnish to the department of revenue a correct list of all the district lands in the county, together with the amount of the total taxes or assessments against the lands for district purposes. The department of revenue shall immediately upon receipt of the list enter the assessment roll in the property tax record of the county for each year.

(2) The county treasurer of each county in which any irrigation district is located, in whole or in part, shall collect and receipt for all taxes and assessments levied by the district, in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. The treasurer ~~shall~~ *must* receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not.

(3) During the water delivery season, as determined by the irrigation district commissioners, the county treasurer shall make available to the board of commissioners of an irrigation district notice of the receipt of payments of district assessments by 9 a.m. on the day following receipt of those payments.

(4) If requested in writing by a board of commissioners of an irrigation district, the county treasurer may receive assistance from an employee of the irrigation district or a commissioner of the district for the purpose of collecting district assessments as provided in 15-16-102, investing district funds as directed by the board of commissioners of the district, and preparing district assessment notices.

(5) When any real estate on account of which the district taxes and assessments have been levied has been sold to the county and *a* tax *lien sale* certificate ~~of sale~~ is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of the district tax or assessment, together with the penalty and interest to date of payment on the installment. However, the payment may not be considered a redemption of the property from the tax *lien* sale but must be credited on account of any redemption that may be made. In case of any payment pursuant to this subsection, a separate tax receipt must be issued showing exactly what assessments have been paid and showing that no other tax on the real estate has been received by the treasurer. The county treasurer may not collect, receive, or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any irrigation district upon which an assessment for the purposes of the irrigation district has been levied unless the assessment levied for irrigation district purposes is either paid as permitted in this section and the receipt for the payment is presented to the county treasurer at the time the taxes are paid or paid at the time the irrigation district taxes are paid."

Section 30. Section 85-7-2152, MCA, is amended to read:

"85-7-2152. Proceeds of sale. Whenever any lot, tract, piece, or parcel of land included within and forming a part of any irrigation district created under the provisions of this chapter or included within any extension of ~~such~~ *the* district is sold by the treasurer of the county where ~~such~~ *the* land is situated in the manner provided by law for the sale of lands for delinquent taxes for state

and county purposes and taxes or assessments of the irrigation district form all or a part of the taxes for which ~~such~~ *the* lands are sold, the county treasurer making ~~such~~ *the* sale or sales shall place to the credit of the proper funds of ~~such~~ *the* irrigation district, out of the proceeds of the sale or sales, the total tax or assessment of the irrigation district, inclusive of the interest and penalty ~~thereon~~ *on the proceeds* as provided for by the general laws relating to delinquent taxes for state and county purposes.~~, and whenever~~ *When* any ~~such~~ *of the* lands are struck off at ~~such~~ *the tax lien* sale to the county where they are situated pursuant to the provisions of 15-17-214, the county treasurer of the county ~~must~~ *shall*, upon the issuance of the *tax lien sale* certificate ~~of tax sale~~ to the county, issue to the irrigation district, in its corporate name, a debenture certificate for the amount of taxes and assessments due to the irrigation district from the lands and premises ~~so~~ *that were* sold, inclusive of the interest and penalty. ~~thereon, which~~ *The* certificate is evidence of and conclusive of the interest and claim of the irrigation district in, to, against, and upon the lands and premises ~~so~~ *that were* struck off to the county at the tax *lien* sale~~,~~. ~~and after~~ *After* the issuance of the certificate, the sum named ~~therein~~ *in the certificate* and the taxes and assessments of the district evidenced ~~thereby~~ *by the certificate* ~~shall bear~~ *bear* interest at the rate of 1% a month from the date of the certificate until redeemed in the manner provided for by law for the redemption of the lands sold for delinquent state and county taxes or until paid from the proceeds of the sale of the lands and premises described ~~therein~~ *in the certificate* in the manner provided for by law~~,~~. ~~and duplicates~~ *Duplicates* of ~~such~~ certificates ~~so~~ issued to the irrigation district ~~shall~~ *must* be filed in the office of the county clerk and county treasurer of the county with the *tax lien sale* certificate ~~of tax sale~~ of the lands and premises."

Section 31. Section 85-7-2157, MCA, is amended to read:

"85-7-2157. Purchase of lands by district — revolving fund, credits, and expenditures. (1) At all sales of all lands for delinquent taxes ~~where~~ *when* all or a portion of ~~such~~ *the* delinquent taxes are taxes and assessments levied and assessed by ~~any~~ *an* irrigation district against the lands to be sold, the commissioners of ~~such~~ *the* irrigation district, if there ~~be~~ *is* no other bidder for ~~such~~ *the* land at ~~such~~ *the* tax *lien* sale, may bid ~~therefor~~ *on the land for* the total amount of all delinquent taxes and assessments, penalty, and interest against ~~such~~ *the* land~~,~~. ~~and thereupon~~ *If the commissioners are the only bidder,* the county treasurer shall strike off ~~said~~ *the* lands to ~~such~~ *the* irrigation district and issue *tax lien sale* certificates ~~of tax sale~~ to ~~said~~ *the* irrigation district the same as ~~such~~ *tax lien sale* certificates ~~of tax sales~~ are issued to other purchasers. For the purpose of paying ~~such~~ *the* taxes, assessments, interest, and penalties, the commissioners of ~~such~~ *the* irrigation district ~~shall have the power and authority to~~ *may* create by resolution a ~~fund to be known and designated as the~~ revolving fund for the purchase of tax *lien sale* certificates and titles. ~~and to~~ *The commissioners may* provide funds for ~~such~~ *the* revolving fund by levy, bond issue, or otherwise. The district may pay ~~such~~ *the* taxes, assessments, interest, and penalties by issuing a warrant to the county treasurer against ~~such~~ *the* revolving fund~~, provided that there shall be~~ *if there is* sufficient money in ~~such~~ *the* fund ~~to pay same in full upon demand~~.

(2) When taxes are paid by the district as provided in this part, the county treasurer shall distribute that portion of ~~said~~ *the* tax belonging to the irrigation district to the several funds as designated in the tax levy and assessment. However, if the board of commissioners of the irrigation district ~~shall~~ file with the county treasurer a certified copy of *the* resolution passed by ~~such~~ *the*

commissioners requesting nondistribution by the county treasurer of the portion of the tax belonging to the district, the county treasurer ~~shall~~ *may* not distribute that portion of ~~said~~ *the* tax belonging to the irrigation district to the several funds as designated in the tax levy and assessment, but the total amount due the irrigation district ~~shall~~ *must* be credited by ~~him~~ *the treasurer* to the revolving fund ~~above specified~~. ~~In such event,~~ *If money is credited to the revolving fund,* at the time of the sale by the district of the tax ~~sale~~ *lien sale* certificate or of the property obtained through ~~such~~ *the* certificate, ~~such~~ *the* funds ~~as~~ *that* are realized from ~~such~~ *the* sale must be deposited with the county treasurer, together with the rentals received from the property, and ~~he~~ *the treasurer* shall credit the proceeds of ~~such~~ *the* redemption sale or rental pro rata to the several funds of the district in accordance with the original levy or assessment.

(3) At the time of redemption or of the sale by the district of the tax ~~sale~~ *lien sale* certificate or of the property obtained through ~~such~~ *the* certificate, ~~such~~ *the* funds ~~as~~ *that* are realized must be deposited with the county treasurer, together with rentals received from the property. ~~He~~ *The county treasurer* shall credit the proceeds of ~~such~~ *the* redemption, sale, or rentals to the ~~above specified~~ revolving fund to ~~such~~ *the* extent ~~as may be~~ required~~, with the credit provided for above,~~ to reimburse ~~said~~ *the* revolving fund in full~~,~~. ~~if~~ *If* the sum realized permits, ~~the overplus, if~~ any *excess, to must* be credited to the several funds of the district in accordance with the original levy and assessment. ~~No expenditures shall~~ *Expenditures may not* be made from the revolving fund except ~~for the purpose as herein specified, and when, by resolution of the~~ *as provided in this section. The* board of irrigation district commissioners *may, by resolution*, ~~such~~ *when the* fund ~~shall be deemed~~ *becomes* inactive, ~~the balance remaining in said fund shall be transferred~~ *transfer the balance* to a sinking fund to ~~be applied upon~~ *pay* any indebtedness ~~which may have~~ *that had* been incurred by the district by reason of the creation of ~~such~~ *the* revolving fund~~, if any there may be~~."

Section 32. Section 85-7-2158, MCA, is amended to read:

"85-7-2158. Purchase of lands by district — tax *lien* sale certificates and payment. (1) Any irrigation district may:

(a) purchase the *tax lien sale* certificate ~~of tax sale~~ issued to any county for lands sold at *a* tax *lien* sale against which any of its taxes and assessments are delinquent; or

(b) if *a* deed ~~therefor~~ has issued to the county, purchase ~~such~~ *the* lands from the county by paying all state, county, city, school district, and other delinquent taxes, together with penalty, interest, and costs of publication and sale to the county treasurer of the county making the sale.

(2) ~~Such~~ *The* payment ~~shall~~ *must* be made by the commissioners of ~~such~~ *the* district *by* issuing and delivering to the county treasurer a warrant drawn against the revolving fund of ~~said~~ *the* district~~; provided there shall be~~ *if there is* sufficient money in ~~said~~ *the* fund to pay ~~same~~ *the warrant* in full upon demand. ~~Thereupon, such treasurer~~ *The county treasurer* shall *then* assign ~~such~~ *the tax lien sale* certificate ~~of tax sale~~ to ~~such~~ *the* irrigation district ~~as in the case of the purchase thereof by any other person~~, or the commissioners of the county shall convey ~~such~~ *the* lands to ~~said~~ *the* district ~~in case~~ *if the* tax deed ~~therefor has been~~ *was* issued to the county."

Section 33. Section 85-7-2159, MCA, is amended to read:

"85-7-2159. Issuance of tax deed. ~~When~~ *If* there has been no redemption of ~~the~~ lands sold at *a* tax *lien* sale to an irrigation district or *by* any other person or *no redemption* of ~~the~~ lands struck off to the county for which *a tax lien sale* certificate ~~of sale~~ has been assigned to an irrigation district or any other person ~~in the manner and within the time allowed~~ *as provided by law* for the redemption of lands from tax *lien* sales, the county treasurer of the county within which the lands are situated shall issue a tax deed for the lands to the irrigation district or *any* other holder of *a tax lien sale* certificate ~~of sale~~."

Section 34. Section 85-7-2162, MCA, is amended to read:

"85-7-2162. Powers of district commissioners to acquire and manage tax *lien* sale lands. (1) In addition to the powers ~~heretofore granted to~~ *of* irrigation districts, the commissioners of every irrigation district established and organized under and by virtue of the laws of the state ~~of Montana shall have power to~~ *may*:

(a) purchase lands within their respective districts ~~heretofore~~ *that had been* sold and conveyed to the county for nonpayment of taxes and assessments, purchase *tax lien sale* certificates ~~of tax sales~~ of ~~such~~ *the* land when struck off to the county, *and* take title ~~thereto~~ *to the land* for their district;

(b) own, manage, operate, lease, sell, and dispose of the ~~same~~ *land* for the use and benefit of their respective districts ~~upon such terms as shall, in the judgment of the board of commissioners of such irrigation district, be deemed most advantageous to the district~~;

(c) sue and be sued in reference to ~~said~~ *the* lands in the name of their respective irrigation districts~~;~~ *and* commence, maintain, and prosecute suits to quiet title to ~~said~~ *the* lands and any ~~and all~~ other suits in equity or actions at law with reference ~~thereto~~ *to the lands*, the same as ~~might be done by~~ any other individual or corporate owners of ~~such~~ *the* lands; and

(d) do any ~~and all~~ other acts or things necessary or beneficial for their respective districts in connection with ~~such~~ *the* lands.

(2) ~~Such~~ *The* lands ~~shall~~ *must* be ~~first~~ offered for sale at public sale*,* and the commissioners may reject any ~~and all~~ bids ~~thereon~~ *on the land*~~,~~ if*,* in their judgment*,* ~~such~~ *the* bids are insufficient. ~~No such~~ *The* lands ~~shall~~ *may not* be sold at private sale at a price less than the highest bid ~~therefor~~ *made* at the public sale at which ~~such~~ *the* lands ~~are~~ *were* offered for sale~~;~~. ~~and if no~~ *If a* bid is *not* received for ~~said~~ *the* land when ~~said~~ *the* land is offered at public sale, the commissioners may then sell the ~~same~~ *land* in ~~such~~ *the* manner*,* ~~and~~ at ~~such~~ *the* price*,* and upon ~~such~~ *the* terms ~~as in their judgment shall be for the best interests of said district~~ *that they choose*.

(3) The board of commissioners of any irrigation district ~~shall be and they are hereby authorized and empowered to do any and all things~~ *may do what is* necessary to carry out the provisions and intentions of 85-7-2157 through 85-7-2164."

Section 35. Section 85-7-2163, MCA, is amended to read:

"85-7-2163. Granting of tax deed. The holder of the *tax lien sale* certificate ~~of tax sale~~ must be granted a tax deed by the county treasurer in the manner and form provided by Title 15, chapter 18."

Section 36. Section 85-8-601, MCA, is amended to read:

"85-8-601. Certification and collection of district taxes. (1) Subject to 15-10-420 and on or before the third Monday in August of each year, the

commissioners shall certify to the department of revenue a correct list of all the district lands in each county and the owners of the lands, together with a statement of the amount of the total tax or assessment against the lands for district purposes for that year. The department of revenue shall immediately enter the assessment roll in the property tax record of the county for each year.

(2) The county treasurer of each county in which a drainage district is located, in whole or in part, shall collect and receipt for all taxes and assessments levied by the district in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. However, the treasurer must receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not. When any real estate on account of which the district taxes and assessments have been levied has been sold to the county and *the* tax *lien sale* certificate ~~of sale~~ is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of the district tax or assessment, together with the penalty and interest to date of payment on the installment. However, the payment may not be considered a redemption of the property from the tax *lien* sale, but must be credited on account of any redemption that may later be made. In case of any payment pursuant to this subsection, a separate tax receipt must be issued showing exactly what assessments have been paid and showing that no other tax on the real estate has been received by the treasurer. However, the county treasurer may not collect, receive, or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any drainage district upon which an assessment for the purposes of the drainage district has been levied unless the assessment levied for the drainage district purposes is either paid as provided in this section and the receipt is presented to the county treasurer at the time the real estate taxes are paid or paid at the time the drainage district taxes are paid."

Approved March 30, 2007

CHAPTER NO. 111

[HB 662]

AN ACT CLARIFYING WHEN AN EXEMPTION FROM REVIEW UNDER LAWS GOVERNING SANITATION IN SUBDIVISIONS MAY APPLY TO A REMAINDER OF AN ORIGINAL TRACT; AMENDING SECTION 76-4-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-4-125, MCA, is amended to read:

"76-4-125. Review of subdivision application — land divisions excluded from review. (1) Except as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing authority. The review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must include preliminary plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review, any public comments or summaries of public comments collected as provided in

76-3-604(6), and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(b) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision on the proposed subdivision within 60 days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may be increased to 120 days. The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final decision on the proposed subdivision. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and

(e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system ~~that was constructed~~ *serving a discharge source that was in existence* prior to April 29, 1993, and, if required when installed, *the system* was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116(1)(i), a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2007

CHAPTER NO. 112

[SB 21]

AN ACT AUTHORIZING COUNTIES TO ESTABLISH AND FUND VETERANS' CEMETERIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Veterans' cemetery. (1) Pursuant to Article II, section 35, of the Montana constitution, a county may provide for the construction, maintenance, and administration of a veterans' cemetery, set the standards by which the cemetery must be constructed and maintained, and determine qualifications for burial in the cemetery.

(2) Subject to 15-10-420, to fund the cemetery, the county may impose a property tax levy, accept gifts, grants, or donations, and receive allowances and collect charges authorized by state or federal law regarding burial of a veteran or a veteran's spouse.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 35, part 22, and the provisions of Title 7, chapter 35, part 22, apply to [section 1].

Approved March 30, 2007

CHAPTER NO. 113

[SB 88]

AN ACT EXTENDING INDEFINITELY THE ALLOCATION OF LODGING FACILITY USE TAX TO THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT ACCOUNT; REPEALING SECTION 3, CHAPTER 469, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 3, Chapter 469, Laws of 2001, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2007

CHAPTER NO. 114

[SB 237]

AN ACT ALLOWING PNEUMATIC SNOW TIRES WITH RETRACTABLE STUDS TO BE USED YEAR ROUND; AND AMENDING SECTION 61-9-406, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-9-406, MCA, is amended to read:

"61-9-406. Restrictions as to tire equipment — particular tires, chains, or traction equipment — definitions. (1) A solid rubber tire on a vehicle must have rubber on its entire traction surface at least 1 inch thick above the edge of the flange of the entire periphery.

(2) A person may not operate or move on a highway a motor vehicle, trailer, or semitrailer having a metal tire in contact with the roadway.

(3) A tire on a vehicle moved on a highway may not have on its periphery a block, stud, flange, cleat, ~~or~~ spike, or other protuberance of a material other than rubber that projects beyond the tread of the traction surface of the tire, except that it is permissible to use farm machinery with tires having protuberances that will not injure the highway. It is also permissible to use tire chains of reasonable proportions or pneumatic tires, the traction surfaces of which have been embedded with material, such as wood, wire, plastic or metal, that may not protrude more than one-sixteenth of an inch beyond the tire tread or that are clearly marked by the manufacturer on the sidewall "all season m&s" (or "all season mud and snow"), upon a vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid. ~~The~~ *Except as provided in subsection (4), the* use of pneumatic tires embedded as provided in this section is permitted only between October 1 and May 31 of each year, except that one of those tires may be used for a spare in case of tire failure. School buses equipped with such embedded pneumatic tires may operate from August 15 through the following June 15.

(4) Pneumatic tires that feature an embedded block, stud, flange, cleat, spike, or other protuberance that is retractable may be used at any time of the year. However, the protuberance may not be engaged or extended other than between October 1 and May 31 of each year on roads that do not contain ice or snow.

~~(4)~~*(5)* The department of transportation and local authorities, as defined in 61-8-102, in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of farm tractors or other farm machinery or of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of the movable tracks, the operation of which upon the highway would otherwise be prohibited under this section.

~~(5)~~*(6)* If the department of transportation determines at any time that dangerous or unsafe conditions on a highway require particular tires, tire chains, or traction equipment for vehicles in addition to or beyond the ordinary pneumatic rubber tires, the department may establish the following recommendations or requirements with respect to the use of the equipment for all vehicles using the highway:

(a) chains or other approved traction devices recommended for driver wheels;

(b) chains or other approved traction devices required for driver wheels; or

(c) chains required for driver wheels.

~~(6)~~*(7)* Equipment required by subsection ~~(5)(b)~~ *(6)(b)* or ~~(5)(c)~~ *(6)(c)* must conform to rules established by the department of justice.

~~(7)~~*(8)* The department of transportation shall place and maintain signs and other traffic control devices on a highway designated under subsection ~~(5)~~ *(6)* that indicate the tire, tire chain, or traction equipment recommendation or requirement determined for vehicles. The signs or traffic control devices may not prohibit the use of pneumatic tires embedded as provided in subsection (3) between October 1 and May 31 of each year, but when the department of transportation determines that chains are required and that no other traction equipment will suffice, the requirement is applicable to tires on driver wheels of one axle, as defined in 61-10-104, of a vehicle, including embedded tires. The

signs or traffic control devices may differentiate in recommendations or requirements for four-wheel-drive vehicles in gear.

~~(8)~~*(9)* As used in this section:

(a) "metal tire" means a tire the surface of which in contact with the highway is wholly or partly metal or other hard, nonresilient material; and

(b) "pneumatic tire" means a tire in which compressed air or nitrogen is designed to support the load."

Approved March 30, 2007

CHAPTER NO. 115

[HB 664]

AN ACT ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONSIDER CONTROLLED BURNING AND LOGGING AS METHODS TO ADDRESS FOREST INSECT PEST INFESTATIONS OR TREE DISEASES; AMENDING SECTION 76-13-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the mountain pine beetle poses a serious threat to the health of Montana forests and the economic benefits and recreational opportunities that those forests provide; and

WHEREAS, years of fire suppression and drought have made Montana forests especially susceptible to mountain pine beetles;

WHEREAS, in 2006, the mountain pine beetle infected about 881,000 acres in western Montana and northern Idaho, killing more than 2.4 million trees; and

WHEREAS, controlled burning or logging may help control beetle infestations as well as reduce wildfire danger created by large stands of trees killed by beetles; and

WHEREAS, students at Butte High School have studied beetle infestations and concluded that Montana should consider controlled burning or logging to attack mountain pine beetles and preserve the state's forests.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-13-304, MCA, is amended to read:

"76-13-304. Suppression and eradication of infestation. (1) The department may enter upon the land within the zone and cause the forest insect pest infestation or forest tree disease to be suppressed, eradicated, and destroyed in the manner approved by it.

(2) In order to accomplish the suppression, eradication, and destruction of the infestation, the department may enter into cooperative agreements with the federal government or other public or private agencies and with forest landowners, using such funds as are made available for those purposes.

(3) The department may consider controlled burning or logging as methods to suppress or eradicate forest insect pest infestation or forest tree disease."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 2, 2007

CHAPTER NO. 116

[SB 45]

AN ACT REVISING THE PROVISIONS FOR BEHAVIORAL HEALTH INPATIENT FACILITIES; PROVIDING FOR LICENSURE; PROVIDING FOR RULEMAKING AUTHORITY; AND AMENDING SECTIONS 53-21-102, 53-21-129, 53-21-193, AND 53-21-194, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-102, MCA, is amended to read:

"53-21-102. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

(2) "Behavioral health inpatient facility" means a ~~licensed~~ facility *or a distinct part of a facility* of 16 beds or less ~~designated~~ *licensed* by the department that~~:~~

~~(a) may be a freestanding licensed hospital or a distinct part of another licensed hospital and that~~ is capable of providing *secure,* inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency~~; and~~

~~(b) has contracted with the department to provide services to persons who have been involuntarily committed for care and treatment of a mental disorder pursuant to this title~~.

(3) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(4) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

(5) "Court" means any district court of the state of Montana.

(6) "Department" means the department of public health and human services provided for in 2-15-2201.

(7) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

(8) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the

respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

(9) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term does not include:

(i) addiction to drugs or alcohol;

(ii) drug or alcohol intoxication;

(iii) mental retardation; or

(iv) epilepsy.

(c) A mental disorder may co-occur with addiction or chemical dependency.

(10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(11) "Mental health professional" means:

(a) a certified professional person;

(b) a physician licensed under Title 37, chapter 3;

(c) a professional counselor licensed under Title 37, chapter 23;

(d) a psychologist licensed under Title 37, chapter 17;

(e) a social worker licensed under Title 37, chapter 22; or

(f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

(12) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

(i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;

(ii) failure to follow a prescribed plan of care and treatment; or

(iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

(13) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(14) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

(16) "Professional person" means:

(a) a medical doctor;

(b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing; or

(c) a person who has been certified, as provided for in 53-21-106, by the department.

(17) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(18) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

(19) "State hospital" means the Montana state hospital."

Section 2. Section 53-21-129, MCA, is amended to read:

"53-21-129. Emergency situation — petition — detention. (1) When an emergency situation exists, a peace officer may take any person who appears to have a mental disorder and to present an imminent danger of death or bodily harm to the person or to others into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained is a danger to the person or to others because of a mental disorder and that an emergency situation exists, then the person may be detained and treated until the next regular business day. At that time, the professional person shall release the detained person or file findings with the county attorney who, if the county attorney determines probable cause to exist, shall file the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall file a report with the court explaining the professional person's actions.

(3) The county attorney of a county may make arrangements with a federal, state, regional, or private mental facility or with a mental health facility in a county for the detention of persons held pursuant to this section. If an arrangement has been made with a facility that does not, at the time of the emergency, have a bed available to detain the person at that facility, the person may be transported to the state hospital or to a behavioral health inpatient facility, subject to 53-21-193 and subsection (4) of this section, for detention and treatment as provided in this part. This determination must be made on an individual basis in each case, and the professional person at the local facility shall certify to the county attorney that the facility does not have adequate room at that time.

(4) Before a person may be transferred to the state hospital or to a behavioral health inpatient facility under this section, the state hospital or the behavioral health inpatient facility must be notified prior to transfer and shall state whether a bed is available for the person. If the ~~Montana state hospital~~ *professional person* determines that a behavioral health inpatient facility is the appropriate facility for the emergency detention *and a bed is available*, ~~it~~ *the county attorney* shall direct the person to the appropriate facility to which the person must be transported for emergency detention."

Section 3. Section 53-21-193, MCA, is amended to read:

"53-21-193. Commitment to behavioral health inpatient facilities — preference — *voluntary treatment*. (1) If a respondent is committed to the state hospital under 53-21-127 or *if* a person in an emergency situation requires

detention under 53-21-129 and a bed is available at a behavioral health inpatient facility, the ~~Montana state hospital shall direct the~~ *professional* person *shall inform the county attorney who shall inform the person* who is responsible for transporting the individual *as* to the appropriate facility to which ~~the person shall transport~~ the individual *is to be transported* for admission.

(2) If a respondent is committed to or an individual requires emergency detention in a behavioral health inpatient facility, the facility must be notified and the facility shall state that a bed is available and agree to accept transfer of the patient based on admission criteria before an individual may be transferred to the behavioral health inpatient facility under this section.

(3) A respondent who is committed to or an individual who is transferred to a behavioral health inpatient facility may be transferred to the state hospital for the remaining period of commitment in accordance with criteria established by the department by rule pursuant to 53-21-194. A court order for commitment or transfer must include the transfer authority, and all conditions contained in the court order apply after a transfer.

(4) The court may not order commitment of the respondent or transfer of an individual to a behavioral health inpatient facility under this part if a bed is not available or if the licensed capacity would be exceeded.

(5) If a bed is available, a behavioral health inpatient facility may admit a person for voluntary treatment."

Section 4. Section 53-21-194, MCA, is amended to read:

"53-21-194. Department ~~contract with~~ *licensure of* behavioral health inpatient facilities — rulemaking authority — ~~rates and~~ transfer criteria. (1) The department may ~~contract with one or more~~ *license* behavioral health inpatient facilities to provide inpatient psychiatric care to persons involuntarily committed or detained under this title *or to persons seeking treatment voluntarily*.

(2) The department shall adopt rules:

(a) governing the ~~number, geographic distribution, capacity, and~~ qualifications *for licensure* of behavioral health inpatient facilities; and

(b) establishing criteria pursuant to subsection ~~(3)~~ *(4)* for admission to a behavioral health inpatient facility or transfer of a patient from a behavioral health inpatient facility to the state hospital.

(3) The rules for licensure must provide standards for the protection of the health and safety of persons committed to or detained in a behavioral health inpatient facility, including:

(a) requirements for medical stability;

(b) maximum length of stay;

(c) staffing levels and qualifications;

(d) building code classifications for occupancy; and

(e) security.

~~(3)~~*(4)* The criteria for admission or transfer of an individual must reflect:

(a) individualized consideration of the patient's treatment needs and the safety of the public, including the prospects for the patient's successful transition to community care within the current period of commitment;

(b) the appropriateness of specialized programs or facilities at the state hospital; and

(c) the recommendations of the individual's treating professionals ~~and~~ *or* state hospital staff.

~~(4)~~*(5)* The department shall provide notice to the district courts *and professional persons* of the designation of any mental health facility as a behavioral health inpatient facility, the facility's capacity, and the criteria for admission and transfer."

Approved April 3, 2007

CHAPTER NO. 117

[SB 108]

AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAW; REQUIRING INSURERS TO NOTIFY THE DEPARTMENT OF LABOR AND INDUSTRY OF CHANGES IN THIRD-PARTY CLAIMS EXAMINERS; DEPOSITING PENALTY FEES FOR FAILURE TO NOTIFY IN THE WORKERS' COMPENSATION ADMINISTRATION FUND; MODIFYING DISPUTE RESOLUTION PROCEDURES PERTAINING TO INDEPENDENT CONTRACTOR STATUS AND CERTIFICATION; MODIFYING DEPARTMENT PROCEDURES FOR ESTABLISHING ANNUAL FEE SCHEDULES FOR MEDICAL SERVICES AND PRESCRIPTION DRUGS; PROVIDING FOR UTILIZATION AND TREATMENT GUIDELINES TO BE ESTABLISHED BY RULE; REVISING REIMBURSEMENT AMOUNTS FOR DOMICILIARY CARE PROVIDED BY A FAMILY MEMBER; PROVIDING THAT INTEREST ACCRUES ON AMOUNTS NOT PAID FROM SECURITY DEPOSITS WHEN PAYMENT IS DEMANDED BY THE DEPARTMENT; CLARIFYING THAT THE PENALTY FOR FAILURE TO REPORT CERTAIN INFORMATION TO THE DEPARTMENT MAY BE ASSESSED FOR EACH INSTANCE OF FAILURE TO REPORT; PROVIDING GUIDELINES FOR DETERMINING WHEN AN INSURER IS IMPAIRED; REQUIRING SECURITY FROM PLAN NO. 2 INSURERS TO COVER POTENTIAL LIABILITY; AMENDING SECTIONS 39-71-107, 39-71-201, 39-71-415, 39-71-417, 39-71-418, 39-71-704, 39-71-727, 39-71-1107, 39-71-2106, 39-71-2201, 39-71-2204, 39-71-2205, AND 39-71-2337, MCA; REPEALING SECTION 39-71-2208, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-107, MCA, is amended to read:

"39-71-107. Insurers to act promptly on claims — in-state claims examiners. (1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to injured workers, to employers, and to providers who are the customers of the workers' compensation system.

(2) All workers' compensation and occupational disease claims filed pursuant to the Workers' Compensation Act must be examined by a claims examiner in Montana. For a claim to be considered as examined by a claims examiner in Montana, the claims examiner examining the claim is required to determine the entitlement to benefits, authorize payment of all benefits due, manage the claim, have authority to settle the claim, maintain an office located

in Montana, and examine Montana claims from that office. Use of a mailbox or maildrop in Montana does not constitute maintaining an office in Montana.

(3) An insurer shall maintain the documents related to each claim filed with the insurer under the Workers' Compensation Act at the Montana office of the claims examiner examining the claim in Montana until the claim is settled. The documents may be either original documents or duplicates of the original documents and must be maintained in a manner that allows the documents to be retrieved from that office and copied at the request of the claimant or the department. Settled claim files stored outside of the claims examiner's office must be made available within 48 hours of a request for the file. Electronic or optically imaged documents are permitted.

(4) (a) An insurer that uses a third-party agent to provide the insurer with claim examination services shall notify the department in writing of a change of a third-party agent at least 14 days in advance of the change.

(b) The department may assess a penalty not to exceed $200 against an insurer that does not comply with the advance notice provision in subsection (4)(a). The penalty may be assessed for each failure by an insurer to give the required advance notice.

~~(4)~~*(5)* An insurer shall provide to the claimant:

(a) a written statement of the reasons that a claim is being denied at the time of denial;

(b) whenever benefits requested by a claimant are denied, a written explanation of how the claimant may appeal an insurer's decision; and

(c) a written explanation of the amount of wage-loss benefits being paid to the claimant, along with an explanation of the calculation used to compute those benefits. The explanation must be sent within 7 days of the initial payment of the benefit.

~~(5)~~*(6)* An insurer shall:

(a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying benefits and specifies the information needed; and

(b) pay settlements within 30 days of the date the department issues an order approving the settlement.

~~(6)~~*(7)* The department may adopt rules to implement this section.

~~(7)~~*(8)* (a) For purposes of this section, "settled claim" means a department-approved or court-ordered compromise of benefits between a claimant and an insurer or a claim that was paid in full.

(b) The term does not include a claim in which there has been only a lump-sum advance of benefits."

Section 2. Section 39-71-201, MCA, is amended to read:

"39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which are to be paid upon lawful appropriation all costs of administering the Workers' Compensation Act and the statutory occupational safety acts that the department is required to administer, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503.

The department shall collect and deposit in the state treasury to the credit of the workers' compensation administration fund:

(a) all fees and penalties provided in *39-71-107,* 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment of 3% of paid losses, plus administrative fines and interest provided by this section.

(2) For the purposes of this section, paid losses include the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the application of any deductible whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of $200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 1 in the form and containing the information required by the department a report of paid losses pursuant to subsection (2).

(4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation plan No. 3, the state fund, shall pay a proportionate share of all costs of administering and regulating the Workers' Compensation Act and the statutory occupational safety acts that the department is required to administer, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. In addition, compensation plan No. 3, the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before July 1, 1990.

(5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the plan No. 1 employer or $500, whichever is greater. Any entity, other than the department, that assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the purposes of this section.

(b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled under compensation plan No. 1.

(c) Payment of the assessment provided for by this subsection (5) must be paid by the employer in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(d) If an employer fails to timely pay to the department the assessment under this section, the department may impose on the employer an administrative fine of $500 plus interest on the delinquent amount at the

annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative and regulatory costs attributable to claims arising before July 1, 1990. The assessment is equal to 3% of the paid losses paid in the preceding calendar year for claims arising before July 1, 1990. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the assessment for administrative and regulatory costs that is attributable to claims arising before July 1, 1990.

(b) Payment of the assessment must be paid in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(c) If the state fund fails to timely pay to the department the assessment under this section, the department may impose on the state fund an administrative fine of $500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(7) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall pay a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be collected by each plan No. 2 insurer and by plan No. 3, the state fund, from each employer that it insures. The premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed upon insured employers.

(b) The amount to be funded by the premium surcharge is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of all plan No. 2 insurers and 3% of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be calculated annually by the department by not later than April 30. The resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in the next fiscal year.

(c) On or before April 30 of each year, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay to the

department all money collected as a premium surcharge within 20 days of the end of the calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge collected under this section, the department may impose on the insurer an administrative fine of $500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(e) If an employer fails to remit to an insurer the total amount due for the premium and premium surcharge, the amount received by the insurer must be applied to the premium surcharge first and the remaining amount applied to the premium due.

(f) The amount actually collected as a premium surcharge in a given year must be compared to the 3% of paid losses paid in the preceding year. Any amount collected in excess of the 3% must be deducted from the amount to be collected as a premium surcharge in the following year. The amount collected that is less than the 3% must be added to the amount to be collected as a premium surcharge in the following year.

(8) On or before April 30 of each year, upon a determination by the department, an insurer under compensation plan No. 2 that pays benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment equal to 3% of paid losses paid in the preceding calendar year, subject to a minimum assessment of $500, that is due on July 1.

(9) An employer that makes a first-time application for permission to enroll under compensation plan No. 1 shall pay an assessment of $500 within 15 days of being granted permission by the department to enroll under compensation plan No. 1.

(10) The department shall deposit all funds received pursuant to this section in the state treasury, as provided in this section.

(11) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, incurred while on the business of the department either within or without the state.

(12) Disbursements from the administration fund must be made after being approved by the department upon claim for disbursement.

(13) The department may assess and collect the workers' compensation regulatory assessment surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage requirements of the Workers' Compensation Act. Any amounts collected by the department pursuant to this subsection must be deposited in the workers' compensation administration fund."

Section 3. Section 39-71-415, MCA, is amended to read:

"39-71-415. Procedure for resolving disputes regarding independent contractor status. ~~(1) If an individual, employer, or insurer has a dispute as to whether an individual is an independent contractor or an employee, any party may, after mediation pursuant to department rules, petition the workers' compensation court for resolution of the dispute.~~

~~(2)~~*(1)* If a claimant and insurer have a dispute over benefits and the dispute involves an issue of whether the claimant is an independent contractor or employee, either party may, after mediation pursuant to department rules, petition the workers' compensation judge for resolution of the dispute in accordance with 39-71-2905.

~~(3)~~*(2) (a)* A dispute ~~between~~ *involving* an employer*, a worker,* ~~and~~ *or* the department *and* involving the issue of whether a worker is an independent contractor or an employee, but not involving workers' compensation benefits, must be brought before the independent contractor central unit of the department for resolution.

(b) (i) A decision of the independent contractor central unit is final unless a party dissatisfied with the decision ~~appeals by filing a petition with the workers' compensation court~~ *requests mediation pursuant to department rules* within ~~30~~ *15* days of the mailing of the decision by the independent contractor central unit.

(ii) At the conclusion of the mediation process, the mediator shall issue a report summarizing the status of the proceeding and shall mail a copy of the report to the parties.

(c) If after mediation the parties have not resolved their dispute concerning a worker's status as an independent contractor or an employee, a party may appeal the decision of the independent contractor central unit by filing a petition with the workers' compensation court within 30 days of the mailing of the mediator's report.

(d) An appeal from the independent contractor central unit to the workers' compensation court brought pursuant to this ~~part~~ *subsection (2)* is a new proceeding."

Section 4. Section 39-71-417, MCA, is amended to read:

"39-71-417. Independent contractor certification. (1) (a) A person who regularly and customarily performs services at a location other than the person's own fixed business location shall apply to the department for an independent contractor exemption certificate unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(b) A person who meets the requirements of this section and receives an independent contractor exemption certificate is not required to obtain a personal workers' compensation insurance policy.

(c) For the purposes of this section, "person" means a sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company.

(2) The department shall adopt rules relating to an original application for or renewal of an independent contractor exemption certificate. The department shall adopt by rule the amount of the fee for an application or certificate renewal. The application or renewal must be accompanied by the fee.

(3) The department shall deposit the application or renewal fee in an account in the state special revenue fund to pay the costs of administering the program.

(4) (a) To obtain an independent contractor exemption certificate, the applicant shall swear to and acknowledge the following:

(i) that the applicant has been and will continue to be free from control or direction over the performance of the person's own services, both under contract and in fact; and

(ii) that the applicant is engaged in an independently established trade, occupation, profession, or business and will provide sufficient documentation of that fact to the department.

(b) For the purposes of subsection (4)(a)(i), an endorsement required for licensure, as provided in 37-47-303, does not imply or constitute control.

(5) An applicant for an independent contractor exemption certificate shall submit an application under oath on a form prescribed by the department and containing the following:

(a) the applicant's name and address;

(b) the applicant's social security number;

(c) each occupation for which the applicant is seeking independent contractor certification; and

(d) other documentation as provided by department rule to assist in determining if the applicant has an independently established business.

(6) The department shall issue an independent contractor exemption certificate to an applicant if the department determines that an applicant meets the requirements of this section.

(7) (a) When the department approves an application for an independent contractor exemption certificate and the person is working under the independent contractor exemption certificate, the person's status is conclusively presumed to be that of an independent contractor.

(b) A person working under an approved independent contractor exemption certificate has waived all rights and benefits under the Workers' Compensation Act and is precluded from obtaining benefits unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(c) For the purposes of the Workers' Compensation Act, a person is working under an independent contractor exemption certificate if:

(i) the person is performing work in the trade, business, occupation, or profession listed on the person's independent contractor exemption certificate; and

(ii) the hiring agent and the person holding the independent contractor exemption certificate do not have a written or an oral agreement that the independent contractor exemption certificate holder's status with respect to that hiring agent is that of an employee.

(8) Once issued, an independent contractor exemption certificate remains in effect for 2 years unless:

(a) suspended or revoked pursuant to 39-71-418; or

(b) canceled by the independent contractor.

(9) If the ~~department~~ *department's independent contractor central unit* denies an application for an independent contractor exemption certificate, the applicant may contest ~~the denial by petitioning the workers' compensation court within 30 days of the mailing of the denial~~ *that decision as provided in 39-71-415(2)*."

Section 5. Section 39-71-418, MCA, is amended to read:

"39-71-418. Suspension or revocation of independent contractor exemption certificate. (1) The department may suspend an independent contractor exemption certificate for a specific business relationship if the department determines that the employing unit exerts or retains a right of control to a degree that causes a certificate holder to violate the provisions of 39-71-417(4).

(2) The department may revoke an independent contractor exemption certificate after determining that the certificate holder:

(a) provided misrepresentations in the application affidavit or certificate renewal form;

(b) altered or amended the application form, the renewal application form, other supporting documentation required by the department, or the independent contractor exemption certificate; or

(c) failed to cooperate with the department in providing information relevant to the continued validity of the holder's certificate.

(3) A decision by the department to suspend or revoke an independent contractor exemption certificate takes effect upon issuance of the decision. Suspension or revocation of the independent contractor exemption certificate does not invalidate the certificate holder's waiver of the rights and benefits of the Workers' Compensation Act for the period prior to notice to the hiring agent by the department of the department's decision to suspend or revoke the independent contractor exemption certificate.

(4) A decision by the ~~department~~ *department's independent contractor central unit* to suspend or revoke an independent contractor exemption certificate may be ~~appealed~~ *contested* in the same manner as provided in ~~39-71-417(9) for denial of an application for an independent contractor exemption certificate~~ *39-71-415(2)*."

Section 6. Section 39-71-704, MCA, is amended to read:

"39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation. (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.

(b) The insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) (i) The insurer shall reimburse a worker for reasonable travel, lodging, meals, and miscellaneous expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the department.

Reimbursement must be at the rates allowed for reimbursement for state employees.

(ii) Rules adopted under subsection (1)(d)(i) must provide for submission of claims, within 90 days from the date of travel, following notification to the claimant of reimbursement rules, must provide procedures for reimbursement receipts, and must require the use of the least costly form of travel unless the travel is not suitable for the worker's medical condition. The rules must exclude from reimbursement:

(A) 100 miles of automobile travel for each calendar month unless the travel is requested or required by the insurer pursuant to 39-71-605;

(B) travel to a medical provider within the community in which the worker resides;

(C) travel outside the community in which the worker resides if comparable medical treatment is available within the community in which the worker resides, unless the travel is requested by the insurer; and

(D) travel for unauthorized treatment or disallowed procedures.

(iii) An insurer is not liable for injuries or conditions that result from an accident that occurs during travel or treatment, except that the insurer retains liability for the compensable injuries and conditions for which the travel and treatment were required.

(e) Pursuant to rules adopted by the department, an insurer shall reimburse a catastrophically injured worker's family or, if a family member is unavailable, a person designated by the injured worker or approved by the insurer for travel assistance expenditures in an amount not to exceed $2,500 to be used as a match to those funds raised by community service organizations to help defray the costs of travel and lodging expenses incurred by the family member or designated person when traveling to be with the injured worker. These funds must be paid in addition to any travel expenses paid by an insurer for a travel companion when it is medically necessary for a travel companion to accompany the catastrophically injured worker.

(f) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

(g) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition;

(ii) when necessary to monitor the status of a prosthetic device; or

(iii) when the worker's treating physician believes that the care that would otherwise not be compensable under subsection (1)(g) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment. A dispute regarding the compensability of palliative or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers' compensation court has jurisdiction.

(h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) The department shall annually establish a schedule of fees for medical services ~~not provided at a hospital~~ that are necessary for the treatment of injured workers. Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule. *Until the department adopts a fee schedule applicable to medical services provided by a hospital, insurers shall pay at the rate payable on June 30, 2007, for those services provided by the hospital. The rate must be adjusted by the annual percentage increase in the state's average weekly wage, as defined in 39-71-116, factoring in changes in the hospital's medical service charges.*

(3) (a) The department may establish by rule evidence-based utilization and treatment guidelines for primary and secondary medical services. There is a rebuttable presumption that the utilization and treatment guidelines established by the department are correct medical treatment for the injured worker.

(b) An insurer is not responsible for treatment or services that do not fall within the utilization and treatment guidelines adopted by the department unless the provider obtains prior authorization from the insurer.

(c) The department may establish by rule an independent medical review process for treatment or services denied by an insurer pursuant to this subsection (3) prior to mediation under 39-71-2401.

~~(3) (a) The department shall establish rates for hospital services necessary for the treatment of injured workers.~~

~~(b) Except as provided in subsection (3)(g), rates for services provided at a hospital must be the greater of:~~

~~(i) 69% of the hospital's January 1, 1997, usual and customary charges; or~~

~~(ii) the discount factor established by the department that was in effect on June 30, 1997, for the hospital. The discount factor for a hospital formed by the merger of two or more existing hospitals is computed by using the weighted average of the discount factors in effect at the time of the merger.~~

~~(c) Except as provided in subsection (3)(g), the department shall adjust hospital discount factors so that the rate of payment does not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.~~

~~(d) The department may establish a fee schedule for hospital outpatient services rendered. The fee schedule must, in the aggregate, provide for fees that are equal to the statewide average discount factors paid to hospitals to provide the same or equivalent procedure to workers' compensation hospital outpatients.~~

~~(e) The discount factors established by the department pursuant to this subsection (3) may not be less than medicaid reimbursement rates.~~

~~(f)~~*(4)* For services available in Montana, insurers are not required to pay facilities located outside Montana rates that are greater than those allowed for services delivered in Montana.

~~(g) For a medical assistance facility or a critical access hospital licensed pursuant to Title 50, chapter 5, the rate for services is the usual and customary charge. Fees paid to a licensed medical assistance facility or critical access hospital are not subject to the limitation provided in subsection (4).~~

(5) For a medical assistance facility or a critical access hospital licensed pursuant to Title 50, chapter 5, the rate for services is the usual and customary charge. Fees paid to a licensed medical assistance facility or critical access hospital are not subject to the limitation provided in subsection (6).

~~(4)~~*(6)* The percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

~~(5)~~*(7)* Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

~~(6)~~*(8)* ~~Disputes~~ *After mediation pursuant to department rules, disputes* between an insurer and a medical service provider regarding the amount of a fee for medical services must be resolved by a hearing before the department upon written application of a party to the dispute.

~~(7)~~*(9)* (a) After the initial visit, the worker is responsible for $25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

(b) "Visit", as used in this subsection ~~(7)~~ *(9)*, means each time that the worker obtains services relating to a compensable injury or occupational disease from:

(i) a treating physician;

(ii) a physical therapist;

(iii) a psychologist; or

(iv) hospital outpatient services available in a nonhospital setting.

(c) A worker is not responsible for the cost of a subsequent visit pursuant to subsection ~~(7)(a)~~ *(9)(a)* if the visit is for treatment requested by an insurer."

Section 7. Section 39-71-727, MCA, is amended to read:

"39-71-727. Payment for prescription drugs — limitations. (1) For payment of prescription drugs, an insurer is liable only for the purchase of generic-name drugs if the generic-name product is the therapeutic equivalent of the brand-name drug prescribed by the physician, unless the generic-name drug is unavailable.

(2) If an injured worker prefers a brand-name drug, the worker may pay directly to the pharmacist the difference in the reimbursement rate between the brand-name drug and the generic-name product, and the pharmacist may bill the insurer only for the reimbursement rate of the generic-name drug.

(3) The pharmacist may bill only for the cost of the generic-name product on a signed itemized billing, except if purchase of the brand-name drug is allowed as provided in subsection (1).

(4) When billing for a brand-name drug, the pharmacist shall certify that the generic-name drug was unavailable.

(5) ~~Reimbursement rates payable by an insurer are limited to the average wholesale price of the product at the time of dispensing, plus a dispensing fee not~~

~~to exceed $5.50 per product.~~ *The department shall establish annually a schedule of fees for prescription drugs.*

(6) The pharmacist may not dispense more than a 30-day supply at any one time.

~~(7) For purposes of this section, average wholesale prices must be updated weekly.~~

~~(8)~~*(7)* For purposes of this section, the terms "brand name"~~, "drug product",~~ and "generic name" have the ~~same meaning as~~ *meanings* provided in 37-7-502.

~~(9)~~*(8)* An insurer may not require a worker receiving benefits under this chapter to obtain medications from an out-of-state mail service pharmacy.

~~(10)~~*(9)* The provisions of this section do not apply to an agreement between a preferred provider organization and an insurer."

Section 8. Section 39-71-1107, MCA, is amended to read:

"39-71-1107. Domiciliary care — requirements — evaluation. (1) Reasonable domiciliary care must be provided by the insurer:

(a) from the date the insurer knows of the employee's need for home medical services that results from an industrial injury;

(b) when the preponderance of credible medical evidence demonstrates that nursing care is necessary as a result of the accident and describes with a reasonable degree of particularity the nature and extent of duties to be performed;

(c) when the services are performed under the direction of the treating physician who, following a nursing analysis, prescribes the care on a form provided by the department;

(d) when the services rendered are of the type beyond the scope of normal household duties; and

(e) when subject to subsections (3) and (4), there is a means to determine with reasonable certainty the value of the services performed.

(2) When a worker suffers from a condition that requires domiciliary care, which results from the accident, and requires nursing care as provided for in Title 37, chapter 8, a licensed nurse shall provide the services.

(3) When a worker suffers from a condition that requires 24-hour care and that results from the accident but that requires domiciliary care other than as provided in Title 37, chapter 8, the care may be provided by a family member. The insurer's responsibility for reimbursement for the care is limited to no more than the daily statewide average medicaid reimbursement rate for the current fiscal year for care in a nursing home. The insurer is not responsible for respite care.

(4) Domiciliary care by a family member that is necessary for a period of less than 24 hours a day may not exceed the ~~prevailing hourly wage, and the~~ *hourly mean wage by area for home health aides, as published by the department in the most recent edition of the Montana Informational Wage Rates by Occupation and adopted annually by the department prior to January 1. The* insurer is not liable for more than 8 hours of care ~~per~~ *each* day *at the rate in effect at the time that the services are rendered*."

Section 9. Section 39-71-2106, MCA, is amended to read:

"39-71-2106. Requiring security of employer. (1) (a) The department, with the concurrence of the Montana self-insurers guaranty fund, may require any employer who elects to be bound by compensation plan No. 1 to provide a security deposit in accordance with rules adopted by the department. All securities of the United States treasury must be in book-entry form. The security deposit may be a surety bond, government bond, certificate of deposit, or letter of credit approved by the department and the Montana self-insurers guaranty fund. For the first 3 years of operating as a self-insured employer, the employer's security deposit must be the greater of:

(i) $250,000; or

(ii) an average of the workers' compensation liabilities incurred by the employer in Montana for the first 3 of the last 4 completed calendar years.

(b) The department, with the concurrence of the Montana self-insurers guaranty fund, may, in accordance with rules adopted by the department, require a larger deposit as additional evidence of ability to pay the benefits provided by this chapter.

(c) The department may, with the concurrence of the Montana self-insurers guaranty fund, reduce the amount of the security deposit if the evidence indicates that the full amount of the deposit is unnecessary.

(2) (a) The department, with the concurrence of the Montana self-insurers guaranty fund, may require an employer to give security in addition to the security deposit described in subsection (1) if:

(i) the department, with the concurrence of the Montana self-insurers guaranty fund, determines that the employer lacks the ability to pay the benefits that are expected to be paid by the employer under the terms and conditions of this chapter that are chargeable to the employer during the year to be covered by the permission provided for in 39-71-2103; or

(ii) the employer is a group of individual employers seeking permission to operate under compensation plan No. 1.

(b) The additional security required in subsection (2)(a) must be an amount that the department, with the concurrence of the Montana self-insurers guaranty fund, finds reasonable and necessary to pay the benefits provided under the terms and conditions of this chapter that the employer may accrue during the year.

(3) (a) The security deposit provided for in subsection (1) must be deposited with the department. The security deposit may consist of:

(i) a bond executed to the department with a surety. The security deposit must state that the employer will pay or cause to be paid to employees the amount for which the employer was given permission under 39-71-2103 and for which the employer is liable under the terms and conditions of this chapter during the year.

(ii) any Montana state, county, municipal, or school district bonds that the department and the Montana self-insurers guaranty fund consider solvent; or

(iii) other security deposits allowed in subsection (1)(a).

(b) Each security deposit and the character and amount of the security deposit are subject to approval, revision, or change considered necessary by the department and the Montana self-insurers guaranty fund.

(c) Upon proof of the final payment of the liability for which the security deposit is given, the security deposit or any remainder of the security deposit must be returned to the depositor.

(d) Payment must be made from the security deposit within 30 days of a demand by the department for payment. If payment is not made within 30 days by the obligor on the security deposit, the obligor is liable to the department for interest at the annual rate of 10% on the amount unpaid.

(4) The department is liable for the value and safekeeping of all security deposits and shall, at any time, upon demand of the depositor, account for the security deposits."

Section 10. Section 39-71-2201, MCA, is amended to read:

"39-71-2201. Election to be bound by plan — *captive reciprocal insurers.* (1) Any employer except those specified in 39-71-403 may, by filing ~~his~~ *an* election to become bound by compensation plan No. 2, insure ~~his~~ *the employer's* liability to pay the compensation and benefits provided by this chapter with any insurance company authorized to transact such business in this state.

(2) Any employer electing to become bound by compensation plan No. 2 shall make ~~his~~ *the* election on the form and in the manner prescribed by the department.

(3) A captive reciprocal insurer established by or on behalf of an employer or a group of employers is considered to be a compensation plan No. 2 insurer. Pursuant to 33-28-205, a captive reciprocal insurer may not be a member of an insurance guaranty association or guaranty fund."

Section 11. Section 39-71-2204, MCA, is amended to read:

"39-71-2204. Insurer to submit notice of coverage within thirty days — penalty for failure. (1) The insurer shall, within 30 days after the issuance of ~~the~~ *a* policy of workers' compensation insurance, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and other information that may be required by the department. ~~Beginning January 1, 2006, notice~~ *Notice* to the department under this section must be provided electronically.

(2) The department:

(a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for authorized workers' compensation insurers in Montana; and

(b) shall, under terms and conditions acceptable to the department, accept notice of coverage received from the agents recognized under subsection (2)(a) as the insurer's notice of coverage.

(3) The department may, in its discretion, assess a penalty of ~~no~~ *not* more than $200 against an insurer that ~~as a general business practice~~ does not comply with the 30-day notice requirement set forth in subsection (1). *The penalty may be assessed for each policy that is not reported to the department in a timely manner.*"

Section 12. Section 39-71-2205, MCA, is amended to read:

"39-71-2205. Policy in effect until canceled or replaced — twenty-day notification of cancellation required — penalty. (1) The policy remains in effect until canceled, and cancellation may take effect only by

written notice to the named insured and to the department at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured. ~~Beginning January 1, 2006, notice~~ *Notice* to the department under this section must be provided electronically.

(2) The department:

(a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for authorized workers' compensation insurers in Montana; and

(b) shall, under terms and conditions acceptable to the department, accept notice of cancellation received from the agents recognized under subsection (2)(a) as the insurer's notice of cancellation.

(3) (a) The department may assess a penalty of up to $200 against an insurer that does not comply with the notice requirement in subsection (1). *The penalty may be assessed for each policy cancellation that is not reported to the department in a timely manner.*

(b) An insurer may contest the penalty assessment in a hearing conducted according to department rules."

Section 13. Section 39-71-2337, MCA, is amended to read:

"39-71-2337. State fund to submit notice of coverage within thirty days — penalty for failure. (1) The state fund shall, within 30 days after the issuance of an insurance policy, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and other information the department requires. ~~Beginning January 1, 2006, notice~~ *Notice* to the department under this section must be provided electronically.

(2) The department:

(a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for the state fund; and

(b) shall, under terms and conditions acceptable to the department, accept notice of coverage received from the agents recognized under subsection (2)(a) as the state fund's notice of coverage.

(3) The department may assess a penalty of ~~no~~ *not* more than $200 against the state fund if~~, as a general business practice,~~ the state fund does not comply with the 30-day notice requirement. *The penalty may be assessed for each policy that is not reported to the department in a timely manner.*"

Section 14. Claim summary and actuarial documentation for impaired insurer. (1) An insurer becomes impaired if the insurer:

(a) becomes insolvent;

(b) is placed in receivership or administration;

(c) declares bankruptcy; or

(d) seeks protection from its creditors.

(2) An impaired insurer shall, within 30 days of the insurer becoming impaired, furnish the department with a claim summary and actuary information relevant to each claim for which the insurer may have future liability.

Section 15. Security deposit to ensure payment of liability of plan No. 2 insurer. (1) Except as provided in subsection (7), a plan No. 2 insurer issuing or renewing a policy on or after January 1, 2008, shall post a security deposit with the department as provided by this section. The purpose of the security deposit is to provide a ready source of funds to pay claims arising under this chapter if the plan No. 2 insurer:

(a) becomes insolvent;

(b) is placed in receivership;

(c) declares bankruptcy;

(d) seeks protection from its creditors; or

(e) is otherwise unwilling or unable to pay its liabilities arising under this chapter.

(2) The amount of the security deposit, which is subject to the discretion of the department, must be in an amount from $25,000 to $250,000. The security deposit must be posted in the form of:

(a) a certificate of deposit;

(b) a United States treasury note; or

(c) an irrevocable letter of credit.

(3) If a plan No. 2 insurer fails to discharge any determined liability within the time set by the department, the department may convert the security deposit to cash and use the proceeds to pay the liability. Upon the conversion, the plan No. 2 insurer shall immediately furnish additional security to the department in an amount determined by the department to provide reasonable assurance that all current and future liabilities incurred by the plan No. 2 insurer as a result of the coverage provided under this chapter can be fully paid.

(4) (a) The security deposit required by this section is the property of the department and is held in trust by the department for the payment of the liabilities of the plan No. 2 insurer incurred under this chapter.

(b) Any earnings made by the security deposit accrue to the security deposit.

(c) Upon proof of final payment of all liabilities incurred under this chapter, the unexpended portion of the security deposit must be discharged and any proceeds remaining are payable to the plan No. 2 insurer.

(5) In the event of the insolvency of a plan No. 2 insurer, the department may, in its discretion, release part or all of the security deposit to the Montana insurance guaranty association, provided for in 33-10-103, for payment of the plan No. 2 insurer's Montana workers' compensation claims if:

(a) the plan No. 2 insurer has been determined to be insolvent by a court of competent jurisdiction or is the debtor in a bankruptcy proceeding;

(b) the plan No. 2 insurer is unable to pay its workers' compensation claims; and

(c) the plan No. 2 insurer's Montana workers' compensation liabilities have become the responsibility of the Montana insurance guaranty association.

(6) The department is authorized to share information and coordinate its actions with the Montana insurance commissioner and other appropriate regulatory agencies with respect to actions taken pursuant to this section.

(7) A captive reciprocal insurer specified in 39-71-2201 is not subject to this section.

Section 16. Repealer. Section 39-71-2208, MCA, is repealed.

Section 17. Codification instruction. [Sections 14 and 15] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 14 and 15].

Section 18. Effective date. [This act] is effective July 1, 2007.

Approved April 3, 2007

CHAPTER NO. 118

[SB 319]

AN ACT ESTABLISHING, WITH RESPECT TO REAL ESTATE TRANSACTIONS, WHEN A SELLER AGENT OR BUYER AGENT MAY REPRESENT MORE THAN ONE SELLER OR MORE THAN ONE BUYER; MODIFYING CONFIDENTIALITY REQUIREMENTS OWED TO A PRINCIPAL UPON TERMINATION OF THE AGENCY RELATIONSHIP; AMENDING SECTION 37-51-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-51-313, MCA, is amended to read:

"37-51-313. Duties, duration, and termination of relationship between broker or salesperson and buyer or seller. (1) The provisions of this chapter and the duties described in this section govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace the duties of agents as provided elsewhere in state law and replace the common law as applied to these relationships. The terms "buyer agent", "dual agent" and "seller agent", as used in this chapter, are defined in 37-51-102 and are not related to the term "agent" as used elsewhere in state law. The duties of a broker or salesperson vary depending upon the relationship with a party to a real estate transaction and are as provided in this section.

(2) A seller agent is obligated to the seller to:

(a) act solely in the best interests of the seller*, except that a seller agent, after written disclosure to the seller and with the seller's written consent, may represent multiple sellers of property or list properties for sale that may compete with the seller's property without breaching any obligation to the seller*;

(b) obey promptly and efficiently all lawful instructions of the seller;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the seller agent and not known or discoverable by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the seller agent *with a buyer or another seller*;

(d) safeguard the seller's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying with the terms established in the listing agreement;

(f) fully account to the seller for any funds or property of the seller that comes into the seller agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(3) A seller agent is obligated to the buyer to:

(a) disclose to a buyer or the buyer agent any adverse material facts that concern the property and that are known to the seller agent, except that the seller agent is not required to inspect the property or verify any statements made by the seller;

(b) disclose to a buyer or the buyer agent when the seller agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a buyer and a buyer agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(4) A buyer agent is obligated to the buyer to:

(a) act solely in the best interests of the buyer*, except that a buyer agent, after written disclosure to the buyer and with the buyer's written consent, may represent multiple buyers interested in buying the same property or similar properties to the property in which the buyer is interested or show properties in which the buyer is interested to other prospective buyers without breaching any obligation to the buyer*;

(b) obey promptly and efficiently all lawful instructions of the buyer;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the buyer agent and not known or discoverable by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer agent *with another buyer or a seller*;

(d) safeguard the buyer's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with the terms established in the buyer broker agreement;

(f) fully account to the buyer for any funds or property of the buyer that comes into the buyer agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(5) A buyer agent is obligated to the seller to:

(a) disclose any adverse material facts that are known to the buyer agent and that concern the ability of the buyer to perform on any purchase offer;

(b) disclose to the seller or the seller agent when the buyer agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a seller and a seller agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them to:

(a) disclose to:

(i) a buyer or a buyer agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller;

(ii) a seller or a seller agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;

(b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and

(c) comply with all applicable federal and state laws, rules, and regulations.

(7) A dual agent is obligated to a seller in the same manner as a seller agent and is obligated to a buyer in the same manner as a buyer agent under this section~~,~~ except ~~as follows:~~ *that*

~~(a)~~ a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations~~; and~~.

~~(b)~~*(8)* ~~a~~ *A* dual agent may not disclose the following information without the written consent of the person to whom the information is confidential:

~~(i)~~*(a)* the fact that the buyer is willing to pay more than the offered purchase price;

~~(ii)~~*(b)* the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;

~~(iii)~~*(c)* factors motivating either party to buy or sell; and

~~(iv)~~*(d)* any information that a party indicates in writing to the dual agent is to be kept confidential.

~~(8)~~*(9)* While managing properties for owners, a licensed real estate broker or licensed real estate salesperson is only required to meet the requirements of part 6 of this chapter, other than those requirements for the licensing of property managers, and the rules adopted by the board to govern licensed property managers.

~~(9)~~*(10)* (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest of the following dates:

(i) completion of performance by the agent;

(ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

(iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

(b) A statutory broker's relationship continues until the completion, termination, or abandonment of the real estate transaction giving rise to the relationship.

~~(10)~~*(11)* Upon termination of an agency relationship, a broker or salesperson does not have any further duties to the principal, except as follows:

(a) to account for all money and property of the principal;

(b) to keep confidential all information received during the course of the agency relationship that was made confidential at the principal's direction, except for:

(i) subsequent conduct by the principal that authorizes disclosure;

(ii) disclosure of any adverse material facts that concern the principal's property or the ability of the principal to perform on any purchase offer;

~~(ii)~~*(iii)* disclosure required by law or to prevent the commission of a crime;

~~(iii)~~*(iv)* the information being disclosed by someone other than the broker or salesperson; and

~~(iv)~~*(v)* the disclosure of the information being reasonably necessary to defend the conduct of the broker or salesperson, including employees, independent contractors, and subagents.

~~(11)~~*(12)* Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2007

CHAPTER NO. 119

[SB 323]

AN ACT PROVIDING THAT A CERTIFICATE OF PUBLIC ADVANTAGE MAY NOT BE ISSUED FOR A TERM IN EXCESS OF 10 YEARS AND MUST TERMINATE NO LATER THAN 10 YEARS AFTER THE DATE OF ISSUANCE; REQUIRING A PRIOR CERTIFICATE HOLDER TO REPORT CERTAIN INFORMATION TO THE DEPARTMENT OF JUSTICE FOR 2 YEARS FOLLOWING THE TERMINATION OF A CERTIFICATE OF PUBLIC ADVANTAGE; AMENDING SECTION 50-4-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-4-603, MCA, is amended to read:

"50-4-603. Certificate of public advantage — standards for certification — time for action by department — *duration of certificate.* (1) Parties to a cooperative agreement, merger, or consolidation may apply to the department for a certificate of public advantage. The application for a certificate must include a copy of the proposed or executed cooperative, merger, or consolidation agreement, a description of the scope of the cooperation, merger, or consolidation contemplated by the agreement, and the amount, nature, source, and recipient of any consideration passing to any person under the terms of the agreement.

(2) The department shall hold a public hearing on the application for a certificate before acting upon the application. The department may not issue a certificate unless the department finds that the agreement is likely to result in lower health care costs or is likely to result in improved access to health care or higher quality health care without any undue increase in health care costs. If the department denies an application for a certificate for an executed agreement, the agreement is void upon the decision of the department not to issue the certificate. Parties to a void agreement may not implement or carry out the agreement. The parties to a void agreement may submit a new application for a certificate based upon a cooperative agreement, merger, or consolidation different from the original application.

(3) The department shall deny the application for a certificate or issue a certificate within 90 days of receipt of a completed application or within one 90-day extension, which may be granted by the department upon a showing of good cause by the applicants. If the department does not issue a certificate within that time, the application is considered to have been denied. A certificate may be issued subject to terms and conditions, as the department may determine are appropriate, in order to best achieve lower health care costs or greater access to or quality of health care.

(4) Any amendment to a cooperative, merger, or consolidation agreement ~~and~~ *or* any material change in the operations or conduct of any party to a cooperative, merger, or consolidation agreement is considered to be a new agreement and may not take effect or occur until the department has issued a new certificate of public advantage approving the amendment or change.

(5) A certificate of public advantage may not have a duration of more than 10 years from the date of issuance. Unless terminated sooner, a certificate of public advantage terminates on the date 10 years from the date of issuance. For 2 years immediately following the termination of a certificate of public advantage, the prior certificate holder shall, on an annual basis, report to the department information regarding:

(a) quality of health care;

(b) access to health care;

(c) patient safety;

(d) patient satisfaction;

(e) health care service changes, additions, and deletions; and

(f) cost comparisons based on similarly situated health care facilities."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to all certificates of public advantage issued prior to [the effective date of this act].

Approved April 3, 2007

CHAPTER NO. 120

[HB 260]

AN ACT REVISING THE LAWS RELATING TO THE STUDENT REGENT; LIMITING THE STUDENT REGENT TO A 1-YEAR TERM; ALLOWING THE STUDENT REGENT TO BE REAPPOINTED IN THE SAME MANNER AS AN INITIAL APPOINTMENT; AMENDING SECTION 2-15-1508, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1508, MCA, is amended to read:

"2-15-1508. Appointments to board of public education and board of regents — conditions — vacancy. (1) Appointments to the board of public education and to the board of regents are subject to the following qualifications:

(a) Not more than four may be from one district provided for in 5-1-102.

(b) Not more than four may be affiliated with the same political party.

(c) The terms of members appointed to each board are 7 years except as provided in subsection (3).

(d) When a vacancy occurs, the governor shall appoint a member for the remainder of the term of the incumbent, and the appointment must preserve the balance required by subsections (1)(a) and (1)(b).

(e) A person may not be appointed to concurrent memberships on the board of public education and the board of regents.

(2) An appointed member of either board shall take and subscribe to the constitutional oath of office and file it with the secretary of state before the person may serve as a member of either board.

(3) (a) One seat of the appointed members on the board of regents is reserved for membership by a student appointed by the governor. The student must be registered as a full-time student at a unit of higher education under jurisdiction of the board of regents. The length of term of the student member is ~~determined by the governor and must be for not less than~~ 1 year ~~and not more than 4 years~~. The term begins July 1 and ends June 30 ~~of the years designated by the governor~~. *The student regent may be reappointed to succeeding terms subject to subsection (3)(b).* The provisions of ~~subsections~~ *subsections* (1)(a) ~~and (1)(b)~~ *and (1)(b)* do not apply to the student member and may not affect the balance of the remaining appointive membership on the board of regents.

(b) The governor shall appoint the student provided for in subsection (3)(a) based upon a nomination provided by a student organization designated by the board of regents. The student organization shall nominate no fewer than three qualified students. If the governor finds that none of the students nominated are acceptable, the governor may request a new slate of nominees. Nominations must be forwarded to the governor in March immediately preceding the end of a regular term, and the governor shall make the appointment before the end of the succeeding June. In the event of a vacancy, a replacement must be appointed as soon as is practicable and in the same manner as the original appointment."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective July 1, 2007.

Section 4. Applicability. [This act] applies to student regents appointed after [the effective date of this act].

Approved April 4, 2007

CHAPTER NO. 121

[HB 22]

AN ACT ELIMINATING A PROVISION FOR MAKING REIMBURSEMENTS TO LOCAL GOVERNMENTS FOR THE FEE IN LIEU OF TAX ON CERTAIN VEHICLES THAT ARE MADE UNDER ANOTHER SECTION OF LAW; AMENDING SECTION 17-7-502, MCA; REPEALING SECTION 15-1-113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; ~~15-1-113;~~ 15-1-121; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 2. Repealer. Section 15-1-113, MCA, is repealed.

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to reimbursement payments after December 31, 2001.

Approved April 5, 2007

CHAPTER NO. 122

[HB 64]

AN ACT REVISING THE DEFINITION OF "SERIOUSLY DEVELOPMENTALLY DISABLED" TO REMOVE TOTAL CARE LANGUAGE FOR THE PURPOSES OF COMMITMENT TO RESIDENTIAL FACILITIES; AND AMENDING SECTION 53-20-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-20-102, MCA, is amended to read:

"53-20-102. Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Community-based facilities" or "community-based services" means those facilities and services that are available for the evaluation, treatment, and habilitation of persons with developmental disabilities in a community setting.

(3) "Court" means a district court of the state of Montana.

(4) "Developmental disabilities professional" means a licensed psychologist, a licensed psychiatrist, or a person with a master's degree in psychology, who:

(a) has training and experience in psychometric testing and evaluation;

(b) has experience in the field of developmental disabilities; and

(c) is certified, as provided in 53-20-106, by the department of public health and human services.

(5) "Developmental disability" means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation and that requires treatment similar to that required by mentally retarded individuals. A developmental disability is a disability that originated before the individual attained age 18, that has continued or can be expected to continue indefinitely, and that results in the person having a substantial disability.

(6) "Habilitation" means the process by which a person who has a developmental disability is assisted in acquiring and maintaining those life skills that enable the person to cope more effectively with personal needs and the demands of the environment and in raising the level of the person's physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(7) "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a resident. The resident is a member of the team.

(8) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(9) "Qualified mental retardation professional" means a professional program staff person for the residential facility who the department of public health and human services determines meets the professional requirements necessary for federal certification of the facility.

(10) "Resident" means a person committed to a residential facility.

(11) "Residential facility" or "facility" means the Montana developmental center.

(12) "Residential facility screening team" means a team of persons, appointed as provided in 53-20-133, that is responsible for screening a respondent to determine if the commitment of the respondent to a residential facility is appropriate.

(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously developmentally disabled and in need of developmental disability services in a residential facility.

(14) "Responsible person" means a person willing and able to assume responsibility for a person who is seriously developmentally disabled or alleged to be seriously developmentally disabled.

(15) "Seriously developmentally disabled" means a person who:

(a) has a developmental disability;

(b) is impaired in cognitive functioning; and

(c) cannot be safely and effectively habilitated in community-based services because of~~:~~

~~(i)~~ behaviors that pose an imminent risk of serious harm to self or others~~; or~~

~~(ii) self-help deficits so severe as to require total care~~."

Approved April 5, 2007

CHAPTER NO. 123

[HB 98]

AN ACT ESTABLISHING A CHILDREN'S SYSTEM OF CARE ACCOUNT TO REDUCE OUT-OF-HOME PLACEMENTS OF HIGH-RISK CHILDREN WITH MULTIAGENCY SERVICE NEEDS; AUTHORIZING USE OF STATE FUNDS APPROPRIATED FOR MEDICAID SERVICES; REQUIRING A REPORT; AMENDING SECTIONS 52-2-301 AND 52-2-308, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Children's system of care account. (1) There is a children's system of care account in the state special revenue fund to the credit of the department. The fund must be used for the purpose of administering and delivering services to high-risk children with multiagency service needs and to provide for the children's care, protection, and mental, social, and physical development.

(2) The children's system of care account must consist of funds:

(a) transferred, to the extent possible within existing resources, by the agencies named in 52-2-303 from their agency appropriation;

(b) designated by the legislature; or

(c) received for the account from any other source.

(3) The department shall use funds from the children's system of care account to reimburse in-state or community-based providers of services for services that allow high-risk children with multiagency service needs to be

placed or to remain in the least restrictive and most appropriate setting, to the extent that the services are not eligible for reimbursement from another source.

Section 2. Section 52-2-301, MCA, is amended to read:

"52-2-301. State policy. The legislature declares that it is the policy of this state:

(1) to provide for and encourage the development of a stable system of care, including quality education, treatment, and services for the high-risk children of this state with multiagency service needs, to the extent that funds are available;

(2) to serve high-risk children with multiagency service needs either in their homes or in the least restrictive and most appropriate setting for their needs in order to preserve the unity and welfare of the family, whenever possible, and to provide for their care and protection and mental, social, and physical development;

(3) to serve high-risk children with multiagency service needs within their home, community, region, and state, whenever possible, and to use out-of-state providers as a last resort;

(4) to provide integrated services to high-risk children with multiagency service needs;

(5) to contain costs and reduce the use of high-cost, highly restrictive, out-of-home placements;

(6) to increase the capacity of communities to serve high-risk children with multiagency service needs in the least restrictive and most appropriate setting for their needs by promoting collaboration and cooperation among the agencies that provide services to children; ~~and~~

(7) to prioritize available resources for meeting the essential needs of high-risk children with multiagency service needs*; and*

(8) to reduce out-of-home and out-of-community placements through a children's system of care account to fund in-state and community-based services that meet the needs of high-risk children with multiagency service needs in the least restrictive and most appropriate setting possible."

Section 3. Section 52-2-308, MCA, is amended to read:

"52-2-308. Rulemaking. The department shall adopt rules necessary to implement 52-2-301 through 52-2-304 *and [section 1]*. The rules must be adopted in cooperation with the committee established in 52-2-303."

Section 4. Use of medicaid funds — report. (1) The department may use up to $500,000 in state funds appropriated for medicaid services in each of state fiscal years 2008 and 2009 for the purposes of [section 1(3)].

(2) The department shall prepare a report to the children, families, health, and human services interim committee and the legislative finance committee no later than September 15, 2008, summarizing use of the children's system of care account in the 2009 biennium.

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 52, chapter 2, part 3, and the provisions of Title 52, chapter 2, apply to [section 1].

Section 6. Effective date. [This act] is effective July 1, 2007.

Approved April 5, 2007

CHAPTER NO. 124

[HB 105]

AN ACT REVISING LAWS ON TRAINING OF STATE AGENCY MANAGERS AND STATE EMPLOYEES ON TRIBAL ISSUES AND CONCERNS; REQUIRING TRAINING TO BE PROVIDED BY THE GOVERNOR'S OFFICE; AMENDING SECTION 2-15-143, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-143, MCA, is amended to read:

"2-15-143. Training and consultation. (1) At least once a year, the ~~department of justice~~ *governor's office* and a trainer selected by the tribal governments shall provide training ~~in Helena or a site mutually agreed upon~~ *in Helena or a site mutually agreed upon* to state agency managers and key employees who have regular communication with tribes on the legal status of tribes, the legal rights of tribal members, and social, economic, and cultural issues of concern to tribes.

(2) At least annually, the governor ~~may~~ *shall* convene ~~in Helena~~ *in Helena* a ~~full-day,~~ working meeting ~~at which the governor,~~ *with* representatives of state agencies~~,~~ and tribal officials, including ~~chiefs and~~ tribal presiding officers, ~~shall~~ *to discuss*:

(a) ~~review the~~ *tribal concerns with rules and* policies that directly impact tribal government and tribal populations ~~that are proposed for adoption by the state agencies and recommend changes to the policies~~; ~~and~~

(b) ~~discuss~~ *other* issues of concern to *either* the state ~~and~~ *or* the tribes ~~and formulate solutions~~*; and*

(c) potential solutions to the concerns.

(3) By ~~December~~ *August* 15 of each year, ~~a~~ *each* state agency shall submit *to the governor* a report *for the prior fiscal year describing* ~~to the governor and to each tribal government on~~ the activities of the state agency relating to tribal government and tribal populations. The report must include:

(a) any *rule or* policy *changes* that the state agency adopted *because of discussions* under subsection (2)(a);

~~(b) the name of the individual within the state agency who is responsible for implementing the policy;~~

~~(c)~~*(b)* the process that the state agency has established to identify the ~~programs~~ *activities* of the state agency that affect tribes;

~~(d)~~*(c)* the efforts of the state agency to promote communication and the government-to-government relationship between the state agency and the tribes; *and*

~~(e)~~*(d)* the efforts of the state agency to ensure tribal consultation and the use of American Indian data in the development and implementation of agency programs that directly affect tribes~~; and~~

~~(f) a joint description by tribal program staff and state staff of the training required under subsection (1)~~.

(4) By September 15 of each year, the governor shall provide to each tribal government a report with an overview of all state and tribal activities for the

prior fiscal year, including a description of the training required under subsection (1). It is the intent of the legislature that this report be prepared within existing levels of funding."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 5, 2007

CHAPTER NO. 125

[HB 118]

AN ACT ALLOWING THE DISPENSING OF CERTAIN CONTRACEPTIVES BY A REGISTERED NURSE EMPLOYED BY A FAMILY PLANNING CLINIC UNDER CONTRACT WITH THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AND AMENDING SECTIONS 37-2-104, 37-7-103, AND 50-31-307, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-2-104, MCA, is amended to read:

"37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions. (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) This section does not prohibit:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples;

(f) the dispensing of factory prepackaged ~~oral~~ contraceptives*, other than mifepristone,* by a registered nurse employed by a family planning clinic under contract with the department of public health and human services if the dispensing is in accordance with:

(i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and

(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;

(g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or any controlled substance. The contract physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C. 353(b)."

Section 2. Section 37-7-103, MCA, is amended to read:

"37-7-103. (Temporary) Exemptions. Subject only to 37-7-401 and 37-7-402, this chapter does not:

(1) subject a person who is licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board, prevent the person from compounding or using drugs, medicines, chemicals, or poisons in the person's practice, or prevent a person who is licensed to practice medicine from furnishing to a patient drugs, medicines, chemicals, or poisons that the person considers proper in the treatment of the patient;

(2) prevent the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) prevent the sale of drugs, chemicals, or poisons at either wholesale or retail for use for commercial purposes or in the arts;

(4) change any of the provisions of this code relating to the sale of insecticides and fungicides;

(5) prevent the sale of common household preparations and other drugs if the stores selling them are licensed under the terms of this chapter;

(6) apply to or interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

(7) prevent a registered nurse employed by a family planning clinic under contract with the department of public health and human services from dispensing factory prepackaged ~~oral~~ contraceptives*, other than mifepristone,* if the dispensing is in accordance with a physician's written protocol specifying the circumstances under which dispensing is appropriate and is in accordance with the board's requirements for labeling, storage, and recordkeeping of drugs; or

(8) prevent a certified agency from possessing, or a certified euthanasia technician or support personnel under the supervision of the employing veterinarian from administering, any controlled substance authorized by the board of veterinary medicine for the purpose of euthanasia pursuant to Title 37, chapter 18, part 6. (Terminates January 1, 2008—sec. 11, Ch. 60, L. 2003.)

37-7-103. (Effective January 1, 2008) Exemptions. Subject only to 37-7-401 and 37-7-402, this chapter does not:

(1) subject a person who is licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board, prevent the person from compounding or using drugs, medicines, chemicals, or poisons in the person's practice, or prevent a person who is licensed to practice medicine from furnishing to a patient drugs, medicines, chemicals, or poisons that the person considers proper in the treatment of the patient;

(2) prevent the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) prevent the sale of drugs, chemicals, or poisons either at wholesale or retail for use for commercial purposes or in the arts or changes any of the provisions of this code relating to the sale of insecticides and fungicides, and does not prevent the sale of common household preparations and other drugs if the stores selling them are licensed under the terms of this chapter;

(4) apply to or interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and

other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

(5) prevent a registered nurse employed by a family planning clinic under contract with the department of public health and human services from dispensing factory prepackaged ~~oral~~ contraceptives*, other than mifepristone,* if the dispensing is in accordance with a physician's written protocol specifying the circumstances under which dispensing is appropriate and is in accordance with the board of pharmacy's requirements for labeling, storage, and recordkeeping of drugs."

Section 3. Section 50-31-307, MCA, is amended to read:

"50-31-307. Dispensing of prescription drugs. (1) A drug intended for use by humans that is included in one of the categories in subsection (2) may be dispensed only:

(a) upon a written prescription of a practitioner licensed by law to administer the drug;

(b) upon an oral prescription of the practitioner that is reduced promptly to writing and filed by the pharmacist; or

(c) by refilling a written or oral prescription if the refilling is authorized by the practitioner, either in the original prescription or by an oral order that is reduced promptly to writing and filed by the pharmacist.

(2) A drug must be dispensed as provided in subsection (1) if the drug:

(a) is a habit-forming drug to which 50-31-306(1)(d) applies;

(b) because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer the drug; or

(c) is limited by an approved application under section 505 of the federal act (21 U.S.C. 355) or 50-31-311 to use under the professional supervision of a practitioner licensed by law to administer the drug.

(3) If the drug is a factory prepackaged ~~oral~~ contraceptive *other than mifepristone*, it may be dispensed as provided in subsection (1) or by a registered nurse employed by a family planning clinic under contract with the department of public health and human services pursuant to a physician's written protocol specifying the circumstances under which dispensing is appropriate and pursuant to the board of pharmacy's rules concerning labeling, storage, and recordkeeping of drugs.

(4) The act of dispensing a drug contrary to the provisions of this section is considered an act that results in a drug being misbranded while held for sale."

Approved April 5, 2007

CHAPTER NO. 126

[HB 120]

AN ACT REVISING THE LAWS PERTAINING TO DAY-CARE PROVIDERS; EXEMPTING CERTAIN DAY-CARE PROVIDERS FROM MANDATORY ANNUAL UNANNOUNCED VISITS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; REVISING THE PAYMENT RATE FOR

ELIGIBLE CHILDREN; AMENDING SECTIONS 52-2-713 AND 52-2-733, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-2-713, MCA, is amended to read:

"52-2-713. Payments for eligible children. The department shall pay a ~~daily~~ rate established by the department and appropriated by the legislature to a day-care facility licensed or registered by the department for each child receiving day-care service and certified eligible by the department to receive day-care services."

Section 2. Section 52-2-733, MCA, is amended to read:

"52-2-733. Periodic visits to facilities by department — investigations — consultation with licensees and registrants. (1) The department or its authorized representative shall make periodic visits to all licensed day-care centers to ensure that minimum standards are maintained.

(2) The department may investigate and inspect the conditions and qualifications of any day-care center, group day-care home, or family day-care home seeking or holding a license or registration certificate under the provisions of this part.

(3) The department shall visit and inspect at least 20% of all registered family day-care homes and group day-care homes in each of the governor's planning regions annually.

(4) *(a)* ~~The~~ *Subject to subsection (4)(b), the* department shall make annual unannounced visits to day-care centers *that are licensed on an annual basis.*

(b) The department may make annual unannounced visits to day-care centers that have been granted 2-year or 3-year licenses under 52-2-721 or that have successfully passed inspections for 10 consecutive years.

(5) Upon request of the department, the state fire prevention and investigation program of the department of justice shall inspect any day-care facility for which a license or registration certificate is applied for or issued and shall report its findings to the department.

(6) Upon request, the department shall give consultation to every licensee and registrant who desires to upgrade the services of the licensee's or registrant's program.

(7) This section may not be construed to require the department to conduct an inspection of each day-care facility applying for a registration certificate under the provisions of this part."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 5, 2007

CHAPTER NO. 127

[HB 124]

AN ACT PROVIDING A TIME LIMIT ON CONTRACTS FOR STATE EMPLOYEE GROUP BENEFIT PLANS; AMENDING SECTIONS 2-18-811 AND 18-4-313, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-811, MCA, is amended to read:

"2-18-811. General duties of ~~the~~ department. The department shall:

(1) adopt rules for the conduct of its business under this part and to carry out the purposes of this part;

(2) negotiate and administer contracts for state employee group benefit plans *for a period not to exceed 10 years*;

(3) design state employee group benefit plans, establish specifications for bids, and make recommendations for acceptance or rejection of bids;

(4) prepare an annual report ~~which~~ *that* describes the state employee group benefit plans being administered, details the historical and projected program costs and the status of reserve funds, and makes recommendations, if any, for change in existing state employee group benefit plans;

(5) prior to each legislative session, perform or obtain an analysis of rate adequacy of all state employee group benefit plans administered under this part; and

(6) submit the report required in this section to the office of budget and program planning as a part of the information required by 17-7-111."

Section 2. Section 18-4-313, MCA, is amended to read:

"18-4-313. Contracts — terms, extensions, and time limits. (1) Except as provided in subsection (2) or unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a period of more than 7 years. A contract, lease, or rental agreement may be extended or renewed if the terms of the extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period at the time of the agreement, and if the total contract period, including any extension or renewal, does not exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

(2) The contract term limit specified in subsection (1) does not apply to:

(a) a contract for hardware, software, or other information technology resources, which may be made for a period not to exceed 10 years;

(b) a department of revenue liquor store contract governed by the term specified in 16-2-101; ~~and~~

(c) a department of corrections contract governed by the term specified in 53-1-203, 53-30-505, or 53-30-608~~.~~*; and*

(d) the department of administration state employee group benefit plans contracts governed by the term specified in 2-18-811, including group benefit plan contracts made in partnership with the Montana university system group benefit plan.

(3) Prior to the issuance, extension, or renewal of a contract, it must be determined that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(4) If funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled."

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved April 5, 2007

CHAPTER NO. 128

[HB 129]

AN ACT GENERALLY REVISING PROVISIONS OF CERTAIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS; CLARIFYING BENEFITS; CLARIFYING GUARANTEED ANNUAL BENEFIT ADJUSTMENTS IN REGARD TO A DISABILITY RETIREMENT BENEFIT AND IN REGARD TO NONRETROACTIVE PAYMENT; CLARIFYING SERVICE CREDIT PURCHASE FOR CERTAIN EMPLOYEES IN HIGHER EDUCATION; CLARIFYING THE ELIGIBILITY OF INDIVIDUALS APPOINTED TO CERTAIN ELECTED OFFICES TO PARTICIPATE IN THE RETIREMENT SYSTEMS; CLARIFYING THAT SERVICE CREDIT FOR RETIREMENT MAY ACCRUE FOR VARIOUS EMPLOYER ARRANGEMENTS AND CONTRACTS; PROSPECTIVELY ASSIGNING MOTOR VEHICLE INSPECTORS TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM RATHER THAN TO THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM; REVISING DEFINITIONS IN REGARD TO RETIREMENT SYSTEMS; ELIMINATING THE AD HOC COST-OF-LIVING INCREASE FOR SOME RETIREES OR MEMBERS' BENEFICIARIES OF THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-2-602, 19-2-715, 19-2-907, 19-2-908, 19-2-909, 19-3-401, 19-3-412, 19-3-510, 19-3-1105, 19-3-1106, 19-3-1202, 19-3-1203, 19-3-1204, 19-3-2111, 19-3-2112, 19-3-2113, 19-6-707, 19-7-101, 19-7-312, 19-7-1101, 19-8-301, 19-8-302, 19-9-1202, 19-9-1205, 19-9-1206, 19-17-102, 19-17-108, 19-17-401, 19-17-402, AND 19-17-502, MCA; AND REPEALING SECTION 19-8-1110, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-2-602, MCA, is amended to read:

"19-2-602. Refund of member's contributions on termination of service. (1) Except as provided in this section, any member who has terminated service, other than by death or retirement, must be paid the member's accumulated contributions upon the filing of a written application by the member and board approval. Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions.

(2) A nonvested member who has terminated service with accumulated contributions of less than $200 must be paid the accumulated contributions in a lump sum as soon as administratively feasible without a written application being filed by the member.

(3) A nonvested member who has terminated service with accumulated contributions of $200 to ~~$5,000~~ *$1,000* must be paid the accumulated contributions in a lump sum as soon as administratively feasible, unless a written application is filed pursuant to subsection (4).

(4) Upon the filing of a written application by an alternate payee eligible to receive a single distribution of $200 or more under 19-2-907 or 19-2-909 or by a member who is terminating service and is eligible to receive a refund of $200 or more of accumulated contributions, the board shall make a direct rollover distribution as allowed under Internal Revenue Code section 401(a)(31). The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law *or to a Roth IRA, provided for under 26 U.S.C. 408A*. The applicant is responsible for designating an eligible retirement plan on forms provided by the board. The portion of the account not eligible for direct rollover distribution must be paid directly to the recipient."

Section 2. Section 19-2-715, MCA, is amended to read:

"19-2-715. Purchase of Montana public service. (1) (a) A member may, at any time before retirement, file a written application with the board to purchase as service credit in the member's retirement system all or any portion of the member's previous service credit in the public employees', judges', highway patrol officers', sheriffs', game wardens' and peace officers', firefighters' unified, or municipal police officers' retirement system ~~to the extent that~~ *if* the member ~~either~~ has*:*

(i) received or is eligible to receive a refund of accumulated contributions*; or*

(ii) become a member of one of the other retirement systems covered under chapter 3, 5, 6, 7, 8, 9, or 13 of this title.

(b) To purchase this service credit, the member shall pay the actuarial cost of the service credit in the member's current retirement system, based on the system's most recent actuarial valuation and the annual compensation of the member, minus the employer contribution provided in subsection ~~(1)(b)~~ *(1)(c)*.

~~(b)~~*(c)* Upon receiving the member's payment under subsection ~~(1)(a)~~ *(1)(b)*, the board shall transfer from the member's former retirement system to the member's current retirement system an amount equal to the employer contributions made on compensation during the member's former service, but no more than an amount equal to the normal cost contribution rate minus the employee contribution rate in the member's current retirement system according to the system's most recent actuarial valuation.

(2) (a) An active member may, at any time before retirement, file a written application with the board to purchase all or a portion of service credit for full-time service performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's former public employer. To purchase service credit under this section, the member shall pay the actuarial cost of the service credit in the member's current retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(b) The board is the sole authority under subsection (2)(a) in determining what constitutes full-time public service, subject to 19-2-403."

Section 3. Section 19-2-907, MCA, is amended to read:

"19-2-907. Alternate payees — family law orders — rulemaking. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental

support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section; and

(b) "participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(3) A family law order must identify a participant and an alternate payee by full name, current address, date of birth, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(5) With respect to a defined benefit plan, a family law order may provide for payment to an alternate payee only as follows:

(a) Retirement benefit payments or refunds may be apportioned by directing payment of either a percentage of the amount payable or a fixed amount of no more than the amount payable to the participant. Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified.

(b) The maximum amount of disability or survivorship benefits that may be ~~apportioned~~ *paid* to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. *The maximum amount paid may be zero, depending on the member's age and service credit at the time of disability or death.* Conversion of a disability retirement to a service retirement pursuant to 19-2-406(4), 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase the maximum monthly amount that may be ~~apportioned~~ *paid* to an alternate payee.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be ~~apportioned~~ *paid* as a percentage only if existing benefit payments are ~~apportioned~~ *paid* as a percentage. The adjustments must be ~~apportioned~~ *paid* as a percentage in the same ratio as existing benefit payments.

(d) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system or plan allows for that option.

(6) With respect to a defined contribution plan, a family law order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount ~~apportioned~~ *paid* may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. A new account may be established for an alternate payee, but money in the account must be totally disbursed to the alternate payee as soon as feasible upon the participant's termination of service or death.

(b) If the participant is receiving periodic payments or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(7) The duration of monthly payments ~~apportioned~~ *paid* from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(8) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(9) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(10) The board shall adopt rules to provide for the administration of family law orders."

Section 4. Section 19-2-908, MCA, is amended to read:

"19-2-908. Time of commencement of benefit — rulemaking. (1) (a) The board shall grant a benefit to any active or inactive member who is vested, or the member's statutory or designated beneficiary, who has fulfilled all eligibility requirements, terminated service, and filed the appropriate written application with the board. However, the board may, on its own accord and without a written application, begin benefit payments to a member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.

(b) A member may apply for retirement benefits before termination from employment, but commencement of the benefits must be as provided in this section.

(2) (a) Except as provided in subsection (2)(b), the service retirement benefit may commence on the first day of the month following the eligible member's last day of membership service or, if requested by the inactive member in writing, on the first day of a later month following filing of the written application.

(b) If an elected official's term of office expires before the 15th day of the month, the official may elect that service retirement benefits from a defined benefit plan commence on the first day of the month following the official's last full month in office. An official electing this option shall file a written application with the board. An official electing this option may not earn membership service, service credit, or compensation for purposes of calculating highest average compensation or final average compensation, as defined under the provisions of the appropriate retirement system, in the partial month ending the official's term, and compensation earned in that partial month is not subject to employer or employee contributions.

(3) *(a)* ~~The~~ *Subject to the provisions of subsection (3)(b), the* disability retirement benefit payable to a member must commence on the day following the member's termination from employment.

(b) The guaranteed annual benefit adjustment payable pursuant to 19-3-1605, 19-5-901, 19-6-710, 19-6-711, 19-7-711, 19-8-1105, 19-9-1009, 19-9-1010, 19-9-1013, 19-13-1010, and 19-13-1011 may not be paid retroactively. The guaranteed annual benefit adjustment begins on January 1 of the year after the member has received an amount equal to or greater than 12 months of disability benefit payments.

(4) Monthly survivorship benefits from a defined benefit plan must commence on the day following the death of the member.

(5) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board.

(6) With respect to the defined contribution plan, the board shall adopt rules regarding the commencement of benefits that are consistent with applicable provisions of the Internal Revenue Code and its implementing regulations."

Section 5. Section 19-2-909, MCA, is amended to read:

"19-2-909. Execution or withholding for support obligation — rulemaking. (1) Benefits in the retirement systems or plans provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution and income withholding for the payment of a participant's support obligation.

(2) For purposes of this section, the following definitions apply:

(a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.

(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-157.

(c) "Participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(d) "Support obligation" has the meaning provided in 40-5-403 for a support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(4) An execution or income-withholding order applied to a defined benefit retirement plan may provide for payment only as follows:

(a) Retirement benefit payments or refunds may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be ~~apportioned and~~ paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. *The maximum amount paid may be zero, depending on the member's age and service credit at the time of disability or death.*

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(5) With respect to a defined contribution plan, an execution or income-withholding order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount ~~apportioned~~ *paid* may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. A new account may be established for an alternate payee, but money in the account must be totally disbursed to the alternate payee as soon as feasible upon the participant's termination of service or death.

(b) If the participant is receiving periodic payments or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(6) The duration of monthly or other periodic payments ~~apportioned~~ *paid* from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(7) The board shall adopt rules to provide for the administration of execution or income-withholding orders."

Section 6. Section 19-3-401, MCA, is amended to read:

"19-3-401. Membership — inactive vested members — inactive nonvested members. (1) Except as otherwise provided in this chapter, all employees ~~shall~~ *must* become members of the defined benefit plan on the first day of service. Each employer shall file with the board information affecting their employees' status as members as the board may require. An employee may become a member of the defined contribution plan only as provided in Title 19, chapter 3, part 21.

(2) (a) An inactive member of the defined benefit plan with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a service retirement benefit subject to the provisions of this chapter.

(b) If an inactive vested member of the defined benefit plan chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(3) (a) An inactive member of the defined benefit plan with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement plan.

(b) An inactive nonvested member of the defined benefit plan is eligible only for a refund of the member's accumulated contributions.

(4) Except as otherwise provided in this chapter, a member of either the defined benefit plan or the defined contribution plan is an active member of the system and is not eligible for a refund of contributions or for benefit payments if the member either:

(a) returns to service within 30 days of termination of employment; or

(b) terminates one employment but remains employed in another position covered by the system.

(5) Time during which an employee of a school district *or a public institution of higher education* is absent from service during official vacation is counted as membership service in determining eligibility for retirement benefits."

Section 7. Section 19-3-412, MCA, is amended to read:

"19-3-412. Optional membership. (1) Except as provided in subsection (2), the following employees and elected officials in covered positions shall elect either to become active members of the retirement system or to decline this optional membership by filing an irrevocable, written application with the board in the manner prescribed in subsection (3):

(a) elected officials of the state or local governments*, including individuals appointed to fill the unexpired term of elected officials,* who:

(i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or

(ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the defined contribution plan at the time of their election;

(b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes.

(2) ~~(a) Except as provided in subsection (2)(b), employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.~~

~~(b)~~*(a)* A legislator may also become a member as of the date prior to December 30, 2000, that the legislator filed an irrevocable written application with the board to become a member and paid the employee share of contributions determined by the board to be required to purchase the legislator's prior service credit. However, the legislator shall purchase at least 5 years of service credit or, if the legislator has less than 5 years of membership service, service credit equal to all of the legislator's membership service. The legislative branch is responsible for paying the amount determined by the board to be the employer's share of contributions required to purchase a legislator's service credit under this subsection ~~(2)(b)~~ *(2)(a)*.

~~(c)~~*(b)* A member who ~~after April 17, 2003,~~ is elected to a local government position in which the member works less than 960 hours in a calendar year may,

within 180 days of being elected, decline optional membership with respect to the member's elected position.

(3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1) and provide written application forms to each employer.

(b) Each employee or elected official in a position covered under subsection (1) shall obtain the written application form from the employer and complete and return it to the board.

(c) The written application must be filed with the board within 180 days of the commencement of the employee's or elected official's employment.

(d) The employer shall retain a copy of the employee's or elected official's written application.

(4) If the employee or elected official fails to file the written application required under subsection (1) with the board within the time allowed in subsection (3), the employee or elected official waives membership.

(5) An employee or elected official who declines optional membership may not receive membership service or service credit for the employment for which membership was declined.

(6) An employee or elected official who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service credit pursuant to this subsection must comply with 19-3-505.

(7) Except as provided in subsection ~~(2)(c)~~ *(2)(b)*, membership in the retirement system is not optional for an employee or elected official who is already a member. Upon employment in a position for which membership is optional:

(a) a member who was an active member before the employment remains an active member;

(b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(8) (a) An employee or elected official who declines membership for a position for which membership is optional may not later become a member while still employed in that position.

(b) If, after a break in service of 30 days or more, an employee who was employed in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership.

(c) If the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(9) An employee accepting a position that requires membership ~~shall~~ *must* become a member even if the employee previously declined membership and did not have a 30-day break in service."

Section 8. Section 19-3-510, MCA, is amended to read:

"19-3-510. Employment in United States government. (1) A member who is assigned to an agency of the United States government under ~~Title IV,~~ the Intergovernmental Personnel Act of 1970, *42 U.S.C. 4701, et seq.,* may purchase the federal employment as service credit in the retirement system under subsection (2) if:

(a) the member has accrued 5 years or more of membership service in the retirement system; and

(b) the member returns to full-time service with the former state or local government employer for at least 1 year after completing employment in the United States government.

(2) A member of the retirement system who is assigned to an agency of the United States government has the option to:

(a) continue the member's payments into the pension trust fund; or

(b) purchase service credit for the period of federal employment under this section within 2 years after return to service under the retirement system.

(3) Salary earned while on assignment to an agency of the United States government must be considered compensation for the purposes of the retirement system and may be included in the determination of highest average compensation~~, provided that~~ *if* the highest average compensation does not exceed 100% of the member's highest annual compensation earned as a state or local government employee."

Section 9. Section 19-3-1105, MCA, is amended to read:

"19-3-1105. Benefit upon second retirement. (1) Except as otherwise expressly provided by law, a member with at least 2 years of service credit accrued after reemployment must receive the benefit of provisions enacted after the member's initial retirement, but only with respect to the service credit earned after reemployment.

(2) Upon retirement subsequent to a cancellation *of a disability benefit* under 19-3-1104, a member must receive a recalculated benefit as provided in 19-3-904 *or 19-3-906, as applicable*. The recalculated benefit is based on service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment."

Section 10. Section 19-3-1106, MCA, is amended to read:

"19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — exceptions. (1) A retired member under 65 years of age who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 960 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this 960-hour limitation in any calendar year after retirement must be temporarily reduced $1 for each $1 earned after working 960 hours in that calendar year.

(2) A retiree 65 years of age or older who returns to employment covered by the retirement system is either subject to the 960-hour limitation of subsection (1) or may earn in any calendar year an amount that, when added to the retiree's current annual retirement benefits, will not exceed the member's annualized highest average compensation, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the

retiree's benefits must be temporarily reduced $1 for each $1 of compensation earned in service beyond the applicable limitation during that calendar year.

(3) A retiree returning to employment covered by the retirement system and the returning employee's employer shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any month after retirement.

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment.

(5) The following members who return to employment covered by the retirement system are not subject to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3):

(a) a retired member who is 70 1/2 years of age or older; or

(b) an elected official in a covered position who declines optional membership as provided in 19-3-412.

(6) For the purposes of this section, "employment covered by the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor as those terms are defined in 39-8-102."

Section 11. Section 19-3-1202, MCA, is amended to read:

"19-3-1202. Amount of ~~lump-sum~~ death payment. (1) The amount of *death* payment to be made to ~~those eligible for death payments~~ *the designated beneficiary of a deceased member* is the sum of subsections (1)(a), (1)(b), and (1)(c) as follows:

(a) the member's accumulated contributions;

(b) *subject to subsection (2),* an amount equal to one-twelfth of the compensation received by the member during the last 12 months of compensation multiplied by the smaller of six or the number of years of the member's service credit; and

(c) the accumulated regular interest on the amounts in subsections (1)(a) and (1)(b) to the first day of the month in which the payment is made.

(2) A beneficiary of an inactive member is not eligible to receive the payment described in subsection (1)(b)."

Section 12. Section 19-3-1203, MCA, is amended to read:

"19-3-1203. Election of optional death annuity. The designated beneficiary of a *deceased* member may elect, by filing a written application with the board, to have the ~~lump-sum~~ death payment *provided for in 19-3-1201* paid in an actuarially equivalent form, subject to rules that the board may adopt. The annuity payments are not subject to increases that may be granted to other monthly retirement benefits."

Section 13. Section 19-3-1204, MCA, is amended to read:

"19-3-1204. Survivorship benefit elected by beneficiary. (1) A designated beneficiary eligible to receive a ~~lump-sum~~ death payment may instead elect a survivorship benefit by filing a written application with the board, if all of the following conditions are met:

(a) ~~The~~ *the deceased* member on behalf of whom the death benefit is payable had completed 5 years of membership service.*;*

(b) ~~The~~ *the* designated beneficiary is a natural person~~.~~*; and*

(c) ~~The~~ *the* designated beneficiary elects the survivorship benefit within 90 days of receipt of notice from the board that the designated beneficiary is eligible to receive the ~~lump-sum~~ death payment.

(2) A designated beneficiary of a vested member may, by filing a written application with the board, elect to receive a survivorship benefit in lieu of a ~~lump-sum~~ death payment.

(3) (a) If the designated beneficiary is a minor, the custodian designated in 19-2-803 may, on the minor's behalf, file a written application with the board.

(b) If an application is not filed on the minor's behalf and no payment has been made, the designated beneficiary may file a written application upon reaching the age of majority. For the purposes of this subsection (3)(b), the survivorship benefit provided for in 19-3-1205 must be calculated as if the member had died on the last day of the month before the month in which the application was filed."

Section 14. Section 19-3-2111, MCA, is amended to read:

"19-3-2111. Plan membership — written election required — failure to elect — effect of election. (1) Except as otherwise provided in this part:

(a) (i) a member who is an active member of the defined benefit plan on the date that the defined contribution plan becomes effective may, within 12 months after that date, elect to transfer to and become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period;

(ii) a member who was an inactive member of the defined benefit plan on the date that the defined contribution plan becomes effective and who is rehired into covered employment after the plan effective date may, within ~~12 months after the member's rehire date~~ *the 12-month period provided for in subsection (2)(a)*, elect to transfer to and become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period;

(b) a member who is initially hired into covered employment on or after the date that the defined contribution plan becomes effective may, within ~~12 months of the member's hire date~~ *the 12-month period provided for in subsection (2)(a)*, elect to become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(2) (a) Elections made pursuant to this section must be made on a form prescribed by the board *and must be made within 12 months from the month that the employer properly reports the new or rehired member to the board*.

(b) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(c) An election under this section, including the default election pursuant to subsection (2)(b), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(c) does not prohibit a new election after a member has terminated membership in either plan and returned to covered employment.

(3) A member in either the defined benefit plan or the defined contribution plan who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(4) A system member may not simultaneously be a member of the defined benefit plan and the defined contribution plan and must be a member of either the defined benefit plan or the defined contribution plan. A period of service may not be credited in more than one retirement plan within the system.

(5) The provisions of this part do not prohibit the board from adopting rules to allow an employee to elect the defined contribution plan from the first day of covered employment.

(6) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the defined contribution plan unless the order is modified to apply under the defined contribution plan.

(7) (a) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the defined contribution plan unless the member first completes or terminates the contract for purchase of service credit.

(b) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(c) If a member who files an election to transfer membership fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract."

Section 15. Section 19-3-2112, MCA, is amended to read:

"19-3-2112. Plan choices for members employed by university system — amount available to transfer — effect on rights. (1) If a member who is employed by the Montana university system is eligible to make an election under this part to transfer to the defined contribution plan, the employee may, instead of electing the defined contribution plan, elect to transfer membership to the university system's optional retirement program provided for under chapter 21 of this title.

(2) Except as otherwise provided in this part, an election to transfer membership to the optional retirement program must be made in accordance with the following provisions:

(a) (i) A member employed by the university system who is an active member of the defined benefit plan on the effective date of the defined contribution plan may, within ~~12 months after that date~~ *the 12-month period provided for in subsection (2)(b)*, elect to transfer to and become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(ii) A member who was an inactive member of the defined benefit plan on the effective date of the defined contribution plan and who is hired or rehired into covered employment with the university system after that date may, within ~~12 months after the member's hire or rehire date~~ *the 12-month period provided for in subsection (2)(b)*, elect to transfer to and become a member of the optional retirement program regardless of whether the member remains active, becomes

inactive, or terminates employment and plan membership within the 12-month period.

(iii) A member who is initially hired into covered employment with the university system on or after the effective date of the defined contribution plan may, within ~~12 months of the member's hire date~~ *the 12-month period provided for in subsection (2)(b)*, elect to become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(b) Elections made pursuant to this section must be made on a form prescribed by the board *and must be made within 12 months from the month that the employer properly reports the new or rehired member to the board*.

(c) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(d) An election under this section, including the default election pursuant to subsection (2)(c), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(d) does not prohibit a new election after an employee has terminated membership in the optional retirement program and returned to employment in a position covered under the system.

(e) A member in either the defined benefit plan or the optional retirement program who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(f) Except as provided in subsection (2)(g), a university employee in a position covered under the system may not simultaneously be a member of more than one retirement plan under chapters 3 and 21 of this title, but must be a member of the defined benefit plan, the defined contribution plan, or the optional retirement program as provided by applicable provisions of this title. The same period of service may not be credited in more than one retirement system or plan.

(g) A university system employee who is or has been a member of the optional retirement program and returns to or accepts covered employment other than with the university system may make an election pursuant to 19-3-2111. That election is valid only for covered employment other than with the university system.

(h) The provisions of this part do not prohibit the board from adopting rules to allow an eligible employee to elect the optional retirement program from the first day of covered employment.

(i) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the optional retirement program unless the order is modified to apply under the optional retirement program.

(j) (i) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the optional retirement program unless the member completes or terminates the contract for purchase of service credit.

(ii) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the

Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(iii) If a member who files an election to transfer fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract.

(3) For an employee electing to transfer membership to the optional retirement program, the board shall transfer to the optional retirement program the amount that the employee would have been able to transfer to the defined contribution plan under 19-3-2114.

(4) An election to become a member of the optional retirement program pursuant to this section is a waiver of all rights and benefits under the public employees' retirement system."

Section 16. Section 19-3-2113, MCA, is amended to read:

"19-3-2113. Reinstatement of plan membership — purchase of prior service credit in defined benefit plan. (1) (a) A member who terminates membership in the defined benefit plan, the defined contribution plan, or the optional retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment in less than 24 months ~~shall become~~ *is* a member of the plan that the member last selected and is not eligible for a new plan choice election.

(b) A member who terminated membership in the defined benefit plan, the defined contribution plan, or the optional retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment after 24 months or more is eligible to make a plan choice election as though initially hired as provided for in 19-3-2111(1)(b).

(2) (a) An employee who returns to covered employment after terminating membership in the defined benefit plan, who is eligible to make a plan choice, and who elects to join the defined benefit plan *pursuant to 19-3-2111 or 19-3-2112* may reinstate prior membership service and service credit as provided in 19-2-603.

(b) An employee who returns to covered employment after terminating membership in the defined contribution plan or the optional retirement program, who is eligible to make a plan choice, and who elects to join the defined benefit plan pursuant to 19-3-2111 or 19-3-2112 may purchase prior membership service and service credit by paying to the board the full actuarial cost of the service credit as of the latest actuarial valuation of the defined benefit plan. The member may not purchase membership service and service credit under this section in excess of the member's length of service in the defined contribution plan or the optional retirement program."

Section 17. Section 19-6-707, MCA, is amended to read:

"19-6-707. Minimum monthly benefit. (1) Subject to the limitations contained in subsection (2), the following retired members, or their survivors, who are not covered by 19-6-710 *or 19-6-711* are eligible to receive a monthly benefit of not less than 2% multiplied by the member's service credits multiplied by the current base compensation received by a probationary highway patrol officer:

(a) a retired member who is 55 years of age or older, except as provided in subsection (3), or the member's survivor, who is receiving a service retirement benefit;

(b) a retired member, or the member's survivor, who is receiving a disability retirement benefit; and

(c) a recipient of a survivorship benefit.

(2) (a) The maximum monthly benefit paid under subsection (1) may not exceed 60% of the current base compensation of a probationary highway patrol officer.

(b) The annual increase in a monthly benefit under subsection (1) may not exceed 5% of the current monthly benefit paid to a retired member or the member's survivor.

(3) A retired member otherwise qualified under subsection (1)(a) who is employed in a position covered by a retirement system under Title 19 is ineligible to receive the minimum monthly benefit provided for in this section until the member's service in the covered position is terminated."

Section 18. Section 19-7-101, MCA, is amended to read:

"19-7-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid from funds controlled by an employer for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include maintenance, allowances, and expenses.

(2) "Detention officer" means any detention officer, as defined in 44-4-302, who is hired by a sheriff, employed in a detention center, and acting as a detention officer for the sheriff and who has received or is expected to receive training to meet the employment standards set by the board of crime control pursuant to 44-4-301 for detention officers.

(3) "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership service or, in the event a member has not served at least 36 months, the total compensation earned divided by the number of months of service. Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(4) "Investigator" means a person who is employed *by the department of justice* as a criminal investigator or as a gambling investigator ~~for the department of justice~~.

(5) "Sheriff" means any elected or appointed county sheriff or undersheriff or any appointed, lawfully trained, appropriately salaried, and regularly acting deputy sheriff with the requisite professional certification and licensing."

Section 19. Section 19-7-312, MCA, is amended to read:

"19-7-312. Transfer of membership — purchase of previous service. A person who elects to become a member of the sheriffs' retirement system pursuant to 19-7-301 may transfer the member's *previous* service credit in the public employees' retirement system *or in another system provided for in chapter 5, 6, 8, 9, or 13 of this title* into the sheriffs' retirement system *by paying the actuarial cost required* under the provisions of 19-2-715."

Section 20. Section 19-7-1101, MCA, is amended to read:

"19-7-1101. Reemployment of retired member. (1) A retired member who returns to service for ~~60 or more working days~~ *480 hours or more* in a calendar year ~~shall~~ *must* become an active member of the system. Upon reinstatement as an active member, benefit payments must cease until subsequent retirement.

(2) A retired member who returns to service for less than ~~60 working days~~ *480 hours* in a calendar year may not become an active member. The retirement benefit of a retired member employed in service must be reduced by $1 for each $3 earned in excess of $5,000 in a calendar year."

Section 21. Section 19-8-301, MCA, is amended to read:

"19-8-301. Membership — inactive vested members — inactive nonvested members. (1) Except as provided in 19-8-302, the following state peace officers must be covered under the game wardens' and peace officers' retirement system and, beginning on the first day of employment, must become and shall remain active members for as long as they are employed as peace officers:

(a) game wardens who are assigned to law enforcement in the department of fish, wildlife, and parks;

(b) motor carrier officers employed by the department of transportation;

(c) campus security officers employed by the university system;

(d) wardens and deputy wardens employed by the department of corrections;

(e) corrections officers employed by the department of corrections;

(f) probation and parole officers employed by the department of corrections;

(g) stock inspectors and detectives employed by the department of livestock; *and*

~~(h) motor vehicle inspectors employed by the department of justice; and~~

~~(i)~~*(h)* drill instructors employed by the department of corrections.

(2) (a) An inactive member with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(3) (a) An inactive member with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 22. Section 19-8-302, MCA, is amended to read:

"19-8-302. Public employees' retirement system — transfer of membership. (1) Except as provided in ~~subsections (2) and (4)~~ *subsection (3)*, an eligible peace officer ~~shall~~ *must* become a member of the game wardens' and peace officers' retirement system on the first day of service.

~~(2) A member of the public employees' retirement system who first becomes eligible for membership in the game wardens' and peace officers' retirement system on July 1, 1997, may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election that must be received by the board no later than December 31, 2001.~~

~~(3)~~*(2)* A person who is a member of the game wardens' and peace officers' retirement system assigned to law enforcement who transfers to a position involving duties other than law enforcement within the same state agency may retain membership in the *game wardens' and peace officers'* retirement system by filing a written election with the board no later than 30 days after transfer to the new position.

~~(4)~~*(3)* A person who is a member of the public employees' retirement system who transfers to a position covered by the game wardens' and peace officers' retirement system may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election with the board no later than 30 days after transfer to the new position."

Section 23. Section 19-9-1202, MCA, is amended to read:

"19-9-1202. Definitions. Unless the context requires otherwise, as used in this part, the following definitions apply:

(1) "DROP" means the deferred retirement option plan established pursuant to this part.

(2) "DROP ~~accrual~~ *account*" means the ~~monthly benefit~~ *member's accumulated monthly DROP accruals*, including any postretirement adjustments, ~~that would have been payable had the participant terminated service and retired, multiplied by each month of the DROP period that the participant completes,~~ plus interest.

(3) "DROP benefit" means the lump-sum benefit calculated and distributed as provided in this part.

(4) "DROP period" means the period of time that a member irrevocably elects to participate in the DROP pursuant to 19-9-1204.

(5) "Monthly DROP accrual" means the amount equal to the monthly benefit that would have been payable to the participant had the participant terminated service and retired.

(6) "Participant" means a member of the retirement system who has elected to participate in the DROP pursuant to this part."

Section 24. Section 19-9-1205, MCA, is amended to read:

"19-9-1205. Retirement system contributions — benefit payments to individual *DROP* accounts — investment returns. (1) During a member's participation in the DROP, state contributions under 19-9-702, employer contributions under 19-9-703, and member contributions under 19-9-710 must continue to be made to the retirement system.

(2) For each DROP participant, the board shall calculate a *monthly* DROP accrual *and the contribution to the participant's DROP account*."

Section 25. Section 19-9-1206, MCA, is amended to read:

"19-9-1206. Survivorship benefits. (1) If a participant dies prior to the receipt of the DROP benefit pursuant to 19-9-1208, the participant's surviving spouse or dependent child is entitled to receive a lump-sum payment equal to the participant's DROP benefit and the member's accumulated contributions minus any benefits paid from the member's *DROP* account, including monthly DROP accruals.

(2) If there is no surviving spouse or dependent child, the designated beneficiary is entitled to receive a lump-sum payment equal to the participant's DROP benefit.

(3) The benefit paid pursuant to this section must include interest reflecting the retirement system's annual investment earnings from the date the member's DROP period commenced."

Section 26. Section 19-17-102, MCA, is amended to read:

"19-17-102. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Active member" means a volunteer firefighter credited with service under this chapter during the most recently reportable fiscal year.

(2) "Benefit" means the pension, disability, or survivorship benefit provided under this chapter.

(3) "Board" means the public employees' retirement board provided for in 2-15-1009.

(4) "Claim" means a request from a member, surviving spouse, or dependent child for payment of medical or funeral expenses.

(5) "Department" means the department of administration.

(6) "Dependent child" means a child who is unmarried, who is under 18 years of age, and who is the child of a deceased member.

(7) "Designated official" means a representative of a fire company appointed by the fire chief to perform specified actions and includes but is not limited to a fire company supervisor, a fire company secretary, and a fire company presiding officer as described in 7-33-2312.

~~(7)~~*(8)* "Disability" or "permanent total disability" means permanent total disability as defined in 39-71-116.

~~(8)~~*(9)* "Fire company" means a fire company organized *under 7-33-2311* in an unincorporated area, town, or village ~~in accordance with 7-33-2311.~~ *and includes a volunteer fire department, a fire district, and a fire service area created under the provisions of Title 7, chapter 33.*

~~(9)~~*(10)* "Fiscal year" means the 12-month period that begins on July 1 and ends on June 30 of the following year.

~~(10)~~*(11)* "Member" means a volunteer firefighter who has service credited under this chapter.

~~(11)~~*(12)* "Pension trust fund" means the volunteer firefighters' pension trust fund established to pay claims and benefits under this chapter.

~~(12)~~*(13)* "Retiree" or "retired member" means a member who is receiving full or partial participation benefits or disability benefits from the pension trust fund.

~~(13)~~*(14)* "Service" means cumulative periods of active membership that are credited only in full fiscal year increments.

~~(14)~~*(15)* "Supplemental insurance" means insurance that is carried by a fire company for the purposes of providing disability or death benefits and that is in addition to any insurance required by law, including workers' compensation insurance.

~~(15)~~*(16)* "Surviving spouse" means the spouse married to a member when the member dies.

~~(16)~~*(17)* "Survivorship benefit" means the monthly benefit paid to the surviving spouse or dependent child of a deceased member.

(18) "Training" means instruction pertaining to firefighting that is supervised by the chief or a designated official.

~~(17)~~*(19)* "Volunteer firefighter" means a person who is an active member of an eligible fire company and is not compensated for services as a firefighter."

Section 27. Section 19-17-108, MCA, is amended to read:

"19-17-108. Credit for service as volunteer firefighter — *records*. (1) The annual period of service that may be credited under this chapter is the fiscal year. A fractional part of a year may not count toward the service required for participation in this system. To be eligible to receive credit for any particular year, a volunteer firefighter shall serve with a fire company throughout the entire fiscal year.

(2) The years of service are cumulative and need not be continuous. Separate periods of service properly credited with different fire companies ~~in different fire districts~~ must be credited toward a member's eligibility for full or partial benefits.

(3) A volunteer firefighter must receive credit for service during any fiscal year if:

(a) during the fiscal year, the volunteer firefighter completes a minimum of 30 hours of ~~instruction~~ training in matters pertaining to firefighting under a formal program that has been formulated, supervised, and certified to the board by the chief or ~~supervisor~~ *designated official* of the fire company;

(b) the volunteer firefighter's participation in the training program is documented in the fire ~~department~~ *company's* records filed and maintained by the chief or ~~supervisor~~ *designated official*; and

(c) the fire company maintained firefighting equipment that is in serviceable condition and owns, rents, or uses one or more buildings used for the storage of that equipment that all together are valued at $12,000 or more.

(4) The chief or designated official of each fire company shall keep and maintain training records for each current and former volunteer firefighter who is or was a member of the fire company."

Section 28. Section 19-17-401, MCA, is amended to read:

"19-17-401. Eligibility for pension and disability benefits. (1) To qualify for a full pension, partial pension, or disability benefit under this chapter, a member shall meet the requirements of subsections (2) or (3) and (4).

(2) (a) For a full pension benefit, a member must have completed 20 years of service and must have attained 55 years of age, but need not be an active member of a fire company when 55 years of age is reached.

(b) A member who is prevented from completing at least 20 years of service may qualify for a partial pension benefit if the member has completed at least 10 years of service and has attained 60 years of age, but need not be an active member of any fire company when 60 years of age is reached.

(3) An active member of a fire company whose duty-related injury results in permanent total disability, as defined in 39-71-116 and determined pursuant to 19-17-410, is eligible, regardless of age or service, to receive a disability benefit.

(4) Except as provided in subsection (5):

(a) to receive a pension or disability benefit, a volunteer firefighter may not be an active member of any fire company; and

(b) a volunteer firefighter who receives a pension or disability benefit under this chapter may not become an active member of any fire company.

(5) (a) In the event of a declared national, state, or local emergency affecting Montana, a retired volunteer firefighter who is not receiving a disability benefit under this chapter may return to active service with a fire company for the duration of the declared emergency without becoming an active member under the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan and without loss of previously earned benefits. Only the fire chief of the fire company may determine who may return to active service. The fire chief shall prescribe the duties of any retired volunteer firefighter returning to active service.

(b) A member who is receiving a full pension benefit, as provided in 19-17-404, may return to service with a volunteer fire ~~department~~ *company* without loss of benefits. A member returning to service under this section may not be considered an active member earning service credit."

Section 29. Section 19-17-402, MCA, is amended to read:

"19-17-402. Certificate of eligibility. The chief or ~~presiding officer~~ *designated official* of each fire company that claims eligibility under this chapter shall, on or before September 1 of each year, file a certificate on a form to be provided by the board, subscribed and verified under oath before a notary, stating whether the *fire* company qualified under 19-17-108(3) during the preceding fiscal year. The certificate must contain the date of organization. The certificate must list the full name, social security number, and date of birth of each member of the fire company who was a member for the entire fiscal year and satisfactorily completed 30 hours of ~~instruction~~ *training* during the preceding fiscal year, as required by 19-17-108(3). The certificate must be maintained by the board for the purpose of establishing service for members and eligibility for benefits."

Section 30. Section 19-17-502, MCA, is amended to read:

"19-17-502. Procedure for claiming medical expenses. (1) A member who claims medical expenses under 19-17-504 shall submit a claim on a form provided by the board. The claim must be verified by the member and by competent medical authority. The claim must be submitted within 1 year from the date of incurring the injury or illness.

(2) The claim must contain:

(a) the name and address of the member;

(b) the date, place, and manner of incurring the injury or illness;

(c) the name and address of the attending physician, surgeon, or nurse, if any;

(d) the dates of hospitalization, if hospitalized;

(e) an affidavit from the attending physician, surgeon, or nurse that describes the nature of the injury or illness, the number and dates of visits, and the expenses;

(f) if hospitalized, an affidavit from competent authority stating the nature of the injury or illness, the dates of hospitalization, and the expenses;

(g) an affidavit from the chief or ~~secretary~~ *designated official* of the fire company stating that the fire company was ~~duly~~ organized under the laws of Montana in an unincorporated town or village, that the member was, at the time of the injury or illness, an active member of the company, and that the injury or illness was incurred in the line of duty as described in 19-17-105."

Section 31. Repealer. Section 19-8-1110, MCA, is repealed.

Approved April 5, 2007

CHAPTER NO. 129

[HB 157]

AN ACT REVISING EXCEPTIONS TO THE LIMIT ON THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM ADMINISTRATIVE EXPENSES; CLARIFYING THAT FUNDS DEPOSITED IN THE STATE SPECIAL REVENUE ACCOUNT TO THE CREDIT OF THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM MAY BE USED TO PAY HEALTH CARE CLAIMS; AMENDING SECTIONS 53-4-1007 AND 53-4-1012, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-4-1007, MCA, is amended to read:

"53-4-1007. (Temporary) Department may contract for services. (1) The department of public health and human services may administer the program directly or contract with insurance companies or other entities to provide services for a set monthly or yearly fee based on the number of participants in the program and the types of services provided or based on a fee for service as established by the department.

(2) The department of public health and human services may contract for a health care service based on a fee for service when the department does not contract for a health care service through an insurance plan, a health maintenance organization, or a managed care plan. In operating the program and providing health services, the department may:

(a) pay providers on a fee-for-service basis in a self-funded program and contract with an insurance company, third-party administrator, or other entity to provide administrative services, including but not limited to processing and payment of claims with program funds;

(b) purchase health coverage for eligible children from an insurance company or other entity through premiums, capitated payments, or other appropriate methods;

(c) purchase health coverage as provided in subsection (2)(b) for some types of health services and contract directly with providers for other types of health services on a fee-for-service basis; or

(d) pay providers on a fee-for-service basis and directly provide administrative services in a self-funded program.

(3) If the department of public health and human services contracts with an insurance company or other entity to administer the program as provided in subsection (2)(b) or (2)(c), not more than 12% of the contract payment may be used for administrative expenses, including:

(a) direct and indirect expenses as specified in 33-22-1514;

(b) risk charges; and

(c) any applicable assessments, fees, and taxes.

(4) If the department operates the program by providing administrative services under subsection (2)(a), (2)(c), or (2)(d), the department's administrative expense may not exceed the lesser of 10% *of total program expenses* or the applicable federal limitation*, excluding costs for federally required audits*.

(5) (a) An insurance company or other entity that contracts with the department for a fully insured contract as provided in subsection (2)(b) shall calculate the surplus account balance at the end of each contract year and may retain an amount equal to 50% of the risk charge allowed under the contract. The remainder of the surplus balance must be deposited in the state special revenue account provided for in 53-4-1012.

(b) For the purposes of this subsection (5):

(i) "risk charge" means the percentage of the administrative expense allowed in the contract for assuming the risk;

(ii) "surplus account balance" means funds that remain after all claims and all administrative expenses have been paid for a claim period. (Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999; sec. 7, Ch. 565, L. 2005.)"

Section 2. Section 53-4-1012, MCA, is amended to read:

"53-4-1012. (Temporary) State special revenue account. (1) There is an account in the state special revenue fund to the credit of the state children's health insurance program administered by the department of public health and human services. Any interest or income derived from the account must be deposited in the account.

(2) Money deposited in this account must be used by the department to cover additional children, to expand eligibility within the limits provided in 53-4-1004, to reduce or maintain premiums, *to pay health care claims,* or to establish and maintain a reserve.

(3) The department shall transfer the unexpended balance of an appropriation into the account provided for in subsection (1) at the expiration of the appropriation to be used for the purposes stated in subsection (2). (Terminates on occurrence of contingency—sec. 7, Ch. 565, L. 2005.)"

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to July 1, 2006.

Section 5. Contingent termination — transfer of excess funds. (1) [This act] terminates on the date that the director of the department of public health and human services certifies to the governor that the federal government has terminated the program or that federal funding for the program has been discontinued.

(2) The governor shall transmit a copy of the certification to the code commissioner.

(3) Any excess funds remaining upon the termination of the program must be transferred to the general fund.

Approved April 5, 2007

CHAPTER NO. 130

[HB 177]

AN ACT REPEALING THE MONTANA ELECTRONIC TRANSACTIONS WITH STATE AGENCIES AND LOCAL GOVERNMENT UNITS ACT; AMENDING SECTIONS 30-18-102, 30-18-118, AND 61-11-503, MCA; AND REPEALING SECTIONS 2-20-101, 2-20-102, 2-20-103, 2-20-104, 2-20-105, 2-20-106, 2-20-107, 2-20-108, 2-20-109, 2-20-110, AND 2-20-111, MCA.

WHEREAS, the 56th Montana Legislature adopted the Montana Electronic Transactions With State Agencies and Local Government Units Act in an effort to establish processes by which citizens, businesses, and other entities could effectively, efficiently, and legally transact official business with state and local governments through technology enabled by electronic means; and

WHEREAS, the 57th Montana Legislature adopted the Uniform Electronic Transactions Act in an effort to expand processes by which citizens, businesses, and other entities can effectively, efficiently, and legally transact official business through technology enabled by electronic means; and

WHEREAS, the adoption and implementation of the Uniform Electronic Transactions Act has eliminated the need for the Montana Electronic Transactions With State Agencies and Local Government Units Act.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-18-102, MCA, is amended to read:

"30-18-102. Definitions. In this part:

(1) "agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.*;*

(2) "automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.*;*

(3) "computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.;

(4) "contract" means the total legal obligation resulting from the parties' agreement as affected by this part and other applicable law.;

(5) "cryptosystem" means a system that transforms or encrypts information for the purpose of secrecy or authenticity. The term includes a computer-based security procedure capable of generating and using a key pair.

~~(5)~~*(6)* "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.;

~~(6)~~*(7)* "electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances, in whole or in part, without review or action by an individual.;

~~(7)~~*(8)* "electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.;

~~(8)~~*(9)* "electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.;

~~(9)~~*(10)* "governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.;

~~(10)~~*(11)* "information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.;

~~(11)~~*(12)* "information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.;

~~(12)~~*(13)* "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.;

~~(13)~~*(14)* "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.;

~~(14)~~*(15)* "security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

~~(15)~~*(16)* "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

(17) "state agency" means a department, board, commission, authority, or other governmental entity of the executive branch of state government, including the Montana university system, that sends or receives electronic records;

~~(16)~~*(18)* "transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs."

Section 2. Section 30-18-118, MCA, is amended to read:

"30-18-118. Interoperability. (1) The secretary of state may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing the most appropriate standard for a particular application.

(2) ~~The secretary of state~~ *Any state agency* may adopt rules to implement this part ~~for state government that are consistent with the provisions of Title 2, chapter 20, however,~~. *However,* governmental agencies are not limited to the use of a cryptosystem~~, as defined in 2-20-103,~~ or any other specific technology for electronic transactions provided for in this part."

Section 3. Section 61-11-503, MCA, is amended to read:

"61-11-503. Definitions. As used in this part, the following definitions apply:

(1) "Disclose" means to engage in any practice or conduct that makes available or known, by means of any communication to another person, organization, or entity, personal information contained in a motor vehicle record.

(2) "Express consent" means an affirmative authorization given in writing by a person to whom personal information pertains that specifically allows the department to release personal information to another person, organization, or entity. Consent may be conveyed electronically if the conveyance includes an electronic signature, as defined in ~~2-20-103~~ *30-18-102*, from the person to whom the personal information pertains.

(3) "Highly restricted personal information" means an individual's photograph or image, social security number, or medical or disability information.

(4) "Motor vehicle record" means any record maintained by the department that pertains to a driver's license, commercial driver's license, driving permit, motor vehicle title, motor vehicle registration, or identification card issued by the department.

(5) "Person" does not mean a state agency or local government entity.

(6) (a) "Personal information" means information that identifies a person, including a person's name, address, telephone number, social security number, driver's license or identification number, date of birth, photograph or image, and medical or disability information.

(b) The term does not include the five-digit zip code of an address, information on vehicular accidents, driving or equipment-related violations, a person's driver's license or vehicle registration status, or a vehicle's insurance status.

(7) "Record" includes all books, papers, photographs, photostats, cards, film, tapes, recordings, electronic data, printouts, or other documentary materials, regardless of physical form or characteristics."

Section 4. Repealer. Sections 2-20-101, 2-20-102, 2-20-103, 2-20-104, 2-20-105, 2-20-106, 2-20-107, 2-20-108, 2-20-109, 2-20-110, and 2-20-111, MCA, are repealed.

Approved April 5, 2007

CHAPTER NO. 131

[HB 207]

AN ACT REVISING WHEN COUNTY COMMISSIONERS AND OTHER COUNTY ELECTED OFFICIALS SHALL TAKE THE OATH OF OFFICE; AND AMENDING SECTIONS 7-4-2105 AND 7-4-2205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2105, MCA, is amended to read:

"7-4-2105. Term of office. (1) The term of office of county commissioners is 6 years. A county commissioner takes office at 12:01 a.m. on January 1 succeeding the date of the election at which the county commissioner was elected.

(2) A county commissioner elected to take office shall take the oath of office on *or before* the last business day of December following the commissioner's election, except as provided for in 7-4-2106."

Section 2. Section 7-4-2205, MCA, is amended to read:

"7-4-2205. Term of office — oath. (1) Each person elected to an office named in 7-4-2203 holds the office for the term of 4 years and until a successor is elected and qualified.

(2) A person appointed to any of the different offices serves at the pleasure of the commissioners.

(3) Each officer who is mentioned in this part and who is elected to office shall:

(a) take the oath of office on *or before* the last business day of December following the officer's election; and

(b) take office at 12:01 a.m. on January 1 following the officer's election."

Approved April 5, 2007

CHAPTER NO. 132

[HB 284]

AN ACT AUTHORIZING THE RENOVATION OF THE HISTORIC BUILDING AT THE MORONY TOWNSITE IN GIANT SPRINGS STATE PARK; GRANTING AUTHORITY FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ENTER AN AGREEMENT WITH THE LITTLE SHELL CHIPPEWA TRIBE FOR MAINTENANCE AND SECURITY AT THE PARK IN EXCHANGE FOR THE TRIBE'S USE OF THE PARK AND

RENOVATION AND USE OF THE BUILDING; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Renovation of Morony apartment building at Giant Springs state park. (1) (a) The department of fish, wildlife, and parks may enter into a 10-year agreement with the Little Shell Chippewa tribe that would authorize the tribe to renovate the historic Morony apartment building at the Morony townsite in Giant Springs state park and use the building for offices, interpretive areas, and related cultural and recreational activities.

(b) If the provisions of the agreement have been adhered to during the first 10-year period, the department and the tribe may renew the agreement for a longer term or agree to transfer the building and acreage to the tribe.

(c) The agreement must provide that written approval by the department is required for major improvements costing more than $5,000 and for architectural plans proposed by the tribe for the building and site. The department may not unreasonably withhold approval for the tribe's proposals.

(d) The agreement must contain a provision that the site remain open to the public for general recreation and related activities during the term of the agreement.

(e) The agreement must contain a provision that gambling, casinos, or similar gaming enterprises are prohibited in the building or on the site.

(f) An appropriate default provision must be included in the agreement.

(2) Renovation and improvement of the building are contingent on written concurrence from PPL Montana, from whom the original Morony townsite was granted. All renovation of and upgrades to the building must comply with current and applicable building codes, permitting, requirements of the federal Americans With Disabilities Act of 1990, and other requirements related to a public building.

(3) The agreement with the Little Shell Chippewa tribe may include a provision that grants the tribe nonexclusive use of the park and associated outbuildings and fixtures and the renovated building in exchange for the tribe's maintenance and security at the townsite, including the renovated building.

Section 2. Appropriation. There is appropriated $500 from the general fund to the department of fish, wildlife, and parks for the purposes of [section 1].

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 4. Effective date. [This act] is effective July 1, 2007.

Approved April 5, 2007

CHAPTER NO. 133

[HB 341]

AN ACT REVISING THE LAWS RELATING TO THE PREPARATION OF JUROR LISTS; AMENDING SECTIONS 3-15-402, 3-15-403, 3-15-404, 46-17-202, AND 61-5-127, MCA; REPEALING SECTION 3-15-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-15-402, MCA, is amended to read:

"3-15-402. (Temporary) Selection of qualified persons. ~~(1) Subject to subsection (2), at the meeting specified in 3-15-401, the officers present~~ *The secretary of state* shall select from the most recent list of all registered electors~~, as prepared by the county registrar,~~ and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in part 3 of this chapter. Each name appearing on the list must be assigned a number that must be placed opposite the name on the jury list and must be considered the number of the juror opposite whose name it appears. A person's name may not appear on a jury list for more than one court during a 1-year term.

~~(2) The list prepared under subsection (1) may not include the name of a person permanently excluded from jury service under 3-15-313.~~

3-15-402. (Effective October 1, 2007) Selection of qualified persons. ~~(1) Subject to subsection (2), at the meeting specified in 3-15-401, the officers present, working with the office of the~~ *The* secretary of state~~,~~ shall select from the most recent list of all registered electors~~, as prepared by the county registrar, working with the office of the secretary of state,~~ and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in part 3 of this chapter. The ~~officers, working with the office of the~~ secretary of state~~,~~ shall then combine the resulting list with the list submitted to the ~~clerk of the district court~~ *secretary of state* under 61-5-127, ensuring that a person's name does not appear on the combined list more than once. Each name appearing on the combined list must be assigned a number that must be placed opposite the name on the combined list and must be considered the number of the juror opposite whose name it appears. A person's name may not appear on a combined list for more than one court during a 1-year term.

~~(2) The combined list prepared under subsection (1) may not include the name of a person permanently excluded from jury service under 3-15-313.~~"

Section 2. Section 3-15-403, MCA, is amended to read:

"3-15-403. (Temporary) ~~Lists delivered to clerk~~ *Jury lists — filing — public inspection.* ~~(1) A list of the names of the persons selected, showing the place of residence and other proper particulars regarding each of them, so far as those particulars can be conveniently ascertained, must be made out and signed by the officers or a majority of them. Within 15 days after the meeting, the list must be delivered by those officers to the clerk of the district court and filed by the clerk in the clerk's office.~~ *(1) On or before the first Monday in May, the list prepared under 3-15-402 must be delivered by the secretary of state to the clerk of the district court and filed by the clerk of the district court in the clerk of the district court's office no later than 5 business days after the receipt of the list.*

(2) A copy of the latest jury ~~list~~ *lists filed under subsection (1) and compiled under 3-15-404 and 46-17-202* and a description of the approved computerized random selection process, if one is used, must be kept in the office of the clerk of *the district* court. ~~and~~ *An excerpt, listing the name, address, and birth year of all jurors, must* be made available for public inspection during normal business hours.

~~(3) If the clerk of court is satisfied that a person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person must be omitted from the jury list. The reason for the omission must be entered in the minutes of the court.~~

3-15-403. (Effective October 1, 2007) Jury lists — filing — public inspection. (1) ~~The~~ *On or before the first Monday in May, the* combined list prepared under 3-15-402 must be delivered by ~~the office of~~ the secretary of state to the clerk of the district court and filed by the clerk of the district court in the clerk of the district court's office no later than 5 business days after the receipt of the combined list.

(2) A copy of the latest jury lists filed under subsection (1) and compiled under 3-15-404 and 46-17-202 and a description of the approved computerized random selection process, if one is used, must be kept in the office of the clerk of *the district* court. ~~and~~ *An excerpt, listing the name, address, and birth year of all jurors, must* be made available for public inspection during normal business hours."

Section 3. Section 3-15-404, MCA, is amended to read:

"3-15-404. (Temporary) Duty of jury commissioner — jury box or computer database. (1) The clerk of court is the jury commissioner and may appoint a deputy pursuant to 7-4-2401.

(2) A county jury commissioner may by order establish the use of either a jury box, as provided in subsection (3), or a computer database, as provided in subsection (4), as the means for selecting jurors in the county.

(3) If a county uses a jury box for selection of jurors, the jury commissioner shall prepare and keep a jury box and contents as prescribed in this subsection. The number of each juror must be written, typed, or stamped on a slip of paper or other suitable material, identical in all respects to the slips used for the other numbers. The slips must be placed in a box of ample size to permit them to be thoroughly mixed. The box must be plainly marked "jury box". The slips may be used as often as necessary, except that none may be used that is in any manner defaced or disfigured or so marked that it may be recognized or distinguished from the others in the jury box except by the number on the slip. The box may contain only one slip for each number corresponding to the number before the name of each juror on the jury list *filed under 3-15-403.*

(4) If a county uses a computer database for selection of jurors, the jury commissioner shall cause the list of jurors ~~prepared~~ *filed* under ~~the provisions of 3-15-402~~ *3-15-403* to be entered into a computerized database.

(5) A person's name may not appear on a jury list for more than one court during a 1-year term.

(6) The clerk of court shall prepare a list of persons to serve as trial jurors for the ensuing year for the district court or each division of the district court. On or before the second Monday of June, the clerk of court shall prepare the jury list pursuant to 46-17-202.

(7) If the clerk of court is satisfied that a person whose name is drawn is deceased, is mentally incompetent, has permanently moved from the county, or has been permanently excused under the provisions of 3-15-313, the person's name must be omitted from the jury list. The reason for the omission must be recorded.

3-15-404. (Effective October 1, 2007) Duty of jury commissioner — jury box or computer database. (1) The clerk of court is the jury commissioner and may appoint a deputy pursuant to 7-4-2401.

(2) A county jury commissioner may by order establish the use of either a jury box, as provided in subsection (3), or a computer database, as provided in subsection (4), as the means for selecting jurors in the county.

(3) If a county uses a jury box for selection of jurors, the jury commissioner shall prepare and keep a jury box and contents as prescribed in this subsection. The number of each juror must be written, typed, or stamped on a slip of paper or other suitable material, identical in all respects to the slips used for the other numbers. The slips must be placed in a box of ample size to permit them to be thoroughly mixed. The box must be plainly marked "jury box". The slips may be used as often as necessary, except that none may be used that is in any manner defaced or disfigured or so marked that it may be recognized or distinguished from the others in the jury box except by the number on the slip. The box may contain only one slip for each number corresponding to the number before the name of each juror on the jury list filed under 3-15-403.

(4) If a county uses a computer database for selection of jurors, the jury commissioner shall cause the list of jurors filed under 3-15-403 to be entered into a computerized database.

(5) A person's name may not appear on a jury list for more than one court during a 1-year term.

(6) The clerk of court shall prepare a ~~jury~~ list *of persons to serve as trial jurors for the ensuing year* for the district court or each division of the district court. *On or before the second Monday of June, the clerk of court shall prepare the jury list pursuant to 46-17-202.*

(7) If the clerk of court is satisfied that a person whose name is drawn is deceased, is mentally incompetent, ~~or~~ has permanently moved from the county*, or has been permanently excused under the provisions of 3-15-313*, the person's name must be omitted from the jury list. The reason for the omission must be ~~entered in the minutes of the court~~ *recorded*."

Section 4. Section 46-17-202, MCA, is amended to read:

"46-17-202. (Temporary) Formation of trial jury for justices', municipal, and city courts. (1) At the time of preparing the district court jury list *under 3-15-404(6)*, the ~~county commissioners and clerk and recorder~~ *clerk of the district court* shall prepare a jury list for each justice's, municipal, and city court within the county. Each list must consist of residents of the appropriate county, city, or town. The lists must be selected in any reasonable manner that ensures fairness, and each list must include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The lists must be filed in the office of the clerk of the district court *as provided in 3-15-403*. The appropriate list must be posted in a public place in each county, city, or town, and the list must comprise the trial jury list for the ensuing year for the county, city, or town.

(2) Trial jurors must be summoned from the jury list by notifying each one orally that the person is summoned and of the time and place at which attendance is required.

46-17-202. (Effective October 1, 2007) Formation of trial jury for justices', municipal, and city courts. (1) At the time of preparing the district court jury list under 3-15-404(6), the clerk of the district court shall prepare a jury list for each justice's, municipal, and city court within the county. Each list must consist of residents of the appropriate county, city, or town. The lists must be selected in any reasonable manner that ensures fairness, and each list must

include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The lists must be ~~kept on file~~ *filed* in the office of the clerk of the district court as provided in 3-15-403. The appropriate list must be posted in a public place in each county, city, or town, and the list must comprise the trial jury list for the ensuing year for the county, city, or town.

(2) Trial jurors must be summoned from the jury list by notifying each one orally that the person is summoned and of the time and place at which attendance is required."

Section 5. Section 61-5-127, MCA, is amended to read:

"61-5-127. (Effective October 1, 2007) Providing lists of licensed drivers and holders of Montana identification cards to clerks of district court — jury selection purposes. (1) On the second Monday of ~~May~~ *April* of each year, the department shall submit to the ~~clerk of the district court of each county~~ *secretary of state* a list, prepared from the department's databases of licensed drivers and holders of Montana identification cards, showing the name, address, and date of birth of all licensed drivers and holders of Montana identification cards, authorized by 61-12-501, who are 18 years of age or older and whose address is in that county. The list must be compiled on a county-by-county basis and be further divided by the city of residence of the persons named on the list to enable the drawing of lists for city courts that are composed of only those residents living within a city's jurisdiction. The list must be provided for the exclusive purpose of making a list of persons to serve as trial jurors for the ensuing year.

(2) The list submitted by the department under subsection (1) must be certified by the attorney general or the attorney general's designee.

(3) The department may not provide the social security or driver's license numbers of persons on the list for any purpose."

Section 6. Repealer. Section 3-15-401, MCA, is repealed.

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 5, 2007

CHAPTER NO. 134

[HB 397]

AN ACT PROVIDING THAT ANY PERSONAL PROPERTY THAT IS IN A MOTOR VEHICLE THAT IS SUBJECT TO A LIEN FOR SERVICES, TOWING, OR STORAGE IS ALSO SUBJECT TO THE LIEN, EXCEPT FOR CERTAIN ITEMS SPECIFICALLY EXEMPTED FROM THE LIEN; AND AMENDING SECTION 71-3-1201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-1201, MCA, is amended to read:

"71-3-1201. Who may have lien — agisters' lien — lien for service — towing and storage lien — *extension of lien to certain personal property contained in motor vehicle that is subject to a lien.* (1) (a) If there is an express or implied contract for keeping, feeding, herding, pasturing, or ranching stock, a rancher, farmer, agister, herder, hotelkeeper, livery, stablekeeper, or reproductive technology business to whom any horses, mules, cattle, sheep,

hogs, or other stock are entrusted has a lien upon the stock for the amount due for keeping, feeding, herding, pasturing, or ranching the stock or for providing a service listed in subsection (1)(b) and may retain possession of the stock until the sum due is paid.

(b) If there is an express or implied contract for collecting, processing, packaging, or storing embryos or semen from livestock provided for in this subsection (1), a reproductive technology business to whom embryos or semen is entrusted and who still has possession has a lien upon the embryos or semen for the amount due for collecting, processing, packaging, or storing the embryos or semen and may retain possession of the embryos or semen until the sum due is paid.

(2) *(a)* Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant of the article by labor or skill employed for the making, repairing, protection, improvement, safekeeping, carriage, towing, or storage of the article or tows or stores the article as directed under authority of law has a special lien on ~~it~~ *the article*. The lien is dependent on possession and is for the compensation, if any, that is due to the person from the owner or lawful claimant for the service and for material, if any, furnished in connection with the service. If the service is towing or storage, the lien is for the reasonable cost of the towing or storage.

(b) Any personal property that is in a motor vehicle that is subject to a lien, as provided in subsection (2)(a), is also subject to the lien, except for the following:

(i) food items;

(ii) perishable goods;

(iii) prescription items;

(iv) operators' licenses and other identifying documents;

(v) cash, credit cards, debit cards, checks, or checkbooks;

(vi) personal records, legal records, and business records;

(vii) child safety items; and

(viii) wallets, purses, bags, or other containers that contain the items listed in subsections (2)(b)(iv) through (2)(b)(vi)."

Approved April 5, 2007

CHAPTER NO. 135

[HB 412]

AN ACT ALLOWING PUBLIC BENEFIT CORPORATIONS TO MAKE TRANSACTIONS WITH MEMBERS, DIRECTORS, OR OFFICERS IF IN CONFORMITY WITH ITS CHARITABLE PURPOSES UPON CERTAIN CONDITIONS; AND AMENDING SECTION 35-2-1401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-2-1401, MCA, is amended to read:

"35-2-1401. Prohibited distributions — *permitted transactions.* *(1)* Except as authorized by 35-2-1402, a corporation may not make any distributions.

(2) A public benefit corporation may, subject to the requirements of Title 15, chapter 31, and this chapter, as applicable:

(a) pay reasonable compensation or reimburse reasonable expenses to members, directors, or officers for services rendered; and

(b) confer benefits upon or make contributions to members in conformity with its charitable purposes if after the transaction is completed:

(i) the corporation would be able to pay its debts as they become due in the usual course of its activities; and

(ii) the corporation's total assets would at least equal the sum of its total liabilities."

Approved April 5, 2007

CHAPTER NO. 136

[HB 497]

AN ACT PROVIDING THAT CERTIFICATION OF A PERSON AS DISABLED FOR PURPOSES OF OBTAINING A PERMIT TO HUNT FROM A VEHICLE MAY BE ENDORSED BY AN ADVANCED PRACTICE REGISTERED NURSE OR A LICENSED PHYSICIAN ASSISTANT AS WELL AS A LICENSED PHYSICIAN; AMENDING SECTION 87-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-803, MCA, is amended to read:

"87-2-803. Persons with disabilities — service members — definitions. (1) Persons with disabilities are entitled to fish and to hunt game birds, not including turkeys, with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule. A person who has purchased a conservation license and a resident fishing license or game bird license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the fishing license or game bird license previously purchased for that license year. A person who is certified as disabled pursuant to subsection (3) and who was issued a permit to hunt from a vehicle for license year 2000 or a subsequent license year is automatically entitled to a permit to hunt from a vehicle for subsequent license years if the criteria for obtaining a permit does not change.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase a Class A-3 deer A tag for $6.50 and a Class A-5 elk tag for $8. A person who has purchased a conservation license and a resident deer license or resident elk license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the deer license or elk license previously purchased and reissuance of the license for that license year at the rate established in this subsection.

(3) A person may be certified as disabled by the department and issued a permit to hunt from a vehicle, on a form prescribed by the department, if the person establishes one or more of the disabilities pursuant to subsection (9). The department shall adopt rules to establish a voluntary board or boards of review to resolve any disputes over whether a person meets the criteria established in

subsection (9). Each board must have at least one Montana-licensed physician as a member.

(4) A person with a disability carrying a permit to hunt from a vehicle, referred to in this subsection as a permitholder, may hunt by shooting a firearm from the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-101, except a state or federal highway, or may hunt by shooting a firearm from within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted. This subsection does not allow a permitholder to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner. A permitholder must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the permitholder by hunting a game animal that has been wounded by the permitholder when the permitholder is unable to pursue and kill the wounded game animal. Any vehicle from which a permitholder is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle, or as prescribed by the department.

(5) A veteran who meets the qualifications in subsection (9) as a result of a combat-connected injury may apply at a fish, wildlife, and parks office for a regular Class A-3 deer A tag, a Class A-4 deer B tag, a Class B-7 deer A tag, a Class B-8 deer B tag, and a special antelope license at one-half the license fee. Fifty licenses of each license type must be made available annually. Licenses issued to veterans under this part do not count against the number of special antelope licenses reserved for people with permanent disabilities, as provided in 87-2-706.

(6) (a) A resident of Montana who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of $10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure.

(b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses, in the manner provided in subsection (2), and must be accompanied by a companion, as provided in subsection (4).

(7) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.

(8) As used in this section, "disabled person", "person with a disability", or "disabled" means or refers to a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.

(9) A person is entitled to a permit to hunt from a vehicle if the person:

(a) is certified by a licensed physician*, an advanced practice registered nurse, or a licensed physician assistant* to be dependent on an oxygen device or dependent on a wheelchair, crutch, or cane for mobility;

(b) is an amputee above the wrist or ankle; or

(c) is certified by a licensed physician*, an advanced practice registered nurse, or a licensed physician assistant* to be unable to walk, unassisted, 600 yards over rough and broken ground while carrying 15 pounds within 1 hour and to be unable to handle and maneuver up to 25 pounds.

(10) Certification by a licensed physician*, an advanced practice registered nurse, or a licensed physician assistant* under subsection (9) must be on a form provided by the department.

(11) A person who disagrees with a determination of eligibility for a permit to hunt from a vehicle may request a review by a voluntary board of review pursuant to subsection (3).

(12) (a) A Montana resident who is a member of the Montana national guard or the federal reserve as provided in 10 U.S.C. 10101 or who was otherwise engaged in active duty and who participated in a contingency operation as provided in 10 U.S.C. 101(a)(13) that required the member to serve at least 6 months outside of the state, upon request and upon presentation of the documentation described in subsection (12)(b), must be issued a free resident wildlife conservation license or a Class AAA resident combination sports license, which may not include a bear license, for $29, plus the resident hunting access enhancement fee provided for in 87-2-202(3)(c), in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in the license year after the member's election. A member who participated in a contingency operation between September 11, 2001, and February 28, 2006, that required the member to serve at least 6 months outside of the state may make an election in 2006 or 2007 and be entitled to a free resident wildlife conservation license or a $25 Class AAA resident combination sports license in the year of election and the license year after the member's election.

(b) To be eligible for the free resident wildlife conservation license or reduced-rate Class AAA resident combination sports license provided for in subsection (12)(a), an applicant shall, in addition to the written application and proof of residency required in 87-2-202(1), provide to any regional department office or to the department headquarters in Helena, by mail or in person, the member's DD form 214 verifying the member's release or discharge from active duty. The applicant is responsible for providing documentation showing that the applicant participated in a contingency operation as provided in 10 U.S.C. 101(a)(13)."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 5, 2007

CHAPTER NO. 137

[HB 770]

AN ACT REVISING PROVISIONS RELATING TO CERTIFICATION OF A PERSON AS DISABLED FOR PURPOSES OF HUNTING FROM A VEHICLE; PROVIDING THAT THE BOARD OF MEDICAL EXAMINERS RATHER THAN A VOLUNTARY BOARD REVIEW DISABILITY CERTIFICATION DISAGREEMENTS; PROVIDING THAT WHEN A PERSON OR THE DEPARTMENT DISAGREES WITH A DETERMINATION OF ELIGIBILITY, A REQUEST MAY BE MADE FOR A REVIEW BY THE BOARD OF MEDICAL

EXAMINERS; AMENDING SECTIONS 37-3-203 AND 87-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-3-203, MCA, is amended to read:

"37-3-203. Powers and duties. The board may:

(1) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter. The rules must be fair, impartial, and nondiscriminatory.

(2) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(3) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter;

(4) establish a program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness; ~~and~~

(5) review certifications of disability and determinations of eligibility for a permit to hunt from a vehicle as provided in 87-2-803(11); and

~~(5)~~*(6)* fund additional staff, hired by the department, to administer the provisions of this chapter, by increasing license fees as necessary."

Section 2. Section 87-2-803, MCA, is amended to read:

"87-2-803. Persons with disabilities — service members — definitions. (1) Persons with disabilities are entitled to fish and to hunt game birds, not including turkeys, with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule. A person who has purchased a conservation license and a resident fishing license or game bird license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the fishing license or game bird license previously purchased for that license year. A person who is certified as disabled pursuant to subsection (3) and who was issued a permit to hunt from a vehicle for license year 2000 or a subsequent license year is automatically entitled to a permit to hunt from a vehicle for subsequent license years if the criteria for obtaining a permit does not change.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase a Class A-3 deer A tag for $6.50 and a Class A-5 elk tag for $8. A person who has purchased a conservation license and a resident deer license or resident elk license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the deer license or elk license previously purchased and reissuance of the license for that license year at the rate established in this subsection.

(3) A person may be certified as disabled by the department and issued a permit to hunt from a vehicle, on a form prescribed by the department, if the person establishes one or more of the disabilities pursuant to subsection (9). ~~The department shall adopt rules to establish a voluntary board or boards of review to resolve any disputes over whether a person meets the criteria established in subsection (9). Each board must have at least one Montana-licensed physician as a member.~~

(4) A person with a disability carrying a permit to hunt from a vehicle, referred to in this subsection as a permitholder, may hunt by shooting a firearm from the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-101, except a state or federal highway, or may hunt by shooting a firearm from within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted. This subsection does not allow a permitholder to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner. A permitholder must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the permitholder by hunting a game animal that has been wounded by the permitholder when the permitholder is unable to pursue and kill the wounded game animal. Any vehicle from which a permitholder is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle, or as prescribed by the department.

(5) A veteran who meets the qualifications in subsection (9) as a result of a combat-connected injury may apply at a fish, wildlife, and parks office for a regular Class A-3 deer A tag, a Class A-4 deer B tag, a Class B-7 deer A tag, a Class B-8 deer B tag, and a special antelope license at one-half the license fee. Fifty licenses of each license type must be made available annually. Licenses issued to veterans under this part do not count against the number of special antelope licenses reserved for people with permanent disabilities, as provided in 87-2-706.

(6) (a) A resident of Montana who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of $10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure.

(b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses, in the manner provided in subsection (2), and must be accompanied by a companion, as provided in subsection (4).

(7) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.

(8) As used in this section, "disabled person", "person with a disability", or "disabled" means or refers to a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.

(9) A person is entitled to a permit to hunt from a vehicle if the person:

(a) is certified by a licensed physician to be dependent on an oxygen device or dependent on a wheelchair, crutch, or cane for mobility;

(b) is an amputee above the wrist or ankle; or

(c) is certified by a licensed physician to be unable to walk, unassisted, 600 yards over rough and broken ground while carrying 15 pounds within 1 hour and to be unable to handle and maneuver up to 25 pounds.

(10) Certification by a licensed physician under subsection (9) must be on a form provided by the department.

(11) ~~A~~ *The department or a* person who disagrees with a determination of *disability or* eligibility for a permit to hunt from a vehicle may request a review by ~~a voluntary board of review pursuant to subsection (3)~~ *the board of medical examiners pursuant to 37-3-203.*

(12) (a) A Montana resident who is a member of the Montana national guard or the federal reserve as provided in 10 U.S.C. 10101 or who was otherwise engaged in active duty and who participated in a contingency operation as provided in 10 U.S.C. 101(a)(13) that required the member to serve at least 6 months outside of the state, upon request and upon presentation of the documentation described in subsection (12)(b), must be issued a free resident wildlife conservation license or a Class AAA resident combination sports license, which may not include a bear license, for $29, plus the resident hunting access enhancement fee provided for in 87-2-202(3)(c), in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in the license year after the member's election. A member who participated in a contingency operation between September 11, 2001, and February 28, 2006, that required the member to serve at least 6 months outside of the state may make an election in 2006 or 2007 and be entitled to a free resident wildlife conservation license or a $25 Class AAA resident combination sports license in the year of election and the license year after the member's election.

(b) To be eligible for the free resident wildlife conservation license or reduced-rate Class AAA resident combination sports license provided for in subsection (12)(a), an applicant shall, in addition to the written application and proof of residency required in 87-2-202(1), provide to any regional department office or to the department headquarters in Helena, by mail or in person, the member's DD form 214 verifying the member's release or discharge from active duty. The applicant is responsible for providing documentation showing that the applicant participated in a contingency operation as provided in 10 U.S.C. 101(a)(13)."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 5, 2007

CHAPTER NO. 138

[SB 116]

AN ACT PROVIDING IDENTITY THEFT PROTECTION; ALLOWING CONSUMERS TO LIMIT ACCESS TO THEIR OWN CREDIT REPORTS; REQUIRING IMPLEMENTATION PROCEDURES FOR CONSUMER REPORTING AGENCIES; PROVIDING FOR TEMPORARY LIFTING OF SECURITY FREEZES; REQUIRING NOTICES TO CONSUMERS ABOUT THE OPTION FOR A SECURITY FREEZE; PROVIDING EXEMPTIONS AND EXCEPTIONS; SETTING FEES; PROVIDING PENALTIES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 11], the following definitions apply:

(1) "Consumer" means an individual.

(2) "Consumer reporting agency" means any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information on consumers for the purpose of furnishing credit reports to a third party and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing credit reports.

(3) "Credit report" means any written, oral, or other communication of any information by a consumer reporting agency:

(a) bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and

(b) that is used or expected to be used in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

(i) credit to be used primarily for personal, family, or household purposes;

(ii) employment purposes; or

(iii) any other purpose authorized under 15 U.S.C. 1681(b).

(4) "Person" means an individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(5) "Proper identification" means information sufficient to verify identity.

(6) "Reviewing the account" or "account review" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(7) (a) "Security freeze" means a notice that:

(i) is placed in a consumer's credit report at the request of the consumer;

(ii) is subject to exceptions and exemptions provided in [section 9];

(iii) prohibits the consumer reporting agency from releasing all or any part of the consumer's credit report or credit score without the express authorization of the consumer, as provided in [section 4].

(b) A security freeze does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

Section 2. Placement of security freeze. A consumer may elect to place a security freeze on the consumer's own credit report by making a request:

(1) in writing by regular or certified mail to a consumer reporting agency at an address designated by the consumer reporting agency to receive the request; or

(2) directly to the consumer reporting agency through a secure electronic connection specified by the consumer reporting agency by January 31, 2009.

Section 3. Consumer reporting agency requirements. (1) Except as provided in subsection (2), a consumer reporting agency shall place a security freeze on a consumer's credit report no later than 5 business days after receiving from the consumer:

(a) a written or electronic request, as provided in [section 2];

(b) proper identification; and

(c) a fee, if applicable.

(2) If a consumer who has been the victim of identity theft, as prescribed by 45-6-332, requests a security freeze, the consumer reporting agency shall place a security freeze on the consumer's credit report no later than 24 hours after receiving notice as provided in [section 2] and a valid police report, investigative report, or complaint that the consumer has filed with a law enforcement agency.

(3) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within 5 business days of placing the security freeze and at the same time shall provide the consumer with a unique personal identification number, password, or similar device to be used by the consumer when providing authorization for a release of the consumer's credit for a specific party or period of time, as provided in [section 4].

(4) A consumer reporting agency may not suggest or otherwise state or imply to a third party that the consumer's security freeze reflects a negative credit score, history, report, or rating.

Section 4. Temporary lifting of security freeze — consumer requirements — consumer reporting agency duties — notification. (1) A consumer who wishes to allow access to the consumer's own credit report by a specific party or for a specific period of time while a security freeze is in place shall contact each consumer reporting agency, using a point of contact designated by the consumer reporting agency by regular or certified mail, telephone, or a secure electronic connection, request that the security freeze be temporarily lifted, and provide all of the following:

(a) proper identification;

(b) the unique personal identification number, password, or device provided by the consumer reporting agency pursuant to [section 3(3)];

(c) the proper information regarding the third party who is to receive the credit report or the time period for which the credit report is to be available to users of the credit report; and

(d) a fee, if applicable.

(2) (a) Except as provided in subsection (2)(b), a consumer reporting agency that receives a request from a consumer to temporarily lift a security freeze on a credit report as provided in subsection (1) shall comply with the request no later than 3 business days after receiving the request.

(b) By no later than January 31, 2009, a consumer reporting agency shall honor a request for the temporary lifting of a security freeze made by telephone or through a secure electronic connection designated by the consumer reporting agency within 15 minutes of receiving the request unless one of the following circumstances applies:

(i) the consumer fails to meet the requirements of subsections (1)(a) through (1)(c); or

(ii) the consumer reporting agency's ability to remove the security freeze within 15 minutes is prevented by:

(A) a natural disaster or act of God, including fire, earthquake, or hurricane;

(B) unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, or a labor strike or similar labor dispute disrupting operations;

(C) operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, or computer hardware or software failures inhibiting response time;

(D) governmental action, including emergency orders or regulations or judicial or law enforcement action;

(E) receipt of a removal request outside of normal business hours; or

(F) maintenance of, updates to, or repair of the consumer reporting agency's systems, whether regularly scheduled or unexpected or unscheduled.

(c) For the purposes of this section, "normal business hours" means from 6 a.m. to 9:30 p.m., mountain standard time or mountain daylight time, seven days a week, excluding holidays.

(3) A consumer reporting agency shall:

(a) designate the contact address and telephone number along with a telefax number or appropriate electronic access address when providing the unique personal identification number, password, or other device as provided in [section 3(3)]; and

(b) develop procedures to implement this section by January 31, 2009, involving the use of telephone, telefax, or electronic connection, using a process for legally required notices provided for in the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001.

(4) Only the attorney general may enforce the provisions of this section related to a failure to comply with the 15-minute requirement for the temporary lifting of a security freeze.

Section 5. Consumer reporting agency security freeze removal procedures — notification. (1) A consumer reporting agency shall remove or temporarily lift a security freeze placed on a credit report:

(a) upon the consumer's request pursuant to [section 4] or [section 7]; or

(b) if the consumer reporting agency determines that the consumer made a material misrepresentation of fact when requesting the security freeze.

(2) When a consumer reporting agency removes a security freeze as provided in subsection (1)(b), the consumer reporting agency shall notify the consumer in writing at least 5 business days prior to removing the security freeze on the credit report.

Section 6. Third-party contacts. If a third party not enumerated in [section 9(1)] requests for the purpose of an application access to a credit report on which a security freeze is in effect and the consumer has not provided a temporary lifting of a security freeze for that specific party or a period of time, the third party may treat the application as incomplete.

Section 7. Security freeze removal procedure. (1) A security freeze must remain in place until the consumer requests that the security freeze be removed or temporarily lifted as provided in [section 4].

(2) After receiving a request from the consumer to remove a security freeze, a consumer reporting agency shall remove the security freeze within 3 business days of receiving a removal request at the point of contact designated by the consumer reporting agency if the consumer provides the following:

(a) proper identification; and

(b) the unique personal identification number, password, or other device provided by the consumer reporting agency pursuant to [section 3(3)].

Section 8. Notice of rights. A consumer reporting agency shall provide a notice of rights as stated below at any time that a consumer is required to receive a summary of rights required under 15 U.S.C. 1681(g) of the Fair Credit Reporting Act.

NOTICE OF RIGHTS: Montana Consumers
Have the Right to Obtain a Security Freeze

You may obtain a security freeze on your credit report to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a security freeze on your credit report pursuant to Montana law.

The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization or approval.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. When you place a security freeze on your credit report, within 5 business days you will be provided a personal identification number, password, or other device to use if you choose to remove the security freeze on your credit report or to temporarily authorize the release of your credit report for a specific party, parties, or period of time after the security freeze is in place. To provide that authorization, you shall contact the consumer reporting agency and provide all of the following:

(1) the unique personal identification number, password, or other device provided by the consumer reporting agency;

(2) the proper identification to verify your identity;

(3) the proper information regarding the third party or parties who are to receive the credit report or the period of time for which the credit report is to be available to users of the credit report; and

(4) a fee, if applicable.

A consumer reporting agency that receives a request from a consumer to temporarily lift a security freeze on a credit report shall comply no later than 3 business days after receiving the request or, after January 31, 2009, within 15 minutes of receiving a request by telephone or through a secure electronic connection.

A security freeze does not apply to circumstances in which you have an existing account relationship and a copy of your credit report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action may be brought against a consumer reporting agency or a user of your credit report.

Section 9. Exceptions — exemptions. (1) The provisions of [sections 1 through 8] and [section 10] do not apply to the following for the purposes of accessing or using a credit report:

(a) a person or the person's subsidiary, affiliate, agent, or assignee with which the consumer has, or prior to assignment had, an account, contract, or debtor-creditor relationship when using a credit report for the purposes of

reviewing the account or collecting the financial obligation owing for the account, contract, or debt;

(b) a subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted to a credit report under [section 4] for purposes of facilitating the extension of credit or other permissible use;

(c) any person using a credit report and acting pursuant to a court order, warrant, or subpoena;

(d) any federal, state, or local agency that administers a program for establishing and enforcing child support obligations;

(e) any federal, state, or local agency or its agents or assigns acting to investigate fraud;

(f) any federal, state, or local agency or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities;

(g) a person for use of a credit report for the purpose of prescreening as described by the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.;

(h) a person or entity administering a credit file monitoring subscription or similar service to which the consumer has subscribed;

(i) a person or entity for the purpose of providing a consumer with a copy of the consumer's own credit report or score and upon the consumer's request;

(j) a person or entity regulated under Title 33; or

(k) a consumer reporting agency for its database or file that consists entirely of information concerning, and used solely for, one or more of the following: criminal record information, tenant screening, employment screening, fraud prevention or detection, or personal loss history information.

(2) The following entities are exempt from placing a security freeze on a credit report:

(a) a check services company or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments;

(b) a deposit account information service company that issues reports regarding account closures because of fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution; or

(c) a consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple consumer reporting agencies and that does not maintain a permanent database of credit information from which new credit reports are produced. However, a consumer reporting agency acting as a reseller shall honor any security freeze placed on a credit report by another consumer reporting agency.

Section 10. Fees. (1) Except as provided in subsection (2), a consumer reporting agency may charge an administrative fee, not to exceed $3, to a consumer for each security freeze or temporary lifting of a security freeze as provided in [section 4], but not for removal of a security freeze as provided in [section 7].

(2) A consumer reporting agency may not charge a fee under [section 3] to a consumer who has been the victim of identity theft and who has submitted to the consumer reporting agency a valid police report, an investigative report, or complaint that the consumer has filed with a law enforcement agency.

(3) A consumer may be charged a reasonable fee, not to exceed $5, if the consumer fails to retain the original personal identification number, password, or other device provided by the consumer reporting agency and if the consumer asks the consumer reporting agency to reissue the same or a new personal identification number, password, or other device.

Section 11. Violations — penalties. (1) A person who willfully fails to comply with any requirements imposed in [sections 2 through 10] with respect to a consumer is liable to that consumer in an amount equal to the sum of:

(a) any actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000; or

(b) punitive damages in an amount that the court may allow; and

(c) the costs of the action together with reasonable attorney fees as determined by the court in the case of a successful action to enforce liability under this section.

(2) A person who obtains a credit report or requests a security freeze, the temporary lifting of a security freeze, or the removal of a security freeze from a consumer reporting agency under false pretenses or in an attempt to violate federal or state law is liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or $1,000, whichever is greater.

(3) A person who negligently fails to comply with any requirement imposed in [sections 2 through 10] with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(a) any actual damages sustained by the consumer as a result of the failure; and

(b) the costs of the action together with reasonable attorney fees as determined by the court in the case of a successful action to enforce liability under this section.

(4) If a court finds that an unsuccessful pleading, motion, or other paper filed under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party reasonable attorney fees as determined by the court.

Section 12. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 13. Codification instruction. [Sections 1 through 11] are intended to be codified as an integral part of Title 30, chapter 14, part 17, and the provisions of Title 30, chapter 14, part 17, apply to [sections 1 through 11].

Section 14. Effective date. [This act] is effective July 1, 2007.

Approved April 5, 2007

CHAPTER NO. 139

[SB 119]

AN ACT CLARIFYING THE EXCHANGE OF YOUTH COURT RECORD INFORMATION WITH CERTAIN FACILITIES IN WHICH A YOUTH IS PLACED; AND AMENDING SECTION 41-5-216, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-216, MCA, is amended to read:

"41-5-216. Disposition of youth court, law enforcement, and department records. (1) Formal youth court records, law enforcement records, and department records that are not exempt from sealing under subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed on the youth's 18th birthday. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, records referred to in 42-3-203, or reports referred to in 45-5-624(7).

(5) After formal youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits a new offense, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

(6) (a) When formal youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the department of public health and human services and by the department relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

(b) The department of public health and human services and the department shall disassociate the offense and disposition information from the name of the youth in the respective management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the department of public health and human services or by the department and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may ~~only~~ be inspected *only* pursuant to subsection (5).

(b) The informal youth court records may be maintained and inspected only by youth court personnel upon a new offense prior to the youth's 18th birthday.

(c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended supervision ends and the youth was ~~only~~ involved in informal proceedings *only*, informal youth court records that are in hard-copy form must be destroyed and any electronic records in the youth court management information system must disassociate the offense and disposition information from the name of the youth and may be used only for the following purposes:

(i) for research and program evaluation authorized by the office of the court administrator and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(8) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth court records within the juvenile probation management information system. Electronic records of the youth court may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) *of this section*.

(9) ~~Nothing in this~~ *This* section ~~prohibits~~ *does not prohibit* the intra-agency use or information sharing of formal or informal youth court records within the department's youth management information system. Electronic records of the department's youth management information system may not be shared except as provided in subsection (5). If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

(10) This section does not prohibit the sharing of formal or informal youth court records with a short-term detention center, a youth care facility, a youth assessment center, or a youth detention facility upon placement of a youth within the facility."

Approved April 5, 2007

CHAPTER NO. 140

[SB 124]

AN ACT PROVIDING FOR THE COSTS OF THE MENTAL HEALTH EXAMINATION AND COMMITMENT OF A CRIMINAL DEFENDANT; PROVIDING THAT COSTS FOR THE EXAMINATION, CARE, CUSTODY, AND TREATMENT OF A CRIMINAL DEFENDANT FOR WHICH THE LEGISLATURE HAS MADE A GENERAL FUND APPROPRIATION MAY NOT BE CHARGED TO THE OFFICE OF COURT ADMINISTRATOR OR THE OFFICE OF STATE PUBLIC DEFENDER; AMENDING SECTIONS 3-5-901, 46-14-202, AND 46-14-221, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-901, MCA, is amended to read:

"3-5-901. State assumption of district court expenses. (1) There is a state-funded district court program under the judicial branch. Under this program, the office of court administrator shall fund all district court costs, except as provided in subsection (3). These costs include but are not limited to the following:

(a) salaries and benefits for:

(i) district court judges;

(ii) law clerks;

(iii) court reporters, as provided in 3-5-601;

(iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and

(v) other employees of the district court;

(b) in criminal cases:

(i) fees for transcripts of proceedings, as provided in 3-5-604;

(ii) witness fees and necessary expenses, as provided in 46-15-116;

(iii) juror fees and necessary expenses;

(iv) for a psychiatric ~~evaluation~~ *examination* under 46-14-202, the cost of the examination and other associated expenses, as provided in 46-14-202(4)~~(a)(i) and (4)(a)(iii)~~; and

(v) for ~~a psychiatric evaluation~~ *commitment* under 46-14-221, the cost of ~~the examination and other associated expenses,~~ *transporting the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate facility of the department of public health and human services and of transporting the defendant back for any proceedings,* as provided in 46-14-221(5);

(c) except as provided in 47-1-201(5), the district court expenses in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;

(d) except as provided in 47-1-201(5), the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations;

(e) except as provided in 47-1-201(5), the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

(i) transcript fees;

(ii) witness fees;

(iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;

(iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and

(v) expenses associated with court-ordered alternative dispute resolution;

(f) except as provided in 47-1-201(5), costs of juror and witness fees and witness expenses before a grand jury;

(g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

(h) except as provided in 47-1-201(5), all district court expenses associated with civil jury trials if similar expenses were paid out of the district court fund or the county general fund in any previous year;

(i) all other costs associated with the operation and maintenance of the district court, including contract costs for court reporters who are independent contractors; and

(j) costs associated with the operation and maintenance of the youth court and youth court division operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by other entities identified in Title 41, chapter 5.

(2) If a cost is not paid directly by the office of court administrator, the county shall pay the cost and the office of court administrator shall reimburse the county within 30 days of receipt of a claim.

(3) For the purposes of subsection (1), district court costs paid by the office of court administrator do not include:

(a) costs for clerks of district court and employees and expenses of the offices of the clerks of district court;

(b) costs of providing and maintaining district court office space; or

(c) charges incurred against a county by virtue of any provision of Title 7 or 46."

Section 2. Section 46-14-202, MCA, is amended to read:

"46-14-202. Examination of defendant. (1) If the defendant or the defendant's counsel files a written motion requesting an examination or if the

issue of the defendant's fitness to proceed is raised by the ~~district~~ court, prosecution, or defense counsel, the ~~district~~ court shall appoint at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse or shall request the superintendent of the Montana state hospital to designate at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse, who may be or include the superintendent, to examine and report upon the defendant's mental condition.

(2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding 60 days or a longer period that the court determines to be necessary for the purpose and may direct that a qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination, any method may be employed that is accepted by the medical or psychological profession for the examination of those alleged to be suffering from mental disease or defect.

(4) (a) The costs incurred for an examination ordered under subsection (2) must be paid as follows:

(i) if the issue of the defendant's fitness to proceed was raised by the ~~district~~ court or the examination was requested by the prosecution, the cost of the examination and other associated expenses must be paid *by the court or, in district court proceedings,* by the office of court administrator, ~~as provided in 3-5-901~~ *except as provided in subsection (4)(a)(iv)*;

(ii) if ~~the defendant was represented by an attorney assigned pursuant to the Montana Public Defender Act, Title 47, chapter 1, and~~ the examination was requested by the defendant or the defendant's counsel, the cost of the examination and other associated expenses must be paid by *the defendant or, if the defendant was represented by an attorney pursuant to the Montana Public Defender Act, Title 47, chapter 1, by* the office of state public defender*, except as provided by subsection (4)(a)(iv)*;

(iii) if ~~the defendant was represented by an attorney assigned pursuant to the Montana Public Defender Act, Title 47, chapter 1, and~~ the examination was jointly requested by the prosecution and defense counsel or the need for the examination was jointly agreed to by the prosecution and defense, the cost of the examination and other associated expenses must be divided and paid equally by the *court or, in district court proceedings, by the* office of court administrator*,* and *the defendant or, if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender Act, Title 47, chapter 1, by* the office of state public defender*, except as provided in subsection (4)(a)(iv)*~~.~~*;*

(iv) any costs for an examination performed by an employee of the department of public health and human services, any other associated expenses at a facility of the department of public health and human services, and any other associated expenses for which the legislature has made a general fund appropriation to the department of public health and human services may not be charged to the office of court administrator or the office of state public defender.

(b) For purposes of this subsection (4), "other associated expenses" means the following costs incurred in association with the commitment to a hospital or other suitable facility for the purpose of examination, regardless of whether the examination is done at the Montana state hospital or any other facility:

(i) the expenses of transporting the defendant from the place of detention to the place where the examination is performed and returning the defendant to detention, including personnel costs of the law enforcement agency by whom the defendant is detained;

(ii) housing expenses of the facility where the examination is performed; and

(iii) medical costs, including medical and dental care, including costs of medication."

Section 3. Section 46-14-221, MCA, is amended to read:

"46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses. (1) The issue of the defendant's fitness to proceed may be raised by the court, by the defendant or the defendant's counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If neither the prosecutor nor the defendant's counsel contests the finding of the report filed under 46-14-206, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) (a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility, as defined in 53-21-102, or residential facility, as defined in 53-20-102, of the department of public health and human services for so long as the unfitness endures or until disposition of the defendant is made pursuant to this section, whichever occurs first.

(b) The facility shall develop an individualized treatment plan to assist the defendant to gain fitness to proceed. The treatment plan may include a physician's prescription of reasonable and appropriate medication that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan, the facility may petition the court for an order requiring compliance. The defendant has a right to a hearing on the petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific findings that the state has proved an overriding justification for the order and that the treatment being ordered is medically appropriate.

(3) (a) The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in subsection (4).

(b) If the court determines that the defendant lacks fitness to proceed because the defendant has a mental disorder, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 21, to determine the disposition of the defendant pursuant to those provisions.

(c) If the court determines that the defendant lacks fitness to proceed because the defendant has a developmental disability as defined in 53-20-102, the proceeding against the defendant must be dismissed and the prosecutor

shall petition the court in the manner provided in Title 53, chapter 20, to determine the disposition of the defendant pursuant to those provisions.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution that is susceptible to fair determination prior to trial and that is made without the personal participation of the defendant.

(5) ~~The~~ *Except as provided in subsection (6), the* expenses of ~~sending~~ *transporting* the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate facility of the department of public health and human services, of ~~keeping the defendant there~~ *the care, custody, and treatment of the defendant at the facility*, and of ~~bringing~~ *transporting* the defendant back are payable by the *court or, in district court proceedings, by the* office of court administrator ~~as a district court expense as provided for in 3-5-901~~.

(6) The cost of care, custody, and treatment at a facility for which the legislature has made a general fund appropriation to the department of public health and human services may not be charged to the office of court administrator."

Section 4. Effective date. [This act] is effective July 1, 2007.

Approved April 5, 2007

CHAPTER NO. 141

[SB 141]

AN ACT CLARIFYING WHEN PHOTOGRAPHS AND FINGERPRINTS TAKEN IN CRIMINAL CASES MUST BE RETURNED TO THE INDIVIDUAL FROM WHOM THEY WERE TAKEN; AND AMENDING SECTION 44-5-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-5-202, MCA, is amended to read:

"44-5-202. Photographs and fingerprints. (1) The following agencies may, if authorized by subsections (2) through (5), collect, process, and preserve photographs and fingerprints:

(a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office, or both;

(b) the department of corrections; and

(c) the department of justice.

(2) The department of corrections may photograph and fingerprint anyone under the jurisdiction of the division of corrections or its successor.

(3) A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person who has been arrested or noticed or summoned to appear to answer an information or indictment if:

(a) the charge is the commission of a felony;

(b) the identification of an accused is in issue; or

(c) it is required to do so by court order.

(4) Whenever a person charged with the commission of a felony is not arrested, the person shall appear before the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at the time of initial appearance in court to answer the information or indictment against the person.

(5) A criminal justice agency described in subsection (1)(a) may photograph and fingerprint an accused if the accused has been arrested for the commission of a misdemeanor, except that an individual arrested for a traffic, regulatory, or fish and game offense may not be photographed or fingerprinted unless the individual is incarcerated.

(6) Within 10 days, the originating agency shall send the state repository a copy of each fingerprint taken on a completed form provided by the state repository.

(7) The state repository shall compare the fingerprints received with those already on file in the state repository. If it is determined that the individual is wanted or is a fugitive from justice, the state repository shall at once inform the originating agency. If it is determined that the individual has a criminal record, the state repository shall send the originating agency a copy of the individual's complete criminal history record.

(8) ~~Photographs~~ *If an individual is released without the filing of charges, if the charges did not result in a conviction, or if a conviction is later invalidated, photographs* and fingerprints taken must be returned by the state repository to the originating agency, which shall return all copies to the individual from whom they were taken, in the following circumstances:

(a) upon order of the court that had jurisdiction; or

(b) upon the request of the individual ~~when the individual was released without the filing of charges or when the charges did not result in a conviction~~."

Approved April 5, 2007

CHAPTER NO. 142

[SB 178]

AN ACT REMOVING THE REFERENCE TO MILLTOWN DAM IN THE DEFINITION OF THE UPPER CLARK FORK RIVER BASIN.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-335, MCA, is amended to read:

"85-2-335. Definitions. Unless the context requires otherwise, in 85-2-335 through 85-2-338, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302.

(2) "Upper Clark Fork River basin" means the drainage area of the Clark Fork River *and the Blackfoot River* and ~~its~~ *their* tributaries above ~~Milltown dam~~ *the confluence of the Clark Fork River and the Blackfoot River*."

Approved April 5, 2007

CHAPTER NO. 143

[SB 208]

AN ACT INSTRUCTING MOTORISTS TO MAKE A COMPLETE STOP, AS IF AT A STOP SIGN, WHEN A TRAFFIC LIGHT IS INOPERATIVE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Inoperable traffic control device. An operator of a vehicle approaching an intersection in which an electronic traffic control device is inoperative shall stop in the manner prescribed in 61-8-344, except when directed to proceed by a police officer, highway patrol officer, or traffic control signal.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 2, and the provisions of Title 61, chapter 8, part 2, apply to [section 1].

Approved April 5, 2007

CHAPTER NO. 144

[SB 239]

AN ACT ALLOWING ACTIVE DUTY MEMBERS OF THE UNITED STATES ARMED FORCES TO RENEW THEIR DRIVER'S LICENSE AT ANY TIME TO REMAIN VALID UNTIL 30 DAYS AFTER DISCHARGE FROM THE SERVICE; ALLOWING FOR A MONTANA DRIVER'S LICENSE TO BE ISSUED TO A MEMBER OF THE UNITED STATES ARMED SERVICES TO REMAIN VALID UNTIL 30 DAYS AFTER DISCHARGE FROM THE SERVICE; AND AMENDING SECTION 61-5-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-104, MCA, is amended to read:

"61-5-104. Exemptions. (1) The following persons are exempt from licensure under this chapter:

(a) a person who is a member of the armed forces of the United States while operating a motor vehicle owned by or leased to the United States government and being operated on official business;

(b) a person who is a member of the armed forces of the United States on active duty in Montana who holds a valid license issued by another state and the spouse of the person who holds a valid license issued by another state and who is not employed in Montana, except as a member of the armed forces. If a spouse of a member of the armed forces becomes gainfully employed in Montana, the spouse must be licensed, as required by 61-5-102, within 90 days of becoming employed.

(c) a person on active duty in the armed forces of the United States and in immediate possession of a valid license issued to that person in a foreign country by the armed forces of the United States, for a period of 45 days from the date of the person's return to the United States;

(d) a person who temporarily drives, operates, or moves a road machine, farm tractor, as defined in 61-9-102, or implement of husbandry for use in intrastate commerce on a highway;

(e) a person who is a locomotive engineer, assistant engineer, conductor, brake tender, railroad utility person, or other member of the crew of a railroad locomotive or train being operated upon rails, including operation on a railroad crossing a public street, road, or highway. A person employed as described in this subsection is not required to display a driver's license to a law enforcement officer in connection with the operation of a railroad train within Montana.

(f) a person who temporarily drives, operates, or moves an off-highway vehicle on a forest development road in this state, as defined in 61-8-110, that has been designated and approved for off-highway vehicle use by the United States forest service if the person:

(i) is under 16 years of age but at least 12 years of age; and

(ii) at the time of driving, operating, or moving the off-highway vehicle, has in the person's possession a certificate showing the successful completion of an off-highway vehicle safety education course approved by the department of fish, wildlife, and parks and is in the physical presence of a person who possesses a license issued under this chapter.

(2) A nonresident who is at least 15 years of age and who is in immediate possession of a valid operator's license issued to the nonresident by the nonresident's home state or country may operate a motor vehicle, except a commercial motor vehicle, in this state.

(3) (a) A nonresident who is in immediate possession of a valid commercial driver's license issued to the nonresident by the nonresident's home jurisdiction, in accordance with the licensing and testing standards of 49 CFR, part 383, may operate a commercial motor vehicle in this state.

(b) For the purpose of this chapter, "jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, a province or territory of Canada, or the federal district of Mexico.

(4) A nonresident who is at least 18 years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than 90 days in any calendar year, if the motor vehicle is registered in the home state or country of the nonresident.

(5) *(a)* A driver's license issued under this chapter to a person who enters the United States armed forces, if valid and in effect at the time that the person enters the service, continues in effect so long as the service continues, unless the license is suspended, revoked, or canceled for a cause as provided by law, and for up to 30 days following the date on which the licensee is honorably separated from the service. ~~During the 30-day period, the license is valid only when the license and the licensee's discharge, separation, leave, or furlough papers are in the licensee's immediate possession.~~

(b) A person serving in the United States armed forces may renew the person's driver's license at any point of the person's service, and any renewed license continues in effect as long as the service continues, unless the license is suspended, revoked, or canceled for a cause as provided by law, and for up to 30 days following the date on which the licensee is honorably separated from the service.

(c) A person serving in the United States armed forces may apply for a Montana driver's license upon meeting the requirements in 61-5-103, and this license continues in effect as long as the service continues, unless the license is suspended, revoked, or canceled for a cause as provided by law, and for up to 30

days following the date on which the licensee is honorably separated from the service."

Approved April 5, 2007

CHAPTER NO. 145

[SB 322]

AN ACT REVISING THE LAWS RELATING TO DRIVERS INVOLVED IN HIT-AND-RUN ACCIDENTS INVOLVING DEATH OR PERSONAL INJURIES; INCREASING THE PENALTY FROM A MISDEMEANOR TO A FELONY AND REQUIRING REVOCATION OF A LICENSE OR PERMIT TO DRIVE FOR A PERIOD OF 2 YEARS IN CERTAIN CASES; AND AMENDING SECTIONS 61-5-205 AND 61-7-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-205, MCA, is amended to read:

"61-5-205. Mandatory revocation or suspension of license upon certain convictions — duration of action — exceptions. (1) The department shall revoke an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

(a) negligent homicide resulting from the operation of a motor vehicle;

(b) any felony in the commission of which a motor vehicle is used;

(c) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(d) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(e) fleeing from or eluding a peace officer; or

(f) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

(2) The department shall suspend an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

(a) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or operating a motor vehicle with a blood alcohol concentration of 0.08 or more;

(b) three reckless driving offenses committed within a period of 12 months; or

(c) a theft offense under 45-6-301 if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense.

(3) A revocation under ~~subsection~~ *subsections* (1)*(a), (1)(b), and (1)(d) through (1)(f)* must be for a period of 1 year. *A revocation under subsection (1)(c) must be for a period of 2 years if the offender received a felony conviction under 61-7-103.*

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a suspension under subsection (2) must be for a period of 1 year.

(b) A suspension under subsection (2)(a) must be for the period set forth in 61-5-208(2)(b).

(c) A suspension under subsection (2)(c) must be for one of the following periods:

(i) 30 days for a first offense;

(ii) 6 months for a second offense; and

(iii) 1 year for a third or subsequent offense."

Section 2. Section 61-7-103, MCA, is amended to read:

"61-7-103. Accidents involving death or personal injuries. (1) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop the vehicle at the scene of the accident or as close to the accident as possible but shall then return to and in every event remain at the scene of the accident until the driver has fulfilled the requirements of 61-7-105. Each stop at the scene of the accident must be made without obstructing traffic more than is necessary.

(2) *(a)* ~~A~~ *Except as provided in subsection (2)(b), a* driver failing to stop or to comply with the requirements of subsection (1) shall upon conviction be punished by imprisonment for *a term of* not ~~less than 30 days or more than 1 year~~ *less than 30 days or more than 1 year*, by a fine ~~of not less than $100 or more than $5,000~~ *of not less than $100 or more than $5,000*, or by both fine and imprisonment.

(b) If the accident resulted in serious bodily injury or death of any person, a driver failing to stop or to comply with the requirements of subsection (1) shall upon conviction be punished by imprisonment in the state prison for a term of not less than 1 year or more than 10 years, by a fine in an amount not to exceed $50,000, or by both fine and imprisonment.

(3) The department shall revoke the license or permit to drive of any resident and any nonresident operating privilege of a person convicted of violating this section for the period prescribed in 61-5-205."

Approved April 5, 2007

CHAPTER NO. 146

[SB 328]

AN ACT ESTABLISHING AN OPTIONAL PROCUREMENT EXCEPTION APPLICABLE TO THE PURCHASE OF MONTANA-PRODUCED FOOD PRODUCTS BY GOVERNMENTAL BODIES; CLARIFYING TERMINOLOGY; AMENDING SECTION 18-4-132, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-4-132, MCA, is amended to read:

"18-4-132. Application. (1) This chapter applies to*:*

(a) the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body

under any contract, except a contract exempted from this chapter by this section or by ~~a~~ *another* statute ~~that provides that this chapter does not apply to the contract. This chapter applies to~~*;*

(b) a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state~~. This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to~~*; and*

(c) the disposal of state supplies.

(2) This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

~~(2)~~*(3)* This chapter does not apply to*:*

(a) either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4;

(b) construction contracts~~.~~*;*

~~(3)~~*(c)* ~~This chapter does not apply to~~ expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system~~.~~*;*

~~(4)~~*(d)* ~~This chapter does not apply to~~ contracts entered into by the Montana state lottery that have an aggregate value of less than $250,000~~.~~*;*

~~(5)~~*(e)* ~~This chapter does not apply to~~ contracts entered into by the state compensation insurance fund to procure insurance-related services~~.~~*;*

~~(6)~~*(f)* ~~This chapter does not apply to~~ employment of:

~~(a)~~*(i)* a registered professional engineer, surveyor, real estate appraiser, or registered architect;

~~(b)~~*(ii)* a physician, dentist, pharmacist, or other medical, dental, or health care provider;

~~(c)~~*(iii)* an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

~~(d)~~*(iv)* consulting actuaries;

~~(e)~~*(v)* a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

~~(f)~~*(vi)* a private consultant employed by the Montana state lottery;

~~(g)~~*(vii)* a private investigator licensed by any jurisdiction;

~~(h)~~*(viii)* a claims adjuster; or

~~(i)~~*(ix)* a court reporter appointed as an independent contractor under 3-5-601~~.~~*;*

~~(7)~~*(g)* ~~(a) This chapter does not apply to~~ electrical energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201.

~~(b)~~ Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure.

~~(8)~~*(h)* ~~This chapter does not apply to~~ the purchase or commission of art for a museum or public display~~.~~*; or*

~~(9)~~*(i)* ~~This chapter does not apply to~~ contracting under 47-1-216 of the Montana Public Defender Act.

(4) (a) Food products produced in Montana may be procured by either standard procurement procedures or by direct purchase. Montana-produced food products may be procured by direct purchase when:

(i) the quality of available Montana-produced food products is substantially equivalent to the quality of similar food products produced outside the state;

(ii) a vendor is able to supply Montana-produced food products in sufficient quantity; and

(iii) a bid for Montana-produced food products either does not exceed or reasonably exceeds the lowest bid or price quoted for similar food products produced outside the state. A bid reasonably exceeds the lowest bid or price quoted when, in the discretion of the person charged by law with the duty to purchase food products for a governmental body, the higher bid is reasonable and capable of being paid out of that governmental body's existing budget without any further supplemental or additional appropriation.

(b) The department shall adopt any rules necessary to administer the optional procurement exception established in this subsection (4).

(5) As used in this section, the following definitions apply:

(a) "Food" means articles normally used by humans as food or drink, including articles used for components of articles normally used by humans as food or drink.

(b) "Produced" means planted, cultivated, grown, harvested, raised, collected, processed, or manufactured."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to contracts for the purchase of food products by governmental bodies that are opened to bidding or direct purchase on or after [the effective date of this act].

Approved April 5, 2007

CHAPTER NO. 147

[SB 385]

AN ACT CRIMINALIZING SUBJECTING ANOTHER TO INVOLUNTARY SERVITUDE AND TRAFFICKING IN PERSONS FOR INVOLUNTARY SERVITUDE; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature recognizes that there is a phenomenon of modern-day slavery, often termed "trafficking in persons", in which traffickers use coercive tactics to obtain and maintain the labor and services of their victims; and

WHEREAS, the Legislature is concerned that the disparate parts of the criminal code may not be clear as to their application to the phenomenon of trafficking in persons and may not reflect current understanding of slavery and trafficking in persons; and

WHEREAS, it may not be clear to prosecutors that behaviors such as kidnapping or prostitution are crimes related to trafficking in persons; and

WHEREAS, the Legislature wishes to address the problem of trafficking in persons and clarify that behaviors that are trafficking in persons be charged as such by prosecutors; and

WHEREAS, the Congress of the United States has enacted criminal provisions specific to trafficking in persons, including the Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. 7101, et seq.; and

WHEREAS, having state and federal criminal laws overlap allows for more prosecutions to be brought, allows local prosecutors to respond most appropriately to crime problems in their own jurisdictions, and provides uniformity in definitions and concepts across state lines to minimize confusion as trafficking victims in state prosecutions begin to seek the victim protections available through the federal government; and

WHEREAS, the Legislature of the State of Montana finds that it is appropriate to enact statutes to prevent and punish trafficking in persons.

Be it enacted by the Legislature of the State of Montana:

Section 1. Subjecting another to involuntary servitude — definitions. (1) A person commits the offense of subjecting another to involuntary servitude if the person purposely or knowingly obtains or maintains the forced labor or services of another person by any of the following actions or by threatening any of the following actions:

(a) causing physical harm to any person;

(b) damaging or destroying the property of any person;

(c) physically restraining another person;

(d) abusing the law or legal process;

(e) knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document or any other actual or purported government identification document of another person;

(f) blackmail; or

(g) causing financial harm to any person or using financial control over any person.

(2) (a) Except as provided in subsection (2)(b), a person convicted of the offense of subjecting another to involuntary servitude shall be imprisoned in the state prison for a term of not more than 10 years, fined an amount not to exceed $50,000, or both.

(b) A person convicted of the offense of subjecting another to involuntary servitude, if the violation involves aggravated kidnapping, sexual intercourse without consent, or deliberate homicide, shall be punished by life imprisonment or by imprisonment in the state prison for a term of not more than 100 years and may be fined not more than $50,000.

(3) As used in this section, the following definitions apply:

(a) "Blackmail" means an unlawful demand of money, property, or services under threat to accuse another person of a crime or to expose any secret tending to subject a person to hatred, contempt, or ridicule.

(b) "Financial harm" includes employment contracts that violate 28-2-903, taking, receiving, reserving, or charging a rate of interest greater than is allowed by 31-1-107, and defrauding creditors as defined in 45-6-315.

(c) "Forced labor or services" means labor or services that are performed or provided by another person and are obtained or maintained through violation of subsection (1).

(d) "Labor" means work of economic or financial value.

(e) "Maintain" means to secure continued performance of labor or services, regardless of any initial agreement on the part of the victim to perform that type of service.

(f) "Obtain" means to secure performance of labor or services.

(g) "Services" means an ongoing relationship between a person and the offender in which the person performs activities under the supervision of or for the benefit of the offender, including commercial sexual activity and sexually explicit performances.

Section 2. Trafficking of persons for involuntary servitude. (1) A person commits the offense of trafficking of persons for involuntary servitude if the person purposely or knowingly:

(a) recruits, entices, harbors, transports, provides, or obtains by any means another person, intending or knowing that the person will be subjected to involuntary servitude as described in [section 1]; or

(b) benefits financially by receiving anything of value from participation in a venture that has engaged in the offense of subjecting another to involuntary servitude as described in [section 1].

(2) (a) Except as provided in subsection (2)(b), a person convicted of the offense of trafficking of persons for involuntary servitude shall be imprisoned in the state prison for a term of not more than 15 years, fined an amount not to exceed $100,000, or both.

(b) A person convicted of the offense of trafficking of persons for involuntary servitude, if the violation involves aggravated kidnapping, sexual intercourse without consent, or deliberate homicide, shall be punished by life imprisonment or by imprisonment in the state prison for a term of not more than 100 years and may be fined not more than $100,000.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 45, chapter 5, part 3, and the provisions of Title 45, chapter 5, part 3, apply to [sections 1 and 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 5, 2007

CHAPTER NO. 148

[SB 479]

AN ACT REGULATING THE DESCRIPTION OF MONTANA HUCKLEBERRY PRODUCTS; PROVIDING PENALTIES FOR MISLABELING; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Montana huckleberries grow wild in a Rocky Mountain Region that includes northwestern Montana, the panhandle area of Idaho, and the Inland Empire of northwestern Washington and have yet to be cultivated, despite attempts at Montana State University and elsewhere; and

WHEREAS, the use of the wild Montana huckleberry in food products is unregulated and in danger of being devalued by a combination of the wild Montana huckleberry with wild blueberries or other similar berries that are cultivated in other climates but that are being called wild Montana huckleberries to capitalize on the popularity of this flavorful native berry.

Be it enacted by the Legislature of the State of Montana:

Section 1. Content criteria for Montana huckleberry products. (1) The label for a product that contains the terms "Montana" and "huckleberry" must meet the following criteria:

(a) The huckleberries must have been picked in the wild from a designated area in Montana that the producer has placed on file with the department. The department shall maintain the designated area information as confidential information but may respond generally to inquiries about whether a producer has listed a designated area for its huckleberry products.

(b) A product that lists only huckleberries as the berry used in the product must meet the criteria listed in subsection (1)(a).

(c) A product that lists huckleberries mixed with other berries must state the proportions and must distinguish the proportion of Montana huckleberries, as designated under subsection (1)(a), from huckleberries grown elsewhere or other types of berries.

(2) A huckleberry product that meets the criteria in subsection (1)(a) and the requirements of 7 CFR 205.207 and the labeling requirements of 7 CFR 205.300, et seq., may be labeled organic.

(3) (a) For the purposes of this section, "huckleberry" means a berry referring to various wild species of the Vaccinium genus, commonly referred to in this state as a huckleberry or Montana huckleberry. The berries usually are less than 5 millimeters in diameter. Among these species are Vaccinium membranaceum and Vaccinium globulare.

(b) The term does not include berries of the species Vaccinium myrtilloides, the Vaccinium angustifolium, Vaccinium ashei, or Vaccinium corymbosum.

Section 2. Penalties for false labeling. (1) (a) It is unlawful for a person to sell or offer for sale or list on a package label for sale either inside or outside this state any product that contains the words Montana and huckleberry in violation of the provisions of [section 1].

(b) A printer whose job does not involve the marketing of a product described in [section 1] is not liable under this section.

(2) A person who knowingly violates subsection (1)(a) is guilty of a misdemeanor and shall be punished under 46-18-212.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 80, chapter 11, and the provisions of Title 80, chapter 11, apply to [sections 1 and 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 5, 2007

CHAPTER NO. 149

[SB 485]

AN ACT REVISING THE PROHIBITION ON THE DISTRIBUTION OF MAILING LISTS FOR CERTAIN OCCUPATIONS AND PROFESSIONS REQUIRING LICENSES; AND AMENDING SECTION 2-6-109, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-6-109, MCA, is amended to read:

"2-6-109. (Temporary) Prohibition on distribution or sale of mailing lists — exceptions — penalty. (1) Except as provided in subsections (3) through (9), in order to protect the privacy of those who deal with state and local government:

(a) an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) This section does not prevent an individual from compiling a mailing list by examination of ~~original documents or applications~~ *records* that are otherwise open to public inspection.

(4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115 or to lists of the names of employees governed by Title 39, chapter 31.

(5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access by Montana law enforcement agencies.

(7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

(8) This section does not apply to the use by the public employees' retirement board of a mailing list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the mailing list is not released to the organization.

(9) This section does not apply to a public school providing lists of graduating students to representatives of the armed forces of the United States or to the national guard for the purposes of recruitment.

(10) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor.

2-6-109. (Effective October 1, 2007) Prohibition on distribution or sale of mailing lists — exceptions — penalty. (1) Except as provided in subsections (3) through (9), in order to protect the privacy of those who deal with state and local government:

(a) an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) This section does not prevent an individual from compiling a mailing list by examination of ~~original documents or applications~~ *records* that are otherwise open to public inspection.

(4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115, to lists of the names of employees governed by Title 39, chapter 31, ~~or~~ to lists of persons holding driver's licenses or Montana identification cards provided for under 61-5-127*, or to lists of persons holding professional or occupational licenses governed by Title 23, chapter 3; Title 37, chapters 1 through 4, 6 through 29, 31, 34, 35, 40, 47, 48, 50, 51, 53, 54, 60, 65 through 69, 72, 73, and 76; and Title 50, chapters 39, 72, 74, and 76.*

(5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access by Montana law enforcement agencies.

(7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

(8) This section does not apply to the use by the public employees' retirement board of a mailing list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the mailing list is not released to the organization.

(9) This section does not apply to a public school providing lists of graduating students to representatives of the armed forces of the United States or to the national guard for the purposes of recruitment.

(10) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor."

Approved April 5, 2007

CHAPTER NO. 150

[HB 92]

AN ACT MODERNIZING PUBLIC HEALTH STATUTES; PROVIDING A PUBLIC HEALTH POLICY STATEMENT; REVISING THE POWERS AND DUTIES OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, LOCAL BOARDS OF HEALTH, AND LOCAL HEALTH OFFICERS; ENCOURAGING GREATER COLLABORATION AMONG AND BETWEEN ENTITIES IN THE PUBLIC HEALTH SYSTEM; AMENDING SECTIONS 50-1-101, 50-1-202, 50-2-116, 50-2-118, 50-2-130, 50-48-102, 50-53-102, 75-5-305, 76-4-125, AND 76-4-133, MCA; AND REPEALING SECTION 50-2-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Policy — purpose. (1) It is the policy of the state of Montana that the health of the public be protected and promoted to the extent practicable through the public health system while respecting individual rights to dignity, privacy, and nondiscrimination.

(2) The purpose of Montana's public health system is to provide leadership and to protect and promote the public's health by:

(a) promoting conditions in which people can be healthy;

(b) providing or promoting the provision of public health services and functions, including:

(i) monitoring health status to identify and recommend solutions to community health problems;

(ii) investigating and diagnosing health problems and health hazards in the community;

(iii) informing and educating individuals about health issues;

(iv) coordinating public and private sector collaboration and action to identify and solve health problems;

(v) developing policies, plans, and programs that support individual and community health efforts;

(vi) implementing and enforcing laws and regulations that protect health and ensure safety;

(vii) linking individuals to needed personal health services and assisting with needed health care when otherwise unavailable;

(viii) to the extent practicable, providing a competent public health workforce;

(ix) evaluating effectiveness, accessibility, and quality of personal and population-based health services; and

(x) to the extent that resources are available, conducting research for new insights on and innovative solutions to health problems;

(c) encouraging collaboration among public and private sector partners in the public health system;

(d) seeking adequate funding and other resources to provide public health services and functions or accomplish public health system goals through public or private sources;

(e) striving to ensure that public health services and functions are provided and public health powers are used based upon the best available scientific evidence; and

(f) implementing the role of public health services and functions, health promotion, and preventive health services within the state health care system.

(3) Title 50, chapter 2, and this chapter may not be construed to require an individual or agency within the public health system to provide specific health services or to mandate state public health agencies and local public health agencies to implement unfunded programs.

Section 2. Collaboration and relationships within public health system. (1) In general, the department and local public health agencies shall seek to establish working relationships with federal, tribal, other state or local public health agencies, and other public sector partners engaged in the provision of public health services and functions within the public health system.

(2) The department may enter an agreement with any federal agency to coordinate the provision of public health services and functions.

(3) The department may enter an agreement with any other state or any agencies in any other state to coordinate the provision of public health services and functions among the states that are parties to the agreement.

(4) Any local public health agency may enter agreements with other local public health agencies in the state to coordinate the provision of public health services and functions consistent with Title 50, chapter 2, and this chapter. The local public health agency shall submit any agreement entered into pursuant to this section to the department.

(5) A local public health agency whose jurisdiction extends to a state border may form an agreement with an adjoining state or a municipality in the other state to coordinate the provision of public health services and functions. The local public health agency shall submit any agreement entered into pursuant to this section to the department for prior approval.

(6) The department or local public health agencies may form agreements with tribes and tribal public health agencies in the state to coordinate the provision of public health services and functions or to promote cooperation in addressing specific public health needs of persons living on Indian reservations or Indians who reside outside the boundaries of Indian reservations.

(7) (a) Public health districts, consisting of two or more local public health agencies, may be created by interlocal agreement, as provided in Title 7, chapter 11, part 1, or as a district board of health under 50-2-107 for the purpose of improving the provision of public health services and functions for the affected population. A public health district created under this subsection (7) may include tribal health agencies.

(b) A public health district created under this subsection (7) must consist of the entire area of the combined local public health agencies and tribal health agencies and must be governed in accordance with state law.

Section 3. Section 50-1-101, MCA, is amended to read:

"50-1-101. Definitions. Unless the context indicates otherwise, in *chapter 2 and* this chapter, the following definitions apply:

(1) "Communicable disease" means an illness because of a specific infectious agent or its toxic products that arises through transmission of that agent or its products from an infected person, animal, or inanimate reservoir to a susceptible host. The transmission may occur either directly or indirectly through an intermediate plant or animal host, a transmitting entity, or the inanimate environment.

(2) "Condition of public health importance" means a disease, injury, or other condition that is identifiable on an individual or community level and that can reasonably be expected to lead to adverse health effects in the community.

~~(2)~~*(3)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(3)~~*(4)* "Inanimate reservoir" means soil, a substance, or a combination of soil and a substance:

(a) in which an infectious agent normally lives and multiplies;

(b) on which an infectious agent depends primarily for survival; and

(c) where an infectious agent reproduces in a manner that allows the infectious agent to be transmitted to a susceptible host.

(5) "Institutional controls" means legal or regulatory mechanisms designed to protect public health and safety that:

(a) limit access to or limit or condition the use of environmentally contaminated property or media;

(b) provide for the protection or preservation of environmental cleanup measures; or

(c) inform the public that property or media is or may be environmentally contaminated.

~~(4)~~*(6)* "Isolation" means the physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected with a communicable disease or possibly communicable disease from nonisolated individuals to prevent or limit the transmission of the communicable disease to nonisolated individuals.

(7) "Local board of health" or "local board" means a county, city, city-county, or district board of health.

(8) "Local health officer" means a county, city, city-county, or district health officer appointed by a local board of health. With regard to the exercise of the duties and authorities of a local health officer, the term may include an authorized representative of the local health officer.

(9) "Local public health agency" means an organization operated by a local government in the state, including local boards of health or local health officers, that principally acts to protect or preserve the public health.

(10) "Physician" has the meaning provided in 37-3-102.

(11) "Public health services and functions" means those services and functions necessary to promote the conditions in which the population can be healthy and safe, including:

(a) population-based or individual efforts primarily aimed at the prevention of injury, disease, or premature mortality; or

(b) the promotion of health in the community, such as assessing the health needs and status of the community through public health surveillance and

epidemiological research, developing public health policy, and responding to public health needs and emergencies.

(12) "Public health system" means state and local public health agencies and their public and private sector partners.

~~(5)~~*(13)* "Quarantine" means the physical separation and confinement of an individual or groups of individuals who are or may have been exposed to a communicable disease or possibly communicable disease and who do not show signs or symptoms of a communicable disease from nonquarantined individuals to prevent or limit the transmission of the communicable disease to nonquarantined individuals.

(14) "Screening" means diagnostic or investigative analysis or medical procedures that determine the presence or absence of or exposure to a condition of public health importance or the condition's precursor in an individual.

(15) "Testing" has the same meaning as screening."

Section 4. Section 50-1-202, MCA, is amended to read:

"50-1-202. General powers and duties. *(1)* ~~The~~ *In order to carry out the purposes of the public health system to protect and promote the public health, the* department*, in collaboration with federal, state, and local partners, shall*:

(a) make inspections for conditions of public health importance and issue written orders for correction, destruction, or removal of the condition;

~~(1) shall study conditions affecting the citizens of the state by making use of birth, death, and sickness records;~~

~~(2)~~*(b)* ~~shall make investigations,~~ disseminate information, and make recommendations for control of diseases and ~~improvement~~ *other conditions* of public health ~~to persons, groups, or the public~~ *importance*;

~~(3)~~*(c)* at the request of the governor, ~~shall~~ *accept funds for and* administer any federal health program for which responsibilities are delegated to states;

~~(4) shall inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;~~

~~(5) after each inspection made under subsection (4), shall submit a written report on sanitary conditions to the governor and to the director of the department of corrections or the commissioner of higher education and include recommendations for improvement in conditions if necessary;~~

~~(6) shall advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;~~

~~(7) shall develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;~~

~~(8) shall develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, which rules may include programs for nutrition, family planning services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act;~~

~~(9) shall conduct health education programs;~~

~~(10) shall provide consultation to school and local community health nurses in the performance of their duties;~~

~~(11) shall consult with the superintendent of public instruction on health measures for schools;~~

~~(12) shall develop, adopt, and administer rules setting standards for a program to provide services to children with disabilities, including standards for:~~

~~(a) diagnosis;~~

~~(b) medical, surgical, and corrective treatment;~~

~~(c) aftercare and related services; and~~

~~(d) eligibility;~~

~~(13) shall provide consultation to local boards of health;~~

~~(14) shall bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;~~

~~(15) shall accept and expend federal funds available for public health services;~~

(d) identify, assess, prevent, and mitigate conditions of public health importance through:

(i) epidemiological tracking and investigation;

(ii) screening and testing programs;

(iii) isolation and quarantine measures;

(iv) treatment;

(v) abatement of public health nuisances;

(vi) inspections;

(vii) collecting and maintaining health information; or

(viii) other public health measures as allowed by law;

(e) promote efforts among public and private sector entities to develop and fund programs or initiatives that identify and ameliorate health problems;

(f) develop and promote training for members of the public health workforce;

(g) bring and pursue actions necessary to abate, restrain, or prosecute the violation of public health laws and rules;

(h) advise state agencies on the following as they relate to public buildings and facilities:

(i) location, drainage, water supply, water quality, heating, plumbing, sewer systems, and ventilation; and

(ii) the disposal of infectious or hazardous wastes;

(i) develop, administer, and promote activities for the protection and improvement of oral health;

(j) develop, adopt, and administer rules setting standards for the operation of programs to protect the health of mothers and children, including programs for nutrition, family planning services, improved pregnancy outcome, and programs authorized by Title X of the federal Public Health Service Act, 42 U.S.C. 300a, et seq., and Title V of the federal Social Security Act, 42 U.S.C. 501 through 510;

(k) conduct health education programs;

(l) provide consultation to school and local public health personnel and consult with the superintendent of public instruction on conditions of public health importance for schools;

(m) develop, adopt, and administer rules setting standards for a program to provide services to children with special health care needs, including standards for:

(i) diagnosis;

(ii) medical, surgical, and corrective treatment;

(iii) aftercare and related services; and

(iv) eligibility;

(n) provide consultation to local boards of health;

~~(16) must have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;~~

~~(17) shall adopt rules imposing fees for the tests and services performed by the department's laboratory. Fees should reflect the actual costs of the tests or services provided. The department may not establish fees exceeding the costs incurred in performing tests and services. All fees must be deposited in the state special revenue fund for the use of the department in performing tests and services.~~

(o) promote cooperation and formal collaborative agreements between the state and tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting, information and data sharing, reporting, resource allocation, funding, service delivery, jurisdiction, and other public health matters addressed in this title;

~~(18)~~*(p)* ~~shall~~ adopt and enforce rules regarding*:*

(i) the reporting and control of communicable diseases *and other conditions of public health importance*;

(ii) the imposition of fees for testing, screening, and other services performed by the state laboratory;

~~(19)~~*(iii)* ~~shall adopt and enforce rules regarding~~ the transportation of dead human bodies;

~~(20)~~*(iv)* ~~shall adopt and enforce rules and standards concerning~~ the issuance of licenses to laboratories that conduct analysis of public water supply systems; and

(v) public health requirements for school sites, including water supply and quality, sewage and waste disposal, and any other matters pertinent to the health and physical well-being of pupils, teachers, and others; and

~~(21)~~*(q)* ~~shall enact or~~ take measures to prevent and alleviate ~~injury~~ *threats to the public health* from the release of biological, chemical, or radiological agents capable of causing imminent infection, disability, or death.

(2) The department:

(a) has the power to use personnel of local public health agencies to assist in the administration of laws relating to public health services and functions; and

(b) may provide, implement, facilitate, or encourage other public health services and functions as considered reasonable and necessary."

Section 5. Section 50-2-116, MCA, is amended to read:

"50-2-116. Powers and duties of local boards *of health*. (1) ~~Local boards~~ *In order to carry out the purposes of the public health system, in collaboration with federal, state, and local partners, each local board of health* shall:

(a) appoint *and fix the salary of* a local health officer who is*:*

(i) a physician*;* ~~or~~

(ii) a person with a master's degree in public health*;* or

(iii) ~~the~~ *a person with* equivalent *education* and ~~with appropriate~~ experience, as determined by the department~~, and shall fix the health officer's salary~~;

(b) elect a presiding officer and other necessary officers;

(c) employ ~~necessary~~ qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings *at least* quarterly and hold special meetings as necessary;

(f) ~~supervise destruction and removal of all sources of filth that cause disease;~~ *identify, assess, prevent, and ameliorate conditions of public health importance through:*

(i) epidemiological tracking and investigation;

(ii) screening and testing;

(iii) isolation and quarantine measures;

(iv) diagnosis, treatment, and case management;

(v) abatement of public health nuisances;

(vi) inspections;

(vii) collecting and maintaining health information;

(viii) education and training of health professionals; or

(ix) other public health measures as allowed by law;

(g) ~~guard against~~ *protect the public from* the introduction *and spread* of communicable disease *or other conditions of public health importance, including through actions to ensure the removal of filth or other contaminants that might cause disease or adversely affect public health*;

(h) supervise *or make* inspections ~~of public establishments for sanitary~~ *for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the* conditions;

(i) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation of public health laws, rules, and local regulations;

(j) identify to the department an administrative liaison for public health. The liaison must be the local health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-time local health officer, the liaison must be the highest ranking public health professional employed by the jurisdiction.

~~(i)~~*(k)* subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings *and facilities* that ~~is~~ *are* not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for

granting variances from the minimum requirements that are identical to standards promulgated by the board of environmental review and must provide for appeal of variance decisions to the department as required by 75-5-305.

(2) Local boards *of health* may:

~~(a) adopt and enforce isolation and quarantine measures to prevent the spread of communicable diseases;~~

~~(b) furnish treatment for persons who have communicable diseases;~~

~~(c) prohibit the use of places that are infected with communicable diseases;~~

~~(d) require and provide means for disinfecting places that are infected with communicable diseases;~~

~~(e)~~*(a)* accept and spend funds received from a federal agency, the state, a school district, or other persons *or entities*;

~~(f) contract with another local board for all or a part of local health services;~~

~~(g) reimburse local health officers for necessary expenses incurred in official duties;~~

~~(h) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;~~

~~(i)~~*(b)* adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings~~.~~ *and facilities;* ~~The fees must be deposited with the county treasurer.~~

~~(j)~~*(c)* adopt ~~rules~~ *regulations* that do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of 50-2-130, ~~on~~ *for* sanitation in public *and private* buildings *and facilities* that affects public health *and for the maintenance of sewage treatment systems that do not discharge effluent directly into state water and that are not required to have an operating permit as required by rules adopted under 75-5-401*;

~~(iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might endanger human lives; and~~

~~(v) subject to the provisions of 50-2-130, for the maintenance of sewage treatment systems that do not discharge an effluent directly into state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401;~~

~~(k)~~*(iv)* subject to the provisions of 50-2-130 and Title 50, chapter 48, ~~adopt necessary regulations~~ *for tattooing and body-piercing establishments and* that are not less stringent than state standards for tattooing and body-piercing establishments; ~~and~~

~~(l)~~*(v)* ~~adopt regulations~~ for the establishment of institutional controls that have been selected or approved by the:

~~(i)~~*(A)* United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

~~(ii)~~*(B)* department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7*; and*

(vi) to implement the public health laws; and

(d) promote cooperation and formal collaborative agreements between the local board of health and tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting, information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters addressed in this title.

(3) A local board of health may provide, implement, facilitate, or encourage other public health services and functions as considered reasonable and necessary."

Section 6. Section 50-2-118, MCA, is amended to read:

"50-2-118. Powers and duties of local health officers. ~~(1)~~ ~~Local~~ *In order to carry out the purpose of the public health system, in collaboration with federal, state, and local partners, local* health officers ~~or their authorized representatives~~ *or their authorized representatives* shall:

~~(a)~~*(1)* make inspections for ~~sanitary~~ conditions *of public health importance and issue written orders for compliance or for correction, destruction, or removal of the condition*;

~~(b) as directed by the local board, issue written orders for the destruction and removal of filth that might cause disease;~~

~~(c)~~*(2)* ~~with written approval of the department, order~~ *take steps to limit contact between people in order to protect the public health from imminent threats, including but not limited to ordering the closure of* buildings or facilities where people congregate ~~closed during epidemics~~ *and canceling events*;

~~(d)~~*(3)* ~~on forms provided by the department,~~ report communicable diseases to the department ~~each week~~ *as required by rule*;

~~(e) before the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of activities, on forms and containing information required by the department;~~

~~(f) before the 10th day after the report is given to the local board, send a copy of the report required by subsection (1)(e) to the department;~~

~~(g)~~*(4)* establish and maintain quarantine and isolation measures as ~~enacted~~ *adopted* by the local board of health; *and*

~~(h) as prescribed by rules adopted by the department, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;~~

~~(i) notify the department of the local health officer's appointment and changes in membership of the local board;~~

~~(j)~~*(5)* ~~file a complaint~~ *pursue action* with the appropriate court if this chapter or rules adopted by the local board or ~~state~~ department under this chapter are violated~~;~~.

~~(k) validate state licenses issued by the department in accordance with chapters 50 through 53 and 57 of this title.~~

~~(2) With approval of the department, local health officers may forbid persons to assemble in a place if the assembly endangers public health.~~

~~(3) A local health officer who is a physician may be placed in charge of a communicable disease hospital, but a local health officer who is a physician is not required to act as a physician to the indigent.~~

~~(4) A local health officer who is not a physician may not act as a physician to anyone.~~"

Section 7. Section 50-2-130, MCA, is amended to read:

"50-2-130. Local regulations no more stringent than state regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (4) or unless required by state law, the local board may not adopt a rule under ~~50-2-116(1)(i), (2)(j)(iii), (2)(j)(v), or (2)(k)~~ *50-2-116(1)(k), (2)(c)(iii), or (2)(c)(iv)* that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The local board may incorporate by reference comparable state regulations or guidelines.

(2) The local board may adopt a rule to implement ~~50-2-116(1)(i), (2)(j)(iii), (2)(j)(v), or (2)(k)~~ *50-2-116(1)(k), (2)(c)(iii), or (2)(c)(iv)* that is more stringent than comparable state regulations or guidelines only if the local board makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local board standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the local board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the local board adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the local board to review the rule. If the local board determines that the rule is more stringent than comparable state regulations or guidelines, the local board shall comply with this section by either revising the rule to conform to the state regulations or guidelines or making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The local board may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the local board for a rule review under subsection (4)(a) if the local board adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted local board rule."

Section 8. Section 50-48-102, MCA, is amended to read:

"50-48-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Body piercing" means penetrating the skin to make a hole, mark, or scar that is generally permanent in nature.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Establishment" means either a body-piercing operation, a tattooing operation, or a combination of both operations in a multiple-type establishment.

(4) "Local board of health" means a county, city, city-county, or district board of health provided for in Title 50, chapter 2.

(5) "Local health officer" has the meaning provided in ~~50-2-101~~ *50-1-101*.

(6) "Multiple-type establishment" means an operation encompassing both body piercing and tattooing on the same premises and under the same management.

(7) "Person" means an individual, partnership, corporation, association, or other entity engaged in the business of operating, owning, or offering the services of body piercing or tattooing.

(8) "Regulatory authority" means the department of public health and human services, the local board of health, the local health officer, or the local sanitarian.

(9) (a) "Tattooing" means making permanent marks on the skin of a live human being by puncturing the skin and inserting indelible colors. The term includes imparting permanent makeup on the skin such as permanent lip coloring and permanent eyeliner.

(b) The term does not include:

(i) the practice of electrology as defined in 37-31-101; or

(ii) the use by a physician or medical professional who is licensed to practice in the state of Montana of colors, dyes, or pigments for the purpose of obscuring scar tissue or imparting color to the skin for cosmetic, medical, or figurative purposes."

Section 9. Section 50-53-102, MCA, is amended to read:

"50-53-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Local board of health" or "board" means a local board as defined in 50-2-101.

(3) "Local health officer" or "officer" means a local health officer as defined in ~~50-2-101~~ *50-1-101*.

(4) "Person" means a person, firm, partnership, corporation, organization, the state, or any political subdivision of the state.

(5) "Public bathing place" means a body of water with bathhouses and related appurtenances operated for the public.

(6) "Public swimming pool" means an artificial pool and bathhouses and related appurtenances for swimming, bathing, or wading, including natural hot water pools and spas. The term does not include:

(a) swimming pools located on private property used for swimming or bathing only by the owner, members of the owner's family, or their invited guests; or

(b) medicinal hot water baths for individual use.

(7) "Spa" means an artificial pool designed for recreational bathing or therapeutic use and that is not drained, cleaned, or refilled for individual use. A spa includes but is not limited to a therapeutic pool, hydrotherapy pool, whirlpool, hot tub, or Jacuzzi-type whirlpool bath.

(8) "Tourist home" means a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis."

Section 10. Section 75-5-305, MCA, is amended to read:

"75-5-305. Adoption of requirements for treatment of wastes — variance procedure — appeals. (1) The board may establish minimum requirements for the treatment of wastes. For cases in which the federal government has adopted technology-based treatment requirements for a particular industry or activity in 40 CFR, chapter I, subchapter N, the board shall adopt those requirements by reference. To the extent that the federal government has not adopted minimum treatment requirements for a particular industry or activity, the board may do so, through rulemaking, for parameters likely to affect beneficial uses, ensuring that the requirements are cost-effective and economically, environmentally, and technologically feasible. Except for the technology-based treatment requirements set forth in 40 CFR, chapter I, subchapter N, minimum treatment may not be required to address the discharge of a parameter when the discharge is considered nonsignificant under rules adopted pursuant to 75-5-301.

(2) The board shall establish minimum requirements for the control and disposal of sewage from private and public buildings, including standards and procedures for variances from the requirements.

(3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant to 50-2-116~~(1)(i)~~ may appeal the local board of health's final decision to the department by submitting a written request for a hearing within 30 days after the decision. The written request must describe the activity for which the variance is requested, include copies of all documents submitted to the local board of health in support of the variance, and specify the reasons for the appeal of the local board of health's final decision.

(4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department shall base its decision on the board's standards for a variance.

(5) A decision of the department pursuant to subsection (4) is appealable to district court under the provisions of Title 2, chapter 4, part 7."

Section 11. Section 76-4-125, MCA, is amended to read:

"76-4-125. Review of subdivision application — land divisions excluded from review. (1) Except as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing authority. The review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a

subdivision application to the reviewing authority. The application must include preliminary plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review, any public comments or summaries of public comments collected as provided in 76-3-604(6), and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(b) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision on the proposed subdivision within 60 days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may be increased to 120 days. The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final decision on the proposed subdivision. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and

(e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system that was constructed prior to April 29, 1993, and, if required when installed, was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116~~(1)(i)~~, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."

Section 12. Section 76-4-133, MCA, is amended to read:

"76-4-133. Installation inspection. A person who owns or controls a parcel of land that has been approved under this chapter for the installation of an individual or multiple-user sewage system shall:

(1) have the system inspected during installation by the local health officer, as defined in ~~50-2-101~~ *50-1-101*, or by the installer or other person designated by the local health officer; and

(2) file with the local board of health a certification by the inspector that the system has been installed in compliance with the certificate of subdivision approval and any conditions of approval."

Section 13. Repealer. Section 50-2-101, MCA, is repealed.

Section 14. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 50, chapter 1, and the provisions of Title 50, chapter 1, apply to [sections 1 and 2].

Section 15. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Approved April 5, 2007

CHAPTER NO. 151

[HB 400]

AN ACT REQUIRING A BOARD OF SUPERVISORS OF A CONSERVATION DISTRICT TO APPOINT ONE OF ITS MEMBERS OR ASSOCIATE MEMBERS TO A CITY-COUNTY PLANNING BOARD; PROVIDING THAT THE APPOINTMENT IS SUBJECT TO APPROVAL OF THE CITY-COUNTY PLANNING BOARD; PROVIDING THAT AN ASSOCIATE MEMBER OF A CONSERVATION DISTRICT DESIGNATED BY THE GOVERNING BOARD MAY BE APPOINTED TO A COUNTY PLANNING BOARD; AMENDING SECTIONS 76-1-201 AND 76-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-1-201, MCA, is amended to read:

"76-1-201. Membership of city-county planning board. (1) Except as provided in subsection (2), a city-county planning board ~~shall consist~~ *consists* of ~~not less~~ *no fewer* than nine members to be appointed as follows:

(a) two official members who reside outside the city limits but within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners, who may in the discretion of the board of county commissioners be employed by or hold public office in the county;

(b) two official members who reside within the city limits to be appointed by the city council, who may in the discretion of the city council be employed by or hold public office in the city;

(c) two citizen members who reside within the city limits to be appointed by the mayor of the city;

(d) two citizen members who reside within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners;

(e) the ninth member ~~to be selected by the eight officers and citizen members hereinabove provided for from the members of~~ *to be appointed by* the board of supervisors of a conservation district provided for in 76-15-311 *from the members or associate members of the board of supervisors, subject to approval of the members provided for in subsections (1)(a) through (1)(d).*

(2) Subsection (1)(e) does not apply if there is no member *or associate member* of the board of supervisors of a conservation district who is able or willing to serve on the city-county planning board. In ~~such~~ *that* case, the ninth member of the city-county planning board ~~shall~~ *must* be selected by the eight officers and citizen members ~~hereinabove provided for~~ *pursuant to subsections (1)(a) through (1)(d),* with the consent and approval of the board of county commissioners and the city council."

Section 2. Section 76-1-211, MCA, is amended to read:

"76-1-211. Membership of county planning board. (1) County planning boards ~~shall~~ consist of not less than five members appointed by the board of county commissioners. At least one member of ~~any~~ *a* county planning board existing on or formed after July 1, 1973, ~~shall~~ *must* be a member of the governing board of a conservation district as provided for in chapter 15*, or an associate member of a conservation district designated by the governing board of a conservation district,* or *a member of* a state cooperative grazing district if officers of either *of the districts or the designated associate member of a conservation district* reside in ~~said~~ *the* county.

(2) ~~In the event that any~~ *If a* city or town subsequently becomes represented on the county planning board pursuant to 76-1-111, additional members of the planning board representing ~~such~~ *the* cities or towns ~~shall~~ *must* be appointed by the respective city councils."

Section 3. Transition. (1) The members of a city-county planning board, established pursuant to 76-1-201, or a county planning board, established pursuant to 76-1-211, who are members on [the effective date of this act] may continue to serve the remainder of their terms as described under the provisions of 76-1-203.

(2) Appointments to a city-county planning board after [the effective date of this act] must be made as described in 76-1-201. Appointments to a county planning board after [the effective date of this act] must be made as described in 76-1-211.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 6, 2007

CHAPTER NO. 152

[HB 409]

AN ACT PROHIBITING CERTAIN UNFAIR PRACTICES BY MOTORSPORTS VEHICLE MANUFACTURERS; DEFINING "MOTORSPORTS VEHICLE"; AND PROVIDING FOR INJUNCTIVE RELIEF AND DAMAGES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 3], the following definitions apply:

(1) "Actual price" means the price to be paid by the dealer less any incentive paid by the manufacturer, whether paid to the dealer or the ultimate purchaser of the motorsports vehicle.

(2) "Control" or "controlling" means:

(a) the possession of, title to, or control of 10% or more of the voting equity interest in a person, whether directly or indirectly through a fiduciary, agent, or other intermediary; or

(b) the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, through director control, by contract, or otherwise, except as expressly provided under the franchise agreement.

(3) "Line-make" means a type of motorsports vehicle produced by a manufacturer.

(4) "Motorsports vehicle" means a personal watercraft as defined in 23-2-502, a snowmobile as defined in 23-2-601, a motorcycle as defined in 61-1-101, a motor-driven cycle as defined in 61-1-101, or a quadricycle as defined in 61-1-101.

(5) "Operate" means to manage a dealership, whether directly or indirectly.

(6) "Own" or "ownership" means to hold the beneficial ownership of 1% or more of any class of equity interest in a dealership, whether the interest is that of a shareholder, partner, limited liability company member, or otherwise. To hold an ownership interest means to have possession of, title to, or control of the ownership interest, whether directly or indirectly through a fiduciary, agent, or other intermediary.

(7) "Person" has the meaning provided in 30-14-102.

Section 2. Unfair trade practices — relationship between motorsports vehicle manufacturers and dealers. In addition to the prohibited practices provided for in 61-4-208 and notwithstanding the terms of a franchise agreement, a manufacturer, distributor, factory branch, or factory representative or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a manufacturer, distributor, factory branch, or factory representative may not:

(1) discriminate between dealers by selling or offering to sell a like motorsports vehicle to one dealer at a lower actual price than the actual price offered to another dealer for the same model similarly equipped;

(2) discriminate between dealers by selling or offering to sell parts or accessories to one dealer at a lower actual price than the actual price offered to another dealer;

(3) discriminate between dealers by using a promotion plan, marketing plan, allocation plan, flooring assistance plan, or other similar device that results in a lower actual price on vehicles, parts, or accessories being charged to one dealer over another dealer;

(4) discriminate between dealers by adopting a method or changing an existing method for the allocation, scheduling, or delivery of new motorsports

vehicles, parts, or accessories to its dealers that is not fair, reasonable, and equitable. Upon the request of a dealer, a manufacturer shall disclose in writing to the dealer the method by which new motorsports vehicles, parts, and accessories are allocated, scheduled, or delivered to its dealers handling the same line or make of vehicles.

(5) give preferential treatment to some dealers over others by refusing or failing to deliver, in reasonable quantities and within a reasonable time after receipt of an order, to a dealer holding a franchise for a line or make of motorsports vehicles sold or distributed by the manufacturer a new vehicle, parts, or accessories, if the motorsports vehicle, parts, or accessories are being delivered to other dealers, or require a dealer to purchase unreasonable advertising displays or other materials or unreasonably require a dealer to remodel or renovate existing facilities as a prerequisite to receiving a model or series of vehicles;

(6) except as provided in 61-4-208(3)(b) or (3)(c), compete with a dealer by acting in the capacity of a dealer or by owning, operating, or controlling, whether directly or indirectly, a dealership in this state;

(7) compete with a dealer by owning, operating, or controlling, whether directly or indirectly, a service facility in this state for the repair or maintenance of motorsports vehicles under the manufacturer's new motorsports vehicle warranty and extended warranty. However, a manufacturer may own or operate a service facility for the purpose of providing or performing maintenance, repair, or service work on motorsports vehicles that are owned by the manufacturer.

(8) use confidential or proprietary information obtained from a dealer to unfairly compete with the dealer without the prior written consent of the dealer. For purposes of this subsection, "confidential or proprietary information" means trade secrets as defined in 30-14-402 and includes business plans, marketing plans or strategies, customer lists, contracts, sales data, revenue, or other financial information.

(9) coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to accept, buy, or order any motorsports vehicle, part, accessory, or any other commodity or service not voluntarily ordered or requested or to buy, order, or pay anything of value for the items in order to obtain a motorsports vehicle, part, accessory, or other commodity that has been voluntarily ordered or requested;

(10) coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to enter into any agreement that violates this chapter;

(11) require a change in capital structure or means of financing for the dealership if the dealer at all times meets the reasonable, written, and uniformly applied capital standards determined by the manufacturer;

(12) prevent or attempt to prevent a dealer from making reasonable changes in the capital structure of a dealership or the means by which the dealership is financed if the dealer meets the reasonable, written, and uniformly applied capital requirements determined by the manufacturer;

(13) unreasonably require the dealer to change the location or require any substantial alterations to the place of business;

(14) condition a renewal or extension of the franchise on the dealer's substantial renovation of the existing place of business or on the construction, purchase, acquisition, or re-lease of a new place of business unless written

notice is first provided 180 days before the date of renewal or extension and the manufacturer demonstrates the reasonableness of the requested actions. The manufacturer shall agree to supply the dealer with an adequate quantity of motorsports vehicles, parts, and accessories to meet the sales level necessary to support the overhead resulting from substantial construction, acquisition, or lease of a new place of business.

(15) coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the vehicle as advertised by the manufacturer, except items:

(a) that have been voluntarily requested or ordered by the dealer; and

(b) required by law;

(16) fail to hold harmless and indemnify a dealer against losses, including lawsuits and court costs, arising from:

(a) the manufacture or performance of a motorsports vehicle, part, or accessory if the lawsuit involves representations by the manufacturer on the manufacture or performance of a motorsports vehicle without negligence on the part of the dealer;

(b) damage to merchandise in transit where the manufacturer specifies the carrier;

(c) the manufacturer's failure to jointly defend product liability suits concerning the motorsports vehicle, part, or accessory provided to the dealer; or

(d) any other act performed by the manufacturer;

(17) unfairly prevent or attempt to prevent a dealer from receiving reasonable compensation for the value of a motorsports vehicle;

(18) fail to pay to a dealer, within a reasonable time after receipt of a valid claim, a payment agreed to be made by the manufacturer on grounds that a new motorsports vehicle or a prior year's model is in the dealer's inventory at the time of introduction of new model motorsports vehicles;

(19) deny a dealer the right of free association with any other dealer for any lawful purpose;

(20) charge increased prices without having given written notice to the dealer at least 15 days before the effective date of the price increases;

(21) permit factory authorized warranty service to be performed upon motorsports vehicles or accessories by persons other than their franchised dealers;

(22) require or coerce a dealer to sell, assign, or transfer a retail sales installment contract or require the dealer to act as an agent for a manufacturer in the securing of a promissory note, a security agreement given in connection with the sale of a motorsports vehicle, or a policy of insurance for a motorsports vehicle. The manufacturer may not condition delivery of any motorsports vehicle, parts, or accessories upon the dealer's assignment, sale, or other transfer of sales installment contracts to specific finance companies.

(23) require or coerce a dealer to grant a manufacturer a right of first refusal or other preference to purchase the dealer's franchise or place of business, or both;

(24) deny a dealer the right of lawfully selling or offering to sell motorsports vehicles in another country;

(25) require a dealer to accept delivery of a number or percentage of motorsport vehicles during a specific period of a sales order;

(26) use a manufacturer order or allocation formula that is not based on actual local area sales and local area market data;

(27) require a dealer to maintain an inventory in excess of the inventory needed for period of 90 days; or

(28) require that any arbitration proceedings or legal action between the parties take place in a venue other than the state of Montana.

Section 3. Injunction — damages — venue. (1) A person who is injured by a violation of [section 2] may maintain an action to enjoin a continuance of an act in violation of [section 2] and to recover damages. A court, upon finding that the defendant is violating or has violated the provisions of [section 2], shall enjoin the defendant from continuing the violation. It is not necessary to allege or prove actual damages to the plaintiff.

(2) In addition to injunctive relief, the plaintiff may recover from the defendant three times the amount of actual damages sustained plus attorney fees and costs of suit.

(3) The proper place for trial of an action based on a claim of a violation of [section 2] is the district court for Lewis and Clark County or the county in which the alleged violation occurred.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through 3].

Approved April 6, 2007

CHAPTER NO. 153

[HB 503]

AN ACT MAKING PERMANENT THE PROVISIONS ALLOWING CERTAIN AGENCIES AND TECHNICIANS TO BE CERTIFIED TO PERFORM EUTHANASIA ON ANIMALS; AND REPEALING SECTION 11, CHAPTER 60, LAWS OF 2003.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 11, Chapter 60, Laws of 2003, is repealed.

Approved April 6, 2007

CHAPTER NO. 154

[HB 510]

AN ACT ALLOWING A CITY COUNCIL OR A BOARD OF COUNTY COMMISSIONERS TO ASSESS THE COST OF A SPECIAL IMPROVEMENT LIGHTING DISTRICT EQUALLY AGAINST EACH LOT OR PARCEL IN THE DISTRICT; AND AMENDING SECTIONS 7-12-2202 AND 7-12-4323, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2202, MCA, is amended to read:

"7-12-2202. Apportionment of costs of maintaining lighting system. (1) The cost of the maintenance and operating service to ~~said~~ *a lighting* rural improvement district may be apportioned among the various tracts of land within ~~said improvement~~ *the* district:

(a) in proportion to the assessed value of ~~said~~ *the* lands within ~~said improvement~~ *the* district, as determined by the board of county commissioners;

(b) by assessing the cost equally against each of the lots or parcels located within the district;

~~(b)~~*(c)* at the option of ~~said~~ *the* board and as determined by ~~said~~ *the* board, in proportion to the lineal front footage of each tract, any part of which is in the district and abuts the street or roadway along which the lighting system is to be maintained; or

~~(c)~~*(d)* in proportion to the area, as determined by ~~said~~ *the* board, of that portion of each tract included in the district.

(2) (a) Before the first Monday of September of each year, the board shall pass and finally adopt a resolution levying and assessing upon all the property within the district an amount equal to the whole cost of maintaining ~~said~~ *the* lighting system. The ~~same shall~~ *levy and assessment must* be proportioned against the ~~several~~ tracts of land in ~~said~~ *the* district as provided in this part.

(b) ~~Said~~ *The* resolution levying assessments to defray the cost of maintenance ~~shall~~ *must* be prepared and certified to in the *same* manner as ~~near as may be to~~ a resolution levying assessments for making, constructing, and installing ~~the~~ improvements in ~~said special improvement districts~~ *the district*."

Section 2. Section 7-12-4323, MCA, is amended to read:

"7-12-4323. Assessment of costs — area or taxable valuation option — *equal assessment option*. (1) The city council may assess the entire cost of ~~such~~ *the lighting* improvement against the entire district, each lot or parcel of land within ~~such~~ *the* district to be assessed for that part of the whole cost ~~which~~ *that* its:

(a) area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places; or

(b) taxable valuation, including improvements, bears to the taxable valuation of the entire district.

(2) The city council may assess the cost equally against each of the lots or parcels located within the district.

~~(2)~~*(3)* The council, in its discretion, ~~shall have the power to~~ *may* pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds ~~in its hands~~ available for that purpose or ~~to~~ include the whole or any part of ~~such~~ *the* costs within the amount of the assessment to be paid by the property in the district.

~~(3)~~*(4)* In order to apportion the cost of any of the improvements provided in this part between the corner lot and the inside lots of ~~any~~ *a* block, the council may, in the resolution creating ~~any~~ *a* district, provide that whenever any of the improvements provided in this part ~~shall be~~ *are located* along ~~any~~ *a* side street or bordering or abutting upon the side of ~~any~~ *a* corner lot of ~~any~~ *a* block, the amount of the assessment against the property in ~~such~~ *the* district to defray the cost of

~~such~~ *the* improvements ~~shall be so~~ *must be* assessed *so* that each square foot of the land embraced within ~~any such~~ *the* corner lot ~~shall bear~~ *bears* double the amount of the cost of ~~such~~ *the* improvement that a square foot of ~~any~~ *an* inside lot ~~shall bear~~ *bears*."

Approved April 6, 2007

CHAPTER NO. 155

[HB 521]

AN ACT REVISING THE DEFINITION OF "OCCUPIED STRUCTURE" IN THE CRIMINAL LAWS TO INCLUDE OUTBUILDINGS ADJACENT TO OR IN CLOSE PROXIMITY TO OCCUPIED STRUCTURES; AND AMENDING SECTION 45-2-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words must be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons other than the offender.

(4) (a) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to another person or entity in whose welfare the beneficiary is interested.

(b) Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes mental illness or impairment.

(6) "Child" or "children" means any individual or individuals under 18 years of age, unless a different age is specified.

(7) "Cohabit" means to live together under the representation of being married.

(8) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.

(9) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.

(10) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(11) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(12) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(13) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(14) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(15) "Conduct" means an act or series of acts and the accompanying mental state.

(16) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(17) "Correctional institution" means a state prison, detention center, multijurisdictional detention center, private detention center, regional correctional facility, private correctional facility, or other institution for the incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence for offenses.

(18) "Deception" means knowingly to:

(a) create or confirm in another an impression that is false and that the offender does not believe to be true;

(b) fail to correct a false impression that the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(19) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

(20) "Deprive" means:

(a) to withhold property of another:

(i) permanently;

(ii) for such a period as to appropriate a portion of its value; or

(iii) with the purpose to restore it only upon payment of reward or other compensation; or

(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.

(21) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(22) "Document" means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

(23) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in a state prison for a term exceeding 1 year.

(24) "Forcible felony" means a felony that involves the use or threat of physical force or violence against any individual.

(25) A "frisk" is a search by an external patting of a person's clothing.

(26) "Government" includes a branch, subdivision, or agency of the government of the state or a locality within it.

(27) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.

(28) A "house of prostitution" means a place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(29) "Human being" means a person who has been born and is alive.

(30) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(31) "Inmate" means a person who is confined in a correctional institution.

(32) (a) "Intoxicating substance" means a controlled substance, as defined in Title 50, chapter 32, and an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by volume.

(b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(33) An "involuntary act" means an act that is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(34) "Juror" means a person who is a member of a jury, including a grand jury, impaneled by a court in this state in an action or proceeding or by an officer authorized by law to impanel a jury in an action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(35) "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(36) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

(37) "Medicaid agency" has the meaning in 53-6-155.

(38) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(39) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other form:

(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or

(ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.

(b) The term includes related documents submitted as a part of or in support of the claim.

(40) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appreciating the nature of the person's own conduct.

(41) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct as a result of the influence of an intoxicating substance.

(42) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison for a term of 1 year or less.

(43) "Negligently"—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(44) "Nolo contendere" means a plea in which the defendant does not contest the charge or charges against the defendant and neither admits nor denies the charge or charges.

(45) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

(46) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

(47) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present*, including any outbuilding that is immediately adjacent to or in close proximity to an occupied structure and that is habitually used for personal use or employment*. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(48) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(49) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(50) (a) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.

(b) Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(51) "Official proceeding" means a proceeding heard or that may be heard before a legislative, a judicial, an administrative, or another governmental agency or official authorized to take evidence under oath, including any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

(52) "Other state" means a state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(53) "Owner" means a person other than the offender who has possession of or other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(54) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(55) "Peace officer" means a person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.

(56) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(57) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of government.

(58) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(59) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(60) "Premises" includes any type of structure or building and real property.

(61) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;

(g) electricity, gas, and water;

(h) birds, animals, and fish that ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and copies thereof.

(62) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

(63) "Public place" means a place to which the public or a substantial group has access.

(64) (a) "Public servant" means an officer or employee of government, including but not limited to legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term "public servant" includes one who has been elected or designated to become a public servant.

(b) The term does not include witnesses.

(65) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

(66) (a) "Serious bodily injury" means bodily injury that:

(i) creates a substantial risk of death;

(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or

(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ.

(b) The term includes serious mental illness or impairment.

(67) "Sexual contact" means touching of the sexual or other intimate parts of the person of another, directly or through clothing, in order to knowingly or purposely:

(a) cause bodily injury to or humiliate, harass, or degrade another; or

(b) arouse or gratify the sexual response or desire of either party.

(68) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by a body member of another person, or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person to knowingly or purposely:

(i) cause bodily injury or humiliate, harass, or degrade; or

(ii) arouse or gratify the sexual response or desire of either party.

(b) For purposes of subsection (68)(a), any penetration, however slight, is sufficient.

(69) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(70) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

(71) "Statute" means an act of the legislature of this state.

(72) "Stolen property" means property over which control has been obtained by theft.

(73) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.

(74) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(75) "Telephone" means any type of telephone, including but not limited to a corded, uncorded, cellular, or satellite telephone.

(76) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit a criminal offense;

(d) accuse a person of a criminal offense;

(e) expose a person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of a person;

(g) reveal information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(77) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than $1,000 by the standards set forth in subsection (77)(a), its value is considered to be an amount less than $1,000.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(78) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

(79) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(80) "Witness" means a person whose testimony is desired in an official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Approved April 6, 2007

CHAPTER NO. 156

[HB 555]

AN ACT REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO PROVIDE INFORMATION IN THE HOUSEHOLD HAZARDOUS WASTE PUBLIC EDUCATION PROGRAM ABOUT RECYCLING OR THE SAFE DISPOSAL OF ELECTRONIC WASTE; AND AMENDING SECTION 75-10-215, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-215, MCA, is amended to read:

"75-10-215. Statewide household hazardous waste public education program. The department shall implement a statewide household hazardous waste public education program. The program must include but is not limited to providing information about:

(1) alternatives to disposal of household hazardous waste at municipal solid waste landfills and other disposal sites;

(2) *options for recycling or the safe disposal of electronic waste, including but not limited to video, audio, and telecommunications equipment, computers, and household appliances;*

(3) methods of reusing or recycling household hazardous waste; and

~~(3)~~*(4)* alternatives to the use of products that lead to the generation of household hazardous waste."

Approved April 6, 2007

CHAPTER NO. 157

[HB 570]

AN ACT EXPANDING THE MONTANA ABSENT UNIFORMED SERVICES AND OVERSEAS ELECTOR VOTING ACT; AUTHORIZING THE USE OF THE FEDERAL WRITE-IN ABSENTEE BALLOT FOR ANY ELECTION; CLARIFYING REGULAR ABSENTEE BALLOT AND FEDERAL WRITE-IN ABSENTEE BALLOT PROCEDURES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 13-21-103, 13-21-201, 13-21-202, 13-21-205, 13-21-206, AND 13-21-210, MCA; AND REPEALING SECTION 13-21-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-21-103, MCA, is amended to read:

"13-21-103. Secretary of state designated as single point of contact — *rulemaking*. (1) The office of the secretary of state is the state's single point of contact responsible for providing information regarding voter registration and absentee ballot procedures to be used by a United States elector.

(2) The secretary of state shall, with the assistance of local election administrators, compile, make available to the general public, or forward to appropriate federal authorities any reports or information required to be compiled, made available, or forwarded pursuant to federal law.

(3) The secretary of state may adopt rules to implement the provisions of this chapter."

Section 2. Section 13-21-201, MCA, is amended to read:

"13-21-201. Registration of United States electors — simultaneous application for absentee ballot. (1) A United States elector may register with the election administrator in the elector's county of residence by properly completing, signing, and returning:

(a) the voter registration form;

(b) the federal post card application; or

(c) the federal write-in absentee ballot ~~transmission envelope~~ *as provided in 13-21-205.*

(2) A registration application under ~~this section~~ *subsection (1)(a) or (1)(b)* must be received by the election administrator not less than 30 days before the election for the registration to be valid for the election. If the registration application is received less than 30 days before the election, the registration application must be processed for the next election.

(3) A registration application using a federal post card application or the federal write-in absentee ballot transmission envelope must be considered a simultaneous application for absentee ballots under 13-21-210."

Section 3. Section 13-21-202, MCA, is amended to read:

"13-21-202. Classification of applications *for regular absentee ballots* — notification of elector. (1) Upon receipt by the election administrator of an application *by a United States elector for a regular absentee ballot* pursuant to 13-13-212 or 13-21-210, the election administrator shall:

(a) classify the application according to the precinct in which the elector resides or, if the information is insufficient to determine precinct of residence, assign an appropriate precinct;

(b) immediately enter all information in the registration records of the office and either file the federal post card application with regular registration forms or file a photocopy attached to a regular registration form on which the information has been entered. This information is sufficient to meet any identification requirements provided by law for an elector.

(c) send to the applicant by the fastest mail service available, which may include facsimile transmission or electronic mail, a notice that the elector has been registered and informing the elector that a *regular absentee* ballot is enclosed or that the elector will be mailed ~~an~~ *a regular* absentee ballot for that election or for the next election in which the elector is entitled to vote under subsection (1) or, if the application is rejected, a notice that the application has been rejected and the reasons for the rejection.

(2) The election administrator may use photocopies of the federal post card application to complete all necessary records."

Section 4. Section 13-21-205, MCA, is amended to read:

"13-21-205. ~~Procedure for voting federal~~ *Federal* write-in absentee ballot. *(1) A United States elector may register, if not already registered, and vote in any election by completing, signing, and returning a federal write-in absentee ballot and meeting the requirements in 13-21-206.*

~~(1)~~*(2) (a)* A United States elector voting a federal write-in absentee ballot for a federal general election may designate a candidate by writing in the name of the candidate or by writing in the name of the political party *for which the elector is voting*. A written designation of the political party must be counted as a vote for the candidate of that party.

(b) (i) Except as provided in subsection (2)(b)(ii), a United States elector may vote in any election for a public office other than for a federal office by using the addendum provided in the federal write-in absentee ballot and writing in the title of the office and the name of the candidate for whom the elector is voting.

(ii) If the elector is voting in a primary election, the elector shall identify the elector's political party affiliation as provided for in the appropriate section of the ballot. A vote cast by writing in the name of a candidate who is not affiliated with the elector's identified party is void and may not be counted.

(3) A vote may not be voided for reasons of misspellings, abbreviations, or other minor variations of the candidate's name.

~~(2)~~*(4)* If the elector receives the regular absentee ballot ~~for the federal general election~~ after the elector has voted and mailed a federal write-in absentee ballot, the elector may vote and return the regular absentee ballot."

Section 5. Section 13-21-206, MCA, is amended to read:

"13-21-206. Counting of federal write-in absentee ballots. (1) A federal write-in absentee ballot received by an election administrator may be counted only if:

~~(a) a valid application was made by the elector pursuant to 13-21-210;~~

(a) the elector's voter registration and identification information is sufficient to determine that the elector is eligible to vote in the election;

(b) the ballot is not received before regular absentee ballots have been printed pursuant to 13-13-205;

~~(b)~~*(c)* the election administrator has not received a regular absentee ballot from the elector by 8 p.m. on election day; and

~~(c)~~*(d)* the ballot is sent by 8 p.m. on election day and is received by 3 p.m. on the Monday following the election.

(2) Federal write-in absentee ballots received before the close of the polls on election day may not be counted until the polls have closed."

Section 6. Section 13-21-210, MCA, is amended to read:

"13-21-210. Application for absentee ballots. (1) A United States elector may apply for *a* regular absentee ~~ballots~~ *ballot* as follows:

(a) by making a written request, which must include the elector's birth date and signature; *or*

(b) by properly completing, signing, and returning to the election administrator the federal post card application~~; or~~

~~(c) by properly completing, signing, and returning to the appropriate county election administrator the federal write-in absentee ballot transmission envelope~~.

(2) An application for a ~~federal write-in~~ *regular* absentee ballot must be received by the appropriate county election administrator not less than 30 days before the date of an election. An application *for a regular absentee ballot that is* received less than 30 days before the date of an election must be processed for the next election.

(3) An application under this section is valid for all state and local elections in the calendar year in which the application is made and the next two regularly scheduled federal general elections.

(4) The elector's county election administrator shall provide the elector with a regular absentee ballot for the elections described in this subsection as soon as the ballots ~~become available~~ *are printed*."

Section 7. Repealer. Section 13-21-204, MCA, is repealed.

Section 8. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Approved April 6, 2007

CHAPTER NO. 158

[HB 579]

AN ACT CLARIFYING THE LAWS RELATING TO THE DISBURSEMENT OF SURPLUS FUNDS FROM A TRUSTEE'S SALE; AND AMENDING SECTION 71-1-316, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-1-316, MCA, is amended to read:

"71-1-316. Disposition of proceeds of sale. *(1)* The trustee shall apply the proceeds of the trustee's sale as follows:

~~(1)~~*(a)* to the costs and expenses of exercising the power of sale and of the sale, including reasonable trustee's fees and ~~attorney's~~ *attorney* fees;

~~(2)~~*(b)* to the obligation secured by the trust indenture;

~~(3)~~*(c)* the surplus, if any, to the person or persons legally entitled ~~thereto~~ *to the surplus*, or the trustee, in ~~his~~ *the trustee's* discretion, may deposit ~~such~~ *the* surplus with the clerk and recorder of the county in which the sale took place.

(2) Upon ~~depositing such~~ *the deposit of the* surplus, the trustee ~~shall be~~ *is* discharged from all further responsibility ~~therefor and the~~ *for the surplus. The* clerk and recorder shall deposit the ~~same~~ *surplus* with the county treasurer ~~subject to~~. *The county treasurer shall pay the surplus funds as provided in* ~~the~~ *a written* order ~~of~~ *from* the district court ~~of such county~~."

Approved April 6, 2007

CHAPTER NO. 159

[HB 596]

AN ACT INCREASING THE REPAYMENT PERIOD FOR ASSESSMENTS IMPOSED AGAINST OWNERS OF LAND FOR THE CONSTRUCTION OF CERTAIN SIDEWALKS, CURBS, GUTTERS, OR ALLEY APPROACHES IN

CITIES OR TOWNS; AMENDING SECTION 7-14-4110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-4110, MCA, is amended to read:

"7-14-4110. Assessments for costs. (1) The payment of assessments to defray the cost of construction of the sidewalks, curbs, and gutters referred to in 7-14-4109 or any combination ~~thereof~~ *of sidewalks, curbs, or gutters* or alley approach may be spread over a ~~term of~~ *period* not to exceed ~~12~~ *20* years~~,~~. ~~payment to~~ *Payments must* be made in equal annual installments.

(2) ~~The~~ *Before the first Monday of October each year, the* city council shall~~,~~ ~~annually before the first Monday of October, pass and~~ adopt a resolution levying an assessment ~~and tax~~ against each lot or parcel of land in front of which sidewalks, curbs, and gutters or any combination ~~thereof~~ *of sidewalks, curbs, or gutters* ~~have~~ *has* been constructed under orders of the city council or each lot or parcel of land having access to ~~said~~ *the* property ~~via~~ *by way of* the alley approach ~~which~~ *that* has been constructed under orders of the city council. ~~Said~~ *The* resolution levying ~~such~~ *the* assessment ~~shall~~ *must* be ~~in every manner~~ prepared and certified *in* the same *manner* as resolutions levying assessments for the making of improvements in special improvement districts."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to city or town council orders for the construction of sidewalks, curbs, gutters, or alley approaches occurring after December 31, 2006.

Approved April 6, 2007

CHAPTER NO. 160

[HB 703]

AN ACT ESTABLISHING APPLICATION REQUIREMENTS FOR AN EASEMENT ON STATE LAND FOR A REGIONAL WATER AUTHORITY; AND AMENDING SECTION 77-2-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2-102, MCA, is amended to read:

"77-2-102. Application for easement. (1) Application for an easement on state land must be made to the department. Except as provided in subsections (3) ~~and (4)~~ *through (5)*, the application must describe the proposed right-of-way according to survey, show the necessity for the proposed highway or street or other easement, and give any additional information that the department requires.

(2) This application must be accompanied by two exact copies of the official plat of the proposed highway, street, or other easement, verified by the affidavit of the engineer or surveyor who prepared the application. These plats must show the quantity of land taken by the proposed highway or street or other easement for each 40-acre tract or government lot of state land over or through which it passes and also the amount of land remaining in each portion of that 40-acre tract or government lot. When considered necessary by the department,

these plats must show all these facts for smaller subdivisions as the circumstances may render desirable for the state.

(3) The application must include the affidavit of a licensed engineer or professional surveyor stating that the methodology used is known to be accurate to within 5 meters. The survey must be tied to an established section corner or 1/4 corner monument. The department may request greater accuracy if the department determines that the information is needed to adequately describe the easement.

(4) If the purpose of the right-of-way applied for is the transmission or distribution of electrical energy or the construction and operation of pipelines or telephone, telegraph, or radio systems, the plats and measurements need not be given. An exact geographical survey is not required, but the application must include the description of the location of the center line of the right-of-way that refers to an established monument within a filed corner recordation form, certificate of survey, or subdivision plat. The accuracy requirements of subsection (3) must be met. The entire right-of-way may be applied for in one application with only one plat of the entire right-of-way required. An archaeological survey is not required if, in the opinion of the department, heritage property would not be impacted.

(5) (a) If the purpose of the right-of-way applied for is a regional water authority provided for in Title 75, chapter 6, part 3, the plats and measurements need not be given. An exact geographical survey is not required, but the application must include the description of the location of the center line of the right-of-way.

(b) The application provided for in subsection (5)(a) must be accompanied by electronic global positioning system data in the Montana coordinate system, easement location depicted on a topographical map to a scale of 1:24,000, easement coordinates, and the quantity of land taken in each quarter-quarter section."

Approved April 6, 2007

CHAPTER NO. 161

[HB 717]

AN ACT RATIFYING THE UNITED STATES OF AMERICA, FISH AND WILDLIFE SERVICE, BOWDOIN NATIONAL WILDLIFE REFUGE COMPACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. United States of America, fish and wildlife service, Bowdoin national wildlife refuge — Montana compact ratified. The compact entered into by the State of Montana and the United States of America to settle for all time any and all claims to federal reserved water rights for the Bowdoin National Wildlife Refuge administered by the U.S. Fish and Wildlife Service within the State of Montana and filed with the secretary of state of the State of Montana under the provisions of 85-2-703 on [date of filing] is ratified. The compact is as follows:

ARTICLE I - RECITALS

WHEREAS, in 1979, the United States brought several actions in the United States District Court for the District of Montana to adjudicate, inter alia, its rights to water with respect to the Bowdoin National Wildlife Refuge; see United States v. Aageson, No. CV-79-GF (filed April 5, 1979);

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America; see "the McCarran Amendment", 43 U.S.C. 666(a)(1) (1952);

WHEREAS, the State of Montana in 1979 pursuant to Title 85, chapter 2, of the Montana Code Annotated (MCA), commenced a general adjudication of the rights to use water within the State of Montana, including all federal reserved and appropriative water rights;

WHEREAS, the Montana Reserved Water Rights Compact Commission, pursuant to 85-2-703, MCA, is authorized to negotiate settlement of water rights claims filed by the United States for areas in which the United States claims reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of Bowdoin National Wildlife Refuge in the State of Montana;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-517 and 519 (1968);

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. 1457 (1986, Supp. 1992), inter alia;

WHEREAS, it is in the best interest of all Parties that the water rights claims for the Bowdoin National Wildlife Refuge be settled through agreement between the State of Montana and the United States;

NOW, THEREFORE, the Parties agree to enter into this Compact for the purpose of settling the water rights claims of the United States for the Bowdoin National Wildlife Refuge.

ARTICLE II - DEFINITIONS

For purposes of this compact only, the following definitions shall apply:

(1) "Abstract" means the copy of the document entitled "Abstract of U.S. Fish and Wildlife Service Water Rights" referenced in this Compact as Appendix 1.

(2) "Acre-Foot" or "Acre-Feet" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet of water.

(3) "Acre-Foot per Year" or "Acre-Feet per Year" or "AFY" means an annual quantity of water measured in Acre-Feet over a period of a year.

(4) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(5) "Arising Under State Law" means, as applied to a water right, a water right created under Montana law and does not include water rights created under federal law.

(6) "Beaver Creek Basin" means Montana Water Court Basin 40M, consisting of the mainstem of Beaver Creek and its tributaries, including Big Warm Creek, Little Warm Creek, and Black Coulee, to its confluence with the Milk River.

(7) "Bowdoin National Wildlife Refuge" or "Refuge" means those lands and interests in lands located in Montana that were acquired pursuant to or withdrawn and reserved by Executive Order No. 7295 of February 14, 1936, and Executive Order No. 8592 of November 12, 1940, for purposes of providing a refuge and breeding ground for migratory bird and other wildlife.

(8) "Change in Use" means, as applied to the Refuge water right, a change in the point of diversion, the place of use, the purpose of use, or the place of storage.

(9) "Consumptive Use" means a use of water that removes water from the source of supply such that the quality or quantity is reduced or the timing of return delayed, making it unusable or unavailable for use by others, and includes evaporative loss from impoundments and natural lakes.

(10) "Deep Ground Water" means water extracted from any deep regional Aquifer that is located in any geologic formation dating from the Jurassic Period or older.

(11) "Department" means the Montana Department of Natural Resources and Conservation or any successor agency.

(12) "Effective Date" means the date on which the Compact is given ratification by the Montana Legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice or on which the Memorandum of Understanding concerning the exercise of certain of the water rights quantified in this Compact and attached hereto as Appendix 3 is executed by the State of Montana and the United States Fish and Wildlife Service, whichever date is latest.

(13) "FWS" means the United States Fish and Wildlife Service of the United States Department of the Interior or any successor agency.

(14) "Ground Water" means any water that is beneath the surface of the ground.

(15) "Jurassic Period" means the middle period of the Mesozoic era, spanning the time between approximately 213 million and 145 million years before the Effective Date of this Compact, as identified on the geologic table attached hereto as Appendix 4.

(16) "Milk River Basin" means the mainstem of the Milk River and its tributaries from its headwaters to the confluence with the Missouri River and consists of: Montana Water Court Basins 40F, 40G, 40H, 40I, 40JW, 40JE, 40K, 40L, 40M, 40N, and 40O, as those Basin names may be modified by the Montana Water Court from time to time, and the portion of the Milk River and its tributaries flowing through the Provinces of Alberta and Saskatchewan in Canada.

(17) "Party" or "Parties" means the State of Montana, the United States of America, or both.

(18) "Person" or "Persons" means an individual or individuals or any other entity, public or private, including the State, a tribe, and the United States and all officers, agents, and departments thereof.

(19) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof, and unless otherwise indicated, for purposes of notification or consent, "State" means the Director of the Department or the Director's designee.

(20) "United States" means the federal government and all officers, agencies, and departments thereof, and unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of the Interior or the Secretary's designee.

ARTICLE III - REFUGE WATER RIGHT

The Parties agree that the following water rights are in settlement of the reserved water rights of the United States for the Refuge. All water rights described in this Article are subject to Article IV of this Compact as well as any specific additional conditions set forth below.

A. Quantification.

The United States shall have the right to water from the following sources:

1. Natural Flow.

Subject to the provisions of Article III.B.2, the United States has the right to the surface flow in Basin 40M that drains naturally into the Refuge after satisfaction of the following water rights Arising Under State Law:

(a) all water rights Arising Under State Law with a priority date before the Effective Date of this Compact;

(b) any right excepted from the permitting requirements of State law to appropriate stock water for impoundments or pits with a priority date after the Effective Date of this Compact; and

(c) any right excepted from the permitting requirements of State law to appropriate Ground Water for domestic and/or lawn and garden use with a priority date after the Effective Date of this Compact.

2. Diversion from Beaver Creek - Consumptive Use.

Subject to the provisions of Article III.B.2, the United States has the right to divert up to 24,714 Acre-Feet per Year from Beaver Creek.

3. Ground Water - Consumptive Use.

Subject to the provisions of Article III.B.2:

(a) the United States has the right to develop 223 Acre-Feet of Ground Water extracted from well(s) located within the exterior boundaries of the Refuge; and

(b) subject also to the provisions of Article III.H, the United States has the right to develop 5,300 Acre-Feet of Deep Ground Water extracted from well(s) located any place within the Refuge.

B. Relative Priority.

1. Priority Date.

Subject to the provisions of Article III.H., the United States has a priority date of November 12, 1940, for the water rights described in this Compact for the Refuge.

2. Subordination.

The water rights described in Article III.A are subordinated to:

(a) all rights Arising Under State Law with a priority date before the Effective Date of this Compact;

(b) any right excepted from the permitting requirements of State law to appropriate stock water for impoundments or pits with a priority date after the Effective Date of this Compact; and

(c) any right excepted from the permitting requirements of State law to appropriate Ground Water for domestic and/or lawn and garden use with a priority date after the Effective Date of this Compact.

C. Period of Use.

The period of use of the water right set forth in Article III.A is January 1 through December 31 of each year.

D. Points and Means of Diversion.

1. Diversion of the water right set forth in Article III.A.2 may be located on Beaver Creek off the Refuge, subject to applicable State and federal law and/or any place within the Refuge.

2. Diversion of the water right set forth in Article III.A.1 and 3 may be located any place within the Refuge.

E. Place of Use.

The water rights set forth in Article III.A may be used anywhere within the Refuge.

F. Purposes.

The water rights set forth in Article III.A may be used for the purposes of the Refuge, including wildlife habitat maintenance and enhancement (including grazing needs for habitat management purposes), stock watering, and administrative uses, including but not limited to domestic, lawn and garden, institutional, and dust abatement uses.

G. Temporary Emergency Appropriations.

The use of water for emergency fire suppression benefits the public and is necessary for the purposes of the Refuge. The United States may divert water for emergency fire suppression at the Refuge without definition of the specific elements of a recordable water right. Temporary emergency use of water for emergency fire suppression from a source for which a water right is quantified in Article III shall not be considered an exercise of that right.

H. Deep Ground Water Use.

The development and use of the water right set forth in Article III.A.3(b) is subject to:

1. The provisions of Article III.I.1.b. and Article IV.B of the Fort Belknap-Montana Compact, 85-20-1001 through 85-20-1008, MCA; and

2. All applicable State laws pertaining to Ground Water wells, including but not limited to authorization under 85-2-311, MCA, and all state and federal water quality standards, with the exception that the priority date for this use shall be the Effective Date of this Compact and the water developed pursuant to this right may be used only for the purposes set forth in Article III.F of this Compact.

I. Exercise of Right Subject to Agreement.

In addition to the foregoing, the exercise of the water rights quantified in this Compact are subject to the provisions set forth in that Memorandum of Understanding (MOU) executed between the FWS and the State and attached hereto as Appendix 3. The MOU may at any time be modified by the mutual consent of the Parties, and such modification shall not be considered a modification of this Compact. Prior to execution of the MOU or of any changes to it, the Parties shall: (1) provide notice to water users in the affected basins of the proposed terms of the MOU and any proposed changes to it; (2) hold at least one meeting in Malta, Montana, and one meeting in Glasgow, Montana, preceded by such notice as may be required under State law for public meetings, at which representatives of the State and the United States will explain the proposed MOU or any change(s) to it and allow for public comment; and (3) provide a reasonable period for receipt of any written public comment concerning the MOU or the proposed change(s).

ARTICLE IV - IMPLEMENTATION OF COMPACT

A. Enforcement of Water Right.

1. The United States, the State, or a holder of a water right Arising Under State Law may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' water right described by this Compact and a holder of a water right Arising Under State Law. Resolution of the controversy shall be governed by the terms of this Compact where applicable, or to the extent not applicable, by applicable state or federal law.

2. The United States agrees that a water commissioner appointed by a state or federal court of competent jurisdiction, or other official authorized by law, may enter the Refuge for the purpose of data collection, including the collection of information necessary for water distribution on or off the Refuge, and to inspect structures for the diversion and measurement of water described in this Compact for Consumptive Use. The terms of entry shall be as specified in an order of a state or federal court of competent jurisdiction.

3. The Department may enter the Refuge at a reasonable hour of the day for the purposes of data collection on water diversion and stream flow or inspection of devices maintained by the United States pursuant to this Compact. The Department shall notify the United States by certified mail, telephone, e-mail, or in person, at least 24 hours prior to entry.

4. The United States may request an investigation by the Department of a diversion located on a stream for which a water right is described in this Compact. The Department may investigate. If an investigation occurs, the United States may accompany the Department.

5. The United States shall maintain structures, including wellhead equipment and casing, for the diversion and measurement of water authorized for consumptive use by this Compact and shall measure all exercises of its consumptive use water right. The United States shall maintain any devices it deems necessary for enforcement of its water right for natural flow described in this Compact.

B. Use of Water Right.

The rights of the United States described in this Compact are federal reserved water rights. Non-use of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment of the right.

The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under State law, but shall be restricted to uses necessary to fulfill the purposes of the Refuge.

C. Change in Use.

1. Natural flow.

Water rights specified in this Compact for natural flow shall not be subject to Change in Use, provided that: the emergency use of water for fire suppression as provided for in Article III.G. shall not be deemed a Change in Use or violation of a water right for natural flow.

2. Consumptive uses.

The United States may make a Change in Use of its Consumptive Use water rights described in Article III.A. of this Compact provided that:

(a) the Change in Use shall be in fulfillment of the purposes of the Refuge;

(b) the total Consumptive Use shall not exceed the amount described in this Compact;

(c) the Change in Use shall not adversely affect any water right Arising Under State Law; and

(d) with the exception of the provisions governing a change in the purpose for which the water right is used, the United States, in making the change, shall comply with the provisions of the Montana Water Use Act, Title 85, chapter 2, MCA, applicable to change in appropriation right at the time of the change.

3. Reporting by the United States.

For any action affecting the use of a consumptive right, whether or not such action is deemed a Change in Use, the United States agrees to provide the following information to the Department upon request:

(a) Well Log:

A well log for any use that includes the drilling of a well or enlargement of an existing wellbore, such well log(s) also to be supplied to the Montana Bureau of Mines and Geology.

(b) Emergency Use:

(i) The use to which water was put, the dates of use, and the estimated amount of water used, for any temporary emergency use for fire suppression authorized by Article III.G of this Compact;

(ii) Such information needs to be provided to the Department, in response to its request, only after the commencement and subsequent cessation of any such emergency use.

(c) Periodic Report:

Within 60 days after receiving a request from the Department, the United States agrees to provide the Department with a report on:

(i) actions since the Effective Date of the Compact or any prior periodic report, whichever is later, affecting the use of a Consumptive Use right described in this Compact;

(ii) the initiation of new uses of any water right recognized in this Compact that were completed since the Effective Date of the Compact or any prior periodic report, whichever is later; and

(iii) any data and documents generated or received by the FWS since the Effective Date of the Compact or any prior periodic report, whichever is later, on measurement of stream flow on a stream with a natural flow water right set forth in this Compact.

4. Reporting by the State.

Upon request and no more often than once in each calendar year, the Department shall provide the United States with a report of:

(a) changes in appropriation granted, as defined by State law, since the Effective Date of the Compact or any prior report, whichever is later, of water rights upstream of the Refuge on Beaver Creek;

(b) any data and documents generated by the Department since the Effective Date of the Compact or any prior report, whichever is later, on the measurement of stream flows, diversions, and well use on or tributary to a stream for which a water right for natural flow is described in this Compact;

(c) any certificate of water right issued since the Effective Date of the Compact or any prior report, whichever is later, for the right to appropriate Ground Water in Basin 40M; and

(d) any permit issued since the Effective Date of the Compact or any prior report, whichever is later, for the right to appropriate stock water for impoundment or pit in Basin 40M.

ARTICLE V - GENERAL PROVISIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights.

1. The relationship between the water rights of the United States described in this Compact and any rights to water of any Indian tribe, or any federally derived water right of an individual, or of the United States on behalf of such tribe or individual, shall be determined by the rule of priority. The Parties agree that the water rights described in this Compact are junior to any rights to water of any Indian tribe, or any federally derived water right of an individual, or of the United States on behalf of such tribe or individual, currently quantified or as may be quantified after the Effective Date of this Compact and with a priority date before the Effective Date of this Compact, including aboriginal rights, if any, in the basins affected.

2. Nothing in the Compact may be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the FWS at the Refuge.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the water rights of any Indian tribe or tribal member.

4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian tribe regarding its boundaries or property interests in the State of Montana.

B. State Water Rights.

Nothing in this Compact may limit the exclusive authority of the State, including the authority of a water commissioner authorized by State law, to administer all current and future water rights Arising Under State Law within and upstream of the Refuge, provided that in administration of those water

rights in which the United States has an interest, such authority is limited to that granted under federal law.

C. Abstract.

Concurrent with this Compact, the Parties have prepared an Abstract, a copy of which is referenced as Appendix 1, which is a specific listing of all of the United States' water rights for the Refuge that are described in this Compact and quantified in accordance with this Compact. The Parties prepared the Abstract to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstract are subject to the terms of this Compact. In the event of a discrepancy between a right listed in the Abstract and that same right as quantified in accordance with Articles III and IV of this Compact, the Parties intend that the quantification in accordance with Articles III and IV of this Compact shall be reflected in a final decree.

D. General Disclaimers.

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State or the United States and any other state;

2. as a waiver by the United States of its right under State law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, MCA, in the basins affected by this Compact or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the state Water Use Act, Title 85, MCA, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;

4. to determine the relative rights inter sese of Persons using water under the authority of state or tribal law or to limit the rights of the Parties or any other Person to litigate any issues or questions not resolved by this Compact;

5. to authorize the taking of a water right that is vested under state or federal law;

6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of this Compact;

8. to affect or determine the applicability of any state or federal law, including, without limitation, environmental and public safety laws, on activities of the FWS;

9. to affect the right of the State to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or Act of Congress;

10. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the United States for the Refuge and does not affect

the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact.

11. to prevent the United States from constructing or modifying an outlet to an impoundment at the Refuge in compliance with all applicable laws;

12. to prevent the United States from seeking a permit to appropriate water under State law;

13. to modify or prevent modification of the March 9, 1937, Memorandum of Agreement between the Secretary of the Interior and the Secretary of Agriculture in the Matter of a Water Supply for the Lake Bowdoin Migratory Water Fowl Refuge;

14. to prevent the United States from entering into an agreement pursuant to applicable law(s) to obtain additional water from the Milk River or Beaver Creek Basins by contract, lease, or purchase or from participating in efforts to improve water supply in the Milk River Basin.

E. Reservation of Rights.

The Parties expressly reserve all rights not granted, described, or relinquished in this Compact.

F. Severability.

The provisions of this Compact are not severable.

G. Multiple Originals.

This compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

H. Notice.

Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as the Director may designate in writing; and

2. United States: Upon the Secretary of the Interior and such other officials as the Secretary may designate in writing.

ARTICLE VI - FINALITY

A. Binding Effect.

1. After the Effective Date of this Compact, all of the provisions of this Compact shall be binding on:

(a) the State, and any Person, using, claiming, or in any manner asserting a right under the authority of the State to the use of water; and

(b) except as otherwise provided in Article V.A., the United States, and any Person, using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.

2. Following the Effective Date, this Compact shall not be modified without the mutual consent of the Parties. Either Party may seek enforcement of this Compact in a court of competent jurisdiction. Attempt to unilaterally modify this Compact by either Party shall render this Compact voidable at the election of the other Party.

3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described

herein, this Compact and such rights are binding on all Persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-702, MCA, this Compact shall be voidable by action of and without prejudice to either Party.

5. Notwithstanding any other provision in this Compact, the State reserves the right to withdraw as a Party if, within five (5) years of ratification of this Compact by the Montana legislature:

(a) this Compact is not given written approval by the United States Department of the Interior;

(b) this Compact is not given written approval by the United States Department of Justice; or

(c) the Memorandum of Understanding concerning the exercise of certain of the water rights quantified in this Compact and attached hereto as Appendix 3 is not executed by the State and the FWS.

6. Notwithstanding any other provision in this Compact, the United States reserves the right to withdraw as a Party if, within five (5) years of ratification of this Compact by the Montana legislature, the Memorandum of Understanding concerning the exercise of certain of the water rights quantified in this Compact and attached hereto as Appendix 3 is not executed by the State and the FWS.

7. Notwithstanding any other provision in this Compact, the State reserves the right to withdraw as a Party if, at any point subsequent to the Effective Date of this Compact, the United States unilaterally withdraws from the Memorandum of Understanding attached hereto as Appendix 3.

B. Disposition of Actions.

Subject to the following stipulations and within one hundred eighty (180) days of the Effective Date, the Parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666, for approval in accordance with State law and for the incorporation of the reserved water rights described in this Compact into a decree or decrees entered therein. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702, MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

1. Dismissal of Filed Claims.

At the time the state courts approve the reserved water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all of the water right claims specified in Appendix 2 to this Compact. If this Compact fails approval or a reserved water right described herein is not confirmed, the specified claims shall not be dismissed.

2. Disposition of Federal Suits.

Within ninety (90) days of the issuance of a final decree or decrees by the state courts approving this Compact and confirming the reserved water rights described herein and the completion of any direct appeals therefrom or the expiration of the time for filing such appeal, the Parties shall execute and file

joint motions pursuant to Rule 41(a), Fed. R. Civ. P., to dismiss with prejudice any claims made by the United States for the FWS for the Refuge described in this Compact in federal court. This Compact may be filed as a consent decree in those federal suits only if, prior to the dismissal of the federal suits as provided in this Article, it is finally determined in a judgment binding on the State that the state courts lack jurisdiction over some or all of the reserved water rights described in this Compact. Within one (1) year of such judgment, the United States agrees to commence such additional proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the reserved water rights described herein which are not included within an existing action.

3. Continuation of Negotiations.

The Parties were unable to finalize agreement on quantification of the water rights for the National Bison Range and the Charles M. Russell and UL Bend National Wildlife Refuges and UL Bend Wilderness Area, prior to the Effective Date of this Compact. The Parties agree to continue to pursue, in good faith, quantification of water rights for these areas. In the event the Parties are unable to agree on quantification, the United States retains its right to have the quantity of any reserved water right for these areas adjudicated in a state or federal court of competent jurisdiction.

C. Settlement of Claims.

The Parties intend that the water rights described in this Compact are in full and final settlement of the water right claims for the reserved land described in this Compact and administered by the FWS in Montana on the Effective Date of this Compact. Pursuant to this settlement, the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed by the United States for the Refuge relinquishes forever on the Effective Date of this Compact all said claims to water within the State for the Refuge. The State agrees to recognize the reserved water rights described and quantified herein and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the State.

D. Defense of Compact.

The Parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 6, 2007

CHAPTER NO. 162

[HB 724]

AN ACT PROVIDING REQUIREMENTS FOR SERVICE CONTRACTS AS PART OF CERTAIN BUSINESS ARRANGEMENTS; REQUIRING INSURANCE OF SERVICE CONTRACTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) "Administrator" means the person who is responsible for the administration of service contracts.

(2) "Department" means the department of justice provided for in 2-15-2001.

(3) "Person" means an individual, partnership, corporation, incorporated or unincorporated association, limited liability company, limited liability partnership, joint-stock company, reciprocal insurer, syndicate, or any similar entity or combination of entities acting in concert.

(4) "Provider" means a person who is contractually obligated to the service contract holder under the terms of the service contract.

(5) "Reimbursement insurance policy" means a policy of insurance issued to a provider to either provide reimbursement to the provider under the terms of the insured service contracts issued or sold by the provider or, in the event of the provider's nonperformance, to pay on behalf of the provider all covered contractual obligations incurred by the provider under the terms of the insured service contracts issued or sold by the provider.

(6) "Service contract" has the meaning provided in 33-1-102(10)(b).

(7) "Service contract holder" or "contract holder" means the person who is the purchaser or holder of a service contract.

Section 2. Requirements for conducting business. (1) A provider may appoint an administrator or other designee to be responsible for any or all of the administration of service contracts in compliance with [sections 1 through 4].

(2) Service contracts may not be issued, sold, or offered for sale in the state unless the provider complies with the requirements of one of the following three provisions:

(a) insures all service contracts under a reimbursement insurance policy issued by an insurer that is licensed, registered, or otherwise authorized to do business in the state and either:

(i) at the time the policy is issued and during the duration of the policy, maintains a surplus as to policyholders and paid-in capital of at least $15 million and annually files copies of the insurer's financial statements, its national association of insurance commissioners annual statement, and any actuarial certification required by and filed in the insurer's state of domicile; or

(ii) at the time the policy is issued and during the duration of the policy, maintains a surplus as to policyholders and paid-in capital of less than $15 million but at least equal to or greater than $10 million and:

(A) upon request of the department, demonstrates that the company maintains a ratio of net written premiums, whenever written, to surplus as to policyholders and paid-in capital of not greater than 3-to-1; and

(B) annually files copies of the insurer's audited financial statements, its national association of insurance commissioners annual statement, and any actuarial certification required by and filed in the insurer's state of domicile;

(b) (i) maintains a funded reserve account, which may be subject to examination and review by the department, for its obligations under its contracts issued and outstanding in this state, the reserves of which may not be less than 40% of gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force;

(ii) maintains a financial security deposit having a value of not less than 5% of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than $25,000 and consisting of one of the following:

(A) a surety bond issued by an authorized surety;

(B) securities of the type eligible for deposit by authorized insurers in this state;

(C) cash; or

(D) a letter of credit issued by a qualified financial institution; or

(c) maintains, either alone or with its parent company, a net worth of stockholders' equity of $100 million and provides the department, upon request, with:

(i) a copy of the provider's or the provider's parent company's most recent Form 10-K or Form 20-F filed with the securities and exchange commission within the last calendar year; or

(ii) if the company does not file with the securities and exchange commission, a copy of the company's audited financial statements showing a net worth of the provider or its parent company of at least $100 million.

(3) If information requested in subsection (2)(c)(i) or (2)(c)(ii) comes from the provider's parent company, then the parent company shall agree to guarantee the obligations of the provider relating to service contracts sold by the provider in this state.

(4) Except for the requirements provided in subsection (2), no other financial security requirements may be required.

(5) The marketing, sale, offering for sale, issuance, making, proposing to make, and administration of service contracts by the providers and related service contract sellers, administrators, and other persons are exempt from all provisions in Title 33, as provided in 33-1-102(10)(a).

Section 3. Required disclosures — reimbursement insurance policy. (1) Reimbursement insurance policies insuring service contracts issued, sold, or offered for sale in this state must state that the insurer that issued the reimbursement insurance policy shall either reimburse or pay on behalf of the provider any covered sums that the provider is legally obligated to pay or, in the event of the provider's nonperformance, shall provide the service that the provider is legally obligated to perform according to the provider's contractual obligations under the service contracts issued or sold by the provider.

(2) If covered service is not provided by the provider within 60 days of proof of loss by the service contract holder, the contract holder is entitled to apply directly to the reimbursement insurance company.

Section 4. Required disclosure — service contracts. (1) Service contracts marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state must be written, printed, or typed in clear understandable language that is easy to read and must disclose the requirements set forth in this section, as applicable.

(2) Service contracts insured under a reimbursement insurance policy pursuant to [section 2(2)(a)] must contain the following items:

(a) a statement that is in a form identical or similar to the following: "Obligations of the provider under this service contract are insured under a service contract reimbursement insurance policy."

(b) the name and address of the insurer.

(3) Service contracts not insured under a reimbursement insurance policy pursuant to [section 2(2)(a)] must contain a statement that is in a form identical or similar to the following: "Obligations of the provider under this service contract are backed by the full faith and credit of the provider."

(4) Service contracts must state the name and address of the provider and must identify any administrator if different from the provider, the service contract seller, and the service contract holder if provided by the holder. The identities of all parties referred to in this subsection are not required to be preprinted on the service contract and may be added to the service contract at the time of the sale.

(5) A service contract or the service contract holder's receipt must state the total purchase price and the terms under which the contract is sold. The purchase price is not required to be preprinted on the service contract and may be negotiated at the time of the sale with the service contract holder.

(6) Service contracts must state the existence of any deductible amount, as applicable.

(7) Service contracts must specify the merchandise and services to be provided and any limitations, exceptions, or exclusions.

(8) Service contracts covering automobiles must state whether the use of nonoriginal manufacturer's parts are allowed.

(9) Service contracts must state any restrictions governing the transferability of the service contract, as applicable.

(10) Service contracts must state the terms, restrictions, or conditions governing cancellation of the service contract prior to the termination or expiration date of the service contract by either the provider or service contract holder.

(11) (a) Except as provided in subsection (11)(b), the provider shall mail a written notice to the service contract holder at the last-known address of the contract holder contained in the records of the provider at least 5 days prior to the cancellation by the provider.

(b) Prior notice is not required if the reason for cancellation is:

(i) nonpayment of the provider fee;

(ii) a material misrepresentation by the service contract holder to the provider; or

(iii) substantial breach of duties by the service contract holder relating to the covered product or its use.

(c) Any cancellation notice must state the effective date and reason for the cancellation.

(12) Service contracts must set forth all of the obligations and duties of the service contract holder, including the duty to protect against any further damage and any requirement to follow the owner's manual.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through 4].

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Applicability. [This act] applies to service contracts issued on or after January 1, 2008.

Approved April 6, 2007

CHAPTER NO. 163

[HB 795]

AN ACT ALLOWING SPECIAL IMPROVEMENT DISTRICTS AND RURAL IMPROVEMENT DISTRICTS TO BE CREATED FOR ACQUISITION, CONSTRUCTION, OR RECONSTRUCTION OF LAND AND STRUCTURES FOR FIRE PROTECTION; AND AMENDING SECTION 7-12-4102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-4102, MCA, is amended to read:

"7-12-4102. Authorization for creation of special improvement districts. (1) The city or town council may:

(a) create special improvement districts, designating them by number;

(b) extend the time for payment of assessments levied upon the districts for district improvements for a period not exceeding 20 years or, if refunding bonds are issued pursuant to 7-12-4194, for a period not exceeding 30 years;

(c) make the assessments payable in installments; and

(d) pay all expenses of whatever character incurred in making the improvements with special improvement warrants or bonds.

(2) Whenever the public interest or convenience requires, the city council may:

(a) create special improvement districts for acquiring by purchase, building, constructing, or maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(b) create special improvement districts for acquiring by purchase or building and constructing municipal swimming pools and other recreation facilities;

(c) create special improvement districts and order the whole or a portion, either in length or width, of one or more of the streets, avenues, alleys, or places or public ways of the city:

(i) graded or regraded to the official grade;

(ii) planked or replanked;

(iii) paved or repaved;

(iv) macadamized or remacadamized;

(v) graveled or regraveled;

(vi) piled or repiled;

(vii) capped or recapped;

(viii) surfaced or resurfaced;

(ix) oiled or reoiled;

(d) create special improvement districts and order the acquisition, construction, or reconstruction within the districts of:

(i) sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings (including the planting of grassplots and setting out of trees);

(ii) sewers, ditches, drains, conduits, and channels for sanitary or drainage purposes, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances;

(iii) waterworks, water mains, and extensions of water mains;

(iv) pipes, hydrants, and hose connections for irrigating purposes;

(v) *land, structures, and* appliances for fire protection;

(vi) tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect them from overflow or injury by water;

(vii) the opening of streets, avenues, and alleys and the planting of trees on the streets, avenues, and alleys;

(e) create special improvement districts and order the construction or reconstruction in, over, or through property or rights-of-way owned by the city of:

(i) tunnels, sewers, ditches, drains, conduits, and channels for sanitary or drainage purposes, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances;

(ii) pipes and hose connections for irrigating and hydrants and appliances for fire protection;

(iii) breakwaters, levees, retaining walls, and bulkheads; and

(iv) walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in the city from overflow by water;

(f) create special improvement districts to make monetary advances or contributions to aid in the construction of additional natural gas and electric distribution lines and telecommunications facilities in order to extend those public utility services;

(g) create special improvement districts and order work to be done that is considered necessary to improve the whole or a portion of the streets, avenues, sidewalks, alleys, places, or public ways, property, or right-of-way of the city;

(h) create special improvement districts to acquire and improve by purchase, gift, bequest, lease, or other means land to be designated as public park or open-space land;

(i) create special improvement districts for the conversion of overhead utilities to underground locations in accordance with 69-4-311 through 69-4-314;

(j) create special improvement districts for the purchase, installation, maintenance, and management of alternative energy production facilities; and

(k) maintain, preserve, and care for any of the improvements authorized in this section.

(3) The city governing body may order and create special improvement districts covering projects abutting the city limits and include properties outside the city when the special improvement district abuts and benefits that property. Property owners within the proposed district boundaries outside the city may not be included in the special improvement district if 40% of those property owners protest the creation of the special improvement district. The property outside the city must be treated in a similar manner as to improvements, notices, and assessments as the property inside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the special improvement district prior to passing the resolution of intention or the resolution creating the special improvement district. A copy of the resolution of intention and the resolution creating the special improvement district must be provided to the county commissioners upon the passage of the respective resolutions."

Approved April 6, 2007

CHAPTER NO. 164

[HB 37]

AN ACT DEFINING THE TERM "NOXIOUS WEEDS"; PROVIDING A NOTIFICATION PROCESS FOR NONCOMPLIANT WEED CONTROL ON STATE LANDS; ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONTROL WEEDS ON STATE LANDS AND BILL FOR COSTS INCURRED; PROVIDING AN ADMINISTRATIVE HEARING PROCESS; GRANTING RULEMAKING AUTHORITY; AND AMENDING SECTION 77-1-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-1-101, MCA, is amended to read:

"77-1-101. Definitions. Unless the context requires otherwise and except for the definition of state land in 77-1-701, in this title, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.

(2) "Commercial or concentrated recreational use" means any recreational use that is organized, developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes all outfitting activity and all activities not included within the definition of general recreational use.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) (a) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing, and other activities determined by the board to be compatible with the use of state lands.

(b) General recreational use does not include the use of streams and rivers by the public under the stream access laws provided in Title 23, chapter 2, part 3.

(5) "Legally accessible state lands" means state lands that can be accessed by:

(a) dedicated public road, right-of-way, or easement;

(b) public waters;

(c) adjacent federal, state, county, or municipal land if the land is open to public use; or

(d) adjacent contiguous private land if permission to cross the land has been secured from the landowner. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use by members of the public, other than those granted permission.

(6) "Noxious weeds" or "weeds" means any exotic plant species established or that may be introduced in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated:

(a) as a statewide noxious weed by rule of the department of agriculture; or

(b) as a district noxious weed by a district weed board organized under 7-22-2103.

~~(6)~~*(7)* (a) "State land" or "lands" means:

(i) lands granted to the state by the United States for any purpose, either directly or through exchange for other lands;

(ii) lands deeded or devised to the state from any person; and

(iii) lands that are the property of the state through the operation of law.

(b) The term does not include:

(i) lands that the state conveys through the issuance of patent;

(ii) lands that are used for building sites, campus grounds, or experimental purposes by a state institution and that are the property of that institution;

(iii) lands that the board of regents of higher education has authority to dispose of pursuant to 20-25-307; or

(iv) lands acquired through investments under the provisions of 17-6-201.

(8) "Weed management" or "control" has the meaning provided in 7-22-2101."

Section 2. Notice of noncompliance. (1) When the department finds that noxious weeds on leased state land or on state land subject to a license or permit have not been controlled as required by 7-22-2116, the lease, the license, or the permit, the department shall contact the lessee, licensee, or permittee and require that a weed management and control program be implemented. The lessee, licensee, or permittee may request that an inspection of the state land be made with department staff. The department shall seek voluntary compliance with a noxious weed management and control program for the state lands prior to issuing a notice of noncompliance. If the lessee, licensee, or permittee fails to implement a weed management and control program when directed by the department, the department shall notify the lessee, licensee, or permittee by mail of the noncompliance. The notice must specify:

(a) the basis for the determination of noncompliance;

(b) the geographic location of the area of noncompliance by legal description or other reasonably identifiable description;

(c) measures to be undertaken in order to comply with the weed control responsibilities of the lease, license, or permit;

(d) a reasonable period of time, not less than 15 days, in which compliance measures must be initiated;

(e) the right of the person to request, within 15 days, an administrative hearing as provided by [section 4]; and

(f) the right of the person to request an extension if the measures in subsection (1)(c) cannot be implemented due to climatic or growing conditions.

(2) At least 2 weeks prior to sending a notice of noncompliance, the department shall send by certified mail to the lessee, licensee, or permittee a final notice that the weed management and control program has not been implemented.

Section 3. Department authorized to control weeds — billing for weed control. (1) If the lessee, licensee, or permittee fails to take corrective action or if a request for an administrative hearing is not made within the time specified in the notice, the department may enter state land covered by the lease, license, or permit and institute appropriate weed control measures. The department may enter into an agreement with a commercial applicator, as defined in 80-8-102, or with the appropriate weed management district organized under 7-22-2102 to control the weeds. The commercial applicator or the weed management district shall agree to carry any insurance required by the department.

(2) The department shall submit a bill to the lessee, licensee, or permittee itemizing the hours of labor, material, and equipment time and listing the actual total cost incurred by the department to take the weed control measures, together with a penalty not exceeding 50% of the total cost. The bill must specify and order a payment due date of 30 days from the date the bill is sent. If payment is not received within 30 days, the department may cancel the lease, license, or permit. Money recovered under this section must be placed in the resource development account established in 77-1-604, except that penalties collected must be distributed annually to the trusts for the lands on which the weed control action was taken.

(3) If a person receiving an order to take corrective action requests an administrative hearing, the department may not institute control measures until the matter is finally resolved, except in case of an emergency. In an emergency, the person is liable for department costs allowed by this section only to the extent determined appropriate by the director or the court that finally resolves the matter.

Section 4. Administrative hearings. (1) A person adversely affected by any notice, action, or order of the department may, within the timeframe stated in the notice of noncompliance provided for in [section 2], request an administrative hearing before the director or the director's designee. The director or the director's designee shall hold a hearing within 30 days of the request. Participants may be represented by legal counsel. The director or the director's designee shall make a record of the proceeding and enter an order and findings within 30 days after the hearing.

(2) Within 30 days after the director or the director's designee renders an order and findings, the person adversely affected may file a petition in district court requesting that the order and findings be set aside or modified. The court may affirm, modify, or set aside the order complained of, in whole or in part.

Section 5. Rulemaking authority. The department may adopt rules to implement [sections 2 through 4].

Section 6. Codification instruction. [Sections 2 through 5] are intended to be codified as an integral part of Title 77, and the provisions of Title 77 apply to [sections 2 through 5].

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 10, 2007

CHAPTER NO. 165

[HB 57]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PURCHASE LIABILITY INSURANCE FOR FOSTER PARENTS PROVIDING FOSTER CARE OR THERAPEUTIC FOSTER CARE FOR A YOUTH UNDER 18 YEARS OF AGE PLACED BY A STATE AGENCY; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Liability insurance for foster parents. (1) The department shall provide for liability and property damage insurance for a foster parent providing foster care services to children placed by the department and for a foster parent providing therapeutic foster care services under the auspices of a licensed child-placing agency.

(2) The state shall pay the cost of the premium for each policy issued under subsection (1). The foster parent may be required, as provided by rule, to pay a reasonable deductible for personal injury or property damage.

(3) The department shall adopt rules for the provision of insurance coverage to foster parents as provided in this section, including rules on premium payment and any deductibles required.

Section 2. Appropriation. There is appropriated to the department of public health and human services $70,000 from the general fund for each fiscal year 2008 and 2009 for the purposes of purchasing liability coverage for foster parents as provided in [section 1].

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2007.

Approved April 10, 2007

CHAPTER NO. 166

[HB 91]

AN ACT REVISING LAWS CONCERNING CHILD ABUSE AND NEGLECT TO COMPLY WITH FEDERAL LAW ALLOWING AUDIO AND VIDEO TESTIMONY; CLARIFYING REQUIREMENTS CONCERNING NOTICE BY CERTAIN PROFESSIONALS OF DRUG-AFFECTED INFANTS; AMENDING SECTIONS 41-3-115, 41-3-201, 41-3-205, 41-3-422, 41-3-423, 41-3-432, AND 41-3-445, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Audio or video testimony allowed. A court may permit testimony by telephone, videoconference, or other audio or audiovisual means at any time in a proceeding pursuant to this chapter.

Section 2. Section 41-3-115, MCA, is amended to read:

"41-3-115. Foster care review committee — foster care reviews — permanency hearings. (1) Except as provided in Title 41, chapter 3, part 10, in every judicial district the district court judge, in consultation with the department, shall appoint a foster care review committee. The foster care review committee shall conduct foster care reviews as provided in this section and may, at the discretion of the court and absent an objection by a party to the proceeding, conduct permanency hearings as provided in 41-3-445.

(2) (a) The members of the committee must be willing to act without compensation. The committee must be composed of not less than three or more than seven members. To the extent practicable, the members of the committee must be representatives of the various socioeconomic, racial, and ethnic groups of the area served.

(b) The members must include:

(i) one representative of the department who may not be responsible for the placement of the child or have any other direct conflict of interest;

(ii) a person who is knowledgeable in the needs of children in foster care placements and who is not employed by the department or the youth court; and

(iii) if the child whose care is under review is an Indian child, a person, preferably an Indian person, who is knowledgeable about Indian cultural and family matters and who is appointed effective only for and during that review.

(c) Members may also include but are not limited to:

(i) a representative of the youth court;

(ii) a representative of a local school district;

(iii) a public health nurse;

(iv) an at-large community member with knowledge of child protective services.

(3) (a) When a child is in foster care under the supervision of the department or if payment for care is made pursuant to 52-2-611, the committee shall conduct a review of the foster care status of the child. The review must be conducted within the time limit established under the Adoption and Safe Families Act of 1997, 42 U.S.C. 675(5).

(b) The committee shall hear the case of each child in foster care to review issues that are germane to the goals of permanency and to accessing appropriate

services for parents and children. In evaluating the accessibility, availability, and appropriateness of services, the committee shall consider:

(i) the safety, history, and specific needs of the child;

(ii) whether an involved agency has selected services specifically relevant to the problems and needs of the child and family;

(iii) whether appropriate services have been available to the child and family on a timely basis; and

(iv) the results of intervention.

(c) If the department has placed a child in foster care in another state, the committee shall consider whether the placement is appropriate and in the best interests of the child. In the case of a child who will not be returned to the parent, the committee shall consider both in-state and out-of-state placement options.

~~(c)~~*(d)* The committee may hear the case of a child who remains in or returns to the child's home and for whom the department retains legal custody.

(4) (a) Prior to the beginning of the review, reasonable notice of each review must be sent to the following:

(i) the parents of the child or their attorneys;

(ii) if applicable, the foster parents, a relative caring for the child, the preadoptive parents, or the surrogate parents;

(iii) the child who is the subject of the review if the child is 12 years of age or older;

(iv) the child's attorney, if any;

(v) the guardian ad litem;

(vi) the court-appointed attorney or special advocate of the child; and

(vii) the child's Indian tribe if the child is an Indian.

(b) When applicable, notice of each review may be sent to other interested persons who are authorized by the committee to receive notice.

(c) All persons receiving notice are subject to the confidentiality provisions of 41-3-205.

(d) If a foster care review is held in conjunction with a permanency hearing, notice of both proceedings must be provided.

(e) If a foster care review is held in conjunction with a permanency hearing, notice must be provided to the attorney who initiated the child abuse or neglect proceedings.

(5) The committee may elect to hold joint or separate reviews for groups of siblings, but findings and recommendations made by the committee must be specific to each child.

(6) After reviewing each case, the committee shall prepare written findings and recommendations with respect to:

(a) the continuing need for the placement and the appropriateness and safety of the placement;

(b) compliance with the case plan;

(c) the progress that has been made toward alleviating the need for placement;

(d) a likely date by which the child may be returned home or by which a permanent placement may be finalized.

(7) Following the permanency hearing, the committee shall send copies of its minutes and written findings and recommendations to the court and to the parties. If a party objects to the findings and recommendations, the party may within 10 days serve written objections upon the other party and file them with the court. A request for a hearing before the court upon the objections may be made by a party by motion. The court, after hearing the objections or upon its own motion and without objection, may adopt the findings and recommendations and shall issue an appropriate order.

(8) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members are confidential and subject to the confidentiality requirements of the department.

(9) The committee is subject to the call of the district court judge to meet and confer with the judge on all matters pertaining to the foster care of a child before the district court."

Section 3. Section 41-3-201, MCA, is amended to read:

"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of public health and human services.

(2) Professionals and officials required to report are:

(a) a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) ~~Christian Science practitioners and~~ religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care program, or an operator or employee of a child-care facility;

(f) a foster care, residential, or institutional worker;

(g) a peace officer or other law enforcement official;

(h) a member of the clergy*, as defined in 15-6-201(2)(a)*;

(i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged abuse or neglect; or

(j) an employee of an entity that contracts with the department to provide direct services to children.

(3) A professional listed in subsection (2)(a) or (2)(b) involved in the delivery or care of an infant shall report to the department any infant known to the professional to be affected by a dangerous drug, as defined in 50-32-101.

~~(3)~~*(4)* Any person may make a report under this section if the person knows or has reasonable cause to suspect that a child is abused or neglected.

~~(4)~~*(5)* (a) Except as provided in subsection ~~(4)(b)~~ *(5)(b)* or ~~(4)(c)~~ *(5)(c)*, a person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(b) A member of the clergy or a priest is not required to make a report under this section if:

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the member of the clergy or the priest in that person's capacity as a member of the clergy or as a priest;

(ii) the statement was intended to be a part of a confidential communication between the member of the clergy or the priest and a member of the church or congregation; and

(iii) the person who made the statement or confession does not consent to the disclosure by the member of the clergy or the priest.

(c) A member of the clergy or a priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

~~(5)~~*(6)* The reports referred to under this section must contain:

(a) the names and addresses of the child and the child's parents or other persons responsible for the child's care;

(b) to the extent known, the child's age and the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible for the injury or neglect; and

(d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

Section 4. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality — disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections ~~(6)~~ *(7)* and ~~(7)~~ *(8)*, a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's assigned attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(6) The confidentiality provisions of this section must be construed to allow a court of this state to share information with other courts of this state or of another state when necessary to expedite the interstate placement of children.

~~(6)~~*(7)* A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

~~(7)~~*(8)* A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection ~~(6)~~ *(7)* if the news organization, employee,

writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

~~(8)~~*(9)* This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

~~(9)~~*(10)* Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 5. Section 41-3-422, MCA, is amended to read:

"41-3-422. Abuse and neglect petitions — burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-427;

(ii) temporary investigative authority, as provided in 41-3-433;

(iii) temporary legal custody, as provided in 41-3-442;

(iv) long-term custody, as provided in 41-3-445;

(v) termination of the parent-child legal relationship, as provided in 41-3-607;

(vi) appointment of a guardian pursuant to 41-3-444;

(vii) a determination that preservation or reunification services need not be provided; or

(viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:

(a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition; and

(b) a separate notice to the court stating any statutory time deadline for a hearing.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

(iii) a preponderance of the evidence for an order of long-term custody; or

(iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

(6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions must be served upon the person or the person's attorney of record by certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall immediately provide for the appointment or assignment of an attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the interests of justice require.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and ~~must be given an opportunity~~ *has the right* to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted

intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must:

(a) state the nature of the alleged abuse or neglect and of the relief requested;

(b) state the full name, age, and address of the child and the name and address of the child's parents or guardian or person having legal custody of the child;

(c) state the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-425.

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing

master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 6. Section 41-3-423, MCA, is amended to read:

"41-3-423. Reasonable efforts required to prevent removal of child or to return — exemption — findings — permanency plan. (1) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state. Reasonable efforts include but are not limited to voluntary protective services agreements, development of individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward reunification or permanent placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.

(2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. If an indigent parent is not already represented by counsel, the court shall immediately provide for the appointment or assignment of counsel to represent the indigent parent in accordance with the provisions of 41-3-425. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; or

(ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts, *including consideration of both in-state and out-of-state permanent placement options for the child,* must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan*, including, if appropriate, placement in another state,* and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning*, including identifying in-state and out-of-state placements,* may be used.

(7) When determining whether the department has made reasonable efforts to prevent the necessity of removal of a child from the child's home or to reunify families that have been separated by the state, the court shall review the services provided by the agency including, if applicable, protective services provided pursuant to 41-3-302."

Section 7. Section 41-3-432, MCA, is amended to read:

"41-3-432. Show cause hearing — order. (1) (a) Except as provided in the federal Indian Child Welfare Act, a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.

(b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(c) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel and may be appointed or assigned counsel as provided for in 41-3-425. ~~The court may permit testimony by telephone, audiovisual means, or other electronic means.~~

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) The court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of

the child named in the petition may request that a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court."

Section 8. Section 41-3-445, MCA, is amended to read:

"41-3-445. Permanency hearing. (1) (a) (i) Subject to subsection (1)(b), a permanency hearing must be held by the court or, subject to the approval of the court and absent an objection by a party to the proceeding, by the foster care review committee, as provided in 41-3-115, or the citizen review board, as provided in 41-3-1010:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); or

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed in either an adoptive or a guardianship placement, the court or the court-approved entity holding the permanency hearing shall conduct a hearing and the court shall issue a finding as to whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency hearing is not required if the proceeding has been dismissed, the child was not removed from the home, the child has been returned to the child's parent or guardian, or the child has been legally adopted or appointed a legal guardian.

(c) The permanency hearing may be combined with a hearing that is required in other sections of this part or with a review held pursuant to 41-3-115 or 41-3-1010 if held within the applicable time limits. If a permanency hearing is combined with another hearing or a review, the requirements of the court related to the disposition of the other hearing or review must be met in addition to the requirements of this section.

(d) The court-approved entity conducting the permanency hearing may elect to hold joint or separate reviews for groups of siblings, but the court shall issue specific findings for each child.

(2) At least 3 working days prior to the permanency hearing, the department shall submit a report regarding the child to the entity that will be conducting the hearing for review. The report must address the department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.

(3) At least 3 working days prior to the permanency hearing, the guardian ad litem or an attorney or advocate for a parent or guardian may submit an informational report to the entity that will be conducting the hearing for review.

(4) In a permanency hearing, the court or other entity conducting the hearing shall consult, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.

~~(4)~~*(5)* (a) The court's order must be issued within 20 days after the permanency hearing if the hearing was conducted by the court. If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member or that a prior grant of temporary custody with that family member be made permanent, the department shall investigate and determine if awarding custody to that family member is in the best interests of the child. The department shall provide the reasons for any denial to the court. If the court accepts the department's custody recommendation, the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality laws allow. The court shall include the reasons for denial in the court order if the family member who is denied custody requests it to be included.

(b) If an entity other than the court conducts the hearing, the entity shall keep minutes of the hearing and the minutes and written recommendations must be provided to the court within 20 days of the hearing.

(c) If an entity other than the court conducts the hearing and the court concurs with the recommendations, the court may adopt the recommendations as findings with no additional hearing required. In this case, the court shall issue written findings within 10 days of receipt of the written recommendations.

~~(5)~~*(6)* The court shall approve a specific permanency plan for the child and make written findings on:

(a) whether the permanency plan is in the best interests of the child;

(b) whether the department has made reasonable efforts to finalize the plan; and

(c) other necessary steps that the department is required to take to effectuate the terms of the plan.

~~(6)~~*(7)* In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the options provided in subsection ~~(7)~~ *(8)* and that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditures are reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

~~(7)~~*(8)* Permanency options include:

(a) reunification of the child with the child's parent or guardian;

(b) adoption;

(c) appointment of a guardian pursuant to 41-3-444; or

(d) long-term custody if the child is in a planned permanent living arrangement and if it is established by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;

(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or

(v) the child meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the best interests of the child; and

(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

~~(8)~~*(9)* The court may terminate a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

Section 9. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1, apply to [section 1].

Section 10. Effective date. [This act] is effective July 1, 2007.

Approved April 10, 2007

CHAPTER NO. 167

[HB 112]

AN ACT PRESCRIBING THE AUTHORITY AND DUTIES OF CERTAIN GOVERNMENTAL FIRE AGENCY FIRE CHIEFS; AND REPEALING SECTION 7-33-2313, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Fire chief — powers and duties. (1) A fire chief of a governmental fire agency organized under this chapter must be considered the highest ranking officer in the agency and is responsible for the operation of the agency, including but not limited to:

(a) development and implementation of agency programs and procedures;

(b) performance of agency personnel;

(c) preventing outbreak of fires;

(d) minimizing danger to persons and damage to property caused by fires; and

(e) ensuring the provision and management of any emergency services that are established by the agency and that are consistent with national and other appropriate standards. These services may include but are not limited to:

(i) fire suppression;

(ii) medical aid;

(iii) hazardous materials response;

(iv) ambulance service; and

(v) extrication from vehicles.

(2) In development of agency regulations, programs, and procedures, the fire chief is subject to applicable laws and ordinances.

(3) The fire chief serves under the direction of the governing body that has created the governmental fire agency.

(4) The fire chief shall develop organizational and operational procedures and shall implement those procedures by issuing written administrative regulations and operational guidelines.

(5) In the event of a fire or other emergency involving the protection of life or property, the fire chief has the authority to direct any operation necessary to extinguish or control the fire or perform a rescue in coordination with other authorities having jurisdiction.

(6) The fire chief may investigate suspected or reported fires, gas leaks, or other hazardous conditions and may take any action necessary to protect public health and safety and protect property or mitigate damage to property in the exercise of the chief's duties.

(7) In the exercise of the authority provided in subsections (5) and (6), the fire chief may:

(a) enter any property;

(b) prohibit any person, vehicle, or thing from approaching the scene;

(c) remove or cause to be removed from the scene of the fire or other emergency any person, vehicle, or thing that the chief determines may interfere with the operations of the agency.

(8) (a) Subject to 50-3-102(1)(c), the fire chief may investigate the cause, origin, and circumstances of every fire that occurs in the chief's jurisdiction that involves the loss of life, injury to a person, destruction of property, or damage to property.

(b) Subject to 50-3-102(1)(c), as part of the investigation, the fire chief may take immediate charge of all physical evidence relating to the cause of the fire and may pursue the investigation to its conclusion.

(c) The fire chief may investigate the cause, origin, and circumstances of unauthorized releases of hazardous materials.

(9) (a) The fire chief may establish and maintain a program applicable to every community in the chief's jurisdiction that provides for:

(i) regular examination of fire hazards; and

(ii) regular inspection of commercial property, after the property has been approved for occupancy by a certified city, county, or town building code

jurisdiction or the department of labor and industry's bureau of building and measurement standards, with particular emphasis on occupancies identified as high risk to life and property.

(b) The fire chief may establish a formal fire inspection program as authorized by the department of justice under 50-61-102.

(10) The fire chief shall report all fires to the department of justice and shall use the national fire incident reporting system or other reporting method approved by the department of justice's fire prevention and investigation section.

(11) The fire chief is responsible for establishing and maintaining a training program for the agency and may use existing federal, regional, state, and local training resources. The agency's program must include training in all areas of emergency response in which the agency provides services.

(12) For the purposes of this section, "governmental fire agency" does not include municipal fire departments.

Section 2. Repealer. Section 7-33-2313, MCA, is repealed.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 33, and the provisions of Title 7, chapter 33, apply to [section 1].

Approved April 10, 2007

CHAPTER NO. 168

[HB 166]

AN ACT REVISING ALTERNATIVE FUELS TAX LAWS; MODIFYING THE TAX CREDITS FOR PROPERTY USED FOR THE PRODUCTION, BLENDING, AND STORAGE OF BIODIESEL OR BIOLUBRICANT; ALLOWING CREDITS TO BE CARRIED FORWARD FOR 7 YEARS; EXTENDING CREDITS TO COVER EXPENSES INCURRED IN CERTAIN TIME PERIODS; EXTENDING THE DURATION OF THE CREDITS; AMENDING SECTIONS 15-32-701, 15-32-702, AND 15-32-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-32-701, MCA, is amended to read:

"15-32-701. Oilseed crush facility — tax credit. (1) An individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for *the costs of* investments in depreciable property in Montana ~~to crush~~ *that is used primarily for crushing* oilseed crops for purposes of ~~biodiesel production~~ *producing biodiesel or biolubricant*.

(2) Subject to subsection (4), a taxpayer qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for the ~~cost of each item of property purchased to crush oilseed only in the year in which the property was purchased~~ *costs described in subsection (1) incurred in the 2 tax years before the facility begins crushing oilseed or in any tax year in which the facility is crushing oilseed*.

(3) The *total* amount of ~~the credit~~ *credits for all years* that may be claimed *for a facility* under this section ~~for investments in depreciable property~~ is 15% of the ~~cost of the property~~ *costs described in subsection (1)*, up to a total of $500,000. ~~for property invested in a facility. The credit must be claimed in the tax year in which the facility begins processing oilseed or manufacturing a product from oilseed.~~

(4) The following requirements must *also* be met *for a taxpayer* to be entitled to a tax credit ~~for investment in property to crush oilseed~~ *under this section*:

(a) ~~The investment must be for depreciable property used primarily to crush oilseed or to manufacture a product from oilseed and must be operating before January 1, 2010.~~ *The depreciable property for which the credit is claimed must begin to be used for the purposes described in subsection (1) before January 1, 2015.*

(b) (i) The taxpayer claiming a credit must be a person who as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that crushes oilseed or that manufactures a product from crushed oilseed.

(ii) If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (4)(b), and*, except for the 2 tax-year period claimed in subsection (2),* must have been ~~processing oilseed or manufacturing a product from oilseed~~ *using the depreciable property for the purposes described in subsection (1)* during the tax year for which the credit is claimed *and during each year for which the credit is carried forward*.

(5) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(6) A tax credit ~~otherwise~~ allowable under this section that is not *completely* used by the taxpayer in the tax year *in which the credit is initially claimed* may ~~not~~ be carried forward ~~to offset~~ *for credit against* a taxpayer's tax liability for any succeeding tax year *until the total amount of the credit has been deducted from tax liability. However, a credit may not be carried forward to any tax year in which the facility in which the depreciable property is installed is not crushing oilseed or beyond the seventh tax year after the tax year for which the credit was initially claimed.* If a facility in which property is installed and for which a credit is claimed ceases ~~operations~~ *production of biodiesel or biolubricant for a period of 12 continuous months* within 5 years ~~of~~ *after* the *initial* claiming of a credit under this section *or within 5 years after a year in which the credit was carried forward*, the credit is subject to recapture. The person claiming the credit is liable for the *total* amount of the credit in the event of recapture.

(7) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(8) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in equipment necessary to crush oilseed or to manufacture a product from oilseed. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law.

(9) For the purposes of this section, "biolubricant" means a commercial or industrial product, other than food or feed, that is composed in whole or in substantial part of biological products, renewable domestic agricultural materials, including plant, animal, or marine materials, or forestry materials and that is used in place of a petroleum-based lubricant."

Section 2. Section 15-32-702, MCA, is amended to read:

"15-32-702. Biodiesel *or biolubricant* production facility tax credit. (1) An individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for the ~~cost~~ *costs* of *investments in depreciable property for* constructing ~~and~~ *or* equipping a facility*, or both,* in Montana to be used for biodiesel *or biolubricant* production.

(2) Subject to subsection (4), a taxpayer qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for the ~~cost of construction of the facility and for each item of property purchased to produce biodiesel only in the year in which the facility is in production~~ *costs described in subsection (1) incurred in the 2 tax years before the facility begins producing biodiesel or biolubricant or in any tax year in which the facility is producing biodiesel or biolubricant.*

(3) The *total* amount of the ~~credit~~ *credits for all years* that may be claimed *for a facility* under this section ~~for investments in depreciable property is 15% of the cost of the facility or the property installed in the facility. The credit must be claimed in the tax year in which the facility begins production~~ *is 15% of the costs described in subsection (1).*

(4) The following requirements must *also* be met *for a taxpayer* to be entitled to a tax credit *under this section* ~~for investment in property to manufacture biodiesel~~:

(a) ~~The investment must be for depreciable property used primarily to manufacture biodiesel and must be~~ *The depreciable property for which the credit is claimed must begin* operating before January 1, ~~2010~~ *2015.*

(b) (i) The taxpayer claiming a credit must be a person who as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that manufactures biodiesel *or biolubricant.*

(ii) If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (4)(b), and*, except for the 2 tax-year period claimed in subsection (2),* must have been ~~manufacturing~~ *producing* biodiesel *or biolubricant* during the tax year for which the credit is claimed *and during each year in which the credit is carried forward.*

(5) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(6) A tax credit ~~otherwise~~ allowable under this section that is not *completely* used by the taxpayer in the tax year *in which the credit was initially taken* may ~~not~~ be carried forward ~~to offset~~ *for credit against* a taxpayer's tax liability for any

succeeding tax year *until the total amount of the credit has been deducted from tax liability. However, a credit may not be carried forward to any tax year in which the facility in which the depreciable property is installed is not producing biodiesel or biolubricant or beyond the seventh tax year after the tax year for which the credit was initially claimed.* If a facility for which a credit is claimed ceases ~~operations~~ *production of biodiesel or biolubricant for a period of 12 continuous months* within 5 years ~~of~~ *after* the *initial* claiming of a credit under this section *or within 5 years after a year in which the credit was carried forward*, the credit is subject to recapture. The person claiming the credit is liable for the *total* amount of the credit in the event of recapture.

(7) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(8) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in the biodiesel *or biolubricant* production facility. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law.

(9) As used in this section, *the following definitions apply:*

(a) ~~"biodiesel"~~ *"Biodiesel"* has the meaning provided in 15-70-301.

(b) "Biolubricant" has the meaning provided in 15-32-701(9)."

Section 3. Section 15-32-703, MCA, is amended to read:

"15-32-703. Biodiesel blending and storage tax credit — recapture — report to interim committee. (1) An individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for the ~~cost of storage and blending equipment to be used for~~ *costs of investments in depreciable property used for storing or* blending biodiesel with petroleum diesel *for sale.*

(2) Subject to subsection (4), a special fuel distributor or an owner or operator of a motor fuel outlet qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for the ~~cost of installing storage and blending equipment only in the year in which~~ *costs described in subsection (1) incurred in the 2 tax years before* the taxpayer begins blending biodiesel fuel *for sale or in any tax year in which the taxpayer is blending biodiesel fuel for sale.*

(3) (a) The *total* amount of the ~~credit~~ *credits for all years* that may be claimed by a distributor under this section ~~for investments in depreciable property~~ is 15% of the ~~cost of the storage and blending equipment~~ *costs described in subsection (1), up to a total of $52,500.* ~~The amount of the credit may not exceed $52,500. The credit must be claimed in the tax year in which the distributor begins blending biodiesel for sale.~~

(b) The *total* amount of the ~~credit~~ *credits for all years* that may be claimed by an owner or operator of a motor fuel outlet under this section ~~for investments in depreciable property~~ is 15% of the ~~cost of the storage and blending equipment~~ *costs described in subsection (1), up to a total of $7,500.* ~~The amount of the credit may not exceed $7,500. The credit must be claimed in the tax year in which the retailer begins blending of biodiesel for fuel.~~

(4) The following requirements must *also* be met ~~in order~~ *for a taxpayer* to be entitled to a tax credit ~~for investment in property to blend biodiesel~~ *under this section*:

(a) The investment must be for depreciable property used primarily to blend *petroleum diesel with* biodiesel made entirely from Montana-produced ~~ingredients with petroleum diesel~~ *feedstocks*.

(b) Sales of biodiesel must be at least 2% of the taxpayer's total diesel sales by the end of the third year following the *initial* tax year in which the credit is *initially* claimed.

(c) (i) The taxpayer claiming a credit must be a person who as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that blends biodiesel.

(ii) If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(d) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (4)(c), and*, except for the 2 tax-year period claimed in subsection (2),* must have been blending biodiesel during the tax year for which the credit is claimed.

(5) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(6) A tax credit ~~otherwise~~ allowable under this section that is not *completely* used by the taxpayer in the tax year *in which the credit is initially claimed* may ~~not~~ be carried forward ~~to offset a taxpayer's tax liability for any succeeding tax year~~ *for credit against the taxpayer's tax liability for any succeeding tax year until the total amount of the credit has been deducted from tax liability. However, a credit may not be carried forward to any tax year in which the facility is not blending biodiesel or storing biodiesel for blending or beyond the seventh tax year after the tax year for which the credit was initially claimed*. If a facility for which a credit is claimed ceases ~~operations~~ *blending of biodiesel with petroleum diesel for sale for a period of 12 continuous months* within 5 years ~~of the~~ *after the initial* claiming of a credit under this section *or within 5 years after a year in which the credit was carried forward* or if the taxpayer claiming the credit fails to satisfy the conditions of subsection (4)(b), the *total* credit is subject to recapture. The person claiming the credit is liable for the *total* amount of the credit in the event of recapture.

(7) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(8) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in the biodiesel blending facility. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law.

(9) As used in this section, "biodiesel" has the meaning provided in 15-70-301.

(10) ~~Beginning after January 1, 2006, the~~ *The* department shall report to the revenue and transportation interim committee at least once each year regarding the number and type of taxpayers claiming the credit under this section, the total amount of the credit claimed, and the department's cost associated with administering the credit."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to investments in depreciable property made after December 31, 2004.

Approved April 10, 2007

CHAPTER NO. 169

[HB 198]

AN ACT EXPANDING THE DENTAL CARE BENEFITS OF THE CHILDREN'S HEALTH INSURANCE PROGRAM; AMENDING SECTION 53-4-1005, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-4-1005, MCA, is amended to read:

"53-4-1005. (Temporary) Benefits provided. (1) Benefits provided to participants in the program may include but are not limited to:

(a) inpatient and outpatient hospital services;

(b) physician and advanced practice registered nurse services;

(c) laboratory and x-ray services;

(d) well-child and well-baby services;

(e) immunizations;

(f) clinic services;

(g) dental services;

(h) prescription drugs;

(i) mental health and substance abuse treatment services;

(j) hearing and vision exams; and

(k) eyeglasses.

(2) The department shall adopt rules, pursuant to its authority under 53-4-1009, allowing it to cover significant dental needs beyond those covered in the basic plan. Expenditures under this subsection may not exceed $100,000 in state funds, plus any matched federal funds, each fiscal year.

~~(2)~~*(3)* The department is specifically prohibited from providing payment for birth control contraceptives under this program. (Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999.)"

Section 2. Effective date. [This act] is effective July 1, 2007.

Section 3. Termination. (1) [This act] terminates on the date that the director of the department of public health and human services certifies to the governor that the federal government has terminated the program or that federal funding for the program has been discontinued.

(2) The governor shall transmit a copy of the certification to the code commissioner.

(3) Any excess funds remaining upon the termination of the program must be transferred to the general fund.

Approved April 10, 2007

CHAPTER NO. 170

[HB 206]

AN ACT CLARIFYING THAT A MILL LEVY ELECTION PROPOSAL MUST SPECIFY EITHER THE DOLLAR AMOUNT TO BE RAISED OR THE NUMBER OF MILLS TO BE LEVIED AND WHETHER THE MILL LEVY IS PERMANENT; CLARIFYING THAT THE GOVERNING BODY MAY REDUCE THE LEVY WITHOUT LOSING THE AUTHORITY TO IMPOSE UP TO THE MAXIMUM APPROVED; AND AMENDING SECTION 15-10-425, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-10-425, MCA, is amended to read:

"15-10-425. Mill levy election. (1) A county, consolidated government, incorporated city, incorporated town, school district, or other taxing entity may impose a new mill levy, increase a mill levy that is required to be submitted to the electors, or exceed the mill levy limit provided for in 15-10-420 by conducting an election as provided in this section.

(2) An election conducted pursuant to this section may be held in conjunction with a regular or primary election or may be a special election. The governing body shall pass a resolution, shall amend its self-governing charter, or must receive a petition indicating an intent to impose a new levy, increase a mill levy, or exceed the current statutory mill levy provided for in 15-10-420 on the approval of a majority of the qualified electors voting in the election. The resolution, charter amendment, or petition must include:

(a) the specific purpose for which the additional money will be used;

(b) *either:*

(i) the specific amount *of money* to be raised *and the approximate number of mills to be imposed*; *or*

~~(c)~~*(ii)* the ~~approximate~~ *specific* number of mills ~~required~~ *to be imposed and the approximate amount of money to be raised*; and

~~(d)~~*(c) whether the levy is permanent or* the durational limit~~, if any,~~ on the levy.

(3) Notice of the election must be prepared by the governing body and given as provided by law. The form of the ballot must reflect the content of the resolution or charter amendment and must include a statement of the impact of the election on a home valued at $100,000 and a home valued at $200,000 in the district in terms of actual dollars in additional property taxes that would be imposed on residences with those values if the mill levy were to pass. The ballot may also include a statement of the impact of the election on homes of any other value in the district, if appropriate.

(4) If the majority voting on the question are in favor of the additional levy, the governing body is authorized to impose the levy in *either* the amount *or the number of mills* specified in the resolution or charter amendment.

(5) A governing body, as defined in 7-6-4002, may reduce an approved levy in any fiscal year without losing the authority to impose in a subsequent fiscal year up to the maximum amount or number of mills approved in the election. However, nothing in this subsection authorizes a governing body to impose more

than the approved levy in any fiscal year or to extend the duration of the approved levy."

Approved April 10, 2007

CHAPTER NO. 171

[HB 253]

AN ACT REMOVING THE REQUIREMENT THAT A BOARD OF COUNTY COMMISSIONERS HOLD AN ELECTION IF THE COST OF CONSTRUCTION OF A BRIDGE IN A MUNICIPALITY EXCEEDS $10,000; AND REPEALING SECTION 7-14-2205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 7-14-2205, MCA, is repealed.

Approved April 10, 2007

CHAPTER NO. 172

[HB 265]

AN ACT CLARIFYING THAT AN ACTION OF A PLANNING BOARD IS NOT OFFICIAL UNLESS AUTHORIZED BY A MAJORITY OF THE QUORUM PRESENT AT THE MEETING; AMENDING SECTION 76-1-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-1-304, MCA, is amended to read:

"76-1-304. Quorum — official action. (1) A majority of members ~~shall constitute~~ *constitutes* a quorum.

(2) ~~No~~ *An* action of the planning board is *not* official~~, however,~~ unless *a quorum is present and unless the action is* authorized by a majority of ~~members of the board~~ *the quorum* at a regular or properly called special meeting."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 10, 2007

CHAPTER NO. 173

[HB 363]

AN ACT REVISING SCHOOL DISTRICT GENERAL FUND BUDGET LIMITATIONS; ALLOWING A SCHOOL DISTRICT TO ADOPT A GENERAL FUND BUDGET IN AN AMOUNT UP TO THE MAXIMUM GENERAL FUND BUDGET OR THE PREVIOUS YEAR'S GENERAL FUND BUDGET; ALLOWING THE ADDITION OF INCREASES IN STATE FUNDING TO A SCHOOL DISTRICT'S GENERAL FUND BUDGET FOR THE PRIOR YEAR; REVISING ELECTION PROVISIONS FOR FINANCING OF THE GENERAL FUND LEVY REQUIREMENT; AMENDING SECTIONS 20-9-141, 20-9-308, AND 20-9-353, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-141, MCA, is amended to read:

"20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353~~, including any additional funding for a general fund budget that exceeds the maximum general fund budget~~.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(B) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid;

(iii) anticipated oil and natural gas production taxes;

(iv) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703; and

(v) school district block grants distributed under 20-9-630.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Determine the sum of any amount remaining after the determination in subsection (1)(c) and any tuition payments for out-of-district pupils to be received under the provisions of 20-5-320 through 20-5-324, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2).

(e) Subtract the amount determined in subsection (1)(d) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for

the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the current total taxable valuation of the district, as certified by the department of revenue under 15-10-202, divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703."

Section 2. Section 20-9-308, MCA, is amended to read:

"20-9-308. (Temporary) BASE budgets and maximum general fund budgets. (1) *(a)* The trustees of a district shall adopt a general fund budget that is at least equal to the BASE budget established for the district ~~and, except as provided in subsection (3), does not exceed the maximum general fund budget established for the district~~. *The trustees of a district may adopt a general fund budget up to the maximum general fund budget or the previous year's general fund budget, whichever is greater.*

(b) For purposes of the budget limitation in subsection (1)(a), the trustees may add any increase in state funding for the general fund payments in 20-9-327 through 20-9-330 to the district's previous year's general fund budget.

(2) Whenever the trustees of a district *propose to* adopt a general fund budget that exceeds the BASE budget for the district ~~but does not exceed the maximum general fund budget for the district~~ *and to increase the over-BASE budget levy to support the general fund budget*, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353.

~~(3) (a) (i) Except as provided in subsections (3)(a)(ii) and (3)(b), the trustees of a school district whose previous year's general fund budget exceeds the current year's maximum general fund budget amount may adopt a general fund budget up to the maximum general fund budget amount or the previous year's general fund budget, whichever is greater. Except as provided in subsection (3)(b), a school district may adopt a budget under the criteria of this subsection (3)(a)(i) for a maximum of 5 consecutive years, but the trustees shall adopt a plan to reach the maximum general fund budget by no later than the end of the 5-year period.~~

~~(ii) Except as provided in subsection (3)(b), the trustees of a district whose general fund budget was above the maximum general fund budget established by Chapter 38, Special Laws of November 1993, and whose general fund budget has continued to exceed the district's maximum general fund budget in each school fiscal year after school fiscal year 1993 may continue to adopt a general fund budget that exceeds the maximum general fund budget. However, the budget adopted for the current year may not exceed the lesser of:~~

~~(A) the adopted budget for the previous year; or~~

~~(B) the district's maximum general fund budget for the current year plus the over maximum budget amount adopted for the previous year.~~

~~(b) A school district that adopted a general fund budget over its maximum general fund budget under any provision of subsection (3)(a) at any time between fiscal year 2001 and fiscal year 2005 may, for fiscal year 2006 and fiscal year 2007, adopt the greater of its maximum general fund budget or the highest actual budget adopted between fiscal year 2001 and fiscal year 2005.~~

~~(c) Except as provided in 20-9-353(8), the trustees of the district shall submit a proposition to raise any general fund budget amount that is in excess of the maximum general fund budget for the district to the electors who are qualified under 20-20-301 to vote on the proposition, as provided in 20-9-353.~~

~~(4)~~*(3)* The BASE budget for the district must be financed by the following sources of revenue:

(a) state equalization aid, as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue, as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

~~(5)~~*(4)* The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district, as provided in 20-9-141. (Terminates June 30, 2007—sec. 3, Ch. 190, L. 2005; sec. 25(2), Ch. 462, L. 2005.)

20-9-308. (Effective July 1, 2007) BASE budgets and maximum general fund budgets. (1) *(a)* The trustees of a district shall adopt a general fund budget that is at least equal to the BASE budget established for the district ~~and, except as provided in subsection (3), does not exceed the maximum general fund budget established for the district~~. *The trustees of a district may adopt a general fund budget up to the maximum general fund budget or the previous year's general fund budget, whichever is greater.*

(b) For purposes of the budget limitation in subsection (1)(a), the trustees may add any increase in state funding for the general fund payments in 20-9-327 through 20-9-330 to the district's previous year's general fund budget.

(2) Whenever the trustees of a district *propose to* adopt a general fund budget that exceeds the BASE budget for the district ~~but does not exceed the maximum general fund budget for the district~~ *and to increase the over-BASE budget levy to support the general fund budget*, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353.

~~(3) (a) (i) Except as provided in subsection (3)(a)(ii), the trustees of a school district whose previous year's general fund budget exceeds the current year's maximum general fund budget amount may adopt a general fund budget up to the maximum general fund budget amount or the previous year's general fund budget, whichever is greater. A school district may adopt a budget under the criteria of this subsection (3)(a)(i) for a maximum of 5 consecutive years, but the trustees shall adopt a plan to reach the maximum general fund budget by no~~

~~later than the end of the 5-year period. A school district whose adopted general fund budget for the previous year exceeds the maximum general fund budget for the current year and whose ANB for the previous year exceeds the ANB for the current year by 30% or more shall reduce its adopted budget by:~~

~~(A) in the first year, 20% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;~~

~~(B) in the second year, 25% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;~~

~~(C) in the third year, 33.3% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;~~

~~(D) in the fourth year, 50% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year; and~~

~~(E) in the fifth year, the remainder of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year.~~

~~(ii) The trustees of a district whose general fund budget was above the maximum general fund budget established by Chapter 38, Special Laws of November 1993, and whose general fund budget has continued to exceed the district's maximum general fund budget in each school fiscal year after school fiscal year 1993 may continue to adopt a general fund budget that exceeds the maximum general fund budget. However, the budget adopted for the current year may not exceed the lesser of:~~

~~(A) the adopted budget for the previous year; or~~

~~(B) the district's maximum general fund budget for the current year plus the over maximum budget amount adopted for the previous year.~~

~~(b) The trustees of the district shall submit a proposition to raise any general fund budget amount that is in excess of the maximum general fund budget for the district to the electors who are qualified under 20-20-301 to vote on the proposition, as provided in 20-9-353.~~

~~(4)~~*(3)* The BASE budget for the district must be financed by the following sources of revenue:

(a) state equalization aid, as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue, as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

~~(5)~~*(4)* The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district, as provided in 20-9-141."

Section 3. Section 20-9-353, MCA, is amended to read:

"20-9-353. (Temporary) Additional financing for general fund — election for authorization to impose. (1) The trustees of a district may propose to adopt~~:~~

~~(a)~~ an over-BASE budget amount for the district general fund that does not exceed the ~~maximum~~ general fund budget ~~for the district or other~~ limitations, as provided in 20-9-308~~(2); or~~

~~(b) a general fund budget amount in excess of the maximum general fund budget amount for the district, as provided in 20-9-308(3)~~.

(2) When the trustees of the district propose to adopt an over-BASE budget under subsection (1)~~(a)~~, any increase in local property taxes authorized by ~~20-9-308(5)~~ *20-9-308(4)* must be submitted to a vote of the qualified electors of the district, as provided in 15-10-425. The trustees are not required to submit to the qualified electors any increase in state funding of the basic or per-ANB entitlements *or of the general fund payments established in 20-9-327 through 20-9-330* approved by the legislature. When the trustees of a district determine that a voted amount of financing is required for the general fund budget, the trustees shall submit the proposition to finance the voted amount to the electors who are qualified under 20-20-301 to vote upon the proposition. The election must be called and conducted in the manner prescribed by this title for school elections and must conform to the requirements of 15-10-425. The ballot for the election must conform to the requirements of 15-10-425.

~~(3) Except as provided in subsection (8), when the trustees of a district propose to adopt the general fund budget amount in excess of the maximum general fund budget under subsection (1)(b), the trustees shall submit the proposition to finance the additional amount of general fund budget authority to the electors who are qualified under 20-20-301 to vote upon the proposition. The election must be called and conducted in the manner prescribed by this title for school elections. The ballot for the election must state the amount of the budget to be financed, the approximate number of mills required to fund all or a portion of the budget amount, and the purpose for which the money will be expended. The ballot must be in the following format:~~

~~PROPOSITION~~

~~Shall the district be authorized to expend the sum of (state the additional amount to be expended) and being approximately (give number) mills for the purpose of (insert the purpose for which the additional financing is made)?~~

~~☐ FOR budget authority and any levy.~~

~~☐ AGAINST budget authority and any levy.~~

~~(4)~~*(3)* If the ~~election~~ *proposition* on any additional financing ~~or budget authority~~ for the general fund is approved by a majority vote of the electors voting at the election, the proposition carries and the trustees may use any portion or all of the authorized amount in adopting the final general fund budget. The trustees shall certify any additional levy amount authorized by the election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy the authorized number of mills on the

taxable value of all taxable property within the district, as prescribed in 20-9-141.

~~(5) Authorization to levy an additional tax to support a budget amount adopted as allowed by 20-9-308(3) is effective for only 1 school fiscal year.~~

~~(6)~~*(4)* All levies adopted under this section must be authorized by the election conducted before August 1 of the school fiscal year for which it is effective.

~~(7)~~*(5)* If the trustees of a district are required to submit a proposition to finance an over-BASE budget amount ~~or an amount in excess of the maximum general fund budget amount for the district~~, as allowed by 20-9-308~~(3)~~, to the electors of the district, the trustees shall comply with the provisions of subsections (2) through ~~(6)~~ *(4)* of this section.

~~(8) The trustees of the district may permissively levy up to the same over-BASE property tax revenue levied in the prior fiscal year.~~ (Terminates June 30, 2007—sec. 25(2), Ch. 462, L. 2005.)

20-9-353. (Effective July 1, 2007) Additional financing for general fund — election for authorization to impose. (1) The trustees of a district may propose to adopt~~:~~

~~(a)~~ an over-BASE budget amount for the district general fund that does not exceed the ~~maximum~~ general fund budget ~~for the district or other~~ limitations, as provided in 20-9-308~~(2); or~~

~~(b) a general fund budget amount in excess of the maximum general fund budget amount for the district, as provided in 20-9-308(3)~~.

(2) When the trustees of the district propose to adopt an over-BASE budget under subsection (1)~~(a)~~, any increase in local property taxes authorized by ~~20-9-308(5)~~ *20-9-308(4)* must be submitted to a vote of the qualified electors of the district, as provided in 15-10-425. The trustees are not required to submit to the qualified electors any increase in state funding of the basic or per-ANB entitlements *or of the general fund payments established in 20-9-327 through 20-9-330* approved by the legislature. When the trustees of a district determine that a voted amount of financing is required for the general fund budget, the trustees shall submit the proposition to finance the voted amount to the electors who are qualified under 20-20-301 to vote upon the proposition. The election must be called and conducted in the manner prescribed by this title for school elections and must conform to the requirements of 15-10-425. The ballot for the election must conform to the requirements of 15-10-425.

~~(3) When the trustees of a district propose to adopt the general fund budget amount in excess of the maximum general fund budget under subsection (1)(b), the trustees shall submit the proposition to finance the additional amount of general fund budget authority to the electors who are qualified under 20-20-301 to vote upon the proposition. The election must be called and conducted in the manner prescribed by this title for school elections. The ballot for the election must state the amount of the budget to be financed, the approximate number of mills required to fund all or a portion of the budget amount, and the purpose for which the money will be expended. The ballot must be in the following format:~~

~~PROPOSITION~~

~~Shall the district be authorized to expend the sum of (state the additional amount to be expended) and being approximately (give number) mills for the purpose of (insert the purpose for which the additional financing is made)?~~

~~☐ FOR budget authority and any levy.~~

~~☐ AGAINST budget authority and any levy.~~

~~(4)~~*(3)* If the ~~election~~ *proposition* on any additional financing ~~or budget authority~~ for the general fund is approved by a majority vote of the electors voting at the election, the proposition carries and the trustees may use any portion or all of the authorized amount in adopting the final general fund budget. The trustees shall certify any additional levy amount authorized by the election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy the authorized number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141.

~~(5) Authorization to levy an additional tax to support a budget amount adopted as allowed by 20-9-308(3) is effective for only 1 school fiscal year.~~

~~(6)~~*(4)* All levies adopted under this section must be authorized by the election conducted before August 1 of the school fiscal year for which it is effective.

~~(7)~~*(5)* If the trustees of a district are required to submit a proposition to finance an over-BASE budget amount ~~or an amount in excess of the maximum general fund budget amount for the district~~, as allowed by 20-9-308~~(3)~~, to the electors of the district, the trustees shall comply with the provisions of subsections (2) through ~~(6)~~ *(4)* of this section."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [Sections 1 and 2] apply retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 1, 2007, in preparing school budgets for the 2008 school fiscal year, including but not limited to setting, scheduling, and holding general fund levy elections.

Approved April 10, 2007

CHAPTER NO. 174

[HB 427]

AN ACT REVISING NATURAL GAS UNIVERSAL SYSTEM BENEFITS LAWS; CLARIFYING THE DEFINITION OF "UNIVERSAL SYSTEM BENEFITS PROGRAMS"; CLARIFYING THAT THE PUBLIC SERVICE COMMISSION HAS ONGOING OVERSIGHT FOR NATURAL GAS UTILITY UNIVERSAL SYSTEM BENEFIT PROGRAMS; PROVIDING THAT A UNIVERSAL SYSTEM BENEFITS CHARGE MAY BE ESTABLISHED AND REVISED THROUGH A TRACKING PROCEDURE; CLARIFYING THAT A NATURAL GAS UTILITY'S FUNDING REQUIREMENT IS A MINIMUM FUNDING REQUIREMENT; REQUIRING AN ANNUAL REPORT; AMENDING SECTIONS 69-3-1402 AND 69-3-1408, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-1402, MCA, is amended to read:

"69-3-1402. Definitions. As used in this part, the following definitions apply:

(1) "Customer" means a natural gas customer or consumer of natural gas supply or natural gas transmission facilities, storage facilities, or distribution facilities.

(2) "Distribution facilities" means those facilities that are not transmission facilities:

(a) by and through which natural gas is received from a transmission services provider and transmitted to the customer; and

(b) operated by a distribution services provider.

(3) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of natural gas to the public.

(4) "Natural gas supplier" means a person, including aggregators, market aggregators, brokers, and marketers, licensed by the commission that is offering to sell natural gas to retail customers in the state of Montana.

(5) "Natural gas utility" means a utility regulated by the commission on May 2, 1997, that provides natural gas services to the public.

(6) "Open access" means that a natural gas utility has made its transmission facilities, storage facilities, or distribution facilities available to all natural gas suppliers, transmission services providers, distribution services providers, and customers on a nondiscriminatory and comparable basis.

(7) "Performance-based ratemaking" means those forms of regulation that include but are not limited to the use of revenue indexing, price indexing, ranges of authorized return, gas cost indexing, and innovative use of utility-related assets and activities, such as system sales of excess natural gas supplies, release of upstream pipeline capacity, and performance of billing services for other natural gas suppliers. A performance-based regulation may also include a mechanism for automatic annual adjustments of revenue to prices to reflect changes in any index adopted for the implementation of the performance-based form of regulation.

(8) "Storage facilities" means those facilities that are owned, controlled, or operated by a person offering storage service for natural gas and generally means any underground reservoir suitable for the storage of natural gas and the facilities used to inject and withdraw natural gas into and out of that underground reservoir.

(9) "Transition costs" means:

(a) a natural gas utility's net, verifiable ~~production-~~ *production-related* and gathering-related costs, including costs of capital, that become unrecoverable as a result of customer choice and open access. These costs include but are not limited to:

(i) regulatory assets and deferred charges that exist as a result of current regulatory practices and that may be accounted for up to the point in time that the commission issues a final order in a docket addressing transition costs, including all costs, expenses, and fees related to the issuance of transition bonds;

(ii) the above-market costs associated with existing gas supply commitments;

(iii) other natural gas utility investments rendered uneconomic as a result of implementation of customer choice and open access;

(iv) the costs associated with renegotiation or buyout of existing natural gas purchase contracts; and

(v) the costs associated with the issuance of any related transition bonds authorized by the commission pursuant to 69-3-1403.

(b) the costs of refinancing or retiring debt or equity capital of the natural gas utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(10) "Transmission facilities" means those facilities owned, controlled, and operated by a transmission services provider that are used to transport natural gas from a gathering line or storage facility to a distribution facility, storage facility, or end-use customer.

(11) "Transmission services provider" means a person controlling or operating transmission facilities.

(12) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits program costs.

(13) "Universal system benefits programs" means public purpose programs for cost-effective local energy conservation, *low-income energy bill discounts,* low-income weatherization, and *emergency* low-income energy bill assistance."

Section 2. Section 69-3-1408, MCA, is amended to read:

"69-3-1408. Universal system benefits programs — establishing nonbypassable rate. (1) A natural gas utility shall implement, upon commission approval *and subject to ongoing commission oversight and direction*, a universal system benefits program ~~that considers existing universal system benefits programs in the state~~.

(2) The commission shall establish a universal system benefits charge that ~~either~~ all natural gas transmission services providers or all distribution services providers, or both, in the state of Montana shall charge to all end-use customers, taking into consideration the current level of expenditure by the natural gas utility, cost-effectiveness, and similar costs imposed in other states. *The charge may be established and revised through a universal system benefits charge tracking procedure.* The method of assessing ~~those rates~~ *the charge* may not disproportionately burden a large transmission services provider's customers. Within the universal system benefits charge, *beginning January 1, 2007,* a natural gas utility's *minimum* annual funding requirement for low-income weatherization and low-income energy bill assistance is established at ~~0.42%~~ *0.42%* of a natural gas utility's annual revenue *for the previous year*. A natural gas utility must receive credit for its internal programs or activities that qualify as universal system benefits programs.

(3) A natural gas utility shall file an annual report of its universal system benefits charges, programs, and program funding levels with the commission in a manner prescribed by the commission.

~~(3) On or before July 1, 2002, the commission shall conduct a reevaluation of the ongoing need for universal system benefits programs and annual funding requirements and shall make recommendations to the 58th legislature regarding the future need for universal system benefits programs. The determination should focus specifically on the existence of markets to provide for any of the universal system benefits programs or on whether other means for funding those universal system benefits programs have developed. These~~

~~recommendations may also address how future reevaluations will be provided, if necessary.~~"

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 10, 2007

CHAPTER NO. 175

[HB 437]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO INCLUDE A DISPUTE RESOLUTION CLAUSE IN ITS CONTRACTS WITH THIRD-PARTY PROVIDERS OF HUMAN SERVICES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Dispute resolution requirement for contracts. Each written contract that the department of public health and human services enters into for the provision of human services to a third party must contain a clause providing for a dispute resolution process in the event of disagreement between the contractor and the department about the terms of the contract.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 22, and the provisions of Title 2, chapter 15, part 22, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved April 10, 2007

CHAPTER NO. 176

[HB 532]

AN ACT REVISING LAWS GOVERNING STATE DUTY FOR THE MONTANA NATIONAL GUARD; CLARIFYING THAT NATIONAL GUARD RESOURCES MAY BE USED TO PREPARE FOR STATE ACTIVE DUTY ORDERED BY THE GOVERNOR; PROVIDING A DEFINITION; AMENDING STATE PAY OF NATIONAL GUARD MEMBERS; AMENDING SECTIONS 10-1-501 AND 10-1-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. State duty for special work — definition. (1) To fulfill the department's duties under 10-1-102, the adjutant general as the department head under 2-15-1201 may use national guard resources and place Montana national guard personnel on state duty for special work.

(2) For purposes of this section, "state duty for special work" means any activity, such as administrative functions, exercises, training, coordination, or planning, that is conducted for the purposes of preparing the Montana national guard for active duty ordered by the governor under Article VI, section 13, of the Montana constitution. State duty for special work does not include active duty ordered by the governor under Article VI, section 13.

Section 2. Section 10-1-501, MCA, is amended to read:

"10-1-501. Pay for ~~activated~~ militia ~~from general fund~~. *(1)* When the organized militia is ordered into active duty as provided for in Article VI, section 13, of the constitution of this state, warrants for pay and expenses ~~shall~~ *must* be drawn upon the general fund of the state.

(2) If national guard members are placed on state duty for special work pursuant to [section 1], the members are entitled to pay and allowances as provided in 10-1-502(3). Warrants for pay and allowances for state duty for special work must be drawn upon funds appropriated by the legislature."

Section 3. Section 10-1-502, MCA, is amended to read:

"10-1-502. Pay and allowances. (1) An officer ordered into active duty as provided for in Article VI, section 13, of the constitution of this state ~~shall~~ *must* receive pay and allowances as prescribed for an officer of corresponding grade and length of service when on active duty in federal service.

(2) An enlisted member ordered into active duty as provided for in Article VI, section 13, of the constitution of this state ~~shall~~ *must* receive pay at rates equivalent to twice those allowed for an enlisted member of corresponding grade and length of time when on active duty in federal service. This schedule of pay for enlisted members applies only to the first 15 days of service. After 15 days, an enlisted member ~~shall~~ *must* receive the pay and allowances as prescribed for an enlisted member of corresponding grade *and length of service* when on active duty in federal service.

(3) A national guard member placed on state duty for special work, as defined in [section 1], must receive the pay and allowances as prescribed for an officer or enlisted member of corresponding grade and length of service when on active duty in federal service.

~~(3)~~*(4)* The pay and allowances provided for in ~~this section~~ *subsections (1) and (2)* may not be paid when pay and allowances for the active duty are provided out of federal funds."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 10, chapter 1, part 5, and the provisions of Title 10, chapter 1, part 5, apply to [section 1].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 10, 2007

CHAPTER NO. 177

[HB 756]

AN ACT ELIMINATING THE REQUIREMENT THAT AN APPLICANT MUST CREATE 10 NEW JOBS IN ORDER TO BE ELIGIBLE FOR A GRANT UNDER THE PRIMARY SECTOR BUSINESS WORKFORCE TRAINING ACT; AMENDING SECTION 39-11-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-11-202, MCA, is amended to read:

"39-11-202. (Temporary) Primary sector business workforce training grants — eligibility. (1) Subject to appropriation by the legislature, the grant review committee provided for in 39-11-201 may award workforce

training grants to primary sector businesses that provide education or skills-based training, through eligible training providers from the eligible training provider list, for employees in new jobs.

(2) To be eligible for a grant, an applicant shall demonstrate that at least 50% of the applicant's sales will be from outside of Montana or that the applicant is a manufacturing company with 50% of its sales from companies that have 50% of their sales outside of Montana and must meet at least one of the following criteria:

(a) be a value-adding business as defined by the Montana board of investments;

(b) demonstrate a significant positive economic impact to the region and state beyond the job creation involved;

(c) provide a service or function that is essential to the locality or the state; or

(d) be a for-profit or a nonprofit hospital or medical center providing a variety of medical services for the community or region.

(3) An applicant shall also provide a match of at least $1 for every $3 requested. The match:

(a) must be from new, unexpended funds available at the time of application;

(b) may include new loans and investments and expenditures for direct project-related costs such as new equipment and buildings. The committee may consider recent purchases of fixed assets directly related to the proposal on a case-by-case basis. A purchase of fixed assets directly related to the proposed training activities that have been made within 90 days after submission of the application may be considered eligible by the committee.

(4) (a) Except as provided in subsection (4)(c), a grant provided under this section may not exceed $5,000 for each full-time position for which an employee is being trained. A grant may be provided only for a new job for which an average weekly wage is paid that meets or exceeds the lesser of the current state's average weekly wage or the current average weekly wage of the county in which the employees are to be principally employed.

(b) The department may consider the value of employee benefits in calculating the expected annual wage.

(c) The committee may, in exceptional circumstances, consider a higher grant ceiling for jobs that will pay significantly higher wages and benefits if the need for higher training costs is documented in the application.

(d) A grant provided under this section must be proportional to the number of jobs provided, the expected average annual wage of all jobs provided, and the underlying economic indicators of the region where the majority of the jobs will be created.

(5) ~~A primary sector business workforce training program must involve at least 10 new jobs unless unique circumstances are documented that indicate a significant, positive, secondary impact to the local economy.~~ Funding ceilings must be determined by the availability of funding, the cost for each job, the quality of the primary sector business proposal, and whether training will be provided in Montana.

(6) The grant application, at a minimum, must contain:

(a) a business plan containing information that is sufficient for the committee to obtain an adequate understanding of the business to be assisted,

including the products or services offered, estimated market potential, management experience of principals, current financial position, and details of the proposed venture. In lieu of a business plan, the committee may consider a copy of the current loan application to entities such as the Montana board of investments, the federal business and industry guarantee program, or the small business administration.

(b) financial statements and projections for the 2 most recent years of operation and projections for each of the 2 years following the grant, including but not limited to balance sheets, profit and loss statements, and cash flow statements. A business operating for less than 2 years shall provide all available financial statements.

(c) a hiring and training plan, which must include:

(i) a breakdown of the jobs to be created or retained, including the number and type of jobs that are full-time, part-time, skilled, semiskilled, or unskilled positions;

(ii) a timetable for creating the positions and the total number of employees to be hired;

(iii) an assurance that the business will comply with the equal opportunity and nondiscrimination laws;

(iv) procedures for outreach, recruitment, screening, training, and placement of employees;

(v) a description of the training curriculum and resources;

(vi) written commitments from any agency or organization participating in the implementation of the hiring plan; and

(vii) a description of the type and method of training to be provided to employees, the starting wage and wage to be paid after training for each position, the job benefits to be paid or provided, and any payment to eligible training providers.

(7) If the committee determines that an applicant meets the criteria established in this section and has complied with the applicable procedures and review processes established by the committee, the committee may award a primary sector business workforce development grant to the employer and authorize the disbursement of funds under contract to the primary sector business.

(8) (a) A contract with a grant recipient must contain provisions:

(i) certifying that the amount of the grant already expended will be reimbursed in the event that the primary sector business ceases operation in the state of Montana within the grant contract period, which may be up to 2 years;

(ii) specifying that the employer may receive grant funds over the contract period only upon documenting the creation of eligible jobs, the hiring of employees for the jobs, or the incurring of eligible training expenses; and

(iii) providing the department with annual reports and a final closeout report that documents the higher wages paid to an employee upon completion of the training.

(b) The contract must be signed by the person in the primary sector business who is assigned the duties and responsibilities for training and the overall success of the program and by the primary sector business's chief executive. (Terminates June 30, 2007—sec. 13, Ch. 26, L. 2005.)

39-11-202. (Temporary—effective July 1, 2007) Primary sector business workforce training grants — eligibility. (1) Subject to appropriation by the legislature, the grant review committee provided for in 39-11-201 may award workforce training grants to primary sector businesses that provide education or skills-based training, through eligible training providers from the eligible training provider list, for employees in new jobs.

(2) To be eligible for a grant, an applicant shall demonstrate that at least 50% of the applicant's sales will be from outside of Montana or that the applicant is a manufacturing company with 50% of its sales from companies that have 50% of their sales outside of Montana and must meet at least one of the following criteria:

(a) be a value-adding business as defined by the Montana board of investments;

(b) demonstrate a significant positive economic impact to the region and state beyond the job creation involved;

(c) provide a service or function that is essential to the locality or the state; or

(d) be a for-profit or a nonprofit hospital or medical center providing a variety of medical services for the community or region.

(3) An applicant shall also provide a match of at least $1 for every $3 requested. The match:

(a) must be from new, unexpended funds available at the time of application;

(b) may include new loans and investments and expenditures for direct project-related costs such as new equipment and buildings. The committee may consider recent purchases of fixed assets directly related to the proposal on a case-by-case basis. A purchase of fixed assets directly related to the proposed training activities that have been made within 90 days after submission of the application may be considered eligible by the committee.

(4) (a) Except as provided in subsection (4)(c), a grant provided under this section may not exceed $5,000 for each full-time position for which an employee is being trained. A grant may be provided only for a new job that has an average weekly wage that meets or exceeds the lesser of Montana's current average weekly wage or the current average weekly wage of the county in which the employees are to be principally employed.

(b) The department may consider the value of employee benefits in calculating the expected annual wage.

(c) The committee may, in exceptional circumstances, consider a higher grant ceiling for jobs that will pay significantly higher wages and benefits if the need for higher training costs is documented in the application.

(d) A grant provided under this section must be proportional to the number of jobs provided, the expected average annual wage of all jobs provided, and the underlying economic indicators of the region where the majority of the jobs will be created.

(5) ~~A primary sector business workforce training program must involve at least 10 new jobs unless unique circumstances are documented that indicate a significant, positive, secondary impact to the local economy.~~ Funding ceilings must be determined by the availability of funding, the cost for each job, the quality of the primary sector business proposal, and whether training will be provided in Montana.

(6) The grant application, at a minimum, must contain:

(a) a business plan containing information that is sufficient for the committee to obtain an adequate understanding of the business to be assisted, including the products or services offered, estimated market potential, management experience of principals, current financial position, and details of the proposed venture. In lieu of a business plan, the committee may consider a copy of the current loan application to entities such as the Montana board of investments, the federal business and industry guarantee program, or the small business administration.

(b) financial statements and projections for the 2 most recent years of operation and projections for each of the 2 years following the grant, including but not limited to balance sheets, profit and loss statements, and cash flow statements. A business operating for less than 2 years shall provide all available financial statements.

(c) a hiring and training plan, which must include:

(i) a breakdown of the jobs to be created or retained, including the number and type of jobs that are full-time, part-time, skilled, semiskilled, or unskilled positions;

(ii) a timetable for creating the positions and the total number of employees to be hired;

(iii) an assurance that the business will comply with the equal opportunity and nondiscrimination laws;

(iv) procedures for outreach, recruitment, screening, training, and placement of employees;

(v) a description of the training curriculum and resources;

(vi) written commitments from any agency or organization participating in the implementation of the hiring plan; and

(vii) a description of the type and method of training to be provided to employees, the starting wage and wage to be paid after training for each position, the job benefits to be paid or provided, and any payment to eligible training providers.

(7) If the committee determines that an applicant meets the criteria established in this section and has complied with the applicable procedures and review processes established by the committee, the committee may award a primary sector business workforce development grant to the employer and authorize the disbursement of funds under contract to the primary sector business.

(8) (a) A contract with a grant recipient must contain provisions:

(i) certifying that the amount of the grant already expended will be reimbursed in the event that the primary sector business ceases operation in the state of Montana within the grant contract period, which may be up to 2 years;

(ii) specifying that the employer may receive grant funds over the contract period only upon documenting the creation of eligible jobs, the hiring of employees for the jobs, or the incurring of eligible training expenses; and

(iii) providing the department with annual reports and a final closeout report that documents the higher wages paid to an employee upon completion of the training.

(b) The contract must be signed by the person in the primary sector business who is assigned the duties and responsibilities for training and the overall success of the program and by the primary sector business's chief executive. (Terminates June 30, 2009—sec. 4, Ch. 169, L. 2005.)"

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved April 10, 2007

CHAPTER NO. 178

[HB 769]

AN ACT REQUIRING MANDATORY REGISTRATION AND LICENSURE OF ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS; ALLOWING FOR PROVISIONAL LICENSING; PROVIDING FOR BACKGROUND INVESTIGATIONS OF CERTAIN EMPLOYEES AND MANAGERS AND ALLOWING FOR A WAIVER; DIRECTING THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT RULES REGARDING PROGRAM CRITERIA; REQUIRING DEPARTMENT INSPECTION OF THE PROGRAMS FOR LICENSURE AND EVERY 3 YEARS; ALLOWING INSPECTIONS IN RESPONSE TO COMPLAINTS; PROVIDING PENALTIES AND NOTIFICATION PROCEDURES; REVISING DEFINITIONS; ESTABLISHING CRITERIA FOR ENSURING PUBLIC HEALTH AND SAFETY FOR PROGRAM PARTICIPANTS; REQUIRING PROOF OF INSURANCE; AMENDING SECTIONS 37-48-101, 37-48-102, AND 37-48-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Licensure. (1) A program must be licensed by the board.

(2) The board may issue a license that is valid for a period of between 1 year and 3 years or may issue a provisional license as provided in [section 2].

(3) A license is valid only for the program for which it is issued and may not be sold, assigned, or transferred without the approval of the board.

(4) The board may suspend or revoke a license if the board, upon a hearing, as provided in 37-1-131, determines that the program is not operated in a manner consistent with the rules adopted and is not in substantial compliance with the program's plan of operation.

(5) The board may approve a modification of the program's plan of operation. A program may not deviate from its plan of operation without the prior approval of the board.

(6) A license terminates and the holder of the program license shall return the license to the department if:

(a) program operations are discontinued;

(b) ownership of the program is transferred without approval of the board;

(c) the board suspends or revokes the license; or

(d) the license expires without being renewed.

(7) The program license must be displayed in a conspicuous place near the admitting office of the program.

Section 2. Provisional license. (1) The board may grant a provisional license to a program:

(a) that was registered with the board as of December 31, 2006; and

(b) that has submitted to the board:

(i) a completed application;

(ii) background materials, as described in [section 3], necessary to conduct background investigations on the program's managers and workers affiliated with the program; and

(iii) the required fees.

(2) A provisional license allows a program to operate for a period of up to 1 year, pending an onsite inspection of the program's facilities and the completion of background investigations on all managers and workers affiliated with the program who have direct access to program participants.

(3) The board may terminate a provisional license by notifying the program of any of the following:

(a) the program's failure to pass the onsite inspection;

(b) the program's failure to provide timely background materials for investigation of all managers and workers affiliated with the program who have direct access to program participants; or

(c) the determination that one or more of the workers affiliated with the program with direct access to program participants are considered unsuitable, based on background information, for having direct access to program participants although the program upon notification may take corrective action within 30 days.

(4) If the program shows good cause, the board may extend a provisional license to complete background investigations on managers and workers affiliated with the program.

(5) The board may decline to grant a provisional license or a license to a program that the board determines is substantially the same in ownership, management, and plan of operation as a program that had previously been denied a provisional license or a license.

Section 3. Background investigations — waiver. (1) The program shall submit background checks for the program manager and each worker affiliated with the program who has or will have direct access to program participants in a manner prescribed by the board or shall provide to the board the information necessary for the board to conduct a background investigation, including a set of fingerprints as required for a fingerprint check by the department of justice and the federal bureau of investigation.

(2) For the purposes of the background investigation required by this section, each individual subject to subsection (1) must be evaluated pursuant to the provisions of Title 37, chapter 1, part 2.

(3) The board may, by rule, identify specific criminal offenses for which a conviction disqualifies a worker affiliated with the program and procedures for disqualification based upon substantiated child abuse or neglect of children.

(4) (a) The board may, by rule, waive the requirement for a background investigation for an individual who holds a professional or occupational license

granted by the state that is not suspended or restricted by action of the appropriate licensing entity.

(b) The board may grant a waiver of the background investigation upon a determination that the class or type of licensure referenced in subsection (4)(a):

(i) subjects the individual to at least as rigorous a background investigation as required by this section; and

(ii) contains provisions disqualifying applicants for a professional or occupational license that are similar to the provisions in subsection (3) and that are specified by the board by rule as disqualifying an individual whose job requires direct access to a program participant.

Section 4. Rules — program criteria — application evaluations. (1) The board shall adopt rules establishing specific minimum criteria to ensure the health and safety of program participants and other rules necessary to implement this part. Those criteria may incorporate by reference appropriate standards established by other governmental entities, including:

(a) building codes for those structures used as a residence for program participants;

(b) health and sanitation requirements; and

(c) other standards adopted by the board by rule.

(2) The board shall evaluate each application for a license to determine whether the proposed plan of operation:

(a) meets the specific minimum criteria set by rule;

(b) reasonably provides for the safety and well-being of program participants; and

(c) is consistent with the goals and objectives stated in the plan of operation.

(3) The board shall adopt rules by October 1, 2008, to begin licensing the programs, and the programs have 30 days from the effective date to apply for a license once the rules are effective.

Section 5. Department or board inspection. (1) The department or board may enter and inspect, without prior notice, program premises and facilities in response to a complaint. The inspection may be for purposes of determining compliance with the provisions of this part or for other purposes provided for by rule.

(2) The department or board may enlist the assistance of other governmental entities in inspections, including but not limited to a county health officer or a county sanitarian.

(3) (a) Except as provided in subsection (3)(b), the department or board shall conduct an onsite inspection of:

(i) each program applying for a license; and

(ii) each licensed program at least once every 3 years.

(b) Instead of an onsite inspection of a licensed program, the department or board may consider verified proof of successful certification by a national or regional certifying organization approved by the board by rule.

Section 6. Penalty for failure to obtain license — notice of violation. (1) It is unlawful to operate a program without a license or a provisional license. A person who maintains or operates a program in violation of this section is

guilty of a misdemeanor punishable under 46-18-212. Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

(2) If the department receives a complaint or information alleging a violation of this part, the department may serve written notice to the program management either in person or by certified mail. The notice must inform the program management of the right to a hearing and whether injunctive action is being sought. The notice may also recommend corrective action to achieve voluntary compliance and a schedule for completing the corrective action if the program prefers to take corrective action rather than proceed to a contested case hearing.

Section 7. Section 37-48-101, MCA, is amended to read:

"37-48-101. Purpose. The purpose of the board is to ~~examine the benefit of licensing~~ *license and regulate* private alternative adolescent residential or outdoor programs as a public service to monitor and maintain a high standard of care and to ensure the safety and well-being of the adolescents and parents using the programs. Necessary licensure processes and safety standards for programs are best developed and monitored by the professionals that are actively engaged in providing private alternative adolescent residential care."

Section 8. Section 37-48-102, MCA, is amended to read:

"37-48-102. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of private alternative adolescent residential or outdoor programs provided for in 2-15-1745.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Direct access" means that an individual has or will likely have person-to-person spoken contact or physical contact with or access to the program participant.

(4) "Manager" means an individual who has or will likely have person-to-person spoken contact or physical contact with or access to the program participant.

(5) "Plan of operation" means the operational structures and parameters describing the program as identified in 37-48-103 and as required by the board by rule.

~~(3)~~*(6)* (a) "Program" means a private alternative adolescent residential or outdoor program that provides a structured, private, alternative residential setting for youth who are experiencing emotional, behavioral, or learning problems and who have a history of failing in academic, social, moral, or emotional development at home or in less-structured traditional settings.

(b) The term does not include:

(i) any program that is required to be licensed or regulated by the state under Title 50, 52, or 53;

(ii) recreational programs such as boy scouts, girl scouts, or 4-H clubs;

(iii) organizations, boarding schools, or residential schools with a sole focus on academics;

(iv) residential training or vocational programs with a sole focus on education and vocational training;

(v) youth camps with a focus on recreation and faith-related activities; or

(vi) an organization, boarding school, or residential school that is an adjunct ministry of a church incorporated in the state of Montana.

(7) "Program participant" means an adolescent enrolled in or participating in a program, other than an adolescent serving as an employee of the program.

(8) "Worker affiliated with the program" means any owner, partner, member, employee, or contractor providing professional or occupational services to a program."

Section 9. Section 37-48-103, MCA, is amended to read:

"37-48-103. ~~Powers and duties of board — registration~~ *Registration and licensing* requirements — *fees.* (1) The board shall develop ~~and implement a process for registration of~~ *adopt rules and set fees for mandatory registration and licensing* programs ~~and to set fees to carry out its duties under this section~~. *Each program is required to provide policies of insurance in a form and in an adequate amount as determined by board rule.*

~~(2) The board shall:~~

~~(a) examine data gathered from the registration process;~~

~~(b) examine current regulations and standards applicable to these programs;~~

~~(c) determine additional regulations and standards that are needed;~~

~~(d) examine the quality of child care available in the various programs, any aspects of existing programs that need improvement, and the positive contributions to or negative interactions with local communities;~~

~~(e) determine the need for the continued existence of the board and its duties or responsibilities; and~~

~~(f) report to the economic affairs interim committee detailing the board's findings, recommendations, and proposed legislation, if any, by September 15, 2006.~~

~~(3)~~*(2)* The board shall require *the following* information to be provided for ~~registration of programs~~ *licensing*. The information includes but is not limited to:

(a) a description of the program and facility;

(b) a description of the goals and objectives of the program for program participants;

~~(b)~~*(c)* a description of the population served by the program~~;~~*, including the maximum number of program participants to be served and the gender of program participants;*

~~(c)~~*(d)* the location and contact information for each program, including the person responsible for the conduct of the program;

~~(d)~~*(e)* a list of professional and supervisory employees and relevant credentials and other qualifications;

~~(e)~~*(f)* the average daily census;

~~(f)~~*(g)* a copy of program policies and procedures on:

(i) admission;

(ii) behavior management;

(iii) communication with family members;

(iv) the availability of routine and emergency medical and psychological care; ~~and~~

(v) medication management~~.~~*;*

(h) any information that the board may require to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation of a manager or a worker affiliated with the program who has direct access to program participants, including information pertaining to criminal convictions; and

(i) any other related information specified by the board by rule.

~~(4)~~*(3)* ~~The board shall adopt rules to determine any additional information necessary for registration. Registration must be updated annually. The board may set fees as provided in 37-1-134 that may be commensurate with program size.~~ *The board shall issue licenses upon receipt of the appropriate fees and a finding that the information provided in subsection (2) is satisfactory.* The board shall make available to the public information on the name, address, and contact information for each ~~registered~~ *licensed* program.

~~(5) The board is exempt from the provisions in 37-1-105, 37-1-136, 37-1-137, 37-1-138, 37-1-141, and Title 37, chapter 1, parts 2 and 3.~~"

Section 10. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 37, chapter 48, part 1, and the provisions of Title 37, chapter 48, part 1, apply to [sections 1 through 6].

Section 11. Effective date. [This act] is effective on passage and approval.

Approved April 10, 2007

CHAPTER NO. 179

[HB 786]

AN ACT EXEMPTING FROM THE WORKERS' COMPENSATION ACT THE EMPLOYMENT OF PERSONS PERFORMING THE SERVICES OF AN INTRASTATE OR INTERSTATE COMMON OR CONTRACT MOTOR CARRIER IF HIRED BY A BROKER; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers and to all employees. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household or domestic employment;

(b) casual employment;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;

(f) employment as a direct seller as defined by 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;

(k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection (2)(k):

(i) "freelance correspondent" means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier":

(A) means a person who provides a newspaper with the service of delivering newspapers singly or in bundles; and

(B) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as referred to in 39-51-204(1)(e);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

(p) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(q) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(r) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(r)(iii)(A) or (2)(r)(iii)(B);

(s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(v) employment of a person performing the services of an intrastate or interstate common or contract motor carrier when hired by an individual or entity who meets the definition of a broker, as provided in 49 U.S.C. 13102;

~~(v)~~*(w)* employment of a person who is not an employee or worker in this state as defined in 39-71-118(10);

~~(w)~~*(x)* employment of a person who is working under an independent contractor exemption certificate.

(3) (a) (i) A person who regularly and customarily performs services at locations other than the person's own fixed business location shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 unless the person has waived the rights and benefits of the Workers' Compensation Act by obtaining an independent contractor exemption certificate from the department pursuant to 39-71-417.

(ii) Application fees or renewal fees for independent contractor exemption certificates must be deposited in the state special revenue account established in 39-9-206 and must be used to offset the certification administration costs.

(b) A person who holds an independent contractor exemption certificate may purchase a workers' compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.

(c) For the purposes of this subsection (3), "person" means a sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or

directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved April 10, 2007

CHAPTER NO. 180

[HB 789]

AN ACT TREATING A TRIBAL IDENTIFICATION CARD IN A MANNER SIMILAR TO A STATE IDENTIFICATION CARD FOR PURPOSES OF CERTAIN STATE LAWS; AND AMENDING SECTIONS 16-3-322, 16-6-305, 30-14-1704, 33-19-321, 45-6-332, 45-8-206, 45-8-322, 61-3-101, 61-3-216, 61-5-206, 61-5-302, 87-2-106, AND 87-2-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-322, MCA, is amended to read:

"16-3-322. Recordkeeping. (1) A licensee, at the time of the sale of a keg, shall record the following:

(a) the purchaser's name, address, and date of birth and the number of the purchaser's driver's license, state-issued or military identification card, *tribal identification card,* or valid United States or foreign passport;

(b) the date of purchase;

(c) the name of the clerk making the sale;

[(d) the keg identification number required under 16-3-321]; and

(e) the purchaser's signature and date of purchase.

(2) The licensee shall maintain the record for not less than 45 days after the date of the sale.

(3) A licensee who maintains the records required by this section shall make the records available during regular business hours for inspection by law enforcement pursuant to 16-3-323."

Section 2. Section 16-6-305, MCA, is amended to read:

"16-6-305. Age limit for sale or provision of alcoholic beverages — liability of provider. (1) (a) Except in the case of an alcoholic beverage provided in a nonintoxicating quantity to a person under 21 years of age by ~~his~~ *the person's* parent or guardian, physician or dentist for medicinal purposes, a licensed pharmacist upon the prescription of a physician, or an ordained minister or priest in connection with a religious observance, a person may not sell or otherwise provide an alcoholic beverage to a person under 21 years of age.

(b) A parent, guardian, or other person may not knowingly sell or otherwise provide an alcoholic beverage in an intoxicating quantity to a person under 21 years of age.

(c) For the purposes of this section, "intoxicating quantity" means a quantity of an alcoholic beverage that is sufficient to produce:

(i) a blood, breath, or urine alcohol concentration in excess of 0.05; or

(ii) substantial or visible mental or physical impairment.

(2) ~~Any~~ *A* person is guilty of a misdemeanor who:

(a) invites a person under the age of 21 years into a public place where an alcoholic beverage is sold and treats, gives, or purchases an alcoholic beverage for the person;

(b) permits the person in a public place where an alcoholic beverage is sold to treat, give, or purchase alcoholic beverages for ~~him~~ *the person*; or

(c) holds out the person to be 21 years of age or older to the owner of the establishment or ~~his or her~~ *to the owner's* employee ~~or employees~~.

(3) It is unlawful for any person to fraudulently misrepresent ~~his or her~~ *the person's* age to any dispenser of alcoholic beverages or to falsely procure any identification card or to alter any of the statements contained in any identification card*, including a tribal identification card*.

(4) A person 21 years of age or older who violates the provisions of subsection (1)(b) is, in addition to applicable criminal penalties, subject to civil liability for damages resulting from a tortious act committed by the person to whom the intoxicating substance was sold or provided if the act is judicially determined to be the result of the intoxicated condition created by the violation. (See compiler's comments for contingent termination of certain text.)"

Section 3. Section 30-14-1704, MCA, is amended to read:

"30-14-1704. Computer security breach. (1) Any person or business that conducts business in Montana and that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the data system following discovery or notification of the breach to any resident of Montana whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person. The disclosure must be made without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (3), or consistent with any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(2) Any person or business that maintains computerized data that includes personal information that the person or business does not own shall notify the owner or licensee of the information of any breach of the security of the data system immediately following discovery if the personal information was or is reasonably believed to have been acquired by an unauthorized person.

(3) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation and requests a delay in notification. The notification required by this section must be made after the law enforcement agency determines that it will not compromise the investigation.

(4) For purposes of this section, the following definitions apply:

(a) "Breach of the security of the data system" means unauthorized acquisition of computerized data that materially compromises the security, confidentiality, or integrity of personal information maintained by the person or business and causes or is reasonably believed to cause loss or injury to a Montana resident. Good faith acquisition of personal information by an employee or agent of the person or business for the purposes of the person or business is not a breach of the security of the data system, provided that the personal information is not used or subject to further unauthorized disclosure.

(b) (i) "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(A) social security number;

(B) driver's license number, ~~or~~ state identification card number*, or tribal identification card number*;

(C) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(ii) Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(5) (a) For purposes of this section, notice may be provided by one of the following methods:

(i) written notice;

(ii) electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 U.S.C. 7001;

(iii) telephonic notice; or

(iv) substitute notice, if the person or business demonstrates that:

(A) the cost of providing notice would exceed $250,000;

(B) the affected class of subject persons to be notified exceeds 500,000; or

(C) the person or business does not have sufficient contact information.

(b) Substitute notice must consist of the following:

(i) an electronic mail notice when the person or business has an electronic mail address for the subject persons; and

(ii) conspicuous posting of the notice on the website page of the person or business if the person or business maintains one; or

(iii) notification to applicable local or statewide media.

(6) Notwithstanding subsection (5), a person or business that maintains its own notification procedures as part of an information security policy for the treatment of personal information and that does not unreasonably delay notice is considered to be in compliance with the notification requirements of this section if the person or business notifies subject persons in accordance with its policies in the event of a breach of security of the data system.

(7) If a business discloses a security breach to any individual pursuant to this section and gives a notice to the individual that suggests, indicates, or implies to the individual that the individual may obtain a copy of the file on the individual from a consumer credit reporting agency, the business shall coordinate with the consumer reporting agency as to the timing, content, and distribution of the notice to the individual. The coordination may not unreasonably delay the notice to the affected individuals."

Section 4. Section 33-19-321, MCA, is amended to read:

"33-19-321. Computer security breach. (1) Any licensee or insurance-support organization that conducts business in Montana and that owns or licenses computerized data that includes personal information shall provide notice of any breach of the security of the system following discovery or

notice of the breach of the security of the system to any individual whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person. The notice must be made without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (3), or consistent with any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(2) Any person to whom personal information is disclosed in order for the person to perform an insurance function pursuant to this part that maintains computerized data that includes personal information shall notify the licensee or insurance-support organization of any breach of the security of the system in which the data is maintained immediately following discovery of the breach of the security of the system if the personal information was or is reasonably believed to have been acquired by an unauthorized person.

(3) The notice required by this section may be delayed if a law enforcement agency determines that the notice will impede a criminal investigation and requests a delay of notice. The notice required by this section must be made after the law enforcement agency determines that the notice will not compromise the investigation.

(4) Licensees, insurance-support organizations, and persons to whom personal information is disclosed pursuant to this part shall develop and maintain an information security policy for the safeguarding of personal information and security breach notice procedures that provide expedient notice to individuals as provided in subsection (1).

(5) For purposes of this section, the following definitions apply:

(a) "Breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by a licensee, insurance-support organization, or person to whom information is disclosed pursuant to this part. Acquisition of personal information by a licensee, insurance-support organization, or employee or agent of a person as authorized pursuant to this part is not a breach of the security of the system.

(b) (i) "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when the name and the data elements are not encrypted:

(A) social security number;

(B) driver's license number*,* ~~or~~ state identification *card* number*, or tribal identification card number*;

(C) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(ii) Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records."

Section 5. Section 45-6-332, MCA, is amended to read:

"45-6-332. Theft of identity. (1) A person commits the offense of theft of identity if the person purposely or knowingly obtains personal identifying information of another person and uses that information for any unlawful purpose, including to obtain or attempt to obtain credit, goods, services,

financial information, or medical information in the name of the other person without the consent of the other person.

(2) (a) A person convicted of the offense of theft of identity if no economic benefit was gained or was attempted to be gained or if an economic benefit of less than $1,000 was gained or attempted to be gained shall be fined an amount not to exceed $1,000, imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of the offense of theft of identity if an economic benefit of $1,000 or more was gained or attempted to be gained shall be fined an amount not to exceed $10,000, imprisoned in a state prison for a term not to exceed 10 years, or both.

(3) As used in this section, "personal identifying information" includes but is not limited to the name, date of birth, address, telephone number, driver's license number, social security number or other federal government identification number, *tribal identification card number,* place of employment, employee identification number, mother's maiden name, financial institution account number, credit card number, or similar identifying information relating to a person.

(4) If restitution is ordered, the court may include, as part of its determination of an amount owed, payment for any costs incurred by the victim, including attorney fees and any costs incurred in clearing the credit history or credit rating of the victim or in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as a result of the actions of the defendant."

Section 6. Section 45-8-206, MCA, is amended to read:

"45-8-206. Public display or dissemination of obscene material to minors. (1) A person having custody, control, or supervision of any commercial establishment or newsstand may not knowingly or purposely:

(a) display obscene material to minors in such a way that minors, as a part of the invited public, will be able to view the material~~;~~. ~~provided, however~~ *However*, ~~that~~ a person is considered not to have displayed obscene material to minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts were made to prevent view of the material by a minor~~;~~.

(b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view, with or without consideration, any obscene material; or

(c) present to a minor or participate in presenting to a minor, with or without consideration, any performance that is obscene to minors.

(2) A person does not violate this section if:

(a) ~~he~~ *the person* had reasonable cause to believe the minor was 18 years of age. "Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage license, birth certificate, educational identification card, governmental identification card, *tribal identification card,* or other official or apparently official card or document purporting to establish that the person is 18 years of age;

(b) the person is, or is acting as, an employee of a bona fide public school, college, or university or a retail outlet affiliated with and serving the educational purposes of a school, college, or university and the material or

performance was disseminated in accordance with policies approved by the governing body of the institution;

(c) the person is an officer, director, trustee, or employee of a public library or museum and the material or performance was acquired by the library or museum and disseminated in accordance with policies approved by the governing body of the library or museum;

(d) an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide school, library, or museum; or

(e) the person is a retail sales clerk with no financial interest in the material or performance or in the establishment displaying or selling the material or performance."

Section 7. Section 45-8-322, MCA, is amended to read:

"45-8-322. Application, renewal, permit, and fees. (1) The application form must be readily available at the sheriff's office and must read as follows:

CONCEALED WEAPON PERMIT APPLICATION

To be completed by each person making application:

RESIDENT OF MONTANA AT LEAST 6 MONTHS ( ) Yes ( ) No

CITIZEN OF THE UNITED STATES ( ) Yes ( ) No

18 YEARS OF AGE OR OLDER ( ) Yes ( ) No

PLEASE TYPE OR PRINT

Full name:.....

Last First Middle

Alias/Maiden/Nickname: .....

Address: Home: ..... Zip .....

Employer: ..... Zip .....

Phone: ...../ ...../ .....

Home Employer Message

Place of birth: ..... Date of birth: .....

Driver's license #: ..... Issuing state: .....

Social Security #: .....

Sex ..... Ht. ..... Wt. ..... Eyes ..... Hair .....

LIST EACH FORMER EMPLOYER OR BUSINESS ENGAGED IN FOR THE LAST 5 YEARS:

	Employer or business name	Address	Dates of employment
1.	.....	.....	.....
2.	.....	.....	.....
3.	.....	.....	.....
4.	.....	.....	.....
5.	.....	.....	.....
6.	.....	.....	.....

LIST EACH PLACE IN WHICH YOU HAVE LIVED FOR THE LAST 5 YEARS:

	City	State	Dates of residence
1.	.....	.....	.....
2.	.....	.....	.....
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5.	.....	.....	.....
6.	.....	.....	.....

MILITARY SERVICE, BRANCH ..... FROM ..... TO .....

TYPE OF DISCHARGE ..... RANK UPON DISCHARGE .....

HAVE YOU EVER BEEN ARRESTED FOR OR CONVICTED OF A CRIME OR FOUND GUILTY IN A COURT-MARTIAL PROCEEDING?

( ) YES ( ) NO

IF YES, COMPLETE THE FOLLOWING (Exceptions: minor traffic violations) (Attach additional sheet if necessary):

	City	State	Charge	Date
1.	.....	.....	.....	.....
2.	.....	.....	.....	.....
3.	.....	.....	.....	.....
4.	.....	.....	.....	.....
5.	.....	.....	.....	.....

LIST THREE PERSONS WHOM YOU HAVE KNOWN FOR AT LEAST 5 YEARS THAT WILL BE CREDIBLE WITNESSES TO YOUR GOOD MORAL CHARACTER AND PEACEABLE DISPOSITION (DO NOT include relatives or present/past employers):

	Name	Address	Phone
1.	.....	.....	.....
2.	.....	.....	.....
3.	.....	.....	.....

PLEASE EXPLAIN YOUR REASONS FOR REQUESTING THIS PERMIT (Attach additional sheet if necessary):

.....

.....

.....

.....

.....

I, the undersigned applicant, swear that the foregoing information is true and correct to the best of my knowledge and belief and is given with the full knowledge that any misstatement may be sufficient cause for denial or revocation of a permit to carry a concealed weapon. I authorize any person having information concerning me that relates to the information requested by this application and the requirements for a concealed weapon permit, either

public record or otherwise, to furnish it to the sheriff to whom this application is made.

.....

Signature

.....

Date of application

This application must be signed in the presence of the sheriff or a designee.

(2) The application must be in triplicate. The applicant must be given the original at the time the completed application is filed with the sheriff, the sheriff shall keep a copy for at least 4 years, and a copy must, within 7 days of the sheriff's receipt of the application, be mailed to the chief of police if the applicant resides in a city or town with a police force.

(3) The fee for issuance of a permit is $50. The permit must be renewed for additional 4-year periods upon payment of a $25 fee ~~per~~ *for each* renewal and upon request for renewal made within 90 days before expiration of the permit. The permit and each renewal must be in triplicate, in a form prescribed by the department of justice, and must, at a minimum, include the name, address, physical description, signature, driver's license *number,* ~~or~~ state identification card number, *or tribal identification card number,* and a picture of the permittee. A person in the United States armed forces satisfies the requirement of submitting a picture if the person submits pictures of the front of the person's military identification card and the person's Montana driver's license. The permit must state that federal and state laws on possession of firearms and other weapons differ and that a person who violates the federal law may be prosecuted in federal court and the Montana permit will not be a defense. The permittee must be given the original, and the sheriff shall keep a copy and send a copy to the department of justice, which shall keep a central repository record of all permits. Replacement of a lost permit must be treated as a renewal under this subsection.

(4) The sheriff shall conduct a background check of an applicant to determine whether the applicant is eligible for a permit under 45-8-321, may require an applicant to submit the applicant's fingerprints, and may charge the applicant $5 for fingerprinting.

(5) Permit, background, and fingerprinting fees may be retained by the sheriff and used to implement 45-8-321 through 45-8-325.

(6) A state or local government law enforcement agency or other agency or any of its officers or employees may not request a permittee to voluntarily submit information in addition to that required on an application and permit."

Section 8. Section 61-3-101, MCA, is amended to read:

"61-3-101. Duties of department — records. (1) (a) The department shall create and maintain a central registry of electronic files that includes an electronic record of title as specified in this section for motor vehicles, trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, and snowmobiles for which:

(i) an application for a certificate of title has been received by the department, its authorized agent, or a county treasurer;

(ii) a certificate of title has been issued by the department; or

(iii) a registration, security interest, or lien transaction has been recorded by the department.

(b) The central registry of electronic files described in subsection (1) must include an electronic record of registration for each motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, and snowmobile registered in this state:

(i) for which the certificate of title was issued by another jurisdiction and that was registered in another jurisdiction; or

(ii) for which a certificate of title has not been issued or is not required.

(2) The electronic record of title for a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile must contain the following information:

(a) the name, residence, and mailing address of the owner and:

(i) if the owner is the holder of a driver's license or identification card issued by the department*, by a tribal government,* or by a motor vehicle agency of another jurisdiction, the owner's driver's license or identification card number and the issuing jurisdiction; or

(ii) if the owner is a corporation, the registered agent's name and, if the agent is the holder of a driver's license or identification card, the agent's driver's license or identification card number and the issuing jurisdiction;

(b) a description of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, including, as pertinent to the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile:

(i) the manufacturer of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile;

(ii) the manufacturer's designation of the style of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile;

(iii) the identifying number;

(iv) the manufacturer's designated model year of manufacture and the odometer reading, if applicable, at the time of the transfer of ownership;

(v) the character of the motive power and the shipping weight of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile as shown by the manufacturer;

(vi) the distinctive license number assigned to the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, if any;

(vii) the gross vehicle weight and gross vehicle weight rating, as determined by the manufacturer, or, for a trailer operating interstate, the declared weight;

(viii) the unique transaction record number, when available and assigned by the department, for each transaction pertaining to the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile and the date of each transaction;

(ix) any brand required under state law or any brand carried forward from a certificate of title surrendered from another jurisdiction;

(x) if the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile has been or is currently registered in this state, the distinctive license plate number or certificate number assigned to the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile and a record of all fees and local option taxes, if applicable, paid for the current and preceding registration periods; and

(xi) other information that may be required for registration or may from time to time be found desirable.

(3) The electronic record of registration for a motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile must contain, at a minimum, the following information:

(a) the name, residence, and mailing address of the owner and the driver's license or identification card data required in subsections (2)(a)(i) and (2)(a)(ii);

(b) the same data that is required under subsection (2)(b) for the electronic record of title; and

(c) any other data considered to be pertinent by the department.

(4) In order to prevent an accumulation of unneeded records and files, regardless of any other statutory requirements, the department may destroy all records and files that relate to motor vehicles, trailers, semitrailers, pole trailers, motorboats, personal watercraft, sailboats, or snowmobiles that have not been registered within the preceding 4 years and that do not have an active lien.

(5) Subject to the provisions of Title 61, chapter 11, part 5, motor vehicle records maintained by the department must be open to inspection during reasonable business hours, and the department shall furnish any information from the records, except personal information and highly restricted personal information, as defined in 61-11-503, upon payment by the applicant of the cost of the information requested. Prior to providing the information, the department shall require the applicant to provide identification. The department may not disclose personal information or highly restricted personal information except as permitted or required under 61-11-507, 61-11-508, or 61-11-509."

Section 9. Section 61-3-216, MCA, is amended to read:

"61-3-216. Certificates of title — application — contents — issuance. (1) The owner of a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile shall apply for a certificate of title on a form prescribed by the department or, if authorized by the department, in an electronic record provided by the department and made available to an authorized agent of the department or a county treasurer.

(2) The application for a certificate of title, upon completion, must include:

(a) the name, residence, and mailing address of the owner and:

(i) if the owner is the holder of a driver's license or identification card issued by the department*, a tribal government,* or a motor vehicle agency of another jurisdiction, the owner's driver's license number or identification card number and the name of the jurisdiction issuing the license or card; or

(ii) if the owner is a corporation, the name of the corporation's registered agent's and, if the agent is the holder of a driver's license or identification card,

the agent's driver's license number or identification card number and the name of the jurisdiction issuing the license or card;

(b) a description of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, including, as available and pertinent to the vehicle:

(i) the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile make, model, manufacturer's designated model year of manufacture, vehicle identification number, and type of body and a description of motive power;

(ii) the odometer reading, if applicable, at the time of transfer of ownership;

(iii) the gross vehicle weight rating, gross vehicle weight, or shipping weight, if applicable, as determined by the manufacturer;

(iv) whether the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile was new or used at the time of transfer; and

(v) for a trailer operating intrastate, its declared weight;

(c) the date on which the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile was purchased by or was transferred to the applicant, the name and address of the person from whom the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile was acquired, and the names and addresses of any secured parties or lienholders for whom the applicant is acknowledging a voluntary security interest;

(d) any other information that the department requires to identify the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile and to enable the department to determine whether the owner is entitled to a certificate of title and to determine the existence of security interests in the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile;

(e) if applicable, an odometer statement containing the information required in 61-3-206 or, if the title does not contain a space for the information, a separate document approved by the department that provides the same information that is required in 61-3-206; and

(f) a section that gives the applicant the option to direct the department, upon examination and review of the records and completion of the application process, to:

(i) issue a certificate of title as soon as possible; or

(ii) update the electronic record of title for the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, issue a transaction summary receipt, and postpone the issuance of a certificate of a title until the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile owner submits a separate request for issuance of the certificate of title.

(3) If the application is for a certificate of title to a new motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, the application must be accompanied by a manufacturer's certificate of origin, properly assigned to the applicant.

(4) Except as provided in 61-3-208 or subsection (4)(b) of this section, if the application is for a certificate of title to a used motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, the application must be:

(a) accompanied by a certificate of title that is properly assigned by the prior owner to the applicant; or

(b) acknowledged by the prior owner if the prior owner's interest in the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile was assigned to the applicant by means of a transfer on the electronic record of title entered by an authorized agent of the department or a county treasurer.

(5) If the application is for a certificate of title to a camper and if a certificate of title properly assigned by the prior owner is not available, the application must be accompanied by a notarized bill of sale or a conditional sales contract.

(6) If the application is for a certificate of title to a motorboat, a personal watercraft, a sailboat that is 12 feet in length or longer, or a snowmobile and a certificate of title properly assigned by the prior owner is not available, the application must be accompanied by a notarized bill of sale, an invoice, the current registration receipt for the motorboat, personal watercraft, sailboat, or snowmobile, or a certificate of number showing the transfer of ownership, which may be used to show the transfer of ownership for a motorboat, personal watercraft, sailboat, or snowmobile from the immediate prior owner to the applicant."

Section 10. Section 61-5-206, MCA, is amended to read:

"61-5-206. Authority of department to suspend license or driving privilege — right to hearing. (1) The department may suspend the driver's license or driving privilege of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

(a) has committed or permitted an unlawful or fraudulent use of the license as specified in 61-5-302;

(b) has falsified the licensee's date of birth on the application for a driver's license;

(c) is under 21 years of age and has altered the licensee's or another's driver's license, ~~or~~ identification card, *or tribal identification card* to obtain alcohol; or

(d) has authorized another to use the licensee's driver's license, ~~or~~ identification card, *or tribal identification card* to obtain alcohol.

(2) If the department suspends a driver's license under 61-5-207 or this section or reinstates a license suspension or revocation upon conviction or forfeiture of bail not vacated of any traffic violation by a person who holds a probationary driver's license under 61-2-302, the department shall immediately notify the licensee in writing and upon the licensee's request shall afford the licensee an opportunity for a hearing as early as practical, within 20 days after receipt of the request, in the county in which the licensee resides unless the department and the licensee agree that the hearing may be held in some other county. At the hearing, the department through its authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. At the hearing, the department shall either rescind its order of

suspension or, for good cause, may affirm, reduce, or extend the period of suspension of the license."

Section 11. Section 61-5-302, MCA, is amended to read:

"61-5-302. Unlawful use of license or identification card. It is a misdemeanor for a person to:

(1) display or cause or permit to be displayed or have in the person's possession a canceled, revoked, suspended, fictitious, or altered driver's license*,* ~~or~~ identification card*, or tribal identification card*;

(2) lend the person's driver's license*,* ~~or~~ identification card*, or tribal identification card* to any other person or knowingly permit its use by another;

(3) display or represent as one's own any driver's license*,* ~~or~~ identification card*, or tribal identification card* not issued to the person;

(4) fail or refuse to surrender to the department upon its lawful demand a driver's license or identification card that has been suspended, revoked, or canceled;

(5) use a false or fictitious name in an application for a driver's license or identification card or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in an application; or

(6) permit any unlawful use of a driver's license*,* ~~or~~ identification card*, or tribal identification card* issued to the person."

Section 12. Section 87-2-106, MCA, is amended to read:

"87-2-106. Application for license — penalties for violation — forfeiture of privileges. (1) A license may be procured from the director, a warden, or an authorized agent of the director. The applicant shall state the applicant's name, age, [social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and other facts, data, or descriptions as may be required by the department. An applicant for a resident license shall present a valid Montana driver's license, Montana driver's examiner's identification card, *tribal identification card,* or other identification specified by the department to substantiate the required information. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a license. It is a misdemeanor for a license agent to sell a hunting, fishing, or trapping license to an applicant who fails to produce the required identification at the time of application for licensure. Except as provided in subsections (2) through (4), the statements made by the applicant must be subscribed to before the officer or agent issuing the license.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by telephone, by mail, on the internet, or by other electronic means. Statements on an application for a license to be issued by telephone, by mail, on the internet, or by other electronic means need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102(7), the applicant shall apply to the director and shall submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102(7). The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing license for the resident's spouse, parent, child, brother, or sister who is otherwise qualified to obtain the license.

(5) A license is void unless subscribed to by the licensee.

(6) It is unlawful to subscribe to or make any statement, on an application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. A person violating any provision of this subsection is guilty of a misdemeanor.

(7) It is unlawful for a nonresident to apply for or purchase for a nonresident's use the following resident licenses and permits:

(a) wildlife conservation license;

(b) hunting license or permit; or

(c) fishing license or permit.

(8) (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of affirming to or making a false statement to obtain a resident license or who is convicted of applying for or purchasing a resident license in violation of subsection (7) shall be:

(i) fined not less than the greater of $100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than $1,000;

(ii) imprisoned in the county jail for not more than 6 months; or

(iii) both fined and imprisoned.

(b) In addition to the penalties specified in subsection (8)(a), upon conviction or forfeiture of bond or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt, fish, and trap in Montana for not less than 18 months.

(9) It is a misdemeanor for a person to purposely or knowingly assist an unqualified applicant in obtaining a resident license in violation of this section.

[(10) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(11) The department shall delete an applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001.)"

Section 13. Section 87-2-202, MCA, is amended to read:

"87-2-202. Application — fee — expiration. (1) Except as provided in 87-2-803(12), a wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, *a tribal identification card,* or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's

identity and qualifications to purchase a wildlife conservation license or to receive a free wildlife conservation license pursuant to 87-2-803(12). It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of $8, of which 25 cents is a search and rescue surcharge.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of $10, of which 25 cents is a search and rescue surcharge.

(c) In addition to the fee in subsection (3)(a), the first time in any license year that a resident uses the wildlife conservation license as a prerequisite to purchase a hunting license, an additional hunting access enhancement fee of $2 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The resident hunting access enhancement fee is chargeable only once during any license year.

(d) In addition to the fee in subsection (3)(b), the first time in any license year that a nonresident uses the wildlife conservation license as a prerequisite to purchase a hunting license, except a variably priced outfitter-sponsored Class B-10 or Class B-11 license issued under 87-1-268, an additional hunting access enhancement fee of $10 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The nonresident hunting access enhancement fee is chargeable only once during any license year.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

[(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(6) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001; the $2 wildlife conservation license fee increases in subsections (3)(a) and (3)(b) enacted by Ch. 596, L. 2003, are void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)"

Section 14. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Approved April 10, 2007

CHAPTER NO. 181

[HB 803]

AN ACT PROVIDING THAT THE INFORMATION AND COMMUNICATION PROGRAM OF THE BOARD OF VETERANS' AFFAIRS MAY INCLUDE INFORMATION RELATED TO DEPLETED URANIUM EXPOSURE; AMENDING SECTION 10-2-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-2-102, MCA, is amended to read:

"10-2-102. Duties of board — employee qualifications. (1) The board shall establish a statewide service for veterans and their families as provided in this section. The board shall:

(a) actively cooperate with local, state, and federal agencies whose services encompass the affairs of veterans and their families;

(b) promote the general welfare of all veterans and their families;

(c) assist veterans and their families who are residents of this state in filing claims for the benefits to which they are entitled. In carrying out this duty, the board and its accredited employees shall, upon the request of an eligible claimant, act as agents for the claimant in developing and presenting claims for benefits provided under Title 38 of the United States Code. The board shall seek to secure speedy and just action for each claimant. A board employee officially acting as an agent on behalf of a claimant must be properly accredited and recognized pursuant to 38 CFR 14.628 and 14.629.

(d) officially advocate for the fair treatment of Montana's veterans and their families by the U.S. department of veterans affairs with respect to claims processing, health care services, and other veteran-related programs and inform veterans and their family members of all available grievance procedures;

(e) develop and implement an information and communication program to keep veterans and their family members informed about available federal, state, and community-based services and benefits. The program may include but is not limited to:

(i) development and distribution of a services and benefits directory;

(ii) regular public service announcements through various media;

(iii) information to assist veterans and their family members in obtaining federal benefits and treatment services related to depleted uranium exposure, including a best practice health screening of any veteran who:

(A) has been identified pursuant to department of defense policy as having possible level I, II, or III exposure to depleted uranium;

(B) is referred for a health screening by a military physician; or

(C) may have been exposed to depleted uranium during service in a combat zone.

~~(iii)~~*(iv)* an internet website with information and links relevant to veterans and their families and including information about board meetings and activities related to veterans' affairs; and

~~(iv)~~*(v)* a quarterly newsletter, which may be printed or electronically distributed by e-mail or by posting it to an appropriate website.

(f) seek grants to help fund veterans' programs established pursuant to this section;

(g) develop a memorandum of understanding with the federal veterans' employment and training service and with other appropriate entities to facilitate interagency cooperation, such as resource sharing, cross-training, data and information sharing, and service delivery coordination;

(h) establish management tools, including but not limited to needs assessments, policy statements, program goals and objectives, performance measures, and program evaluation criteria;

(i) prepare a biennial report to the governor, the department of military affairs, the appropriate legislative interim committee, and veterans' service organizations. The report must include but is not limited to the latest information about the demographics of Montana's veteran population, a needs assessment, annual summaries of the veterans' special revenue accounts established in 10-2-112 and 10-2-603, and a review of the veterans' affairs budget.

(j) request legislation responsive to identified needs.

(2) Employees of the board must be residents of this state. Whenever possible, all employees of the board must have served in the military forces of the United States during World War I, World War II, the Korean war, the Vietnam conflict, or other period of conflict involving the United States military overseas and must have been honorably discharged. Preference for employment must be given to disabled veterans.

(3) The board shall hire an administrator to implement board policy and carry out the duties of the board."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 10, 2007

CHAPTER NO. 182

[SB 60]

AN ACT REVISING AND CLARIFYING THE GOVERNOR'S ENERGY EMERGENCY AUTHORITY RELATED TO A PRICE OF ENERGY; AND AMENDING SECTIONS 10-3-312 AND 90-4-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-312, MCA, is amended to read:

"10-3-312. Maximum expenditure by governor — appropriation. (1) Whenever an emergency*, including an energy emergency as defined in 90-4-302,* or *a* disaster is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and, subject to subsection (2), the governor is authorized to expend from the general fund an amount not to exceed $16 million in any biennium, minus any amount appropriated pursuant to 10-3-310 in the same biennium. The statutory appropriation in this subsection may be used by any state agency designated by the governor.

(2) In the event of the recovery of money expended under this section, the spending authority must be reinstated to a level reflecting the recovery.

(3) If a disaster is declared by the president of the United States, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund an amount not to exceed $500,000 during the biennium to meet the state's share of the individual and family grant programs as provided in 42 U.S.C. 5178. The statutory appropriation in this subsection may be used by any state agency designated by the governor."

Section 2. Section 90-4-302, MCA, is amended to read:

"90-4-302. Definitions. As used in this part, the following definitions apply:

(1) "Bulk pipeline terminal" means a facility that is primarily used for storage for the marketing of petroleum products and that has a total bulk storage capacity of 50,000 gallons or more.

(2) "Distributor" means any person, private corporation, partnership, producer, individual proprietorship, public utility, joint operating agency, or cooperative that engages in or is authorized to engage in the activity of generating, producing, transmitting, or distributing energy in this state.

(3) "Energy" means petroleum or other liquid fuels, natural or synthetic fuel gas, or electricity.

(4) "Energy emergency" means*:*

(a) an existing or imminent domestic, regional, or national shortage of energy ~~or a price of energy~~ that will result in curtailment of essential services or production of essential goods or the disruption of significant sectors of the economy unless action is taken to conserve or limit the use of the energy form involved and the allocation of available energy supplies among users or to increase the available supply of energy*; or*

(b) a price of energy that will:

(i) result in curtailment of essential services or production of essential goods or the disruption of significant sectors of the economy; or

(ii) impose a threat to the health or safety of those segments of the population who are most in need, as defined by their economic, social, or medical circumstances.

(5) "Energy facility" means a facility that produces, extracts, converts, transports, or stores energy.

(6) "Energy supply alert" means a condition of energy supply on a national, regional, state, or local basis that foreseeably will affect significantly the availability of essential energy supplies ~~or the price of energy~~ within the ensuing 90-day period unless action is taken under 90-4-309 to reduce energy usage by state agencies and political subdivisions or action is taken to increase the supply of energy.

(7) "Person" means an individual, partnership, joint venture, private or public corporation, cooperative, association, firm, public utility, political subdivision, municipal corporation, government agency, joint operating agency, or any other entity, public or private, however organized.

(8) "Petroleum pipeline company" means a person who owns or operates in Montana any pipeline used for the transportation of petroleum products or their derivatives. This definition does not include pipelines used to transport crude petroleum from producing wells to refineries.

(9) "Petroleum products" means propane, butane, propane/butane mix, motor gasoline, kerosene and other middle distillates, aviation gasoline, jet fuel, number 4 fuel oil, residual fuel oil, and alcohol fuels, whether in natural or synthetic form.

(10) "Prime petroleum supplier" means the person who makes the first sale of a petroleum product into the state distribution system. Any person who is considered to be a Montana prime supplier by the U.S. department of energy is included in this definition.

(11) "Refiner" means a person that owns, operates, or controls the operations of one or more refineries located in Montana.

(12) "Refinery" means an industrial plant, regardless of capacity, that processes fossil or renewable feedstock or manufactures refined petroleum products, except when the plant exclusively produces petrochemicals."

Approved April 10, 2007

CHAPTER NO. 183

[SB 77]

AN ACT REVISING LEGISLATIVE REPORTING REQUIREMENTS RELATED TO THE FUTURE FISHERIES IMPROVEMENT PROGRAM; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO SUBMIT ITS DETAILED PROGRAM REPORT TO CERTAIN LEGISLATIVE COMMITTEES, TO INCLUDE SPECIFIC INFORMATION REGARDING PROGRESS AND PROJECTS RELATED TO THE RESTORATION OF NATIVE MONTANA FISH SPECIES, TO IDENTIFY ANY PROJECT THAT INVOLVES STREAM REMEDIATION FROM MINING ACTIVITIES, AND TO INCLUDE PARTICULAR FUNDING INFORMATION; AMENDING SECTION 87-1-272, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-272, MCA, is amended to read:

"87-1-272. (Temporary) Future fisheries improvement program — funding priority — reports required. (1) In order to enhance future fisheries through natural reproduction, the department shall establish and implement a statewide voluntary program that promotes fishery habitats and spawning areas for the rivers, streams, and lakes of Montana's fisheries.

(2) The department shall ~~by April 1, 1996, and thereafter~~ when projects are suggested by the future fisheries review panel, through a public hearing process and with the approval of the commission, prioritize projects that have been recommended by the review panel to be funded. Emphasis must be given to projects that enhance the historic habitat of native fish species. The department shall fund and implement the program regarding the long-term enhancement of streams and streambanks, instream flows, water leasing, lease or purchase of stored water, and other voluntary programs that deal with wild fish and aquatic habitats. A project conducted under the future fisheries improvement program may not restrict or interfere with the exercise of any water rights or property rights of the owners of streambeds and property adjacent to streambeds, streambanks, and lakes. The fact that a program project has been completed on

private property does not create any right of public access to the private property unless that right is granted voluntarily by the property owner.

(3) The department shall work in cooperation with private landowners, conservation districts, irrigation districts, local officials, anglers, and other citizens to implement the future fisheries improvement program. Any department employee who is employed under this section to facilitate contact with landowners must have experience in commercial or irrigated agriculture. The department shall encourage the use of volunteer labor and grants, matching grants, and private donations to accomplish program purposes. The department may use contracted services:

(a) for negotiations with landowners, local officials, citizens, and others;

(b) for coordination with other agencies that may be involved in projects conducted under this section; and

(c) to perform and supervise project work.

(4) Funds expended under this section may be used only for projects for the protection of the fisheries resource that have been identified by the review panel established in 87-1-273 and approved by the commission and may not be used for the acquisition of any interest in land.

(5) (a) The department shall report to the commission on the progress of the future fisheries improvement program every 12 months and post a copy of the report on a state electronic access system to ensure public access to the report.

(b) The department shall also present a detailed report to *the senate fish and game committee, the house fish, wildlife, and parks committee, and the natural resources and commerce joint appropriations subcommittee of* each regular session of the legislature on the progress of the future fisheries improvement program *and shall include specific information regarding progress and projects related to the restoration of native Montana fish species*. The legislative report must include the department's program activities and expenses since the last report and the project schedules and anticipated expenses for the ensuing 10 years' implementation of the future fisheries improvement program. *The department shall include a listing of the funding source for each project funded since the last report and shall identify any project that involves stream remediation from mining activities. All financial information presented in the legislative report must conform to the requirements of the state accounting, budgeting, and human resources system.*

(c) In order to implement 87-1-273 and this section, the department may expend revenue from the future fisheries improvement program for up to two additional full-time employees. (Terminates July 1, 2009—sec. 6, Ch. 529, L. 1999.)"

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Termination. [This act] terminates July 1, 2009.

Approved April 10, 2007

CHAPTER NO. 184

[SB 164]

AN ACT CLARIFYING THE DISTINCTION BETWEEN THE POWERS AND DUTIES OF ASSIGNED COUNSEL AND A GUARDIAN AD LITEM IN

PROCEEDINGS TO ADJUDICATE INCAPACITY AND TO PROTECT PROPERTY OF MINORS AND PERSONS UNDER DISABILITY; AMENDING SECTIONS 72-5-315 AND 72-5-408, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-5-315, MCA, is amended to read:

"72-5-315. Procedure for court appointment of guardian — hearing — examination — interview — procedural rights. (1) The incapacitated person or any person interested in the incapacitated person's welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The allegedly incapacitated person may have counsel of the person's own choice or the court may, in the interest of justice, appoint an appropriate official or order the office of state public defender, provided for in 47-1-201, to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the person in the proceeding. ~~The official or assigned counsel has the powers and duties of a guardian ad litem.~~

(3) The person alleged to be incapacitated must be examined by a physician appointed by the court who shall submit a report in writing to the court and must be interviewed by a visitor sent by the court. Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed and the person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the requested appointment is made and submit the visitor's report in writing to the court. Whenever possible without undue delay or expense beyond the ability to pay of the alleged incapacitated person, the court, in formulating the judgment, shall utilize the services of any public or charitable agency that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in the person's affairs.

(4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see or hear all evidence bearing upon the person's condition. The person is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or the person's counsel requests it."

Section 2. Section 72-5-408, MCA, is amended to read:

"72-5-408. Procedure concerning hearing and order on original petition. (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If at any time in the proceeding the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in 47-1-201, to assign counsel pursuant to the Montana Public Defender Act,

Title 47, chapter 1, to represent the minor. ~~Counsel assigned to represent a minor also has the powers and duties of a guardian ad litem.~~

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of the person's own choice, the court shall order the office of state public defender, provided for in 47-1-201, to assign counsel to represent the person pursuant to the Montana Public Defender Act, Title 47, chapter 1. ~~Assigned counsel has the powers and duties of a guardian ad litem.~~ If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. It is preferable that a physician designated by the court not be connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to be protected be examined by a physician as set forth in subsection (2).

(4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to appointments on or after [the effective date of this act].

Approved April 10, 2007

CHAPTER NO. 185

[SB 170]

AN ACT EXTENDING THE TERMINATION DATE OF THE DOMESTIC VIOLENCE FATALITY REVIEW COMMISSION BY 2 YEARS; AMENDING SECTION 4, CHAPTER 81, LAWS OF 2003, AND SECTION 1, CHAPTER 23, LAWS OF 2005.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 4, Chapter 81, Laws of 2003, is amended to read:

"Section 4. Termination. [This act] terminates December 31, ~~2006~~ *2010*."

Section 2. Section 1, Chapter 23, Laws of 2005, is amended to read:

"Section 1. Section 4, Chapter 81, Laws of 2003, is amended to read:

"Section 4. Termination. [This act] terminates December 31, ~~2006~~ *2008 2010*.""

Approved April 10, 2007

CHAPTER NO. 186

[SB 203]

AN ACT ALLOWING A COUNTY SHERIFF OR THE SHERIFF'S DESIGNEE TO AUTHORIZE THE PARTICIPATION OF CIVIL AIR PATROL CADETS IN SEARCH AND RESCUE OPERATIONS; AMENDING SECTION 7-32-235, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-235, MCA, is amended to read:

"7-32-235. Search and rescue units authorized — under control of county sheriff — optional funding. (1) A county may establish or recognize one or more search and rescue units within the county.

(2) *(a)* Except in time of martial rule as provided in 10-1-106, search and rescue units and their officers are under the operational control and supervision of the county sheriff, or the sheriff's designee, having jurisdiction and whose span of control would be considered within reasonable limits.

(b) A county sheriff or the sheriff's designee may authorize the participation of members of the civil air patrol, including cadets under 18 years of age, in search and rescue operations.

(3) Subject to 15-10-420, a county may, after approval by a majority of the people voting on the question at an election held throughout the county, levy an annual tax on the taxable value of all taxable property within the county to support one or more search and rescue units established or recognized under subsection (1). The election must be held as provided in 15-10-425."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 10, 2007

CHAPTER NO. 187

[SB 245]

AN ACT INCREASING THE DEBT LIMITS FOR COUNTIES, CONSOLIDATED MUNICIPALITIES, AND CITIES OR TOWNS; AMENDING SECTIONS 7-3-1321, 7-7-2101, 7-7-4201, 7-14-2524, AND 7-14-2525, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-3-1321, MCA, is amended to read:

"7-3-1321. Authorization to incur indebtedness — limitation. (1) The consolidated municipality may borrow money or issue bonds for any municipal purpose to the extent and in the manner provided by the constitution and laws of Montana for the borrowing of money or issuing of bonds by counties and cities and towns.

(2) The municipality may not become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate that exceeds ~~1.51%~~ *2.5%* of the total assessed value of taxable property, determined as provided in 15-8-111, within the municipality, as ascertained by the last assessment for state and county taxes prior to incurring indebtedness. All

warrants, bonds, or obligations in excess of the amount given by or on behalf of the municipality are void."

Section 2. Section 7-7-2101, MCA, is amended to read:

"7-7-2101. Limitation on amount of county indebtedness. (1) A county may not issue bonds or incur other indebtedness for any purpose in an amount, including existing indebtedness, that in the aggregate exceeds ~~1.4%~~ *2.5%* of the total assessed value of taxable property, determined as provided in 15-8-111, within the county, as ascertained by the last assessment for state and county taxes.

(2) Except as provided in 7-7-2402 and 7-21-3413, a county may not incur indebtedness or liability for any single purpose to an amount exceeding $500,000 without the approval of a majority of the electors of the county voting at an election as provided by law.

(3) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6."

Section 3. Section 7-7-4201, MCA, is amended to read:

"7-7-4201. Limitation on amount of bonded indebtedness. (1) Except as provided in 7-7-4202, a city or town may not issue bonds or incur other indebtedness for any purpose in an amount that with all outstanding and unpaid indebtedness exceeds ~~1.51%~~ *2.5%* of the total assessed value of taxable property, determined as provided in 15-8-111, within the city or town, as ascertained by the last assessment for state and county taxes.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

(3) The limitation in subsection (1) does not apply to bonds issued for the repayment of tax protests lost by the city or town."

Section 4. Section 7-14-2524, MCA, is amended to read:

"7-14-2524. Limitation on amount of bonds issued. (1) Except as otherwise provided in 7-7-2203, 7-7-2204, and this section, a county may not issue bonds in an amount that, with all outstanding bonds and warrants except emergency bonds, exceeds 0.68% of the total assessed value of taxable property, determined as provided in 15-8-111, within the county, as ascertained by the last assessment for state and county taxes.

(2) A county may issue bonds in an amount that, with all outstanding bonds and warrants, exceeds 0.68% but does not exceed ~~1.4%~~ *2.5%* of the total assessed value of taxable property, determined as provided in 15-8-111, when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways that have been destroyed or damaged by an act of God or by a disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county may not exceed ~~1.4%~~ *2.5%* of the total assessed value of taxable property, determined as provided in 15-8-111, within the county, as ascertained by the last assessment for state and county taxes prior to the issuance of the bonds."

Section 5. Section 7-14-2525, MCA, is amended to read:

"7-14-2525. Refunding agreements and refunding bonds authorized. (1) Whenever the total indebtedness of a county exceeds ~~1.4%~~ *2.5%*

of the total assessed value of taxable property, determined as provided in 15-8-111, within the county and the board determines that the county is unable to pay the indebtedness in full, the board may:

(a) negotiate with the bondholders for an agreement under which the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest in satisfaction of the bonds;

(b) enter into the agreement;

(c) issue refunding bonds for the amount agreed upon.

(2) These bonds may be issued in more than one series, and each series may be either amortization or serial bonds.

(3) The plan agreed upon between the board and the bondholders must be embodied in full in the resolution providing for the issuance of the bonds."

Section 6. Effective date. [This act] is effective July 1, 2007.

Approved April 10, 2007

CHAPTER NO. 188

[SB 341]

AN ACT REVISING GOVERNMENTAL PROCUREMENT PROCEDURES TO ALLOW FOR THE BIENNIAL SELECTION OF FIRMS FOR ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING SERVICES; AND AMENDING SECTION 18-8-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-8-204, MCA, is amended to read:

"18-8-204. Procedures for selection. (1) In the procurement of architectural, engineering, and land surveying services, the agency may encourage firms engaged in the lawful practice of their profession to submit annually *or biennially* a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

(2) (a) The agency shall then select, based on criteria established under agency procedures and guidelines and the law, the firm considered most qualified to provide the services required for the proposed project.

(b) The agency procedures and guidelines must be available to the public and include at a minimum the following criteria as they relate to each firm:

(i) the qualifications of professional personnel to be assigned to the project;

(ii) capability to meet time and project budget requirements;

(iii) location;

(iv) present and projected workloads;

(v) related experience on similar projects; and

(vi) recent and current work for the agency.

(c) The agency shall follow the minimum criteria of this part if no other agency procedures are specifically adopted.

(3) The provisions of this section do not apply to procurement of architectural, engineering, and land surveying services for projects that the department of transportation has determined are part of the design-build contracting pilot program authorized in 60-2-135 through 60-2-137."

Approved April 10, 2007

CHAPTER NO. 189

[SB 466]

AN ACT PROVIDING THAT ECONOMIC IMPACT STATEMENTS REQUESTED BY AN ADMINISTRATIVE RULE REVIEW COMMITTEE CONSIDER THE POTENTIAL IMPACT OF A RULE ON AFFECTED SMALL BUSINESSES; AND AMENDING SECTION 2-4-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-405, MCA, is amended to read:

"2-4-405. Economic impact statement. (1) Upon written request of the appropriate administrative rule review committee based upon the affirmative request of a majority of the members of the committee at an open meeting, an agency shall prepare a statement of the economic impact of the adoption, amendment, or repeal of a rule as proposed. The agency shall also prepare a statement upon receipt by the agency or the committee of a written request for a statement made by at least 15 legislators. If the request is received by the committee, the committee shall give the agency a copy of the request, and if the request is received by the agency, the agency shall give the committee a copy of the request. As an alternative, the committee may, by contract, prepare the estimate.

(2) Except to the extent that the request expressly waives any one or more of the following, the requested statement must include and the statement prepared by the committee may include:

(a) a description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

(b) a description of the probable economic impact of the proposed rule upon affected classes of persons, including but not limited to providers of services under contracts with the state *and affected small businesses*, and quantifying, to the extent practicable, that impact;

(c) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue;

(d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of inaction;

(e) an analysis that determines whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule;

(f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

(g) a determination as to whether the proposed rule represents an efficient allocation of public and private resources; and

(h) a quantification or description of the data upon which subsections ~~(1)(a)~~ *(2)(a)* through ~~(1)(g)~~ *(2)(g)* are based and an explanation of how the data was gathered.

~~(2)~~*(3)* A request to an agency for a statement or a decision to contract for the preparation of a statement must be made prior to the final agency action on the rule. The statement must be filed with the appropriate administrative rule review committee within 3 months of the request or decision. A request or decision for an economic impact statement may be withdrawn at any time.

~~(3)~~*(4)* Upon receipt of an impact statement, the committee shall determine the sufficiency of the statement. If the committee determines that the statement is insufficient, the committee may return it to the agency or other person who prepared the statement and request that corrections or amendments be made. If the committee determines that the statement is sufficient, a notice, including a summary of the statement and indicating where a copy of the statement may be obtained, must be filed with the secretary of state for publication in the register by the agency preparing the statement or by the committee, if the statement is prepared under contract by the committee, and must be mailed to persons who have registered advance notice of the agency's rulemaking proceedings.

~~(4)~~*(5)* This section does not apply to rulemaking pursuant to 2-4-303.

~~(5)~~*(6)* The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of the inaccuracy or inadequacy of a statement required under this section.

~~(6)~~*(7)* An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the factors listed in this section satisfies the provisions of this section."

Approved April 10, 2007

CHAPTER NO. 190

[SB 467]

AN ACT GENERALLY REVISING THE LAWS GOVERNING THE BOARD OF INVESTMENTS; ADDING LEGISLATIVE LIAISONS TO THE BOARD; AMENDING SECTION 2-15-1808, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1808, MCA, is amended to read:

"2-15-1808. Board of investments — allocation — composition — quasi-judicial. (1) There is a board of investments within the department of commerce.

(2) Except as otherwise provided in this subsection, the board is allocated to the department for administrative purposes as prescribed in 2-15-121. The board may employ a chief investment officer and an executive director who have

general responsibility for selection and management of the board's staff and for direct investment and economic development activities. The board shall prescribe the duties and annual salaries of the chief investment officer, executive director, and ~~six~~ *six* professional staff positions. The chief investment officer, executive director, and ~~six~~ *six* professional staff serve at the pleasure of the board.

(3) The board is composed of ~~nine~~ *nine* members appointed by the governor*,* as prescribed in 2-15-124*, and two ex officio nonvoting members*. The members are:

(a) one member from the public employees' retirement board, provided for in 2-15-1009, and one member from the teachers' retirement board provided for in 2-15-1010. If either member *of the respective retirement boards* ceases to be a member of the retirement board, the position of that member on the board of investments is vacant, and the governor shall fill the vacancy in accordance with 2-15-124.

~~(b) seven members who will provide a balance of professional expertise and public interest and accountability, who are informed and experienced in the subject of investments, and who are representative of:~~

~~(i) the financial community;~~

~~(ii) small business;~~

~~(iii) agriculture; and~~

~~(iv) labor.~~

(b) seven members who will provide a balance of professional expertise and public interest and accountability, who are informed and experienced in the subject of investments, and who are representatives of:

(i) the financial community;

(ii) small business;

(iii) agriculture; and

(iv) labor; and

(c) two ex officio nonvoting legislative liaisons to the board, of which one must be a senator appointed by the president of the senate and one must be a representative appointed by the speaker of the house. The liaisons may not be from the same political party. Preference in appointments is to be given to legislators who have a background in investments or finance. The legislative liaisons shall serve from appointment through each even-numbered calendar year and may attend all board meetings. Legislative liaisons appointed pursuant to this subsection (3)(c) are entitled to compensation and expenses, as provided in 5-2-302, to be paid by the legislative council.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 10, 2007

CHAPTER NO. 191

[HB 242]

AN ACT CHANGING THE DEADLINE FOR A WRITE-IN CANDIDATE TO FILE A DECLARATION OF INTENT; AMENDING SECTION 13-10-211, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-10-211, MCA, is amended to read:

"13-10-211. Declaration of intent for write-in candidates. (1) Except as provided in subsection (7), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. Except as provided in subsections (2) and (3), the declaration must be filed no later than 5 p.m. on the ~~15th~~ *10th* day before *the date established under 13-13-205 on which a ballot must be available for absentee voting for* the election and must contain:

(a) (i) the candidate's first and last names;

(ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;

(iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and

(iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;

(b) the candidate's mailing address;

(c) a statement declaring the candidate's intention to be a write-in candidate;

(d) the title of the office sought;

(e) the date of the election;

(f) the date of the declaration; and

(g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office that the write-in candidate is seeking:

(a) dies;

(b) withdraws from the election; or

(c) is charged with a felony offense.

(3) A person seeking to become a write-in candidate for a trustee position on a school board shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

(4) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk shall

notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(5) A declaration of intent may be sent by facsimile transmission if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state.

(6) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the secretary of state or the election administrator.

(7) The requirements in subsection (1) do not apply if:

(a) an election is held;

(b) a person's name is written in on the ballot;

(c) the person is qualified for and seeks election to the office for which the person's name was written in; and

(d) no other candidate has filed a declaration or petition for nomination or a declaration of intent."

Section 2. Applicability. [This act] applies to elections held after January 1, 2008.

Approved April 11, 2007

CHAPTER NO. 192

[SB 225]

AN ACT ALLOWING SPECIAL SCHOOL ELECTIONS ON A DATE OTHER THAN THE REGULAR SCHOOL ELECTION DAY IN ORDER FOR THE ELECTORS TO CONSIDER A PROPOSITION REQUESTING ADDITIONAL FUNDING; AMENDING SECTION 20-20-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-20-105, MCA, is amended to read:

"20-20-105. Regular school election day and special school elections — limitation — exception. (1) ~~The~~ *Except as provided in subsection (4), the* first Tuesday after the first Monday of May of each year is the regular school election day. Except as provided in ~~subsection~~ *subsections* (3) *and (4)*, a proposition requesting additional funding under 20-9-353 may be submitted to the electors only once each calendar year on the regular school election day.

(2) Subject to the provisions of subsection (1), special school elections may be conducted at times determined by the trustees.

(3) In the event of an unforeseen emergency occurring on the date scheduled for the funding election pursuant to subsection (1), the district will be allowed to reschedule the election for a different day of the calendar year. As used in this section, "unforeseen emergency" has the meaning provided in 20-3-322(5).

(4) In years when the legislature meets in regular session or in a special session that affects school funding, the trustees may order the election on a date other than the regular school election day in order for the electors to consider a proposition requesting additional funding under 20-9-353."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Extension of school election deadlines — applicability. In order to allow for the more orderly and efficient conduct of the regular school elections scheduled for May 8, 2007, it may not be possible to comply with certain statutory deadlines relating to a school election. Therefore, in 2007 only, a school district may limit the regular school election scheduled for May 8, 2007, to trustee elections only and may reschedule a single general fund operating levy election at any time prior to the adoption of a final budget pursuant to 20-9-131. For any levy election rescheduled under this section, a resolution calling for the election may not be adopted later than 20 days before the scheduled election and final ballot language may not be adopted later than 10 days before the date of the election. In addition, all statutory deadlines for the May 2007 regular school election are extended to April 27, 2007.

Approved April 11, 2007

CHAPTER NO. 193

[SB 536]

AN ACT PROVIDING THAT LOCAL GOVERNMENT ENTITIES, MUNICIPAL UTILITIES, OR COMPETITIVE ELECTRICITY SUPPLIERS MAY NOT USE EMINENT DOMAIN TO ACQUIRE EXISTING TELEPHONE OR ELECTRICAL ENERGY LINES AND APPURTENANT FACILITIES OWNED BY A PUBLIC UTILITY OR COOPERATIVE FOR THE PURPOSE OF TRANSMITTING OR DISTRIBUTING ELECTRICITY OR PROVIDING TELECOMMUNICATIONS SERVICES; AMENDING SECTION 70-30-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-30-102, MCA, is amended to read:

"70-30-102. Public uses enumerated. Subject to the provisions of this chapter, the right of eminent domain may be exercised for the following public uses:

(1) all public uses authorized by the government of the United States;

(2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;

(3) public buildings and grounds for the use of any county, city, town, or school district;

(4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town;

(5) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen, or straighten stream channels;

(6) water and water supply systems as provided in Title 7, chapter 13, part 44;

(7) roads, streets, alleys, controlled-access facilities, and all other public uses for the benefit of a county, city, or town or the inhabitants of a county, city, or town;

(8) acquisition of road-building material as provided in 7-14-2123;

(9) stock lanes as provided in 7-14-2621;

(10) parking areas as provided in 7-14-4501 and 7-14-4622;

(11) airport purposes as provided in 7-14-4801, 67-2-301, 67-7-210, and Title 67, chapters 10 and 11;

(12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43;

(13) housing authority purposes as provided in Title 7, chapter 15, part 44;

(14) county recreational and cultural purposes as provided in 7-16-2105;

(15) city or town athletic fields and civic stadiums as provided in 7-16-4106;

(16) county cemetery purposes as provided in 7-35-2201, cemetery association purposes as provided in 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;

(17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);

(18) public assistance purposes as provided in 53-2-201;

(19) highway purposes as provided in 60-4-103 and 60-4-104;

(20) common carrier pipelines as provided in 69-13-104;

(21) water supply, water transportation, and water treatment systems as provided in 75-6-313;

(22) mitigation of the release or threatened release of a hazardous or deleterious substance as provided in 75-10-720;

(23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;

(24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;

(25) water conservation and flood control projects as provided in 76-5-1108;

(26) acquisition of natural areas as provided in 76-12-108;

(27) acquisition of water rights for the natural flow of water as provided in 85-1-204;

(28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;

(29) conservancy district purposes as provided in 85-9-410;

(30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and railroads;

(31) canals, ditches, flumes, aqueducts, and pipes for:

(a) supplying mines, mills, and smelters for the reduction of ores;

(b) supplying farming neighborhoods with water and drainage;

(c) reclaiming lands; and

(d) floating logs and lumber on streams that are not navigable;

(32) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(33) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;

(34) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores;

(35) an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However, the reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(36) private roads leading from highways to residences or farms;

(37) telephone or electrical energy lines*, except that local government entities as defined in 2-7-501, municipal utilities, or competitive electricity suppliers may not use this chapter to acquire existing telephone or electrical energy lines and appurtenant facilities owned by a public utility or cooperative for the purpose of transmitting or distributing electricity or providing telecommunications services*;

(38) telegraph lines;

(39) sewerage of any:

(a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or unincorporated;

(b) settlement consisting of not less than 10 families; or

(c) public buildings belonging to the state or to any college or university;

(40) tramway lines;

(41) logging railways;

(42) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However, the grounds of state institutions may not be used for this purpose.

(43) underground reservoirs suitable for storage of natural gas;

(44) projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath or upon the surface of property where the title to the surface vests in others. However, the use of the surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose.

(45) projects to restore and reclaim lands that were strip mined or underground mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse affects of strip or underground mining on those lands."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 11, 2007

CHAPTER NO. 194

[SB 291]

AN ACT REVISING THE MORATORIUM ON NEW SCHOOL DISTRICTS TO ALLOW CREATION UNDER CERTAIN CIRCUMSTANCES OF A HIGH

SCHOOL DISTRICT SOLELY FOR THE PURPOSE OF EXPANDING AN ELEMENTARY DISTRICT INTO A K-12 SCHOOL DISTRICT; PROVIDING FOR THE DISPOSITION OF DISTRICT BONDED INDEBTEDNESS UNDER CERTAIN CIRCUMSTANCES; ESTABLISHING PROCEDURES FOR CREATION OF A HIGH SCHOOL DISTRICT BY TRUSTEE RESOLUTION; AMENDING SECTIONS 20-6-104, 20-9-366, 20-9-439, AND 20-9-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Procedure for creation of high school district solely for expansion into K-12 school district — trustee resolution. (1) An existing elementary district may create a high school district solely for the purpose of expanding an elementary district into a K-12 district only if:

(a) the nearest elementary school building is located at a distance of at least 40 miles from the nearest accessible high school;

(b) the trip from the nearest elementary school building to the nearest accessible high school is 60 minutes or more over the shortest passable route;

(c) periodically during the school year, the condition of the road makes it impractical to attend the nearest accessible high school; and

(d) at least 50 high school students reside in the elementary district; and

(e) the taxable valuation and boundaries of the combining elementary and high school district are the same.

(2) The creation of a new high school district may be requested by the trustees of an existing elementary district through passage of a resolution that includes the information outlined in 20-6-105(3) and requests the county superintendent to order an election to allow the electors of the elementary district to consider the proposition to create a high school district solely for the purpose of expanding the elementary school district into a K-12 district. Approval of the proposition results in a tax levy for payments as provided in subsection (6)(b).

(3) If the proposition for the expansion and the transition levy provided for in 20-9-502(6) is approved by the electors of the elementary district and the trustees issue a certificate of election as provided in 20-20-416, the county superintendent shall order the creation of the high school district and oversee the expansion of the high school district into a K-12 district pursuant to 20-6-701.

(4) The county superintendent shall send a copy of the order to the board of county commissioners and to the trustees of the districts affected by the creation of the district.

(5) If a new district is created, the effective date of its creation is the following July 1. The trustees of the elementary district must be designated as the trustees of the new K-12 district.

(6) Until the first school fiscal year in which the new K-12 district enrolls high school students in all grades, the existing high school district shall provide high school instruction to students residing in the newly created K-12 district with the K-12 district paying the existing high school district:

(a) tuition and transportation charged pursuant to the provisions of 20-5-320 and 20-5-321; and

(b) an amount equal to the BASE general fund mills for the existing high school district assessed against the taxable valuation in the new K-12 district and funded using a building reserve fund levy for transition costs as provided in 20-9-502. The payment to the existing high school district must be deposited in the district general fund and used to reduce the BASE budget levy.

(7) If bonded indebtedness has been approved by the voters of the existing high school district prior to [the effective date of this act] but the bonds have not been sold prior to the creation of the new K-12 district, then the future indebtedness of those bonds when those bonds are sold must be paid by levies on the original territory.

(8) If the K-12 school district does not open and operate a high school within 3 years after the effective date of the creation of the new district, the order of the county superintendent creating a new district under this section is void, the new district ceases to exist, and the trustees of the new district have no capacity to act. Those trustees retain authority as trustees of the elementary district.

Section 2. Section 20-6-104, MCA, is amended to read:

"20-6-104. Moratorium on creation of new district — ~~exception~~ *exceptions.* (1) ~~A~~ *Except as provided in subsections (2) and (3), a* school district may not initiate the creation of a new elementary district or a new high school district.

(2) Pursuant to the provisions of [section 1], the trustees or the electors of an existing elementary district may initiate the creation of a new high school district solely for the purpose of expanding into a K-12 district.

~~(2)~~*(3)* ~~This section~~ *The moratorium in subsection (1)* does not apply to a district that results from the procedure for the dissolution of a K-12 school district pursuant to 20-6-704."

Section 3. Section 20-9-366, MCA, is amended to read:

"20-9-366. Definitions. As used in 20-9-366 through 20-9-371, the following definitions apply:

(1) "County retirement mill value per elementary ANB" or "county retirement mill value per high school ANB" means the sum of the taxable valuation in the previous year of all property in the county divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts.

(2) (a) "District guaranteed tax base ratio" for guaranteed tax base funding for the BASE budget of an eligible district means the taxable valuation in the previous year of all property in the district*, except for property subject to the creation of a new school district under [section 1],* divided by the sum of the district's current year BASE budget amount less direct state aid and the state special education allowable cost payment.

(b) "District mill value per ANB", for school facility entitlement purposes, means the taxable valuation in the previous year of all property in the district*, except for property subject to the creation of a new school district under [section 1],* divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year total per-ANB entitlement amount.

(3) "Facility guaranteed mill value per ANB", for school facility entitlement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 140% and divided by

1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts.

(4) (a) "Statewide elementary guaranteed tax base ratio" or "statewide high school guaranteed tax base ratio", for guaranteed tax base funding for the BASE budget of an eligible district, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 175% and divided by the total sum of either the state elementary school districts' or the high school districts' current year BASE budget amounts less total direct state aid.

(b) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB", for school retirement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 121% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB amount used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts."

Section 4. Section 20-9-439, MCA, is amended to read:

"20-9-439. Computation of net levy requirement for general obligation bonds — procedure when levy inadequate. *Subject to [section 1], the following provisions apply:*

(1) The county superintendent shall compute the levy requirement for each school district's general obligation debt service fund on the basis of the following procedure:

(a) Determine the total money available in the debt service fund for the reduction of the property tax on the district by totaling:

(i) the end-of-the-year fund balance in the debt service fund, less any limited operating reserve as provided in 20-9-438;

(ii) anticipated interest to be earned by the investment of debt service cash in accordance with the provisions of 20-9-213(4) or by the investment of bond proceeds under the provisions of 20-9-435;

(iii) any state advance for school facilities distributed to a qualified district under the provisions of 20-9-346, 20-9-370, and 20-9-371;

(iv) funds transferred from the impact aid fund established pursuant to 20-9-514 that are authorized by 20-9-437(2) to be used to repay the district's bonds; and

(v) any other money, including money from federal sources, anticipated by the trustees to be available in the debt service fund during the ensuing school fiscal year from sources such as legally authorized money transfers into the debt service fund or from rental income, excluding any guaranteed tax base aid.

(b) Subtract the total amount available to reduce the property tax, determined in subsection (1)(a), from the final budget for the debt service fund as established in 20-9-438.

(2) The net debt service fund levy requirement determined in subsection (1)(b) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the net debt service fund levy requirement for the district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) If the board of county commissioners fails in any school fiscal year to make a levy for any issue or series of bonds of a school district sufficient to raise the money necessary for payment of interest and principal becoming due during the next ensuing school fiscal year, in any amounts established under the provisions of this section, the holder of any bond of the issue or series or any taxpayer of the district may apply to the district court of the county in which the school district is located for a writ of mandate to compel the board of county commissioners of the county to make a sufficient levy for payment purposes. If, upon the hearing of the application, it appears to the satisfaction of the court that the board of county commissioners of the county has failed to make a levy or has made a levy that is insufficient to raise the amount required to be raised as established in the manner provided in this section, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring the board of county commissioners, at the next meeting for the purpose of fixing tax levies for county purposes, to fix and make a levy against all taxable property in the school district that is sufficient to raise the amount of the deficiency. The levy is in addition to any levy required to be made at that time for the ensuing school fiscal year. Any costs that may be allowed or awarded the petitioner in the proceeding must be paid by the members of the board of county commissioners and may not be a charge against the school district or the county."

Section 5. Section 20-9-502, MCA, is amended to read:

"20-9-502. Purpose and authorization of building reserve fund by election — levy for school transition costs. (1) The trustees of any district, with the approval of the qualified electors of the district, may establish a building reserve for the purpose of raising money for the future construction, equipping, or enlarging of school buildings, for the purpose of purchasing land needed for school purposes in the district, or for the purpose of funding school transition costs as provided in ~~subsection~~ *subsections* (5) *and (6)*. In order to submit to the qualified electors of the district a building reserve proposition for the establishment of or addition to a building reserve, the trustees shall pass a resolution that specifies:

(a) the purpose or purposes for which the new or addition to the building reserve will be used;

(b) the duration of time over which the new or addition to the building reserve will be raised in annual, equal installments;

(c) the total amount of money that will be raised during the duration of time specified in subsection (1)(b); and

(d) any other requirements under 15-10-425 and 20-20-201 for the calling of an election.

(2) The total amount of building reserve, less the amount provided for in subsection (5), when added to the outstanding indebtedness of the district may not be more than the limitations provided in 20-9-406. Except as provided in ~~subsection~~ *subsections* (5)(b) *and (6)*, a building reserve tax authorization may not be for more than 20 years.

(3) The election must be conducted in accordance with the school election laws of this title, and the electors qualified to vote in the election must be qualified under the provisions of 20-20-301. The ballot for a building reserve proposition must be substantially in compliance with 15-10-425.

(4) The building reserve proposition is approved if a majority of those electors voting at the election approve the establishment of or addition to the building reserve. The annual budgeting and taxation authority of the trustees for a building reserve is computed by dividing the total authorized amount by the specified number of years. The authority of the trustees to budget and impose the taxation for the annual amount to be raised for the building reserve lapses when, at a later time, a bond issue is approved by the qualified electors of the district for the same purpose or purposes for which the building reserve fund of the district was established. Whenever a subsequent bond issue is made for the same purpose or purposes of a building reserve, the money in the building reserve must be used for the purpose or purposes before any money realized by the bond issue is used.

(5) (a) The trustees may submit a proposition to the qualified electors of the district for a levy to provide funding for transition costs incurred when the trustees:

(i) open a new school under the provisions of Title 20, chapter 6;

(ii) close a school;

(iii) replace a school building; or

(iv) consolidate with or annex another district under the provisions of Title 20, chapter 6.

(b) Except as provided in ~~subsection~~ *subsections* (5)(c) *and (6)*, the total amount the trustees may submit to the electorate for transition costs may not exceed the number of years specified in the proposition times the greater of 5% of the district's maximum general fund budget for the current year or $250 per ANB for the current year. ~~The~~ *Except as provided in subsection (6), the* duration of the levy for transition costs may not exceed 6 years.

(c) If the levy for transition costs is for consolidation or annexation:

(i) the limitation on the amount levied is calculated using the ANB and the maximum general fund budget for the districts that are being combined; and

(ii) the proposition must be submitted to the qualified electors in the combined district.

(d) The levy for transition costs may not be considered as outstanding indebtedness for the purpose of calculating the limitation in 20-9-406.

(6) The trustees of a K-12 district shall impose a levy for transition costs to fund the payment required by [section 1(6)(b)] when a proposition to create the K-12 district and to assess the transition levy has been approved pursuant to [section 1(2)]. The levy is limited to the amount required by [section 1(6)(b)] for a period not to exceed 3 years."

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 6, part 3, and the provisions of Title 20, chapter 6, part 3, apply to [section 1].

Section 7. Effective date — applicability. [This act] is effective on passage and approval and applies to the creation of new districts on or after [the effective date of this act].

Approved April 12, 2007

CHAPTER NO. 195

[HB 35]

AN ACT PROVIDING ASSISTANCE TO VICTIMS OF IDENTITY THEFT; CLARIFYING THE PROCESS FOR LAW ENFORCEMENT IN RELATION TO IDENTITY THEFT PASSPORTS; REQUIRING LAW ENFORCEMENT TO TAKE REPORTS IN IDENTITY THEFT CASES; EXPANDING THE APPLICATION OF THE IDENTITY THEFT PASSPORT PROGRAM TO ALL STATE RESIDENTS; PROVIDING THAT AN IDENTITY THEFT PASSPORT IS EQUIVALENT TO A POLICE REPORT OR INVESTIGATIVE REPORT; PROVIDING PENALTIES FOR FALSE REPORTS; REQUIRING CONSUMER REPORTING AGENCIES TO BLOCK INFORMATION RESULTING FROM IDENTITY THEFT; ALLOWING A VICTIM OF IDENTITY THEFT TO REQUEST THAT RECORDS OF ARREST OR CONVICTION BE EXPUNGED IN CERTAIN CIRCUMSTANCES; PROVIDING FOR INSURANCE PREMIUM REFUNDS UPON EXPUNGEMENT; AND AMENDING SECTION 46-24-220, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Identity theft report — process — investigation. (1) A law enforcement agency that receives a report of identity theft, as described in 45-6-332, from a victim of identity theft shall request two forms of identification sufficient to determine the identity of the victim. The forms of identification may include but are not limited to:

(a) a driver's license or other current, valid photo identification card, including but not limited to a school district or postsecondary education photo identification or a tribal photo identification that shows the individual's name;

(b) a birth certificate; or

(c) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and address.

(2) The law enforcement agency shall:

(a) notwithstanding subsection (1), immediately begin to investigate the report of identity theft, based upon whatever proof of identity the victim is able to provide, if any, at the time of making the report and proceed with the investigation as far as the agency is able;

(b) within 72 hours of receiving an identity theft victim's complaint, provide to the victim one copy of the police report, law enforcement investigative report, or filed complaint; and

(c) as provided in 46-24-220, send another copy along with the victim's completed application for an identity theft passport to the attorney general.

(3) Within 72 hours after making the report of identity theft, the victim shall provide the forms of identification requested pursuant to subsection (1). If the victim is unable to provide that identification within that time, the victim shall explain to the law enforcement agency receiving the report why the victim is unable to provide those forms of identification.

(4) The law enforcement agency shall take a complaint as provided under subsection (1) even if jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft. The law enforcement agency that takes the complaint may refer the complaint to a law enforcement agency that has apparent jurisdiction.

(5) (a) The law enforcement agency with which the original police report, investigative report, or complaint is filed shall cooperate fully with other law enforcement agencies of the same or another jurisdiction and investigate the identity theft within its resources.

(b) A complaint filed under this section is not required to be counted as an open case for purposes of compiling open case statistics.

Section 2. Section 46-24-220, MCA, is amended to read:

"46-24-220. Identity theft passport — application — issuance — *uses — penalty for false report.* (1) *(a)* The attorney general, in cooperation with any law enforcement agency, may issue an identity theft passport to a person who is a victim of identity theft in this state ~~and~~ *or to a resident of this state* who has filed a police report *in this state or another state* citing that the person is a victim of ~~a violation of~~ *identity theft as described in* 45-6-332.

(b) A victim who has filed a report of identity theft with a law enforcement agency may apply for an identity theft passport through any law enforcement agency. The agency shall send a copy of the police report and the application to the attorney general.

(c) For a resident who became an identity theft victim in another state, the victim may apply directly to the department of justice and shall provide a copy of the police report or other substantial evidence of having filed a complaint.

(d) The attorney general shall process the application and supporting report and may issue the victim an identity theft passport in the form of a card or certificate.

(2) (a) A victim of identity theft may present the victim's identity theft passport issued under subsection (1) to any of the following:

(i) a law enforcement agency to help prevent the victim's arrest or detention for an offense committed by someone other than the victim who is using the victim's identity;

(ii) any of the victim's creditors to aid in the creditors' investigation and establishment of whether fraudulent charges were made against accounts in the victim's name or whether accounts were opened using the victim's identity; or

(iii) a consumer reporting agency, as defined in 31-3-102, which shall accept the passport as the direct conveyance of a dispute under 31-3-124 and shall include notice of the dispute in all future reports that contain disputed information caused by identity theft.

(b) Acceptance of the identity theft passport presented by the victim to a law enforcement agency or creditor pursuant to subsection (2)(a) is at the discretion of the law enforcement agency or creditor. A law enforcement agency or creditor may consider the surrounding circumstances and available information regarding the offense of identity theft pertaining to the victim.

(c) An identity theft passport is equivalent to a police report or investigative report when a police report or investigative report is required as proof that the holder is a victim of identity theft.

(3) An application made with the attorney general pursuant to subsection (1), including any supporting documentation, is confidential criminal justice information, as defined in 44-5-103, and must be disseminated accordingly.

(4) The attorney general shall adopt rules to implement this section. The rules must include a procedure by which the attorney general is assured that an identity theft passport applicant has an identity theft claim that is legitimate and adequately substantiated.

(5) A person who knowingly gives a false report to obtain an identity theft passport is guilty of a felony and upon conviction shall be punished as provided by law and by revocation of the passport."

Section 3. Block of information on credit report. (1) Within 30 days after a consumer reporting agency receives from a consumer a complaint of identity theft and documentation as provided in subsection (2), the consumer reporting agency shall permanently block any information that the consumer identifies from the consumer's report that resulted from identity theft as defined in 45-6-332.

(2) To request a block of information on a consumer report, a consumer shall provide a consumer reporting agency with:

(a) a copy of a police report or an identity theft passport as provided in 46-24-220;

(b) the specific description of information that is to be blocked because it was a result of a violation of 45-6-332.

(3) A consumer reporting agency shall notify the person furnishing the information that a police report has been filed and that a block has been requested and shall notify the person of the effective date of the block.

(4) A consumer reporting agency may decline to block information or may rescind any block of information if, in the exercise of good faith and reasonable judgment, the consumer reporting agency believes that:

(a) the information was blocked because of a misrepresentation of fact by the consumer in requesting the block under this section;

(b) the consumer agrees that the blocked information or portions of the blocked information were blocked in error; or

(c) the consumer knowingly obtained possession of goods, services, or money as a result of the transaction for which information was blocked or the consumer should have known that possession of goods, services, or money occurred because of the transaction for which information was blocked.

(5) If a consumer reporting agency declines to block information or rescinds a blocking of information under this section, the consumer reporting agency shall notify the consumer promptly in the same manner as required in 15 U.S.C. 1681i. The prior presence of the blocked information in the consumer reporting agency's file on the consumer is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or money.

(6) In order to facilitate a consumer's right to block information as provided in subsection (1), a law enforcement agency shall provide to the consumer at the consumer's request a copy of a police report filed by the consumer that indicates that the consumer is a victim of 45-6-332.

Section 4. Application to expunge record — identity theft passport required — notice — fee waiver — rules. (1) A victim of identity theft, as described in 45-6-332, may apply to a district court to expunge from the victim's record any records or entries relating to a charge or conviction in which another

person used personal identifying information of the victim to commit an offense or violation, including records or entries relating to a charge or conviction that was dismissed or set aside.

(2) A victim who applies to have a record expunged shall provide to the court an identity theft passport as provided under 46-24-220 and other documents or information necessary to establish that the charge or conviction referred to in subsection (1) was the result of a person using the personal identifying information of the victim to commit the offense or violation.

(3) After granting the expungement, the court shall forward a copy of the expungement order to the department of justice. Upon receipt of the court order, the department shall expunge the pertinent records.

(4) Notwithstanding any other provision of law, a victim seeking expungement under this section may not be charged a fee by the court.

(5) The department of justice may adopt rules to implement procedures regarding law enforcement agency procedures for handling the expunged records.

Section 5. Refund for expunged record. An insurance company that charges an additional premium based on insurance points assessed against a policyholder as a result of a charge or conviction that was expunged because of identity theft pursuant to [section 4] shall refund the additional premiums to the policyholder upon notification and verification of the expungement.

Section 6. Codification instruction. (1) [Sections 1 and 4] are intended to be codified as an integral part of Title 46, chapter 24, part 2, and the provisions of Title 46, chapter 24, part 2, apply to [sections 1 and 4].

(2) [Section 3] is intended to be codified as an integral part of Title 31, chapter 3, part 1, and the provisions of Title 31, chapter 3, part 1, apply to [section 3].

(3) [Section 5] is intended to be codified as an integral part of Title 33, chapter 18, and the provisions of Title 33, chapter 18, apply to [section 5].

Approved April 17, 2007

CHAPTER NO. 196

[HB 99]

AN ACT INCREASING FEES FOR LICENSING OF WEIGHING DEVICES; AND AMENDING SECTION 30-12-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-12-203, MCA, is amended to read:

"30-12-203. Licensing of weighing devices. (1) A person may not knowingly operate or use an unlicensed weighing device in trade or commerce for ascertaining the weight of any commodity.

(2) A license must be obtained by applying to the department upon a form provided by the department. Each license must require at least one inspection a year.

(3) An application must be accompanied by the proper fee as established by this section, except that fees may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.

WEIGHING DEVICES

Capacity	Fees
499 pounds or less	~~$12.00~~ *$16*
500 pounds through 1,999 pounds	~~20.00~~ *26*
2,000 pounds through 7,999 pounds	~~40.00~~ *51*
8,000 pounds through 60,000 pounds	~~100.00~~ *130*
60,001 pounds or more	~~175.00~~ *225*

(4) The capacity of a weighing device must be determined by the manufacturer's rated capacity.

(5) (a) All licenses are annual and, except for those described in subsection (5)(b), expire on the anniversary date established by rule by the board of review established in 30-16-302.

(b) Licenses for on-farm scales expire at the end of the calendar year.

(6) (a) A late renewal fee equal to 50% of the renewal license fee established in subsection (3) must be assessed if the fee is not paid:

(i) for on-farm scales, before the first day of the sixth month of the year in which the license fee is due; or

(ii) for all other licenses, within 60 days of the anniversary date.

(b) If the fee is not paid by the respective due date listed in subsection (6)(a), the weighing device may be sealed and removed from service by the department.

(c) A person may not use a weighing device that has been removed from service or break the seal on a device removed from service until all fees have been paid.

(7) The fees must be deposited to the state special revenue fund of the department for use in the administration and enforcement of this part."

Approved April 17, 2007

CHAPTER NO. 197

[HB 113]

AN ACT REVISING LIQUOR LICENSING LAWS TO ELIMINATE THE RESIDENCE REQUIREMENT FOR LIQUOR LICENSES AND TO ALLOW ALL ENTITIES TO OBTAIN A LIQUOR LICENSE; REQUIRING SUITABLE FUNDING SOURCES FOR INDIVIDUAL APPLICANTS; CLARIFYING OTHER APPLICATION REQUIREMENTS FOR OWNERS, STOCKHOLDERS, PARTNERSHIPS, AND MEMBERS OF DIFFERENT BUSINESS ENTITIES; AND AMENDING SECTION 16-4-401, MCA.

WHEREAS, the Montana District Court decision in Hotel Venture East v. State, Cause No. CDV-2002-493(2005), requires the elimination of the residence requirement for liquor licenses.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-401, MCA, is amended to read:

"16-4-401. License as privilege — criteria for decision on application. (1) A license under this code is a privilege that the state may grant to an applicant and is not a right to which any applicant is entitled.

(2) Except as provided in 16-4-311 and subsection (6) of this section, in the case of a license that permits on-premises consumption, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) ~~in the case of~~ *if the applicant is* an individual ~~applicant~~:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

~~(iv) the applicant is a resident of the state and is qualified to vote in a state election;~~

~~(v)~~*(iv)* the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

~~(vi)~~*(v)* the applicant is not under 19 years of age; ~~and~~

(b) ~~in the case of a corporate~~ *if the* applicant *is a publicly traded corporation*:

~~(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (2)(a)(iv);~~

~~(ii)~~*(i)* each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a)~~;~~. *If no single owner owns more than 10% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (2)(a).*

~~(iii)~~*(ii)* each individual who has control over the operation of the license meets the requirements for an individual applicant listed in subsection (2)(a);

~~(iv)~~*(iii)* each person who shares in the profits or liabilities of a license meets the requirements for an individual applicant listed in subsection (2)(a). This subsection ~~(2)(b)(iv)~~ *(2)(b)(iii)* does not apply to a shareholder of a corporation who owns less than 10% of the outstanding stock in that corporation.

~~(v)~~*(iv)* the corporation is authorized to do business in Montana; ~~and~~

~~(vi) in the case of a corporation not listed on a national stock exchange, each owner of stock meets the requirements of subsections (2)(a)(i) and (2)(a)(ii); and~~

(c) if the applicant is a privately held corporation:

(i) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (2)(a), and the owners of 51% of the outstanding stock must meet the requirements of subsection (2)(a).

(ii) each individual who has control over the operation of the license meets the requirements for an individual applicant listed in subsection (2)(a);

(iii) each person who shares in the profits or liabilities of a license meets the requirements for an individual applicant listed in subsection (2)(a). This subsection (2)(c)(iii) does not apply to a shareholder of a corporation who owns less than 10% of the outstanding stock in that corporation.

(iv) the corporation is authorized to do business in Montana;

~~(c) in the case of any other business entity as applicant:~~

~~(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (2)(a); and~~

~~(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (2)(b).~~

(d) if the applicant is a general partnership, each partner must meet the requirements of subsection (2)(a);

(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the requirements of subsection (2)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all limited partners must meet the requirements of subsection (2)(a).

(f) if the applicant is a limited liability company, all managing members and those members whose ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (2)(a). If no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of subsection (2)(a).

(3) In the case of a license that permits only off-premises consumption, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) ~~in the case of~~ *if the applicant is* an individual ~~applicant~~:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

(iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, the applicant's rights have been restored;

(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(vi) the applicant is not under 19 years of age; ~~and~~

(b) ~~in the case of a corporate~~ *if the* applicant *is a publicly traded corporation*:

~~(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (3)(a)(iv);~~

~~(ii)~~*(i)* each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (3)(a). *If no single owner owns more than 10% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (3)(a).*~~; and~~

~~(iii)~~*(ii)* the corporation is authorized to do business in Montana; ~~and~~

(c) if the applicant is a privately held corporation:

(i) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (3)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (3)(a), and the owners of 51% of the outstanding stock must meet the requirements of subsection (3)(a).

(ii) the corporation is authorized to do business in Montana;

~~(c) in the case of any other business entity as applicant:~~

~~(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (3)(a); and~~

~~(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (3)(b)~~

(d) if the applicant is a general partnership, each partner must meet the requirements of subsection (3)(a);

(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the requirements of subsection (3)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all limited partners must meet the requirements of subsection (3)(a).

(f) if the applicant is a limited liability company, all managing members and those members whose ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (3)(a). If no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of subsection (3)(a).

(4) Subject to 16-4-311, in the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic beverage, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) ~~in the case of~~ *if the applicant is* an individual ~~applicant~~:

(i) the applicant has no ownership interest in any establishment licensed under this chapter for retail alcoholic beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, *the applicant's* rights have been restored;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments;

(v) the applicant is not under 19 years of age; and

(vi) an applicant for a wholesale license is ~~neither~~ *not* a manufacturer of an alcoholic beverage ~~nor is~~ *or* owned or controlled by a manufacturer of an alcoholic beverage; ~~and~~

(b) ~~in the case of a corporate~~ *if the* applicant *is a publicly traded corporation*:

~~(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (4)(a)(iii);~~

~~(ii)~~*(i)* each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (4)(a). *If no single owner owns more than 10% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (4)(a).*~~;~~

~~(iii)~~*(ii)* an applicant for a wholesale license is ~~neither~~ *not* a manufacturer of an alcoholic beverage ~~nor is~~ *or* owned or controlled by a manufacturer of an alcoholic beverage; and

~~(iv)~~*(iii)* the corporation is authorized to do business in Montana; ~~and~~

(c) if the applicant is a privately held corporation:

(i) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (4)(a). If no single owner owns more than 10% of the outstanding stock, the applicant must designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (4)(a) and the owners of 51% of the outstanding stock must meet the requirements of subsection (4)(a).

(ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or controlled by a manufacturer of an alcoholic beverage; and

(iii) the corporation is authorized to do business in Montana;

~~(c) in the case of any other business entity as applicant:~~

~~(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (4)(a); and~~

~~(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (4)(b)~~

(d) if the applicant is a general partnership, each partner must meet the requirements of subsection (4)(a);

(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the requirements of subsection (4)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all limited partners must meet the requirements of subsection (4)(a).

(f) if the applicant is a limited liability company, all managing members and those members whose ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (4)(a). If no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of subsection (4)(a).

(5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b) apply separately to each class of stock.

(6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to 16-4-302.

(7) an applicant's source of funding must be from a suitable source. A lender or other source of money or credit may be found unsuitable if the source:

(a) is a person whose prior financial or other activities or criminal record:

(i) poses a threat to the public interest of the state;

(ii) poses a threat to the effective regulation and control of alcoholic beverages; or

(iii) create a danger of illegal practices, methods, or activities in the conduct of the licensed business; or

(b) has been convicted of a felony offense within 5 years of the date of application or is on probation or parole or under deferred prosecution for committing a felony offense."

Approved April 17, 2007

CHAPTER NO. 198

[HB 287]

AN ACT OPPOSING THE IMPLEMENTATION OF THE FEDERAL REAL ID ACT AND DIRECTING THE MONTANA DEPARTMENT OF JUSTICE NOT TO IMPLEMENT THE PROVISIONS OF THE FEDERAL ACT.

WHEREAS, in May 2005, the U.S. Congress enacted the REAL ID Act of 2005 (REAL ID Act) as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief Act (Public Law 109-13), which was signed by President Bush on May 11, 2005, and which becomes fully effective May 11, 2008; and

WHEREAS, some of the requirements of the REAL ID Act are that states shall:

(1) issue a driver's license or state identification card in a uniform format, containing uniform information, all as prescribed by the Department of Homeland Security;

(2) verify the issuance, validity, and completeness of all primary documents used to issue a driver's license, such as those showing that the bearer is a U.S. citizen or a lawful alien, a lawful refugee, or a person holding a valid visa;

(3) provide for secure storage of all primary documents that are used to issue a federally approved driver's license or state identification card;

(4) provide fraudulent document recognition training to all persons engaged in issuing driver's licenses or state identification cards; and

(5) issue a driver's license or state identification card in a prescribed format if it is a license or card that does not meet the criteria provided for a federally approved license or identification card; and

WHEREAS, use of the federal minimum standards for state driver's licenses and state-issued identification cards will be necessary for any type of federally regulated activity for which an identification card must be displayed, including flying in a commercial airplane, making transactions with a federally licensed bank, entering a federal building, or making application for federally supported public assistance benefits, including Social Security; and

WHEREAS, some of the intended privacy requirements of the REAL ID Act, such as the use of common machine-readable technology and state maintenance of a database that can be shared with the United States and agencies of other states, may actually make it more likely that a federally required driver's license or state identification card, or the information about the bearer on which the license or card is based, will be stolen, sold, or otherwise used for purposes that were never intended or that are criminally related than if the REAL ID Act had not been enacted; and

WHEREAS, these potential breaches in privacy that could result directly from compliance with the REAL ID Act may violate the right to privacy, as secured by Article II, section 10, of the Montana Constitution, of thousands of residents of Montana; and

WHEREAS, the American Association of Motor Vehicle Administrators, the National Governors' Association, and the National Conference of State Legislatures have estimated, in an impact analysis dated September 2006, that the cost to the states to implement the REAL ID Act will be more than $11 billion over 5 years, and the Motor Vehicle Division of the Montana Department of Justice has estimated that the implementation of the REAL ID Act will cost Montana $2,660,000 to fully implement the Act, none of which costs are or will be paid for by the federal government; and

WHEREAS, for all of these reasons, the American Association of Motor Vehicle Administrators, the National Governors' Association, and the National Conference of State Legislatures, in a letter dated March 17, 2005, to the majority and minority leaders of the U.S. Senate, opposed the adoption of the REAL ID Act, but the opposition of those groups, and the groups' request that Congress rely on driver's license security provisions already passed by Congress in the Intelligence Reform and Terrorism Prevention Act of 2004, was largely ignored by Congress; and

WHEREAS, the regulations that are to be adopted by the U.S. Department of Homeland Security to implement the requirements of the REAL ID Act have yet to be adopted and, in reality, will probably not become effective until the spring of 2007, effectively giving the states only 1 year in which to become familiar with the implementing regulations and comply with those regulations and the requirements of the REAL ID Act; and

WHEREAS, the mandate to the states, through federal legislation that provides no funding for its requirements, to issue what is, in effect, a national identification card appears to be an attempt to "commandeer" the political machinery of the states and to require them to be agents of the federal government, in violation of the principles of federalism contained in the 10th amendment to the U.S. Constitution, as construed by the United States Supreme Court in New York v. United States, 488 U.S. 1041 (1992), United States v. Lopez, 514 U.S. 549 (1995), and Printz v. United States, 521 U.S. 898 (1997); and

WHEREAS, some states, or legislative bodies in some states, such as New Hampshire and Washington, have, through legislation, opposed the implementation of the REAL ID Act.

THEREFORE, the purpose of the Legislature in enacting [this act] is to refuse to implement the REAL ID Act and thereby protest the treatment by Congress and the President of the states as agents of the federal government and, by that protest, lead other state legislatures and Governors to reject the

treatment by the federal government of the 50 states by the enactment of the REAL ID Act.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative finding and direction to state agency not to implement REAL ID Act. (1) The legislature finds that the enactment into law by the U.S. congress of the REAL ID Act of 2005, as part of Public Law 109-13, is inimical to the security and well-being of the people of Montana, will cause unneeded expense and inconvenience to those people, and was adopted by the U.S. congress in violation of the principles of federalism contained in the 10th amendment to the U.S. constitution.

(2) The state of Montana will not participate in the implementation of the REAL ID Act of 2005. The department, including the motor vehicle division of the department, is directed not to implement the provisions of the REAL ID Act of 2005 and to report to the governor any attempt by agencies or agents of the U.S. department of homeland security to secure the implementation of the REAL ID Act of 2005 through the operations of that division and department.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 5, part 1, and the provisions of Title 61, chapter 5, part 1, apply to [section 1].

Approved April 17, 2007

CHAPTER NO. 199

[HB 348]

AN ACT INCREASING THE FEE FOR A NONRESIDENT TEMPORARY-SNOWMOBILE-USE PERMIT AND INCREASING THE PROPORTIONAL AMOUNTS OF THE FEE THAT ARE USED FOR CERTAIN SNOWMOBILE TRAIL GROOMING AND ENFORCEMENT COSTS; AMENDING SECTION 23-2-615, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-615, MCA, is amended to read:

"23-2-615. Nonresident temporary-use permits — use of fees. (1) The requirements for a nonresident temporary-snowmobile-use permit are as follows:

(a) Application for the issuance of the permit must be made at locations and upon forms prescribed by the department. The forms must include but are not limited to:

(i) the applicant's name and permanent address; and

(ii) an affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of ~~$15~~ *$25*, of which 50 cents is a search and rescue surcharge, a nonresident temporary-snowmobile-use sticker must be issued. The sticker must be permanently affixed in a conspicuous manner on the snowmobile.

(2) The temporary permit is valid during the fiscal year in which it is issued.

(3) The permit is not proof of ownership, and a certificate of title may not be issued.

(4) (a) A nonresident temporary-snowmobile-use permit is not required for a snowmobile that qualifies as a racing snowmobile under 23-2-622.

(b) A nonresident temporary-snowmobile-use permit is not required for a snowmobile that will be used only on trails that are managed jointly by agreement between Montana and another state.

(5) Except as provided in subsection (1)(b), money collected by payment of fees under this section must be deposited in the state special revenue fund to the credit of the department and used as follows:

(a) ~~$8~~ *$11* must be expended in areas that are impacted by nonresident snowmobile use to assist in offsetting snowmobile trail grooming costs;

(b) ~~$1.50~~ *$2.50* must be used by the department for the enforcement of snowmobile laws pursuant to 23-2-641;

(c) ~~50 cents~~ *$1* must be remitted to the license agent who sold the nonresident temporary-snowmobile-use permit; and

(d) ~~$4.50~~ *$10* must be used by the department for the statewide snowmobile trail grooming program.

(6) The failure to display the permit as required by this section or the making of false statements in obtaining the permit is a misdemeanor, punishable by a fine of not less than $25 or more than $100."

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved April 17, 2007

CHAPTER NO. 200

[HB 372]

AN ACT ALLOWING A COUNTY TREASURER TO RECEIVE UP TO $2,000 A YEAR IN ADDITION TO BASE SALARY; AMENDING SECTION 7-4-2503, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2503, MCA, is amended to read:

"7-4-2503. Salary schedule for certain county officers — county compensation board. (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812, justice of the peace, and county auditor in all counties where the office is authorized must be established by the county governing body based upon the recommendations of the county compensation board provided for in subsection (4).

(b) ~~The~~ *Except as provided in subsection (2), the* annual salary established pursuant to subsection (1)(a) must be uniform for all county officers referred to in subsection (1)(a).

(2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon subsection (1), the sum of $400 a year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may,

at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 a year.

(b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of $2,000 a year.

(c) The county sheriff must receive a longevity payment amounting to 1% of the salary determined under subsection (1) for each year of service with the sheriff's office, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(d) If the clerk and recorder is also the county election administrator, the clerk and recorder may receive, in addition to the base salary provided in subsection (1)(a), up to $2,000 a year. The additional salary provided for in this subsection (2)(d) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.

(e) The county treasurer may receive, in addition to the base salary provided in subsection (1)(a), up to $2,000 a year. The additional salary provided for in this subsection (2)(e) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.

(3) (a) In each county with a population in excess of 30,000, the county attorney must be a full-time official under 7-4-2704, and the salary is $50,000 a year, subject to adjustment as provided in subsection (3)(c). In counties with a population less than 30,000, the county attorney who is a part-time official is entitled to receive an annual base salary equal to the salary received for the fiscal year ending June 30, 2001.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney is the same as that established for full-time county attorneys in subsection (3)(a).

(c) Each county attorney is entitled to an increase in salary based upon the schedule developed and approved by the county compensation board as provided in subsection (4).

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of additional service up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase.

(4) (a) There is a county compensation board consisting of the county commissioners, three of the county officials described in subsection (1) appointed by the board of county commissioners, the county attorney, and two to four resident taxpayers appointed initially by the board of county commissioners to staggered terms of 3 years, with the initial appointments of one or two taxpayer members for a 2-year term and one or two taxpayer

members for a 3-year term. The county compensation board shall hold hearings annually for the purpose of reviewing the compensation paid to county officers. The county compensation board may consider the compensation paid to comparable officials in other Montana counties, other states, state government, federal government, and private enterprise.

(b) The county compensation board shall prepare a compensation schedule for the elected county officials, including the county attorney, for the succeeding fiscal year. The schedule must take into consideration county variations, including population, the number of residents living in unincorporated areas, assessed valuation, motor vehicle registrations, building permits, and other factors considered necessary to reflect the variations in the workloads and responsibilities of county officials as well as the tax resources of the county.

(c) A recommended compensation schedule requires a majority vote of the county compensation board, and at least two county commissioners must be included in the majority. A recommended compensation schedule may not reduce the salary of a county officer that was in effect on May 1, 2001.

(d) The provisions of this subsection (4) do not apply to a county that has adopted a charter form of government or to a charter, consolidated city-county government."

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved April 17, 2007

CHAPTER NO. 201

[HB 587]

AN ACT CLARIFYING THAT COVERAGES SPECIFIED UNDER ONE POLICY OR UNDER MORE THAN ONE POLICY ISSUED BY THE SAME COMPANY MAY NOT BE ADDED TOGETHER IF THE PREMIUMS CHARGED FOR THE COVERAGE ACTUARIALLY REFLECT THE LIMITING OF COVERAGE SEPARATELY TO THE VEHICLES COVERED BY THE POLICY; AMENDING SECTION 33-23-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-23-203, MCA, is amended to read:

"33-23-203. Limitation of liability under motor vehicle liability policy. (1) Unless a motor vehicle liability policy specifically provides otherwise, the limits of insurance coverage available under each part of the policy must be determined as follows, regardless of the number of motor vehicles insured under the policy, the number of policies issued by the same company covering the insured, or the number of separate premiums paid:

(a) the limits of insurance coverages available for any one accident are the limits specified for each coverage available under the policy insuring the motor vehicle involved in the accident;

(b) if the motor vehicle involved in the accident is not insured under a policy, the limits of the insurance coverages available for any one accident are the highest limits of the coverages specified under one policy for one motor vehicle insured under that policy; and

(c) the limits of the coverages specified under one policy or under more than one policy issued by the same company may not be added together to determine the limits of insurance coverages available under the policy or policies for any one accident *if the premiums charged for the coverage by the insurer actuarially reflect the limiting of coverage separately to the vehicles covered by the policy and the premium rates have been filed with the commissioner*.

(2) A motor vehicle liability policy may also provide for other reasonable limitations, exclusions, reductions of coverage, or subrogation clauses that are designed to prevent duplicate payments for the same element of loss under the motor vehicle liability policy or under another casualty policy that provides coverage for an injury that necessitates damages or benefit payments or to prevent the adding together of insurance coverage limits in one policy or from more than one policy issued by the same company.

(3) An insurer that charges a premium for a specified coverage shall clearly inform or notify the insured in writing of the limits of the coverage with respect to the premium charged and whether the coverage from one policy or motor vehicle may be added to the coverage of another policy or motor vehicle.

~~(4)~~*(4)* ~~Nothing in this~~ *This* section is *not* intended to create coverage for a motor vehicle that would otherwise be uninsured."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to motor insurance policies issued or renewed on or after [the effective date of this act].

Approved April 17, 2007

CHAPTER NO. 202

[HB 617]

AN ACT REVISING THE FILING REQUIREMENTS FOR CHILD SUPPORT DEBTS; REQUIRING THAT NOTICE OF A SUPPORT DEBT BE FILED WITH THE CLERK OF THE DISTRICT COURT FOR THE JUDICIAL DISTRICT IN WHICH THE MOST RECENT SUPPORT ORDER WAS ISSUED; REQUIRING THE FILING OF A FINAL ADMINISTRATIVE ORDER FOR A SUPPORT DEBT WITH THE CLERK OF THE DISTRICT COURT; REQUIRING THE COMMENCEMENT OF CONTEMPT OF COURT PROCEEDINGS UPON THE FILING OF A FINAL ADMINISTRATIVE ORDER FOR A SUPPORT DEBT UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTIONS 40-5-222 AND 40-5-227, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-5-222, MCA, is amended to read:

"40-5-222. Support debt based upon support order — notice — contents — action to collect. (1) The department may issue a notice of a support debt accrued or accruing based upon a support order. The notice may be served upon the obligor, in the manner prescribed for the service of a summons in a civil action in accordance with the provisions of the Montana Rules of Civil Procedure, demanding payment within 20 days of the date of receipt.

(2) The notice of debt ~~shall~~ *must* include:

(a) a statement of the support debt accrued or accruing, computable on the amount required to be paid under any support order;

(b) a statement that the property of the debtor is subject to collection action;

(c) a statement that the property is subject to distraint and seizure and sale;

(d) a statement that the net proceeds will be applied to the satisfaction of the support debt; and

(e) a statement that the obligor is entitled to a fair hearing.

(3) Action to collect the support debt by distraint and seizure and sale is lawful after 20 days from the date of service upon the obligor or 20 days from the receipt or refusal by the debtor of the notice of debt.

(4) Within 20 days of the date of service of notice of support debt, the obligor may request a fair hearing as provided in 40-5-226.

(5) The department shall send a copy of the notice described in subsection (2) to the clerk of the district court for the judicial district in which the most recent support order was issued."

Section 2. Section 40-5-227, MCA, is amended to read:

"40-5-227. Filing and docketing of final orders — orders effective as district court decrees. (1) An abstract of any final administrative order under this chapter may be filed in the office of the clerk of the district court of any county of Montana *and must be filed in the office of the clerk of the district court that received notice under 40-5-222(5).* ~~Upon the request of the department, the~~ *The* order must be docketed in the judgment docket of the district court. The properly filed and docketed order has all the force, effect, and attributes of a docketed order or decree of the district court, including but not limited to lien effect and enforceability by supplemental proceedings, writs of execution, and contempt of court proceedings. A final administrative order of the department is effective and enforceable without filing and docketing the order in the district court. Contempt of court proceedings and writs of execution based on the administrative order may not be requested from the district court unless the administrative order is first docketed with the district court. The administrative order may not operate as a judgment lien~~,~~ unless the order is first docketed with the district court or a lien is otherwise perfected under the laws of this state, including 40-5-248.

(2) A final administrative order that determines and sets periodic support payments in the absence of a district court order, when filed and docketed under this section, may be modified by a district court order only as to installments accruing after actual notice to the parties of any motion for modification. The standard for a modification is that set forth in 40-4-208.

(3) The department may issue a warrant for distraint based upon a properly filed and docketed order pursuant to 40-5-247.

(4) If the department has filed an abstract pursuant to subsection (1) after issuing a notice of a support debt pursuant to 40-5-222, the department shall petition the district court to find the obligor in contempt if the obligor has not made a payment on the debt in 30 days."

Approved April 17, 2007

CHAPTER NO. 203

[HB 629]

AN ACT PROVIDING FOR MEDIATION OF CRIMINAL PROCEEDINGS.

WHEREAS, the Montana Legislature recognizes the increasing burden on all levels of courts in the State of Montana; and

WHEREAS, mediation and other methods of alternative dispute resolution have proved effective in lessening the burden in other areas of the legal system; and

WHEREAS, many crimes are more amenable to mediation than to criminal prosecution; and

WHEREAS, it is the intent of the Montana Legislature to allow judges of the District, Justices', City, and Municipal Courts to suggest, and the parties to request by motion, mediation for certain criminal proceedings.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 7], the following definitions apply:

(1) "Mediation" has the meaning provided in 26-1-813(1).

(2) "Party" means any one of the following, and "parties" means all of the following:

(a) the defendant;

(b) a victim of the crime; or

(c) the county attorney or other prosecuting attorney.

Section 2. Mediation. (1) At any time after the commencement of a prosecution and before the verdict, the court may, at its suggestion, or upon motion of a party, and with the consent of all the parties refer the proceeding to mediation by a mediator chosen by the court.

(2) The proceeding may not be referred for mediation if the offense charged is:

(a) deliberate homicide, as described in 45-5-102;

(b) mitigated deliberate homicide, as described in 45-5-103;

(c) intimidation, as described in 45-5-203;

(d) partner or family member assault, as described in 45-5-206;

(e) assault on a minor, as described in 45-5-212;

(f) stalking, as described in 45-5-220;

(g) aggravated kidnapping, as described in 45-5-303;

(h) a sex crime, as described in 45-5-502, 45-5-503, 45-5-504, 45-5-505, or 45-5-507;

(i) endangering the welfare of children, as described in 45-5-622;

(j) sexual abuse of children, as described in 45-5-625; or

(k) ritual abuse of a minor, as described in 45-5-627.

(3) Any aspect of or issue in the proceeding may be the subject of the mediation, including but not limited to the charge, a plea bargain, or a recommended sentence.

(4) At any point during mediation, a party may withdraw from the mediation without penalty or sanction.

(5) This section does not prohibit the parties from engaging in traditional plea negotiations.

Section 3. Factors to use in determining appropriateness of mediation. In deciding whether mediation is appropriate, the court may consider:

(1) the nature of the offense;

(2) any special circumstances or characteristics of the defendant or any victim;

(3) whether the defendant previously participated in mediation in the current or a prior proceeding;

(4) whether it is probable that the defendant will cooperate with the mediator;

(5) the recommendation of any victim or victims;

(6) the recommendation of any involved law enforcement agency;

(7) whether a qualified mediator is available;

(8) the type of sentence, including any treatment, that the defendant would most likely be amenable to, whether the best interests of the defendant and the security of the public may require that the defendant be placed in secure detention or under supervision, and whether there are facilities available for treatment and rehabilitation of the defendant;

(9) whether there is evidence that the charged offense included violence or was otherwise committed in an aggressive and premeditated manner;

(10) the motivation for the commission of the charged offense;

(11) the age of the defendant and of any codefendant or victim;

(12) the previous history of the defendant, including any criminal history and any other prior antisocial behavior or pattern of physical violence;

(13) the sophistication and maturity of the defendant as determined by factors such as home, employment, school activities, emotional attitude, and pattern of living;

(14) whether any victim wishes to address the parties and mediator during mediation; and

(15) other matters that the court believes relevant.

Section 4. Procedure following mediation. (1) If mediation is successful, the mediator shall inform the court of the results of the mediation and of any agreement reached.

(2) If mediation is unsuccessful or if one of the parties withdraws from the mediation, the mediator shall notify the court and the prosecutor may proceed with the prosecution of the defendant.

(3) After a successful mediation, the results of the mediation and any agreement reached by the parties to the mediation are subject to the approval of the court.

Section 5. Privilege and confidentiality. Mediation communications and documents are privileged and confidential and may not be disclosed in any judicial or administrative proceeding except when:

(1) the parties to the mediation agree, in writing, to disclosure;

(2) a written agreement by the parties to mediate permits disclosure;

(3) a communication or document provides evidence of an ongoing or future criminal activity;

(4) disclosure is necessary to prevent an action or event that is reasonably likely to result in death, serious bodily harm, or substantial injury to the financial interests or property of another;

(5) a communication or document is necessary to defend against a legal malpractice claim by the defendant against the defendant's attorney; or

(6) a communication or document is relevant to determining the existence of an agreement that resulted from the mediation or to the enforcement of an agreement.

Section 6. Right to speedy trial. Time spent in mediation may not be counted in determining whether a defendant's right to a speedy trial has been violated.

Section 7. Costs. The mediation costs must be paid equally by the defendant and the prosecution, except that if a defendant is eligible for a public defender, the public defender shall pay the mediation costs.

Section 8. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 46, chapter 1, and the provisions of Title 46 apply to [sections 1 through 7].

Approved April 17, 2007

CHAPTER NO. 204

[HB 657]

AN ACT REVISING CONSTRUCTION LIEN LAW TO ALLOW THE CONTRACTING OWNER TO FILE A BOND WITHIN 30 DAYS OF AN ACTION BROUGHT TO FORECLOSE UPON A CONSTRUCTION LIEN; AND AMENDING SECTIONS 71-3-551 AND 71-3-553, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-551, MCA, is amended to read:

"71-3-551. Substitution of bond allowed — filing — amount — condition. (1) Whenever a construction lien has been filed upon real property or any improvements ~~thereon~~ *on the real property*, the contracting owner of any interest in ~~such~~ *the* property, whether legal or beneficial, may, at any time before the lien claimant has commenced an action to foreclose ~~such~~ *the construction* lien~~,~~ *or within 30 days of the service of a complaint in an action to foreclose the construction lien,* file a bond with the clerk of the district court in the county in which ~~such~~ *the* property is ~~situated~~ *located* or, if ~~such~~ *the* property is ~~situated~~ *located* in more than one county, with the clerk of the district court of any county in which a part of ~~such~~ *the* property is ~~situated~~ *located*.

(2) ~~Such~~ *The* bond ~~shall~~ *must* be in an amount 1 1/2 times the amount of the *construction* lien and ~~shall~~ *must* be either in cash or written by a corporate surety company. If written by a corporate surety, ~~such~~ *the* bond ~~shall~~ *must* be approved by a judge of the district court with which ~~such~~ *the* bond is filed.

(3) The bond ~~shall~~ *must* be conditioned that if the *construction* lien claimant ~~shall be~~ *is* finally adjudged to be entitled to recover upon the claim upon which ~~his~~ *the construction* lien is based, the principal or ~~his~~ *the principal's* sureties shall pay to ~~such~~ *the* claimant the amount of ~~his~~ *the claimant's* judgment, together with any interest, costs, ~~attorneys'~~ *attorney* fees, and other sums ~~which such~~ *that the* claimant would be entitled to recover upon the foreclosure of a *construction* lien against the principal."

Section 2. Section 71-3-553, MCA, is amended to read:

"71-3-553. Action upon bond — period of limitation same. (1) When a bond is filed *prior to the service of a complaint in an action to foreclose upon a construction lien* as ~~provided~~ *allowed* in 71-3-551, the person filing ~~such~~ *the construction* lien may bring an action upon the bond.

(2) ~~Such~~ *The* action ~~shall~~ *must* be commenced within the time allowed for the commencement of an action upon foreclosure of a lien, and the statute of limitations applicable to a lien foreclosure ~~shall apply~~ *applies* to an action upon ~~such~~ *the* bond as it would had ~~no~~ *a* bond *not* been filed."

Approved April 17, 2007

CHAPTER NO. 205

[HB 782]

AN ACT PROHIBITING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FROM REQUIRING REPAYMENT FROM FOOD STAMP RECIPIENTS FOR DEPARTMENT ERRORS; ESTABLISHING THE DEPARTMENT'S RESPONSIBILITY FOR REPAYING A FEDERAL CLAIM FOR OVERPAYMENT OF FOOD STAMPS IN CERTAIN CASES; AMENDING SECTIONS 39-51-2208 AND 53-2-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-2208, MCA, is amended to read:

"39-51-2208. Deduction and withholding of unemployment benefits to repay overissuance of food stamps — definitions. (1) For the purposes of this section, the following definitions apply:

(a) "State food stamp agency" means any agency of a state or a political subdivision of a state that is responsible for enforcing the repayment of an obligation for overissuance of food stamp ~~coupons~~ *benefits*.

(b) "Unemployment benefits" means benefits payable under the Montana unemployment insurance law, including amounts payable by the department pursuant to an agreement under any federal law that provides for benefits, assistance, or allowances with respect to unemployment.

(2) An individual filing a new claim for unemployment benefits shall disclose at the time of filing the claim whether or not the individual owes for an uncollected overissuance of food stamp ~~coupons~~ *benefits* as defined in section 13(c)(1) of the Food Stamp Act of 1977, ~~(~~7 U.S.C. 2022(c)(1)~~)~~. If an individual discloses that the individual has an uncollected obligation for overissuance of food stamp ~~coupons~~ *benefits* and if the department finds that the individual is

eligible for unemployment benefits, the department shall notify the state food stamp agency that the individual is eligible for unemployment benefits.

(3) ~~The~~ *Except as provided in subsection (7), the* department shall deduct and withhold from any unemployment benefits payable to an individual who has an obligation for an uncollected overissuance of food stamp ~~coupons~~ *benefits*:

(a) the amount specified by the individual to the department to be deducted and withheld, in which case subsections (3)(b) and (3)(c) are not applicable;

(b) the amount, if any, determined by a state food stamp agency for enforcing obligations for overissuance of food stamp ~~coupons~~ *benefits*, pursuant to an agreement submitted to the department under section 13(c)(3)(A) of the Food Stamp Act of 1977, ~~(~~7 U.S.C. 2022(c)(3)(A)~~)~~, unless subsection (3)(c) is applicable; or

(c) any amount otherwise required to be deducted and withheld from unemployment benefits pursuant to section 13(c)(3)(B) of the Food Stamp Act of 1977, ~~(~~7 U.S.C. 2022 (c)(3)(B)~~)~~.

(4) The department shall pay any amount deducted and withheld under subsection (3) to the appropriate state food stamp agency responsible for enforcing an obligation for overissuance of food stamp ~~coupons~~ *benefits*.

(5) Deductions may be made pursuant to this section only if appropriate arrangements have been made for reimbursement by the state food stamp agency for the administrative costs incurred by the department under this section.

(6) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to the individual as unemployment benefits and then paid by the individual to the state food stamp agency in satisfaction of the individual's uncollected overissuance of food stamp ~~coupons~~ *benefits*.

(7) The department may not deduct or withhold unemployment benefits in a case involving overissuance of food stamps that meets the provisions of 53-2-108(2)."

Section 2. Section 53-2-108, MCA, is amended to read:

"53-2-108. Overpayment of assistance — *department errors involving food stamps* — civil penalty when fraud. (1) If, ~~due to~~ *because of* department or recipient error, a recipient receives public assistance for which the recipient is not eligible, the portion of payment that the recipient is not entitled to receive may be returned at the discretion of the department.

(2) (a) Except as provided in subsection (3), a recipient who receives an overpayment of food stamp benefits because of a department error in processing or administering the recipient's case is not required to repay the department for the overpayment if:

(i) the recipient notifies the department of the potential error; and

(ii) the department informs the recipient that no error occurred or fails to respond to the notification within 30 days.

(b) If a federal agency seeks repayment of an overpayment of food stamps in a case meeting the provisions of subsection (2)(a):

(i) the department is considered a person connected to the household for purposes of 7 CFR 273.18 and is liable for reimbursing the federal claim for the overpayment; and

(ii) the recipient is exempt from the unemployment withholding requirements of 39-51-2208.

~~(2)~~*(3)* If a person obtains any part of an assistance payment through fraudulent means as specified in 53-2-107, 125% of the amount of assistance to which the person was not entitled must be repaid and, until fully paid, is a debt due the state."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to any cases pending before a Montana court on [the effective date of this act].

Approved April 17, 2007

CHAPTER NO. 206

[SB 36]

AN ACT REVISING AND CLARIFYING THE PAYMENT OF MOTOR VEHICLE REGISTRATION FEES; AMENDING SECTION 61-3-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles and vessels — certain vehicles exempt from registration fees — disposition of fees. (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, renewal of registration of motor vehicles, snowmobiles, watercraft, trailers, semitrailers, and pole trailers as provided in subsections (2) through ~~(18)~~ *(19)*:

(2) ~~(a) Except as provided in subsection (2)(b), there is a registration fee imposed on light vehicles. The registration fee is in addition to other annual registration fees.~~

~~(b) The following vehicles are exempt from the registration fee imposed in this subsection (2):~~

~~(i) light vehicles that meet the description of property exempt from taxation under 15-6-201(1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j), (1)(l), or (1)(m), 15-6-203, or 15-6-215, except as provided in 61-3-520;~~

~~(ii) a light vehicle owned by a person eligible for a waiver of registration fees under 61-3-460;~~

~~(iii) a light vehicle registered under 61-3-456.~~

~~(c) The owner of a light vehicle subject to the provisions of 61-3-313 through 61-3-316 may register the light vehicle for a period not to exceed 24 months. The application for registration or reregistration must be accompanied by the registration fee and all other fees required in this chapter for each 12-month period of the 24-month period.~~

~~(d) The~~ *Unless a light vehicle is permanently registered under 61-3-562, the* annual registration fee for light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton is as follows:

~~(i)~~*(a)* if the vehicle is 4 or less years old, $217;

~~(ii)~~*(b)* if the vehicle is 5 through 10 years old, $87; and

~~(iii)~~*(c)* if the vehicle is 11 or more years old, $28;

~~(c) The owner of a light vehicle 11 years old or older may permanently register the light vehicle as provided in 61-3-562.~~

(3) ~~(a)~~ Except as provided in subsection ~~(3)(c)~~ *(14)*, the ~~owner~~ *one-time registration fee based on the declared weight* of a trailer, semitrailer, or pole trailer ~~that has a declared weight of less than 6,000 pounds shall pay a one-time fee of $61.25~~ *is as follows:*

(a) if the declared weight is less than 6,000 pounds, $61.25; or

(b) if the declared weight is 6,000 pounds or more, $148.25.

~~(b) The owner of a trailer, semitrailer, or pole trailer with a declared weight of 6,000 pounds or more shall pay a one-time fee of $148.25.~~

~~(c) Except as provided in subsection (17), whenever a transfer of ownership of a trailer, semitrailer, or pole trailer described in subsection (3)(a) or (3)(b) occurs, the one-time fee required under subsection (3)(a) or (3)(b) must be paid by the new owner.~~

(4) ~~The annual~~ *Except as provided in subsection (14), the one-time* registration fee for motor vehicles owned and operated solely as collector's items pursuant to 61-3-411, ~~that are for motor vehicles~~ *based on the weight of the vehicle, is as follows*:

(a) 2,850 pounds and over, $10; and

(b) under 2,850 pounds, $5.

(5) ~~(a) The~~ *Except as provided in subsection (14), the one-time* registration fee for off-highway vehicles *other than a quadricycle or motorcycle* is $61.25. ~~This fee is a one-time fee, except upon transfer of ownership of an off-highway vehicle. Except as provided in subsection (17), whenever a transfer of ownership of an off-highway vehicle occurs, the one-time fee required under this subsection must be paid by the new owner.~~

~~(b) The application for registration for an off-highway vehicle must be made to the county treasurer of the county in which the owner resides, on a form furnished by the department for that purpose. The application must contain:~~

~~(i) the name and home mailing address of the owner;~~

~~(ii) the certificate of title number;~~

~~(iii) the name of the manufacturer of the off-highway vehicle;~~

~~(iv) the model number or name;~~

~~(v) the year of manufacture;~~

~~(vi) a statement evidencing payment of the fee in lieu of property tax; and~~

~~(vii) other information that the department may require.~~

~~(c) If the off-highway vehicle was previously registered, the application must be accompanied by the registration certificate for the most recent year in which it was registered. Upon payment of the registration fee, the county treasurer shall sign the application and issue a registration receipt containing the information considered necessary by the department. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer or to a purchaser or subsequent owner pursuant to a transfer of ownership.~~

(6) The annual registration fee for heavy trucks, buses, and logging trucks in excess of 1 ton is $22.75.

(7) (a) The ~~owner of a motor home shall pay an~~ annual *registration* fee *for a motor home,* based on the age of the motor home*,* ~~according to the following schedule~~ *is as follows*:

(i) less than 2 years old, $282.50;

(ii) 2 years old and less than 5 years old, $224.25;

(iii) 5 years old and less than 8 years old, $132.50; and

(iv) 8 years old and older, $97.50.

(b) ~~(i) Except as provided in subsection (7)(b)(ii), the age of a motor home is determined by subtracting the manufacturer's designated model year from the current calendar year.~~

~~(ii) If the purchase year of a motor home precedes the designated model year of the motor home and the motor home is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.~~

~~(c) (i)~~ The owner of a motor home *that is* 11 years old or older *and that is* subject to the registration fee under ~~subsection (7)(a)~~ *this section* may permanently register the motor home upon payment of:

~~(A)~~*(i)* a *one-time registration* fee of $237.50; and

~~(B)~~*(ii)* if applicable, five times the *renewal fees for* personalized license ~~plate fees~~ *plates* under 61-3-406.

~~(ii) The following series of license plates may not be used for purposes of permanent registration of a motor home:~~

~~(A) Montana national guard license plates issued under 61-3-458(2)(b);~~

~~(B) reserve armed forces license plates issued under 61-3-458(2)(c);~~

~~(C) license plates bearing a wheelchair design as a symbol of a person with a disability issued under 61-3-332(9);~~

~~(D) amateur radio operator license plates issued under 61-3-422;~~

~~(E) collegiate license plates issued under 61-3-465; and~~

~~(F) generic specialty license plates issued under 61-3-479.~~

~~(iii) Except as provided in subsection (17), whenever a transfer of ownership of a permanently registered motor home occurs, the applicable fees required under this subsection (7) must be paid by the new owner.~~

(8) (a) ~~The~~ *Except as provided in subsection (14), the one-time* registration fee for motorcycles and quadricycles registered for use on public highways is $53.25, and the *one-time* registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is $114.50.

(b) An additional fee of ~~$5 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, an additional fee of~~ $16 must be collected for the registration of each motorcycle or quadricycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.

~~(c) The registration fees in this subsection (8) are a one-time fee, except upon transfer of ownership of a motorcycle or quadricycle.~~

(9) ~~(a) The~~ *Except as provided in subsection (14), the one-time* registration fee for travel trailers*, based on the length of the travel trailer, is as follows:*

(a) under 16 feet in length*,* ~~is~~ $72*;* and

(b) ~~the registration fee for travel trailers~~ 16 feet in length or longer*,* ~~is~~ $152. ~~This fee is a one-time fee, except upon transfer of ownership of a travel trailer.~~

~~(b) Except as provided in subsection (17), whenever a transfer of ownership of a travel trailer occurs, the one-time fee required under subsection (9)(a) must be paid by the new owner.~~

(10) ~~(a) The owner of each~~ *Except as provided in subsection (14), the one-time registration fee for a* motorboat, sailboat, personal watercraft, or motorized pontoon ~~requiring numbering by this state shall file an application for number in the office of the county treasurer in the county where the motorboat, sailboat, personal watercraft, or motorized pontoon is owned, on forms prepared and furnished by the department. The application must be signed by the owner of the motorboat, sailboat, personal watercraft, or motorized pontoon and be accompanied by the appropriate registration fee. The owner of a motorboat, sailboat, personal watercraft, or motorized pontoon shall pay a one-time fee~~ *required to be numbered under 23-2-512 is* as follows:

~~(i)~~*(a)* for a personal watercraft or a motorboat, sailboat, or motorized pontoon less than 16 feet in length, $65.50;

~~(ii)~~*(b)* for a motorboat, sailboat, or motorized pontoon at least 16 feet in length but less than 19 feet in length, $125.50; and

~~(iii)~~*(c)* for a motorboat, sailboat, or motorized pontoon 19 feet in length or longer, $295.50.

~~(b) This fee is a one-time fee, except upon transfer of ownership of the motorboat, sailboat, personal watercraft, or motorized pontoon.~~

(11) (a) Except as provided in ~~subsection~~ *subsections* (11)(b) *and (14)*, the one-time registration fee for a snowmobile is $60.50.

(b) *(i)* ~~If a~~ *A* snowmobile *that* is licensed by a Montana business and is owned exclusively for the purpose of daily rental to customers, ~~the business~~ is assessed:

~~(i)~~*(A)* a fee of $40.50 in the first year of registration; and

~~(ii)~~*(B)* if the business reregisters the snowmobile for a second year, a fee of $20.

(ii) If the business reregisters the snowmobile for a third year, the snowmobile must be permanently registered and the business is assessed the fee in lieu of tax imposed in subsection (11)(a).

~~(c) Except as provided in subsection (17), whenever a transfer of ownership of a snowmobile occurs, the applicable fee required under this subsection (11) must be paid by the new owner.~~

(12) A fee of $5 must be collected when a new set of standard license plates or a new single standard license plate provided for under 61-3-332 is issued. *The $5 fee imposed under this subsection does not apply when previously issued license plates are transferred under 61-3-335. All registration fees imposed under this section must be paid if the vehicle to which the plates are transferred is not currently registered.*

(13) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers,

semitrailers, snowmobiles, watercraft, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202*, or to a vehicle or vessel that meets the description of property exempt from taxation under 15-6-201(1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j), (1)(l), or (1)(m), 15-6-203, or 15-6-215, except as provided in 61-3-520*.

(14) ~~When the license plates for a registered motor vehicle are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335, the owner of the motor vehicle shall pay a registration fee as follows:~~

~~(a) heavy trucks, buses, and logging trucks in excess of 1 ton, 75 cents;~~

~~(b) light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton:~~

~~(i) if the vehicle is 4 years old or less, $195.75;~~

~~(ii) if the vehicle is 5 years old through 10 years old, $65.75; and~~

~~(iii) if the vehicle is 11 years old or older, $6.75;~~

~~(c) motor homes:~~

~~(i) less than 2 years old, $250.50;~~

~~(ii) 2 years old and less than 5 years old, $192.25;~~

~~(iii) 5 years old and less than 8 years old, $100.50; and~~

~~(iv) 8 years old and older, $65.50;~~

~~(d) motorcycles and quadricycles registered for use on the public highways, $42, and motorcycles and quadricycles registered for both off-road use and for use on the public highways, $103.25. This fee is a one-time fee, except upon transfer of ownership.~~

~~(e) travel trailers under 16 feet in length, $50.50, and travel trailers 16 feet in length or longer, $130.50. This fee is a one-time fee, except upon transfer of ownership.~~

~~(f) trailers, semitrailers, or pole trailers with a declared weight of less than 6,000 pounds, $52. This fee is a one-time fee, except upon transfer of ownership.~~

~~(g) trailers, semitrailers, or pole trailers with a declared weight of 6,000 pounds or more, $139. This fee is a one-time fee, except upon transfer of ownership.~~ *Whenever ownership of a trailer, semitrailer, pole trailer, off-highway vehicle, motorcycle, quadricycle, travel trailer, motor home, motorboat, sailboat, personal watercraft, motorized pontoon, snowmobile, or motor vehicle owned and operated solely as a collector's item pursuant to 61-3-411 is transferred, the new owner shall title and register the vehicle or vessel as required by this chapter and pay the fees imposed under this section.*

(15) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

(16) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

(17) The fees imposed by subsections (2) through (11) are not required to be paid by a dealer for the enumerated vehicles or vessels that constitute inventory of the dealership.

(18) (a) Unless a person exercises the option in subsection (18)(b), an additional fee of $4 must be collected for each light vehicle registered ~~for licensing pursuant to~~ *under* this part. This fee must be accounted for and

transmitted separately from the registration fee. The fee must be deposited in an account in the state special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities. Of the $4 fee, the department *of fish, wildlife, and parks* shall use $3.50 for state parks, 25 cents for fishing access sites, and 25 cents for the operation of state-owned facilities at Virginia City and Nevada City.

(b) A person who registers a light vehicle may, at the time of annual registration, certify that the person does not intend to use the vehicle to visit state parks and fishing access sites and may make a written election not to pay the additional $4 fee provided for in subsection (18)(a). If a written election is made, the fee may not be collected.

(19) For each light vehicle, trailer, semitrailer, pole trailer, heavy truck, motor home, motorcycle, quadricycle, and travel trailer subject to a registration fee under this section, an additional fee of $5 must be collected and forwarded to the state for deposit in the account established in 44-1-504.

(20) This section does not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is governed by 61-3-721."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2007

CHAPTER NO. 207

[SB 47]

AN ACT AMENDING THE MONTANA ADMINISTRATIVE PROCEDURE ACT TO CLARIFY THE EXISTING STATUTE REQUIRING AN AGENCY TO NOTIFY A BILL'S SPONSOR AT THE TIME THAT THE AGENCY BEGINS TO WRITE RULES IMPLEMENTING THE BILL AFTER IT IS ENACTED; AND AMENDING SECTION 2-4-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-302, MCA, is amended to read:

"2-4-302. Notice, hearing, and submission of views. (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasonable necessity for the intended action, and the time when, place where, and manner in which interested persons may present their views on the intended action. The reasonable necessity must be written in plain, easily understood language. If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

(a) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and

(b) the number of persons affected.

(2) (a) The notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312, and mailed within 3 days of publication to the *primary* sponsor of the legislative bill that enacted the ~~section~~ *statute or amendment to the statute* that is cited as implemented in the notice if the notice is the initial proposal to implement the section, to interested persons who have

made timely requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the appropriate administrative rule review committee when the request has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection if it includes in the notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(b) The appropriate administrative rule review committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to the agencies that the committee oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The notice required by subsections (1) and (2)(a) must be published and mailed at least 30 days in advance of the agency's intended action. In addition to publishing and mailing the notice under subsection (2)(a), the agency shall post the notice on a state electronic access system or other electronic communications system available to the public.

(d) The agency shall also, at the time that its personnel begin to work on the substantive content and the wording of the initial rule proposal to implement ~~one or more statutes~~ *a statute or an amendment to a statute*, notify the *primary* sponsor of the legislative bill that enacted the ~~section~~ *statute or amendment to a statute*. *If an agency intends to implement a statute or amendment to a statute by proposing initial rules for more than one program, the agency shall notify the primary sponsor, as required in this subsection (2)(d), for the purpose of the administrative rules that will implement each of the programs.*

(3) If a statute provides for a method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained in this section. However, the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate administrative rule review committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of a hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the "Notice of Function of Administrative Rule Review Committee" appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.

(8) For purposes of notifying *primary* sponsors under subsections (2)(a) and (2)(d) who are no longer members of the legislature, a former legislator who wishes to receive notice may keep the former legislator's name, address, and telephone number on file with the secretary of state. An agency proposing rules shall consult the register when providing sponsor notice."

Approved April 17, 2007

CHAPTER NO. 208

[SB 150]

AN ACT CLARIFYING THAT A FUND OF A TAX-EXEMPT ORGANIZATION FROM WHICH CONTRIBUTIONS ARE EXPENDED DIRECTLY FOR CONSTRUCTING, RENOVATING, OR PURCHASING OPERATIONAL ASSETS IS NOT A PERMANENT, IRREVOCABLE FUND FOR THE PURPOSES OF DETERMINING THE TAX CREDIT FOR CONTRIBUTIONS TO A QUALIFIED ENDOWMENT; EXTENDING THE TERMINATION DATE OF THE TAX CREDIT; AMENDING SECTION 15-30-165, MCA, SECTION 9, CHAPTER 537, LAWS OF 1997, SECTION 5, CHAPTER 226, LAWS OF 2001, AND SECTION 7, CHAPTER 4, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-165, MCA, is amended to read:

"15-30-165. (Temporary) Qualified endowments credit — definitions — rules. *(1)* For the purposes of 15-30-166 *and this section*, the following definitions apply:

~~(1)~~ *(a) (i) "Permanent, irrevocable fund" means a fund comprising cash, securities, mutual funds, or other investment assets established for a specific charitable, religious, educational, or eleemosynary purpose and invested for the production or growth of income, or both, that may either be added to principal or expended.*

(ii) The term does not include a fund held by or for a tax-exempt organization to accomplish a charitable, religious, educational, or eleemosynary purpose from which contributions are expended directly for constructing, renovating, or purchasing operational assets, such as buildings or equipment.

(b) Subject to subsection ~~(3)~~ *(2)*, "planned gift" means an irrevocable contribution to a permanent endowment held by *or for* a tax-exempt organization~~, or for a tax-exempt organization,~~ when the contribution uses any

of the following techniques that are authorized under the Internal Revenue Code:

~~(a)~~*(i)* charitable remainder unitrusts, as defined by 26 U.S.C. 664;

~~(b)~~*(ii)* charitable remainder annuity trusts, as defined by 26 U.S.C. 664;

~~(c)~~*(iii)* pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);

~~(d)~~*(iv)* charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);

~~(e)~~*(v)* charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);

~~(f)~~*(vi)* charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

~~(g)~~*(vii)* deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

~~(h)~~*(viii)* charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B);

~~(i)~~*(ix)* paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

~~(2)~~*(c)* "Qualified endowment" means a permanent, irrevocable fund that is held by a Montana incorporated or established organization that:

~~(a)~~*(i)* is a tax-exempt organization under 26 U.S.C. 501(c)(3); or

~~(b)~~*(ii)* is a bank or trust company, as defined in Title 32, chapter 1, part 1, that is holding the fund on behalf of a tax-exempt organization.

~~(3)~~*(2)* (a) A contribution using a technique described in subsection ~~(1)(a)~~ *(1)(b)(i)* or ~~(1)(b)~~ *(1)(b)(ii)* is not a planned gift unless the trust agreement provides that the trust may not terminate and the beneficiaries' interest in the trust may not be assigned or contributed to the qualified endowment sooner than the earlier of:

(i) the date of death of the beneficiaries; or

(ii) 5 years from the date of the contribution.

(b) A contribution using the technique described in subsection ~~(1)(g)~~ *(1)(b)(vii)* is not a planned gift unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables adopted by rule by the department in effect on the date of the contribution.

(c) A contribution using a technique described in subsection ~~(1)(f)~~ *(1)(b)(vi)* or ~~(1)(g)~~ *(1)(b)(vii)* is not a planned gift unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the qualified endowment sooner than the earlier of:

(i) the date of death of the annuitant or annuitants; or

(ii) 5 years after the date of the contribution.

(d) A contribution using a technique described in subsection ~~(1)(f)~~ *(1)(b)(vi)* or ~~(1)(g)~~ *(1)(b)(vii)* is not a planned gift unless the annuity is a qualified charitable gift annuity as defined in 33-20-701.

~~(4)~~*(3)* The department shall adopt rules to prepare life expectancy tables that are derived from the actuarial tables contained in the most recent Publication 1457 by the internal revenue service. (Terminates December 31, ~~2007~~ *2013* ~~—sec. 5, Ch. 226, L. 2001~~.)"

Section 2. Section 9, Chapter 537, Laws of 1997, is amended to read:

"**Section 9. Termination.** [This act] terminates December 31, ~~2001~~ *2013*."

Section 3. Section 5, Chapter 226, Laws of 2001, is amended to read:

"**Section 5.** Section 9, Chapter 537, Laws of 1997, is amended to read:

"**Section 9. Termination.** [This act] terminates December 31, ~~2001~~ *2007 2013*.""

Section 4. Section 7, Chapter 4, Laws of 2005, is amended to read:

"**Section 7. Termination.** [This act] terminates December 31, ~~2007~~ *2013*."

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Applicability. [This act] applies to charitable contributions made on or after [the effective date of this act].

Section 7. Termination. (1) [Section 1] terminates December 31, 2013.

(2) Sections 1 through 4, Chapter 226, Laws of 2001, terminate December 31, 2013.

(3) Section 7, Chapter 482, Laws of 2003, terminates December 31, 2013.

Approved April 17, 2007

CHAPTER NO. 209

[SB 160]

AN ACT ALLOWING LOCAL GOVERNMENTS, TRANSPORTATION DISTRICTS, AND NONPROFIT ORGANIZATIONS TO USE MONEY FROM THE SENIOR CITIZEN AND PERSONS WITH DISABILITIES TRANSPORTATION SERVICES ACCOUNT AS MATCHING FUNDS FOR FEDERAL GRANTS; AND AMENDING SECTION 7-14-112, MCA.

WHEREAS, Montana's senior citizens and persons with disabilities rely on human service agencies and public transportation systems for essential transportation to work, health care services, and recreation; and

WHEREAS, these transportation services and systems can be expanded by using state funding, known as Transportation Assistance for the Disabled and Elderly or TransADE, to match increases in federal transit funding; and

WHEREAS, this expansion of service addresses coordinated transportation options available to Montana's transit-dependent residents.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-112, MCA, is amended to read:

"7-14-112. Senior citizen and persons with disabilities transportation services account — use. (1) There is a senior citizen and persons with disabilities transportation services account in the state special revenue fund. Money must be deposited in the account pursuant to 15-1-122(3)(e).

(2) Except as provided in subsection (6), the account must be used to provide operating funds *or matching funds for operating grants pursuant to 49 U.S.C. 5311* to counties, incorporated cities and towns, transportation districts, or nonprofit organizations for transportation services for persons 60 years of age or older and for persons with disabilities.

(3) (a) Subject to the conditions of subsection (3)(b), the department of transportation is authorized to award grants to counties, incorporated cities and towns, transportation districts, and nonprofit organizations for transportation services using guidelines established in the state management plan for the purposes described in 49 U.S.C. 5310 and 5311.

(b) Priority for awarding grants must be determined according to the following factors:

(i) the most recent census or federal estimate of persons 60 years of age or older and persons with disabilities in the area served by a county, incorporated city or town, transportation district, or nonprofit organization;

(ii) the annual number of trips provided by the transportation provider to persons 60 years of age or older and to persons with disabilities in the transportation service area;

(iii) the ability of the transportation provider to provide matching money in an amount determined by the department of transportation; and

(iv) the coordination of services as required in subsection (5).

(4) The department of transportation shall ensure that the available funding is distributed equally among the five transportation districts provided in 2-15-2502.

(5) In awarding grants, the department of transportation shall give preference to proposals that:

(a) include the establishment of a transit authority to coordinate service area or regional transportation services;

(b) address and document the transportation needs within the community, county, and service area or region;

(c) identify all other transportation providers in the community, county, and service area or region;

(d) explain how services are going to be coordinated with the other transportation providers in the service area or region;

(e) indicate how services are going to be expanded to meet the unmet needs of senior citizens and disabled persons within the community, county, and service area or region who are dependent upon public transit;

(f) include documentation of coordination with other local transportation programs within the community, county, and service area or region, including:

(i) utilization of existing resources and equipment to maximize the delivery of service; and

(ii) the projected increase in ridership and expansion of service;

(g) invite school districts to participate or be included in the transportation coordination efforts within the community, county, and service area or region; and

(h) at a minimum, comply with the provisions in subsections (5)(b) through (5)(f).

(6) Any ~~amount of~~ money remaining after grants have been awarded to transportation providers who provide transportation services for persons 60 years of age or older and persons with disabilities may be awarded to other transportation providers for operating costs *or matching funds for operating grants* for the purposes described in 49 U.S.C. 5311 other than for

transportation services for persons 60 years of age or older or persons with disabilities."

Approved April 17, 2007

CHAPTER NO. 210

[SB 169]

AN ACT ADJUSTING THE REDUCTION IN THE BASE ENTITLEMENT SHARE, FOR FUNDING RESPONSIBILITIES FOR PUBLIC DEFENDER SERVICES, FOR CASCADE COUNTY, FLATHEAD COUNTY, GALLATIN COUNTY, LEWIS AND CLARK COUNTY, MISSOULA COUNTY, AND YELLOWSTONE COUNTY; AMENDING SECTION 15-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the Legislature established the statewide Montana public defender system by the passage of Senate Bill No. 146, Chapter 449, Laws of 2005; and

WHEREAS, the Legislature provided that funding responsibilities for public defender services through the statewide system will be shared by state and local government and that the counties', consolidated governments', and cities' share of costs will be paid through a reduction in the county's, consolidated government's, or city's base entitlement share under section 15-1-121, MCA; and

WHEREAS, the Legislature provided for an audit of the actual costs for public defender services in District Court and Justice's Court proceedings incurred from July 1, 1998, through June 30, 2004, in Cascade County, Flathead County, Gallatin County, Lewis and Clark County, Missoula County, and Yellowstone County and required that the audit results be reported to the Governor's budget office, the Legislative Audit Committee, the Legislative Finance Committee, and the Law and Justice Interim Committee; and

WHEREAS, the Legislature directed the Law and Justice Interim Committee to prepare legislation to be introduced in the 2007 legislative session to amend section 15-1-121, MCA, to provide that the base entitlement share for Cascade County, Flathead County, Gallatin County, Lewis and Clark County, Missoula County, and Yellowstone County be adjusted by an appropriate amount arrived at based on the audit and in consultation with the Legislative Audit Committee, the Legislative Finance Committee, representatives of the counties, the Governor's budget office, the American Civil Liberties Union, the Attorney General's office, and all other interested and participating parties; and

WHEREAS, the audit was performed and reported as required; and

WHEREAS, the Law and Justice Interim Committee, in consultation with interested parties, has determined the appropriate amounts to be used to adjust the base entitlement share for each of the named counties; and

WHEREAS, the Law and Justice Interim Committee recommends the adjustments to the base entitlement share for each of the named counties as proposed in this act.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-121, MCA, is amended to read:

"15-1-121. Entitlement share payment — appropriation. (1) The amount calculated pursuant to this subsection, as adjusted pursuant to subsection (3)(a)(i), is each local government's base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle, boat, and aircraft taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-317;

(v) 61-3-321;

(vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;

(vii) Title 61, chapter 3, part 7;

(viii) 5% of the fees collected under 61-10-122;

(ix) 61-10-130;

(x) 61-10-148; and

(xi) 67-3-205;

(c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);

(d) district court fees pursuant to:

(i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);

(ii) 25-1-202;

(iii) 25-1-1103;

(iv) 25-9-506; and

(v) 27-9-103;

(e) certificate of title fees for manufactured homes pursuant to 15-1-116;

(f) financial institution taxes collected pursuant to the former provisions of Title 15, chapter 31, part 7;

(g) all beer, liquor, and wine taxes pursuant to:

(i) 16-1-404;

(ii) 16-1-406; and

(iii) 16-1-411;

(h) late filing fees pursuant to 61-3-220;

(i) title and registration fees pursuant to 61-3-203;

(j) veterans' cemetery license plate fees pursuant to 61-3-459;

(k) county personalized license plate fees pursuant to 61-3-406;

(l) special mobile equipment fees pursuant to 61-3-431;

(m) single movement permit fees pursuant to 61-4-310;

(n) state aeronautics fees pursuant to 67-3-101; and

(o) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.

(3) (a) The base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. By October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

(i) Before applying the growth rate for fiscal year 2007 to determine the fiscal year 2007 entitlement share payments, the department shall subtract from the fiscal year 2006 entitlement share payments the following amounts:

Beaverhead		$6,972
Big Horn		$52,551
Blaine		$13,625
Broadwater		$2,564
Carbon		$11,537
Carter		$407
Cascade	~~$157,151~~	*$100,000*
Chouteau		$3,536
Custer		$7,011
Daniels		$143
Dawson		$3,893
Fallon		$1,803
Fergus		$9,324
Flathead	~~$33,655~~	*$100,000*
Gallatin	~~$222,029~~	*$160,000*
Garfield		$91
Glacier		$3,035
Golden Valley		$2,282
Granite		$4,554
Hill		$31,740

Jefferson		$5,700
Judith Basin		$1,487
Lake		$38,314
Lewis and Clark	~~$247,886~~	*$160,000*
Liberty		$152
Lincoln		$3,759
Madison		$8,805
McCone		$1,651
Meagher		$2,722
Mineral		$2,361
Missoula	~~$172,600~~	*$200,000*
Musselshell		$23,275
Park		$6,582
Petroleum		$36
Phillips		$653
Pondera		$10,270
Powder River		$848
Powell		$5,146
Prairie		$717
Ravalli		$93,090
Richland		$3,833
Roosevelt		$9,526
Rosebud		$19,971
Sanders		$30,712
Sheridan		$271
Stillwater		$12,117
Sweet Grass		$2,463
Teton		$5,560
Toole		$7,113
Treasure		$54
Valley		$6,899
Wheatland		$918
Wibaux		$72
Yellowstone	~~$266,644~~	*$270,000*
Anaconda-Deer Lodge		$20,707
Butte-Silver Bow		$53,057
Alberton		$675
Bainville		$258
Baker		$2,828

Bearcreek	$143
Belgrade	$11,704
Belt	$1,056
Big Sandy	$1,130
Big Timber	$2,910
Billings	$163,499
Boulder	$2,340
Bozeman	$52,805
Bridger	$1,303
Broadus	$766
Broadview	$258
Brockton	$414
Browning	$1,830
Cascade	$1,374
Chester	$1,430
Chinook	$2,275
Choteau	$3,050
Circle	$1,018
Clyde Park	$572
Colstrip	$4,090
Columbia Falls	$6,805
Columbus	$3,245
Conrad	$4,562
Culbertson	$1,216
Cut Bank	$5,316
Darby	$1,348
Deer Lodge	$5,708
Denton	$503
Dillon	$6,928
Dodson	$194
Drummond	$561
Dutton	$661
East Helena	$2,888
Ekalaka	$689
Ennis	$1,518
Eureka	$1,733
Fairfield	$1,120
Fairview	$1,152
Flaxville	$143

Forsyth	$3,286
Fort Benton	$2,579
Fort Peck	$393
Froid	$328
Fromberg	$855
Geraldine	$457
Glasgow	$5,361
Glendive	$8,099
Grass Range	$254
Great Falls	$96,422
Hamilton	$7,148
Hardin	$5,920
Harlem	$1,422
Harlowton	$1,678
Havre	$16,223
Helena	$45,877
Hingham	$263
Hobson	$397
Hot Springs	$912
Hysham	$482
Ismay	$43
Joliet	$1,006
Jordan	$606
Judith Gap	$263
Kalispell	$28,144
Kevin	$304
Laurel	$10,804
Lavina	$361
Lewistown	$10,170
Libby	$4,475
Lima	$397
Livingston	$12,145
Lodge Grass	$889
Malta	$3,389
Manhattan	$2,485
Medicine Lake	$410
Melstone	$234
Miles City	$14,152
Missoula	$104,264

Moore	$319
Nashua	$536
Neihart	$149
Opheim	$180
Outlook	$125
Philipsburg	$1,612
Pinesdale	$1,413
Plains	$2,007
Plentywood	$3,185
Plevna	$225
Polson	$7,722
Poplar	$1,544
Red Lodge	$3,903
Rexford	$263
Richey	$309
Ronan	$3,262
Roundup	$3,280
Ryegate	$465
Saco	$354
Scobey	$1,798
Shelby	$5,677
Sheridan	$1,150
Sidney	$7,747
Stanford	$737
Stevensville	$3,063
St. Ignatius	$1,367
Sunburst	$709
Superior	$1,521
Terry	$1,011
Thompson Falls	$2,272
Three Forks	$3,130
Townsend	$3,286
Troy	$1,654
Twin Bridges	$695
Valier	$817
Virginia City	$223
Walkerville	$1,183
West Yellowstone	$2,083
Westby	$263

White Sulphur Springs	$1,734
Whitefish	$9,932
Whitehall	$1,889
Wibaux	$893
Winifred	$259
Winnett	$314
Wolf Point	$4,497

(ii) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A).

(iii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(iii)(A).

(b) (i) The entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(B) and (3)(a)(iii)(B):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(A) and (3)(a)(iii)(A):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis.

(b) (i) The growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero. The growth factor in the entitlement share must be calculated separately for:

(A) counties;

(B) consolidated local governments; and

(C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the base year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the base year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the base year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

Cascade	Great Falls - downtown	$468,966
Deer Lodge	TIF District 1	3,148
Deer Lodge	TIF District 2	3,126
Flathead	Kalispell - District 1	758,359
Flathead	Kalispell - District 2	5,153
Flathead	Kalispell - District 3	41,368
Flathead	Whitefish District	164,660
Gallatin	Bozeman - downtown	34,620
Lewis and Clark	Helena - #2	731,614
Missoula	Missoula - 1-1B & 1-1C	1,100,507
Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - uptown	283,801
Yellowstone	Billings	436,815

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants or from countywide retirement block grants.

(8) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(o) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection (8)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

(9) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

(10) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

(11) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

(12) A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to entitlement share payments under 15-1-121 made in fiscal year 2007 and subsequent fiscal years. The department of revenue shall adjust the fourth quarterly payments for fiscal year 2007 to reflect the base entitlement share for each county as adjusted in [this act].

Approved April 17, 2007

CHAPTER NO. 211

[SB 177]

AN ACT EXTENDING THE TIME IN WHICH A PETITION MAY BE FILED WITH A DISTRICT COURT TO SET ASIDE AN AGENCY DECISION MADE IN VIOLATION OF THE PUBLIC PARTICIPATION IN GOVERNMENT STATUTES IN TITLE 2, CHAPTER 3, PART 1 OR 2, MCA; AND AMENDING SECTIONS 2-3-114 AND 2-3-213, MCA.

WHEREAS, sections 2-3-114 and 2-3-213, MCA, now require that civil actions brought under either of those sections in District Court to enforce the laws allowing citizen participation in government be brought within 30 days of an agency decision made in violation of those laws; and

WHEREAS, the effect of the 30-day limitation is to prohibit suits brought after that 30-day limit, as was confirmed by the Montana Supreme Court in the case of Kadillak v. The Anaconda Co., 184 M 127 (1979), in which the Supreme Court held that a District Court had no jurisdiction to even consider a case brought after the 30-day period had passed; and

WHEREAS, if an agency, board, or other public entity holds a meeting but does not give notice of a meeting, does not publish an agenda for the meeting, and does not publish minutes of a meeting, there is no way for the public to know whether a meeting occurred, whether a decision was made by the agency, board, or other public entity that is of public interest, or whether the 30-day "clock" has in fact started, except by word of mouth; and

WHEREAS, if a potential plaintiff learns of the meeting by word of mouth at a time too late in the 30-day period to discuss the violation of the participation in government statutes with a potential defendant, it could force a hasty decision to bring suit against the agency, board, or other public entity just because the 30-day period has almost passed.

THEREFORE, it is the determination of the State Administration and Veterans' Affairs Interim Committee that the starting of the 30-day "clock" at the time that a potential plaintiff or petitioner learns or should have learned of a decision made at a meeting held in violation of the law will still apply a limitation to the time that a suit may be brought, but is more fair to a plaintiff or petitioner who might otherwise be precluded from legal action, with the agency, board, or other public entity thereby being rewarded for its secrecy.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-3-114, MCA, is amended to read:

"2-3-114. Enforcement. The district courts of the state have jurisdiction to set aside an agency decision under this part upon petition ~~made within 30 days of the date of the decision~~ of any person whose rights have been prejudiced. *A petition pursuant to this section must be filed within 30 days of the date on which the petitioner learns, or reasonably should have learned, of the agency's decision.*"

Section 2. Section 2-3-213, MCA, is amended to read:

"2-3-213. Voidability. Any decision made in violation of 2-3-203 may be declared void by a district court having jurisdiction. A suit to void ~~any such~~ *a* decision must be commenced within 30 days of the ~~decision~~ *date on which the plaintiff or petitioner learns, or reasonably should have learned, of the agency's decision.*"

Approved April 17, 2007

CHAPTER NO. 212

[SB 193]

AN ACT REQUIRING A CHILD PROTECTIVE SOCIAL WORKER TO SUBMIT AN AFFIDAVIT TO THE COUNTY ATTORNEY WITHIN 2 WORKING DAYS OF A CHILD'S REMOVAL FROM A HOME; REQUIRING THE AFFIDAVIT TO BE PROVIDED TO THE PARENTS AT THE SAME TIME, IF POSSIBLE; INCREASING THE TIME TO FILE AN ABUSE AND NEGLECT PETITION FROM 2 DAYS TO 5 DAYS; AND AMENDING SECTION 41-3-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical custody of the youth of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing and must advise the parents, parent, guardian, or other person having physical custody of the youth that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with the social worker concerning emergency protective services.

(2) If a social worker of the department, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault; and

(c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) *If a child is removed from the child's home by the department, a child protective social worker shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal.* An abuse and neglect petition must be filed within ~~2~~ *5* working days, excluding weekends and holidays, of *the* emergency ~~placement~~ *removal* of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or voluntary protective services are provided pursuant to 41-3-302.

(6) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must be held within 20 days of the filing of the initial petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(7) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the social worker shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child. The district court may not order further relief until the parents, if they are reasonably available, are given the opportunity to appear before the court or have their statements, if any, presented to the court for consideration before entry of an order granting the petition.

(8) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."

Approved April 17, 2007

CHAPTER NO. 213

[SB 248]

AN ACT RATIFYING THE UNITED STATES OF AMERICA, DEPARTMENT OF AGRICULTURE, FOREST SERVICE-MONTANA COMPACT; PROVIDING FOR A CHANGE IN APPROPRIATION RIGHT TO INSTREAM FLOW IN CERTAIN INSTANCES; PROVIDING ADDITIONAL CRITERIA

THAT MUST BE MET BY THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE TO BE ABLE TO CHANGE AN APPROPRIATION RIGHT TO INSTREAM FLOW; REQUIRING APPLICANTS TO SUBMIT PROOF OF ANY WRITTEN SPECIAL USE AUTHORIZATION REQUIRED BY FEDERAL LAW TO OCCUPY, USE, OR TRAVERSE NATIONAL FOREST SYSTEM LANDS FOR THE PURPOSE OF DIVERSION, IMPOUNDMENT, STORAGE, TRANSPORTATION, WITHDRAWAL, USE, OR DISTRIBUTION OF WATER IN CERTAIN INSTANCES; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES NECESSARY FOR STATE WATER RESERVATIONS; PROVIDING FOR PROCESSING OF STATE WATER RESERVATIONS FOR THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE IN ALL BASINS IN MONTANA; AMENDING SECTIONS 85-2-102, 85-2-302, 85-2-306, 85-2-308, 85-2-310, 85-2-311, 85-2-312, 85-2-316, 85-2-319, 85-2-331, 85-2-336, 85-2-341, 85-2-343, 85-2-344, 85-2-401, AND 85-2-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. United States of America, department of agriculture, forest service-Montana compact ratified. The compact entered into by the state of Montana and the United States of America, Department of Agriculture, Forest Service and filed with the secretary of state of the state of Montana under the provisions of 85-2-702 on [date of filing], is ratified. The compact is as follows:

WATER RIGHTS COMPACT

STATE OF MONTANA

UNITED STATES OF AMERICA, DEPARTMENT OF AGRICULTURE, FOREST SERVICE

This Compact is entered into by the State of Montana ("State") and the United States of America ("United States") to settle for all time any and all claims existing on the Effective Date of This Compact to federal reserved water rights for National Forest System Lands administered by the Forest Service, an agency of the United States Department of Agriculture ("Forest Service"), within the State of Montana.

RECITALS

WHEREAS, the State of Montana, in 1979, pursuant to Title 85, chapter 2, of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana, including all federal reserved and appropriative water rights;

WHEREAS, section 85-2-703, MCA, provides that the State may negotiate compacts concerning the equitable division and apportionment of water between the State and its people and the federal government with claims to non-Indian federal reserved water rights within the State of Montana;

WHEREAS, section 85-2-228, MCA, provides that a federal reserved water right with a priority date of July 1, 1973, or later be subject to the same process and adjudication as a federal reserved water right with a priority date before July 1, 1973;

WHEREAS, the United States wishes to secure water rights to fulfill the purposes of National Forest System Lands in the State of Montana;

WHEREAS, the United States, in quantifying and securing water rights to meet National Forest System purposes, seeks cooperatively to accommodate the interests of the State and its citizens and to avoid the conflict and uncertainty inherent in litigating federal reserved water rights claims. The United States believes that the natural flows needed for favorable conditions of flow, for fisheries, and for other resource management goals and obligations on National Forest System Lands can be achieved, without materially affecting the interests of the United States, through the use of state law as provided in this Compact.

WHEREAS, the United States Attorney General or a duly designated official of the United States Department of Justice has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516 and 517;

WHEREAS, The Secretary of Agriculture or a duly designated official of the United States Department of Agriculture has authority to execute this Compact on behalf of the United States Department of Agriculture pursuant to 7 U.S.C. 2201 note, Section 1(a);

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE I

DEFINITIONS

For purposes of this Compact only the following definitions shall apply:

(1) "Abstracts" means the documents included in Appendix 1 of this Compact, entitled "Abstracts of Forest Service Federal Reserved Water Rights for Current Discrete Administrative Uses", referenced in this Compact as Appendix 1.

(2) "Concurrently" for the purposes of instream uses means not cumulative to the flow of other instream, nondiversionary water rights on the same reach of stream and for the purposes of in situ uses means not cumulative to the volume or flow of other in situ, nondiversionary water rights from the same source of water.

(3) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(4) "Discrete Administrative Use" means a federal reserved water right to divert or withdraw water from a source of supply for use authorized under the Organic Administrative Act, 16 U.S.C. 473, et seq., necessary to fulfill the primary purposes of a National Forest at administrative sites on National Forest System Lands and includes but is not limited to federal reserved water rights for the following purposes: water for district offices, ranger stations, guard stations, work centers, and housing; water used for facilities operated for administrative purposes; water used for permanently established tree nurseries and seed orchards; and water for maintaining riding and pack stock used for administrative purposes.

(5) "Dispersed Administrative Use" means a federal reserved water right to divert or withdraw water from time to time, as needed, from a source of supply for use authorized under the Organic Administrative Act, 16 U.S.C. 473, et seq., necessary to fulfill the primary purposes of a National Forest within a specified area on National Forest System Lands and includes but is not limited to federal reserved water rights for the following purposes: water for dust abatement and road construction; water for prescribed fire management; water for reclamation;

water used to establish vegetation; water used temporarily for establishment of nursery stock and seed orchards; and water for other incidental administrative purposes.

(6) "Effective Date of This Compact" means the date of the ratification of the Compact by the Montana Legislature, written approval by the United States Department of Agriculture, or written approval by the United States Department of Justice, whichever is later.

(7) "In situ" means water with a surface expression used in the place of its natural occurrence and without need of a diversion structure, measured as a flow, level, or volume of water.

(8) "National Forest System Lands" means all lands within Montana that are owned by the United States and administered by the Secretary of Agriculture through the Forest Service, but does not include any lands within the exterior boundaries of National Forest System units that are not owned by the United States and administered by the Secretary of Agriculture through the Forest Service.

(9) "Parties" means the State and the United States.

(10) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

(11) "South Fork Flathead Wild and Scenic River" means the segment of the South Fork of the Flathead River from its origin to Hungry Horse Reservoir located in Montana that, pursuant to the Wild and Scenic Rivers Act, 16 U.S.C. 1271, et seq., was designated as a component of the National Wild and Scenic Rivers System by Public Law 94-486, 16 U.S.C. 1274(a)(13), on October 12, 1976.

(12) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "State" means the Director of the Montana Department of Natural Resources and Conservation or the Director's designee.

(13) "United States" means the United States of America and all officers, agencies, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of Agriculture or the Secretary's designee.

(14) "Water Right Recognized Under State Law" means a water right or use created and administered under Montana law and includes all Forest Service water rights created in Article V of this Compact and state water reservations granted, but does not include a federal or tribal reserved water right recognized by the State.

(15) "Wetted Perimeter Methodology" means an instream flow methodology for fisheries flow based on habitat for food production in the shallow, fast-moving water of a stream. The wetted perimeter is the distance across the bottom and sides of a stream channel, measured at a riffle area, that is in contact with the water. A graph of the wetted perimeter versus discharge generally yields two inflection points. The upper inflection point of the graph is the level above which large increases in discharge result in a small increase of the wetted perimeter. The lower inflection point of the graph is the level below which small decreases in discharge result in large decreases of the wetted perimeter.

ARTICLE II

FEDERAL RESERVED WATER RIGHTS

The Parties agree that the following water rights are the federal reserved water rights of the United States for the National Forest System Lands.

A. **Discrete Administrative Uses on National Forest System Lands.**

The United States has federal reserved water rights for current and future Discrete Administrative Uses on National Forest System Lands, subject to the terms of Article III of this Compact:

1. **Current Discrete Administrative Uses on National Forest System Lands.**

The United States has federal reserved water rights for current Discrete Administrative Uses on National Forest System Lands as set forth in Table 1 and the specific listing and Abstracts attached to this Compact as Appendix 1. In the event there is a discrepancy between Table 1 and an Abstract contained in Appendix 1, the Abstract in Appendix 1 controls.

2. **Future Discrete Administrative Uses on National Forest System Lands.**

The United States has federal reserved water rights for future Discrete Administrative Uses on National Forest System Lands as set forth in Table 1.

B. **Dispersed Administrative Uses on National Forest System Lands.**

The United States has federal reserved water rights for Dispersed Administrative Uses on National Forest System Lands, subject to the terms of Article III of this Compact, as set forth in Table 1. The period of use for Dispersed Administrative Uses on National Forest System Lands can be for any period throughout the year.

TABLE 1

			Discrete Administrative Uses			Dispersed Administrative Uses
MT Adj Basin	Priority Date	National Forests	Current (AF/YR)	Future (AF/YR)	Total (AF/YR)	Volume (AF/YR)
39E	1906-09-24	Custer	0.00	2.00	2.00	12.20
39F	1906-09-24	Custer	0.25	2.00	2.25	11.90
39FJ	1906-11-05	Custer	0.00	2.00	2.00	5.50
40A	1902-08-16	Lewis & Clark				90.00
			1.36	2.00	3.36	
	1906-08-10	Gallatin				3.30
40B	1906-11-05	Lewis & Clark	0.00	2.00	2.00	5.50
40C	1906-11-05	Lewis & Clark	0.00	2.00	2.00	2.70
41A	1906-11-05	Beaverhead-Deerlodge	2.13	2.13	4.26	121.00
41B	1906-11-05	Beaverhead-Deerlodge	1.26	2.00	3.26	42.90
41C	1906-11-05	Beaverhead-Deerlodge	8.90	8.90	17.80	70.90
41D	1906-11-05	Beaverhead-Deerlodge	202.27	49.27	251.54	310.60
41E	1906-04-12	Beaverhead-Deerlodge				85.50
			0.00	2.00	2.00	

	1905-05-12	Helena				1.20
41F	1902-08-16	Beaverhead-Deerlodge				98.50
			14.62	14.62	29.24	
	1902-08-16	Gallatin				69.50
41G	1906-04-12	Beaverhead-Deerlodge	2.50	2.50	5.00	81.80
41H	1906-03-07	Gallatin	14.63	14.63	29.26	147.60
41I	1905-10-03	Gallatin				15.40
			4.75	4.75	9.50	
	1905-10-03	Helena				169.30
41J	1905-10-03	Helena				36.00
			5.51	5.51	11.02	
	1906-11-06	Lewis & Clark				102.30
41K	1897-02-22	Lewis & Clark	6.63	6.63	13.26	44.80
41M	1897-02-22	Lewis & Clark	3.01	3.01	6.02	43.50
41O	1897-02-22	Lewis & Clark	3.75	3.75	7.50	24.40
41Q	1902-08-16	Lewis & Clark	0.33	2.00	2.33	72.10
41QJ	1906-11-06	Lewis & Clark				0.80
			0.00	2.00	2.00	
	1928-05-17	Helena				17.10
41R	1903-12-12	Lewis & Clark	0.00	2.00	2.00	9.50
41S	1902-08-16	Lewis & Clark	2.50	2.50	5.00	96.80
41U	1897-02-22	Lewis & Clark				11.20
			0.01	2.00	2.01	
	1928-05-17	Helena				14.40
42B	1907-03-02	Custer	0.00	2.00	2.00	13.10
42C	1907-03-02	Custer	39.35	39.35	78.70	133.70
42J	1907-03-02	Custer	0.00	2.00	2.00	11.20
43A	1906-08-10	Gallatin	1.51	2.00	3.51	43.40
43B	1902-09-04	Gallatin	14.33	14.33	28.66	136.10
43BJ	1902-09-04	Gallatin	9.64	9.64	19.28	22.50
43BV	1902-09-04	Gallatin	0.00	2.00	2.00	8.20
43C	1902-09-04	Custer	3.00	3.00	6.00	34.50
43D	1902-09-04	Gallatin				3.40
			2.25	2.25	4.50	
	1902-09-04	Custer				25.50
43N	1906-11-06	Custer	0.00	2.00	2.00	14.40
43P	1906-11-06	Custer	0.10	2.00	2.10	9.90
76B	1906-08-13	Kootenai	0.02	2.00	2.02	129.10
76C	1907-03-02	Kootenai	1.00	2.00	3.00	110.00
76D	1907-03-02	Kootenai	9.60	9.60	19.20	384.30
76E	1905-10-03	Beaverhead-Deerlodge				76.90
			4.00	4.00	8.00	
	1905-10-03	Lolo				52.10

76F	1928-05-17	Helena				65.90
			19.40	19.40	38.80	
	1906-11-06	Lolo				123.70
76G	1906-04-12	Beaverhead-Deerlodge				112.30
			85.75	9.75	95.50	
	1906-04-12	Helena				35.00
	1905-10-03	Lolo				17.00
76GJ	1905-10-03	Beaverhead-Deerlodge	0.00	2.00	2.00	51.90
76H	1897-02-22	Bitterroot				280.20
			96.82	75.00	171.82	
	1897-02-22	Lolo				59.00
76I	1897-02-22	Flathead	0.02	2.00	2.02	22.30
76J	1897-02-22	Flathead	4,247.75	2.16	4,249.91	120.00
76K	1897-02-22	Flathead	241.51	241.51	483.02	97.10
76L	1907-03-02	Flathead				3.40
			0.00	2.00	2.00	
	1907-03-02	Lolo				8.50
76LJ	1907-03-02	Flathead				246.40
			5.78	5.78	11.56	
	1897-02-22	Kootenai				12.20
76M	1906-11-06	Lolo	1,000.28	335.28	1335.56	337.90
76N	1907-03-02	Kootenai				138.80
			4.26	4.26	8.52	
	1907-03-02	Lolo				168.40

C. **Emergency Fire Suppression.**

The use of water for emergency fire suppression benefits the public and is necessary for the primary purposes of the National Forest System Lands in Montana. The United States has a federal reserved water right to divert or withdraw water on National Forest System Lands, with the priority date for each Water Court basin set forth in Table 1 of this Compact, from a stream, lake, or pond, as needed for emergency fire suppression for the benefit of National Forest System Lands, and without a definition of the specific elements of a recordable water right, subject to the terms of Article III. Use of water for emergency fire suppression shall not be considered an exercise of the United States' federal reserved water rights for Discrete Administrative Uses as described in Article II, section A., or Dispersed Administrative Uses as described in Article II, section B.

D. **South Fork Flathead Wild and Scenic River.**

The United States has a federal reserved water right with a priority date of October 12, 1976, for instream flow on the South Fork Flathead Wild and Scenic River in the amount of the entire flow of the river, less any of the United States' Discrete Administrative Uses as described in Article II, section A., and Dispersed Administrative Uses as described in Article II, section B., provided that the instream flow water right is subordinate to all Water Rights Recognized Under State Law with a priority date before the Effective Date of This Compact.

This federal reserved water right ends at the point where the South Fork Flathead Wild and Scenic River flows into Hungry Horse Reservoir.

ARTICLE III

IMPLEMENTATION OF FEDERAL RESERVED WATER RIGHTS

A. **Abstracts.**

Abstracts for all the United States' federal reserved water rights for Current Discrete Administrative Use on National Forest System Lands are set forth in Appendix 1. The Parties prepared the Abstracts to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights for current Discrete Administrative Uses as described in this Compact. The rights specified in the Abstracts are subject to the terms of this Compact.

B. **Enforcement and Administration of Federal Reserved Water Rights.**

1. When a controversy arises between the United States' federal reserved water rights described by this Compact and another holder of a Water Right Recognized Under State Law or, for enforcement pursuant to Article VIII, section B., when there is a question concerning the use of water on National Forest System Lands under this Compact, the United States, the State, or a holder of a Water Right Recognized Under State Law may petition a court of competent jurisdiction for relief. Resolution of any controversy must be governed by the terms of this Compact when applicable or, to the extent not applicable, by appropriate federal or state law.

2. For the purpose of the administration of federal reserved water rights provided for in Article II, the United States agrees that a water commissioner or other official appointed by a court of competent jurisdiction may enter National Forest System Lands to collect data, inspect structures for the diversion and measurement of water, and distribute the federal reserved water rights in Article II. The terms of entry or distribution may be limited, as appropriate, by an order of a court of competent jurisdiction. Nothing in this Compact waives the right of the United States, with respect to a specific action or anticipated action by a water commissioner or other official under this subsection, to seek terms of entry or distribution consistent with federal law if in conflict with state law.

3. The Department may enter National Forest System Lands for which a federal reserved water right is described in Article II for the purposes of data collection on Forest Service water diversions or notice requirements by the United States, pursuant to Article III, section C.3., of this Compact.

C. **Use of Federal Reserved Water Rights.**

1. **Federal Reserved Water Rights.**

The rights of the United States described in Article II of this Compact are federal reserved water rights. Non-use of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment of the right.

2. **Development of Future Discrete Administrative Uses.**

The United States, without prior approval of the Department, may develop a Discrete Administrative Use after the Effective Date of This Compact as described in Article II, section A.2., provided that:

(a) the purpose of use of the water is for a Discrete Administrative Use as defined in Article I(4) and described in Article II, section A.2.;

(b) the quantity of water for Discrete Administrative Uses diverted or withdrawn shall not exceed the total amount as set forth in Article II, Table 1; and

(c) the use shall not adversely affect a senior Water Right Recognized Under State Law.

3. **Use of Dispersed Administrative Uses.**

The United States, without prior approval of the Department, may use its federal reserved water right for Dispersed Administrative Uses, as needed, provided that:

(a) the purpose of use of the water is for a Dispersed Administrative Use as defined in Article I(5) and described in Article II, section B.;

(b) the total quantity of water for Dispersed Administrative Uses diverted or withdrawn shall not exceed the amount as set forth in Article II, Table 1;

(c) the Forest Service shall provide notice of a Dispersed Administrative Use as follows:

(i) for uses of 20,000 gallons or less per day from a single source of supply, no notice is required;

(ii) for uses greater than 20,000 gallons per day and less than 60,000 gallons per day from a single source of supply, a notice must be posted at the site of the diversion or withdrawal for the entire period during which water is being diverted or withdrawn. The notice posted shall be clearly legible and visible and provide the following information:

(A) source of water;

(B) purpose of use;

(C) starting and ending date of diversion;

(D) place of use;

(E) diversion flow rate;

(F) maximum volume of water to be diverted or withdrawn per day; and

(G) name and contact information for the contractor, the local Forest Service Ranger District, and the local Department Water Resources Regional Office.

(iii) for uses greater than 60,000 gallons per day from a single source of supply, the local Department Water Resources Regional Office must be notified at least 10 days but not more than 45 days in advance of the initial use of the water. Notice must be posted at the site of the diversion or withdrawal, as provided in Article III, section C.3.(c)(ii). Notification to the Department Water Resources Regional Office must provide the following information:

(A) source of water;

(B) legal description of the point of diversion or withdrawal;

(C) place of use;

(D) map showing preceding three items;

(E) purpose of use;

(F) starting and ending date of use;

(G) diversion flow rate;

(H) maximum volume of water to be diverted or withdrawn per day; and

(I) name and contact information for the contractor and the local Forest Service Ranger District.

(d) the diversion or withdrawal of water for a Dispersed Administrative Use shall not adversely affect a senior Water Right Recognized Under State Law; and

(e) if notified that the diversion or withdrawal for a Dispersed Administrative Use is adversely affecting a senior Water Right Recognized Under State Law, the Forest Service will immediately cease diversion or withdrawal from that source of supply. To resume the diversion or withdrawal, the Forest Service can move the diversion or withdrawal to another source of supply or satisfy the senior user and the Department Water Resources Regional Office Manager that use will not adversely affect the senior user or users.

D. **Change in Use of Federal Reserved Water Rights.**

1. **Discrete Administrative Uses.**

The United States, without approval of the Department, may change a Discrete Administrative Use described in Article II, section A., provided that:

(a) the purpose of use of the water remains a Discrete Administrative Use as defined in Article I(4) and described in Article II, section A.;

(b) the quantity of water for Discrete Administrative Uses diverted or withdrawn shall not exceed the total amount as set forth in Article II, Table 1; and

(c) the change shall not adversely affect a Water Right Recognized Under State Law.

2. **Dispersed Administrative Uses.**

The United States' federal reserved water right to divert or withdraw water for Dispersed Administrative Uses as described in Article II, section B., shall not be changed to any other use.

3. **Emergency Fire Suppression.**

The United States' federal reserved water right to divert or withdraw water for Emergency Fire Suppression as described in Article II, section C., shall not be changed to any other use.

4. **South Fork Flathead Wild and Scenic River.**

The United States' federal reserved water right for instream flow for the South Fork Flathead Wild and Scenic River, as described in Article II, section D., shall not be changed to any other use.

E. **Reporting Requirements.**

1. The Forest Service agrees to provide a report to the Department on an annual basis or on a periodic basis agreed to by the Parties containing information on development of Discrete Administrative Uses, as described in Article III, section C.2., and any change of a Discrete Administrative Use, as described in Article III, section D.1.

2. Upon request by the Department, the Forest Service shall report to the Department information it has regarding water use for Emergency Fire Suppression, as described in Article II, section C.

3. For Dispersed Administrative Uses, as described in Article III, section C.3.(c)(ii) and (iii), upon request by the Department, the Forest Service shall provide copies of notice postings for the stream or basin requested.

4. For Dispersed Administrative Uses, as described in Article III, section C.3.(c)(i), upon request by the Department, the Forest Service shall report information it has available. In the event the Department requests additional information for future reports on a stream or basin for enforcement or water distribution purposes, the Forest Service agrees to comply with the request.

F. **Ownership Interest in Water for Purposes of Statewide Adjudication.**

The federal reserved water rights for Administrative Uses and Emergency Fire Suppression described in Article II, sections A., B., and C., are ownership interests in water and its use for each water source within National Forest System Lands that has been affected by a temporary preliminary decree or preliminary decree.

ARTICLE IV

STATE LAW PROVISIONS

A. **Compact Principles.**

In order to promote settlement of issues between the United States and the State, the United States agrees to relinquish any and all claims to federal reserved water rights for instream flows on National Forest System Lands. The State agrees that, in consideration for the United States' agreement not to pursue federal reserved water rights for instream flows on National Forest System Lands, the following principles, subject to the terms of this Compact, shall be included in state law:

1. **Forest Service Water Rights Recognized Under Law Created in This Compact**.

There shall be created by this Compact Water Rights Recognized Under State Law held by the Forest Service as set forth in Article V, Table 2.

2. **State Water Reservation Process.**

(a) There shall be a state water reservation process providing a means for the United States to appropriate state-law-based water rights for a minimum instream flow, level, or quality of water that provides an opportunity for hearing and judicial review.

(i) Any appropriation granted under this process will result in a water right held by the United States that is protectable and enforceable under state law, and shall not be subject to periodic review or reallocation.

(ii) The date of appropriation for water rights granted under the state water reservation process will be the date of filing of the application for state water reservations and will be senior in priority to any applications for state water reservations filed after that date.

(b) The Parties agree that the language of 85-2-316, MCA, on the Effective Date of This Compact and the terms of Article VI of this Compact satisfy the principles in Article IV, section A.2.

3. **New State Water Reservation Section.**

The United States shall have the right to apply for a state water reservation under a new specific procedure in limited circumstances for state water reservations as set forth in Article VI, section B.

4. **Standing.**

In the ongoing statewide adjudication, the United States shall have the right to object to and participate as an objector to any water right claim for water use or storage on or water conveyed across National Forest System Lands. The Parties agree that the language of 85-2-233, MCA, on the Effective Date of This Compact satisfies the principles in Article IV, section A.4.

B. **State Law Adopted as a Condition Precedent to This Compact.**

Subject to Article VIII, section D., the Parties agree that as a condition precedent to this Compact, the following provisions will be adopted as state law:

1. **Sequencing.**

(a) The permitting process for water appropriations under state law and the permitting for the access and use of National Forest System Lands in relation to water appropriations will be sequenced to avoid conflict between state and federal permitting.

(b) The applicant is required to show proof of federal authorization before the application for a new appropriation of water or a change of appropriation will be correct and complete when:

(i) a state permit is required prior to a new appropriation of water, including ground water, or a change of appropriation; and

(ii) a federal authorization is required to occupy, use, or traverse National Forest System Lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water for the appropriation or change of appropriation.

(c) The state permit for a new appropriation shall be subject to any terms, conditions and limitations related to the use of water contained in the required federal authorization.

(d) The Parties agree that the language of 85-2-302, 85-2-310, 85-2-311, 85-2-312, and 85-2-402, MCA, on the Effective Date of This Compact satisfies this condition precedent.

2. **Change of Diversionary Use to Instream Flow.**

In addition to any other process available under state law, the Forest Service may apply for a change of use from an appropriation right to divert or withdraw water on land owned by the United States that is located within or immediately adjacent to the exterior boundaries of National Forest System Lands on the Effective Date of This Compact to an instream flow water right on National Forest System Lands within or immediately adjacent to the exterior boundaries of National Forest System Lands on the Effective Date of This Compact in accordance with procedures required under state law. The Parties agree that the language of [section 2] on the Effective Date of This Compact satisfies the principles in Article IV, section B.2.

ARTICLE V

WATER RIGHTS RECOGNIZED UNDER STATE LAW

There is created by this Compact appropriations of Water Rights Recognized Under State Law held by the Forest Service for instream flow or in situ use as set forth in Article V.

A. **Water Rights Recognized Under State Law**

TABLE 2

Water Right Number	Source	Flow Rate (CFS)	Lower Stream Point				Upper Stream Point			
			SEC	TWP	RGE	QTR SEC	SEC	TWP	RGE	QTR SEC
41F-30023850	Horse Creek	3.0	25	10S	01W	NESE	29	10S	01W	SWNW
41F-30023851	Sheep Creek	4.0	1	12S	02E	SWSE	20	12S	03E	SWNW
41H-30023852	East Fork Hyalite Creek	7.0	23	04S	06E	SWNW	12	05S	06E	SWSW
41H-30023853	Hyalite Creek	28.0	14	03S	05E	SESW	15	04S	06E	NWSW
41H-30023854	West Fork Hyalite Creek	12.0	26	04S	06E	NWNW	23	05S	06E	NW
41I-30023855	Beaver Creek	10.0	19	12N	02W	SWNE	11	12N	02W	SENE
41J-30023856	Sheep Creek	27.0	2	12N	05E	NWSW	5	12N	06E	SESE
41J-30023857	Tenderfoot Creek	15.0	30	14N	05E	NENE	22	14N	05E	NWSW
41S-30023858	Dry Wolf Creek	5.0	28	15N	10E	SWNW	31	15N	10E	SWSW
41S-30023859	South Fork Judith River	3.5	1	12N	11E	NENE	4	11N	11E	SENE
43B-30023860	Little Mission Creek	2.5	14	03S	11E	NENW	27	03S	11E	NWNE
43B-30023861	Pine Creek	4.0	8	04S	10E	NWSW	16	04S	10E	NWSW
43B-30023862	South Fork Deep Creek	7.0	5	04S	10E	NENW	14	04S	10E	NWNW
43B-30023863	Upper Deer Creek	2.0	13	02S	14E	NENW	29	03S	14E	SESE
76B-30023864	North Fork Yaak River	24.0	15	37N	31W	SWNE	4	37N	31W	NE
76B-30023865	Pete Creek	15.0	5	35N	32W	NENW	29	36N	32W	SWNW
76B-30023866	Seventeenmile Creek	40.0	27	34N	33W	NWSE	5	33N	32W	NWNW
76B-30023867	South Fork Yaak River	19.0	2	35N	32W	NENE	5	34N	31W	SWSW
76B-30023868	Spread Creek	50.0	3	35N	33W	SWSE	29	36N	33W	SENE
76B-30023869	West Fork Yaak River	30.0	32	37N	31W	NWNE	35	37N	32w	NENE
76C-30023870	East Fisher	15.0	31	26N	29W	NWNE	31	26N	29W	NENE
76C-30023871	Silver Butte/Fisher River	34.0	17	26N	29W	NENE	35	26N	30W	SENW
76C-30023872	West Fisher River	28.0	1	26N	30W	NWNW	4	26N	30W	SWSE
76D-30023873	Barron Creek	2.0	27	32N	29W	SWNW	21	32N	30W	NW
76D-30023874	Big Cherry Creek	40.0	27	29N	31W	SWSW	3	28N	31W	NENE
76D-30023875	Big Creek	19.0	3	34N	29W	NWNW	34	35N	30W	NWNW
76D-30023876	Bobtail Creek	5.0	20	31N	31W	NWSW	8	31N	31W	NESW
76D-30023877	Bristow Creek	12.0	14	32N	29W	NWNW	8	32N	29W	NESE
76D-30023878	Callahan Creek	60.0	24	31N	34W	NWNW	21	31N	34W	NWSE
76D-30023879	Canyon Creek	4.0	22	31N	29W	SWSE	29	31N	28W	SWSW
76D-30023880	Cripple Horse Creek	8.0	2	31N	29W	NESE	5	31N	28W	SWSW
76D-30023881	Five Mile Creek	4.0	17	32N	28W	SWNW	19	32N	27W	NENE
76D-30023882	Granite Creek	21.0	2	29N	31W	NWNW	5	29N	31W	NESE
76D-30023883	Libby Creek	40.0	16	28N	30W	NWNW	18	28N	30W	SESE
76D-30023884	Midas Creek	1.5	31	28N	30W	SWNW	8	27N	30W	SWSE
76D-30023885	North Fork Big Creek	14.0	28	35N	30W	SWSE	31	36N	30W	SWSE
76D-30023886	Parmenter Creek	10.0	7	30N	31W	SWNE	18	30N	32W	SWSW
76D-30023887	Quartz Creek	17.5	12	31N	32W	SESW	2	31N	32W	SWNE
76D-30023888	Ross Creek	20.0	8	28N	33W	NENE	17	28N	34W	SWNW
76D-30023889	South Fork Big Creek	20.0	33	35N	30W	SENE	5	32N	30W	NENE
76D-30023890	Therriault Creek	4.0	3	35N	26W	SWNW	3	35N	26W	SENW
76D-30023891	Young Creek	6.0	17	37N	28W	NESE	8	37N	29W	SE
76E-30023892	Middle Fork Rock Creek	41.0	18	04N	15W	NENE	25	04N	16W	NWSW
76E-30023893	Rock Creek at Bitterroot Flat	150.0	7	08N	17W	NWNW	7	07N	16W	SESE
76E-30023894	Rock Creek at Mouth	250.0	13	11N	17W	SENE	30	11N	16W	SWNW
76E-30023895	West Fork Rock Creek	12.0	35	06N	16W	NESE	2	05N	17W	NWSW
76F-30023896	Clearwater River at Lake Alva	13.0	24	18N	16W	SWSE	24	18N	16W	NWSE
76F-30023897	Copper Creek	11.0	26	15N	08W	SENE	9	15N	08W	NENE
76F-30023898	Morrell Creek	12.0	35	17N	15W	SWSE	1	17N	15W	NESE

76F-30023899	North Fork Blackfoot River	39.0	2	15N	11W	NWNW	27	16N	11W	NESE
76F-30023900	Placid Creek	7.0	13	16N	16W	SWSW	10	16N	16W	NWNW
76F-30023901	Poorman Creek	7.0	8	13N	08W	NWSW	24	13N	08W	SENE
76G-30023902	Little Blackfoot River	17.0	30	09N	06W	NENW	12	08N	07W	SWNE
76G-30023903	Schwartz Creek	10.0	4	11N	17W	NWNW	8	11N	17W	SESW
76H-30023904	Lolo Creek	41.0	29	12N	22W	NENE	25	12N	23W	NENW
76H-30023905	South Fork Lolo Creek	15.0	6	11N	21W	NWNW	7	11N	21W	NWNW
76J-30023906	Wounded Buck Creek	11.0	17	29N	18W	SWNW	30	29N	18W	SWSW
76K-30023907	Bond Creek	6.0	24	25N	18W	NWNW	17	25N	17W	NWSE
76K-30023908	Cedar Creek	7.0	12	22N	18W	NENW	21	22N	18W	SESE
76K-30023909	Cold Creek	22.0	28	21N	17W	SWNE	33	21N	18W	NENW
76K-30023910	Elk Creek	25.0	16	20N	17W	NENE	23	20N	18W	SENW
76K-30023911	Goat Creek	11.0	17	23N	17W	NWSW	12	23N	17W	NWNE
76K-30023912	Groom Creek	2.5	12	25N	18W	SWSW	5	25N	17W	SE
76K-30023913	Hall Creek	2.5	11	25N	18W	SENE	11	25N	18W	NENE
76K-30023914	Lion Creek	19.0	8	22N	17W	SWNE	10	22N	16W	NWSW
76K-30023916	North Fork Lost Creek	6.0	27	25N	17W	NWSE	5	24N	16W	NESE
76K-30023917	Piper Creek	9.0	8	22N	17W	SWSW	33	22N	18W	NENW
76K-30023918	Scout Creek	1.5	12	23N	17W	NWNE	19	23N	16W	SESE
76K-30023919	South Fork Lost Creek	6.0	6	24N	16W	SWSW	19	24N	16W	NWSE
76LJ-30023920	Red Meadow Creek	16.0	7	35N	21W	SWNW	11	35N	22W	NWNW
76LJ-30023921	Trail Creek	37.0	34	37N	22W	SESE	28	37N	22W	SESW
76M-30023922	Rattlesnake Creek	17.0	2	13N	19W	NWNE	14	14N	18W	NENW
76M-30023923	Trout Creek	28.0	23	16N	26W	SWSW	5	15N	26W	NESW
76N-30023924	Bull River	29.0	14	28N	33W	NWNW	14	28N	33W	NENW
76N-30023925	Graves Creek	28.0	36	23N	30W	SWSW	36	23N	30W	NWNE
76N-30023926	Trout Creek	14.0	24	24N	32W	NENE	28	24N	32W	SWSW
76N-30023927	Vermilion River	110.0	14	24N	31W	SWSE	7	24N	30W	NWSW
Water Right Number	Source	Volume (AF/YR)	SEC	TWP	RGE	QTR SEC				
76M-30023928	Shoofly Meadow	50.75	4	14N	17W	SW				

B. **Priority Date.**

The priority date of each of the Forest Service Water Rights Recognized Under State Law created in Article V, section A., is the Effective Date of This Compact.

C. **Purpose of Use.**

Except for Water Right Number 76M-30023928, the purpose of use of each of the Forest Service Water Rights Recognized Under State Law created in Article V, section A., is fishery. The purpose of use for Water Right Number 76M-30023928, created in Article V, section A., is wildlife, which includes habitat.

D. **Period of Use.**

The period of use of each of the Forest Service Water Rights Recognized Under State Law created in Article V, section A., is January 1 to December 31.

E. **Limitation on Objections to Changes.**

A Forest Service Water Right Recognized Under State Law created in Article V, section A., shall not be the basis to preclude a change in point of diversion, means of diversion, or place of use of a senior, direct-from-source, stock water right within an allotment on National Forest System Lands if the change is for dispersing stock in the allotment and the proposed change does not expand historic consumptive use of the stock water right.

F. **Administration and Enforcement.**

The Forest Service Water Rights Recognized Under State Law created in Article V, section A., are appropriations under state law and, as such, will be administered by the State and enforced in accordance with state law. The United States, as owner and user of these water rights, is entitled to the same benefits and is subject to the same regulations as all other holders of a Water Right Recognized Under State Law.

G. **Concurrent With Other Instream Flow Uses.**

The Forest Service Water Rights Recognized Under State Law created in Article V, section A., are for instream uses or in situ nonconsumptive use, meaning that there is no diversion, impoundment, or withdrawal associated with the use and the use does not cause a net loss of water in the source of supply. The Forest Service Water Rights Recognized Under State Law created in Article V, section A., shall run Concurrently with other instream flow or in situ rights.

ARTICLE VI

APPLICATIONS FOR STATE WATER RESERVATIONS UNDER STATE LAW

A. **State Water Reservation.**

The Forest Service may apply for a state water reservation to maintain a minimum flow, volume, level, or quality of water on National Forest System Lands under 85-2-316, MCA, in all basins within the State including basins or subbasins closed to new appropriations on or after the Effective Date of This Compact, subject to the terms of this Compact, for any purpose authorized by federal law applicable to National Forest System Lands. Any purpose authorized by federal law applicable to National Forest System Lands shall be considered a beneficial use under state law for the purposes of this Compact but shall set no precedent as to whether such purposes are beneficial uses under state law outside the terms of this Compact. A state water reservation issued under 85-2-316, MCA, is a Water Right Recognized Under State Law.

B. **Specific Procedure in Limited Circumstances.**

1. (a) For a state water reservation application pursuant to Article VI, section A., when the purpose of the reservation is to maintain a minimum flow for fish and the amount requested is based on the Wetted Perimeter Methodology or other methodology adopted pursuant to Article VI, section B.1.(b), a correct and complete application shall constitute:

(i) conclusive evidence of the purpose of the reservation;

(ii) conclusive evidence of the need for the reservation;

(iii) prima facie evidence that the amount requested is accurate and suitable:

(A) at the lower inflection point of the Wetted Perimeter Methodology; or

(B) at the upper inflection point of the Wetted Perimeter Methodology or other methodology adopted pursuant to Article VI, section B.1.(b), when the purpose of the reservation is for an existing population of bull trout, westslope cutthroat trout, Yellowstone cutthroat trout, Columbia River redband trout, arctic grayling, or any other fish species listed in the future under the Endangered Species Act of 1973, 16 U.S.C. 1531, et seq.; and

(iv) prima facie evidence that the reservation is in the public interest.

(b) By mutual agreement of the Parties, the Department may propose an administrative rule under the Montana Administrative Procedure Act, Title 2, chapter 4, of the Montana Code Annotated, to establish a methodology, other than the Wetted Perimeter Methodology, for an application for a state water reservation to maintain a minimum flow under Article VI, section B.1.(a), for fish species identified in Article VI, section B.1.(a)(iii)(B). Rulemaking under this subsection shall not be considered a modification of this Compact. The Department may adopt a rule under this subsection only if it finds, based on scientific and technical evidence in the administrative record, that:

(i) the proposed methodology enjoys acceptance in the scientific community as a methodology for establishment of minimum flow for pertinent fish species based on evidence that includes the existence of peer-reviewed studies, testimony or publications by experts in the field, and previous use in Montana or another relevant location; and

(ii) the results of the proposed methodology with respect to the stream that is the subject of the application are either based on field data collected with respect to the stream or susceptible to verification based on field data.

2. For purposes of Article VI, section B., a correct and complete application shall be substantially in the form attached to this Compact as Appendix 3. Appendix 3 may be modified at any time by the consent of both Parties and shall not be considered a modification of the Compact.

3. For the purposes of Article VI, section B., the Department shall issue a state water reservation unless an objector proves by a preponderance of the evidence that:

(a) the amount of water under the Wetted Perimeter Methodology or other methodology adopted pursuant to Article VI, section B.1.(b), was not accurately measured or calculated, that the Wetted Perimeter Methodology or other methodology adopted pursuant to Article VI, section B.1.(b), could not suitably be applied to the stream reach applied for, or that there is not an existing population of the fish species set forth in Article VI, section B.1.(a)(iii)(B), identified in the application for state water reservation in the stream reach applied for; or

(b) for the public interest, there is a projected water development project:

(i) that is feasible;

(ii) that is reliably projected to be commenced within ten (10) years or within ten (10) years after a basin closure is removed;

(iii) in which the objector has or can reasonably obtain a possessory interest or the written consent of the Person or Party with the possessory interest in the property where the water is to be diverted, impounded, stored, transported, and put to beneficial use;

(iv) for which the amount of water needed for the project is reasonable;

(v) for which water needed for the project is not reasonably available from any other water source;

(vi) for which the water needed for the project, based on amount and period of use, would be unavailable if the proposed reservation was granted;

(vii) that would not be feasible with water either in a lesser amount or at a different location if the reservation was granted; and

(viii) that serves a significant public need.

4. If the Department determines that proofs under Article VI, section B.3.(a), are met or that proofs for all criteria under Article VI, section B.3.(b), are met, the Department may issue, modify, or deny the reservation or may subordinate the reservation to the actual development of the project identified in Article VI, section B.3.(b).

C. **General Provisions.**

1. The Forest Service's ability to apply for a state water reservation pursuant to Article VI in any basin or subbasin terminates thirty (30) years after the state court issues a final decree for that water basin under 85-2-234(1), MCA, or thirty (30) years after the Effective Date of This Compact, whichever is later. The termination of the Forest Service's ability to apply for a state water reservation pursuant to Article VI under this subsection shall not restrict the Forest Service's ability to apply for a water right in any process available to the Forest Service under state law, including 85-2-316, MCA, provided that, the terms of this Compact shall not apply.

2. A state water reservation issued to the Forest Service under Article VI shall not be the basis to preclude a change in point of diversion, means of diversion, or place of use of a senior, direct-from-source, stock water right within an allotment on National Forest System Lands if the change is for dispersing stock in the allotment and the proposed change does not expand historic consumptive use of the stock water right.

3. In any contested case proceeding held under the Montana Administrative Procedure Act, Title 2, chapter 4, of the Montana Code Annotated, pursuant to this Compact, the common law and statutory rules of evidence shall apply only upon stipulation of all entities who are involved in a proceeding.

4. Any appeal of an administrative decision under Article VI shall be in state court and shall be filed at the First Judicial District in Helena, and the review shall be conducted according to the procedures for judicial review of contested cases under the Montana Administrative Procedure Act, Title 2, chapter 4, of the Montana Code Annotated.

5. A state water reservation issued to the Forest Service pursuant to Article VI is not subject to periodic review by the Department as set forth in 85-2-316(10), MCA. A state water reservation issued to the Forest Service pursuant to Article VI shall not be reallocated to another qualified reservant with a retained priority date as set forth in 85-2-316(11), MCA. Unless provided in this Compact, all other provisions of state law apply to a state water reservation issued to the Forest Service.

D. **Administration and Enforcement.**

Any state water reservation issued pursuant to Article VI is a Water Right Recognized Under State Law and, as such, will be administered by the State and enforced in accordance with state law. The United States, as owner and user of these water rights, is entitled to the same benefits and is subject to the same regulations of water use as all other holders of a Water Right Recognized Under State Law.

E. **Concurrent With Other Instream Flow Uses.**

Any state water reservation issued pursuant to Article VI is a Water Right Recognized Under State Law for instream uses or in situ nonconsumptive uses, meaning that there is no diversion, impoundment, or withdrawal associated with the use and the use does not cause a net loss of water in the source of supply. Unless otherwise provided in the terms and conditions, a state water

reservation issued pursuant to Article VI shall run Concurrently with other instream flow rights.

F. **Department Reporting to Montana Legislature.**

For the period of time set forth in Article VI, section C.1., the Department shall biennially report to the Environmental Quality Council or other appropriate legislative committee the state water reservations applied for by the Forest Service since the previous report and the Department action on applications for state water reservations by the Forest Service since the previous report.

ARTICLE VII

GENERAL PROVISIONS

A. **No Effect on Tribal Rights or Other Federal Reserved Water Rights.**

1. The relationship between the water rights of the Forest Service described in this Compact and any rights to water of an Indian tribe in Montana or of any federally derived water right of an individual or of the United States on behalf of such tribe or individual shall be determined by the rule of priority. The Parties to this agreement recognize that the water rights described in This Compact are junior to any tribal water rights with a priority date before the Effective Date of This Compact, including aboriginal rights, if any, in the basins affected.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than National Forest System Lands.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any Indian tribes and tribal members in Montana.

4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian tribe regarding boundaries or property interests in the State of Montana.

B. **General Disclaimers.**

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of federal reserved water rights or the interpretation or administration of future compacts between the United States and the State or between the United States and any other state;

2. as a waiver by the United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to state law on National Forest System Land in the basins affected by this Compact or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under state law in the basins affected by this Compact;

3. to establish a precedent for other agreements between the State and the United States or an Indian tribe;

4. to determine the relative rights, inter sese, of Persons using water under the authority of state law or to limit the rights of the Parties or a Person to litigate an issue not resolved by this Compact;

5. to create or deny substantive rights through headings or captions used in this Compact;

6. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of This Compact;

7. with respect to federal reserved water rights, to affect the right of the State to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs pursuant to a ruling by a court of competent jurisdiction or Act of Congress;

8. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the Forest Service and does not affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;

9. to prevent the United States from seeking a permit to appropriate water under state law from a source not closed to new permits by law; or

10. to expand or restrict rights of the United States under federal law except as expressly provided in this Compact.

C. **Reservation of Rights.**

The Parties expressly reserve all rights not granted, described, or relinquished in this Compact.

D. **Severability.**

Except as provided in Article VIII, section C., the provisions of this Compact are not severable.

E. **Multiple Originals.**

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

F. **Notice.**

Unless otherwise specifically provided for in this Compact, service of notice required under this Compact, except service in litigation, shall be:

1. State: Upon the Director of the Department or other officials that the Director may designate in writing.

2. United States: Upon the Secretary of Agriculture or other officials that the Secretary may designate in writing.

ARTICLE VIII

FINALITY OF COMPACT AND DISMISSAL OF CLAIMS

A. **Binding Effect.**

1. The Effective Date of This Compact is the date of the ratification of this Compact by the Montana Legislature, written approval by the United States Department of Agriculture, or written approval by the United States Department of Justice, whichever occurs later. Subject to Article VIII, section C., once effective, all of the provisions of this Compact shall be binding on:

(a) the State and a Person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the State to the use of water; and

(b) except as otherwise provided in Article VII, section A., the United States and a Person or entity of any nature whatsoever using, claiming, or in any

manner asserting a right under the authority of the United States to the use of water.

2. Following the Effective Date of This Compact, this Compact shall not be modified without the consent of both Parties. Unilateral substantive modification of the terms of this Compact by either Party, as determined by a court of competent jurisdiction, shall render this Compact voidable at the election of the other Party.

3. On approval of this Compact by a court of competent jurisdiction and entry of a decree by such court confirming the rights described in this Compact, this Compact and such rights are binding on all Persons bound by the final order of the court.

4. If an objection to this Compact is sustained under 85-2-233, MCA, this Compact shall be voidable by action of and without prejudice to either Party.

B. **Enforcement of Compact.**

1. Either Party may seek enforcement of the terms of this Compact in a court of competent jurisdiction, subject to the limitations of remedies provided in Article VIII, section C.

2. When the enforcement action involves issues of notice or reporting required under Article III, sections C.3.(c) and E., the State shall provide written notice to the Forest Service and allow a reasonable opportunity to resolve the issue prior to filing an enforcement action.

3. Except as provided in Article VIII, section C., the remedy for an action for enforcement of the terms of this Compact shall not include termination of the Compact in whole or in part.

C. **Exclusive Remedy for Changes in State Law.**

1. For the time period set forth in subsection 11, if the State enacts a law that results in an alleged material impairment of any principle set forth in Article IV, section A.2., A.3., or A.4., the United States may, within 90 days of the effective date of the law, provide notice to the State of the alleged material impairment. If the United States fails to provide notice within 90 days of the effective date of the law, the United States is barred from taking any action under this section regarding alleged material impairment by enactment of the law.

2. Following the receipt of notice provided in subsection 1, the Parties shall meet within 30 days to discuss the alleged material impairment. The Parties may each appoint a negotiator and may utilize a neutral third party to discuss resolution of the alleged material impairment.

3. If the State does not agree that the legislation has resulted in material impairment within 90 days or such time as the Parties may agree or if no other alternative resolution has been found, the United States may seek a judgment in a court of competent jurisdiction declaring that the specified act of the Montana Legislature has resulted in material impairment of a principle set forth in Article IV, section A.2., A.3., or A.4. The only remedy available under this subsection is a declaratory judgment as to whether or not the change in state law results in a material impairment of a principle set for in Article IV, section A.2., A.3., or A.4. The Parties shall jointly request the court to retain jurisdiction through all proceedings under this section.

4. If the State agrees or if a court finds that changes to state law have materially impaired a principle set forth in Article IV, section A.2., A.3., or A.4., the United States may take no action under subsection 5 until the final

adjournment of the next regular session of the Montana Legislature. If the material impairment is cured through enacted legislation to the satisfaction of the United States, the United States is barred from taking further action under this section.

5. If, in the opinion of the United States, the State has failed to enact legislation that cures a material impairment as provided in subsection 4, the United States may initiate severance and termination of portions of the Compact as provided in subsection 8 by sending notice to the State within 90 days from the end of the regularly scheduled legislative session. If this notice is not served within the 90-day period, the United States is barred from severing and terminating portions of the Compact based on material impairment.

6. If the State has enacted a law to cure the material impairment and the United States does not agree that the material impairment has been cured by the enactment, the State shall have the opportunity within 90 days from receipt of the notice served by the United States to seek a judgment declaring that the specific enactment has cured the material impairment of a principle set forth in Article IV, section A.2., A.3., or A.4., either by:

(a) invoking any retained jurisdiction of the court; or

(b) if no court has retained jurisdiction over the dispute, seeking a judgment in a court of competent jurisdiction.

7. If the State does not file an action within the 90-day period provided in subsection 6, the notice served by the United States becomes effective at the expiration of the 90-day period. If the State files for declaratory judgment and the court finds that legislation enacted by the State cures the material impairment, then the notice served by the United States does not operate to sever or terminate portions of the Compact under subsection 8. If the court finds that the enacted legislation does not cure the material impairment, the notice served by the United States becomes effective when the court's judgment becomes final either through the exhaustion of all available appeals or the running of the time for taking an appeal.

8. If the United States elects to sever and terminate portions of the Compact under this section, the Parties agree that Article IV, section A.2., A.3., and A.4., and Article VI together and in their entirety are severed from the Compact and all rights and obligations under those provisions are terminated. All other provisions of this Compact remain in force and effect. If the portions of the Compact are severed and terminated, the Parties agree that the United States shall retain all water rights contained in Articles II and V and state water reservations granted to the United States prior to severance and termination under this subsection.

9. If the United States severs and terminates portions of the Compact as provided in subsection 8, the United States may file federal reserved water right claims in the state general stream adjudication, in the Montana Water Court or other state court that succeeds to the Montana Water Court's jurisdiction to conduct the general stream adjudication, for instream flow for any stream on which the United States has not been granted a Water Right Recognized Under State Law for an instream flow or an in situ right. The United States shall file all federal reserved water right claims for instream flow with the state court within twelve (12) months after severance and termination of portions of the Compact become effective. The United States agrees that, regardless of the dates of the reservation of the National Forest System Lands for which a federal reserved

water right is claimed, the priority date of the federal reserved water right claim will be the Effective Date of This Compact.

10. The remedy provided in Article VIII, section C., is the exclusive remedy for actions brought as a result of changes to state law that materially impair the provisions of Article IV, section A.2., A.3., or A.4. There is no remedy under this Compact for changes to state law except as applied under this section to Article IV, section A.2., A.3., and A.4., and as provided in Article VIII, section A.2.

11. This section and the procedure and remedy provided under this section shall remain in effect for a period of thirty (30) years after the state court issues a final decree for all water basins under 85-2-234(1), MCA, that contain National Forest System Lands. This period of time under this subsection is tolled for any period of time during which state law materially impaired the interest of the United States as agreed to by the State or determined by a court of competent jurisdiction. After this period, all rights and remedies under this section terminate.

D. **Limits on Article IV, Section B.**

Article IV, section B., is not an enforceable term of this Compact, and changes to the provisions of state law as described in Article IV, sections B.1. and B.2., after the Effective Date of This Compact shall not give rise to any cause of action in law or in equity or provide any remedy under this Compact.

E. **State Court Filing.**

Subject to the following stipulations and within one hundred eighty (180) days of the Effective Date of This Compact, the Parties shall submit this Compact to an appropriate state court having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666, for approval in accordance with state law and for the incorporation of the federal reserved water rights described in this Compact into a decree or decrees entered in the court. The Parties understand and agree that the submission of this Compact to a state court, as provided for in this Compact, does not expand or restrict the jurisdiction of the state court or expand or restrict in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

F. **Dismissal of Filed Claims.**

At the time the state courts approve the federal reserved water rights described in Article II of this Compact and enter a decree or decrees confirming the rights described, such courts shall dismiss, with prejudice, all of the water right claims specified in Appendix 2 of this Compact for National Forest Service Lands. If this Compact fails approval or a federal reserved water right described in this Compact is not confirmed, the specified claims shall not be dismissed.

G. **Consent Decree.**

This Compact may be filed as a consent decree in federal court if it is finally determined in a judgment binding on the State of Montana that the state courts lack jurisdiction over some or all of the water rights described in this Compact. Within one (1) year of such judgment, the United States agrees to commence such proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the water rights described in this Compact.

H. **Settlement of Claims.**

The Parties intend that the water rights described in this Compact, together with the rights and obligations set forth in Article IV, are in full and final

settlement of all federal reserved water right claims filed by the United States or that could have been filed by the United States as of the Effective Date of This Compact for the primary purposes of the National Forest System Lands in the State of Montana. Pursuant to this settlement, the United States hereby relinquishes forever on the Effective Date of This Compact all said federal reserved water right claims.

I. **Defense of Compact.**

The Parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the ____ day of _____, 2007.

Section 2. Change in appropriation right authorization for instream flow — United States department of agriculture, forest service. (1) (a) The department shall accept and process an application by the United States department of agriculture, forest service for a change in appropriation right under the provisions of 85-2-402 and this section to protect, maintain, or enhance streamflows to benefit the fishery or other resources on national forest system lands.

(b) As used in this section, "national forest system lands" has the same meaning as that provided in [section 1, Article I].

(c) To change an appropriation right, the United States department of agriculture, forest service must own the appropriation right that it seeks to change to an instream flow right, the diversion or withdrawal that is to be changed to instream flow must be located within or immediately adjacent to the exterior boundaries of national forest system lands on the date provided in [section 1, Article IV.B.2.], and the stream reach in which the streamflow is to be protected, maintained, or enhanced must be located within or immediately adjacent to the exterior boundaries of national forest system lands as of the date provided in [section 1, Article IV.B.2.]. The application for a change in appropriation right must:

(i) include specific information on the length and location of the stream reach in which the streamflow is to be protected, maintained, or enhanced; and

(ii) provide a detailed streamflow measuring plan that describes the point where and the manner in which the streamflow must be measured.

(2) In addition to the requirements of 85-2-402, when applying for a change in appropriation right pursuant to this section, the United States department of agriculture, forest service, shall prove by a preponderance of the evidence that:

(a) the change in appropriation right authorization to protect, maintain, or enhance streamflows to benefit the fishery or other resources, as measured at a specific point, will not adversely affect the water rights of other persons; and

(b) the amount of water for the proposed instream flow use is needed to protect, maintain, or enhance streamflows to benefit the fishery or other resources.

(3) The proposed method of measurement of the water to protect, maintain, or enhance streamflows to benefit the fishery or other resources must be approved by the department before a change in appropriation right may be approved.

(4) The department is not responsible for costs associated with installing devices or providing personnel to measure streamflows according to the measurement plan submitted under this section.

(5) If an appropriation right is changed pursuant to this section, the priority of the appropriation right remains the same as the appropriation right that was changed.

(6) A change in appropriation right authorization under this section does not create a right of access across private property or allow any infringement of private property rights.

(7) The maximum quantity of water that may be subject to a change in appropriation right authorization to protect, maintain, or enhance streamflows to benefit the fishery or other resources is the amount historically diverted. However, only the amount historically consumed or a smaller amount if specified by the department in the change in appropriation right authorization may be used to protect, maintain, or enhance streamflows to benefit the fishery or other resources below the existing point of diversion.

(8) The department may modify or revoke the change in appropriation right up to 10 years after it is approved if an appropriator with a priority of appropriation that is earlier than the change in appropriation right that was granted submits new evidence that was not available at the time the change in appropriation right was approved that proves by a preponderance of evidence that the appropriator's water right is adversely affected.

Section 3. Section 85-2-102, MCA, is amended to read:

"85-2-102. (Temporary) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service,:

(i) instream flows and in situ use of water created in [section 1, Article V]; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with [section 2]; or

~~(d)~~*(e)* temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436; or

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(10) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(11) "Ground water" means any water that is beneath the ground surface.

(12) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(13) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(14) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(15) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(16) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(17) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(18) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department

should proceed with the action requested by the person providing the information.

(19) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(20) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(21) "Water division" means a drainage basin as defined in 3-7-102.

(22) "Water judge" means a judge as provided for in Title 3, chapter 7.

(23) "Water master" means a master as provided for in Title 3, chapter 7.

(24) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(25) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)

85-2-102. (Effective July 1, 2009) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the United States department of agriculture, forest service,:

(i) instream flows or in situ use of water created in [section 1, Article V]; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with [section 2]; or

~~(c)~~*(d)* temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; or

(c) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(9) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(10) "Ground water" means any water that is beneath the ground surface.

(11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(13) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(14) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(15) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(16) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(17) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(18) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(19) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(20) "Water division" means a drainage basin as defined in 3-7-102.

(21) "Water judge" means a judge as provided for in Title 3, chapter 7.

(22) "Water master" means a master as provided for in Title 3, chapter 7.

(23) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(24) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 4. Section 85-2-302, MCA, is amended to read:

"85-2-302. Application for permit — *definition.* (1) Except as provided in 85-2-306, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works except by applying for and receiving a permit from the department.

(2) The department shall adopt rules that are necessary to determine whether or not an application is correct and complete, based on the provisions applicable to issuance of a permit under this part. The rules must be adopted in compliance with Title 2, chapter 4.

(3) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.

(4) *(a) Subject to subsection (4)(b), the* ~~The~~ applicant shall submit a correct and complete application. The determination of whether an application is correct and complete must be based on rules adopted under subsection (2) that are in effect at the time the application is submitted.

(b) If an application is for a permit to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, the application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(c) As used in this part, "national forest system lands" has the same meaning as that provided in [section 1, Article I].

(5) The department shall notify the applicant of any defects in an application within 180 days. The defects must be identified by reference to the rules adopted under subsection (2). If the department does not notify the applicant of any defects within 180 days, the application must be treated as a correct and complete application.

(6) An application does not lose priority of filing because of defects if the application is corrected or completed within 30 days of the date of notification of the defects or within a further time as the department may allow, but not to exceed 90 days from the date of notification. If an application is made correct and complete after the mandated time period, but within 90 days of the date of notification of the defects, the priority date of the application is the date the application is made correct and complete.

(7) An application not corrected or completed within 90 days from the date of notification of the defects is terminated."

Section 5. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) *(a) Except as provided in subsection (1)(b), ground* ~~Ground~~ water may be appropriated only by

a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works. ~~or, if~~

(b) If another person has rights in the ground water development works, *water may be appropriated* with the written consent of the person with those property rights *or, if the ground water development works are on national forest system lands, with any prior written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.*

(c) If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

(a) according to a permit received pursuant to 85-2-508; or

(b) according to the requirements of an order issued pursuant to 85-2-507.

(3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.

(b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiling a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification *or a written federal special use authorization* as necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

(b) the appropriation is less than 30 acre-feet a year;

(c) the appropriation is from a source other than a perennial flowing stream; and

(d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) *(a)* Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. ~~Upon~~ *Subject to subsection (7)(b), upon* receipt of a correct and complete application for a ~~stockwater~~ *stock water* provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(b) If the impoundment or pit is on national forest system lands, an application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113."

Section 6. Section 85-2-308, MCA, is amended to read:

"85-2-308. Objections. (1) (a) An objection to an application under this chapter must be filed by the date specified by the department under 85-2-307(2).

(b) The objection to an application for a permit must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-311 are not met.

(2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-402 *and [section 2], if applicable,* are not met.

(3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.

(4) For an application for a reservation of water, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-316 are not met.

(5) An objector to an application under this chapter shall file a correct and complete objection on a form prescribed by the department within the time period stated on the public notice associated with the application. In order to assist both applicants and objectors, the department shall adopt rules in accordance with this chapter delineating the components of a correct and complete objection. For instream flow water rights for fish, wildlife, and recreation, the rules must require the objector to describe the reach or portion of the reach of the stream or river subject to the instream flow water right and the beneficial use that is adversely affected and to identify the point or points where the instream flow water right is measured and monitored. The department shall notify the objector of any defects in an objection. An objection not corrected or completed within 15 days from the date of notification of the defects is terminated.

(6) An objection is valid if the objector has standing pursuant to subsection (3), has filed a correct and complete objection within the prescribed time period, and has stated the applicable information required under this section and rules of the department."

Section 7. Section 85-2-310, MCA, is amended to read:

"85-2-310. Action on application for permit or change in appropriation right. (1) The department shall grant, deny, or condition an application for a permit or change in appropriation right in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received. However, in either case the time may be extended upon agreement of the applicant or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, may be extended by not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons for the extension by first-class mail upon the applicant and each person who has filed an objection as provided by 85-2-308.

(2) If an application is to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, any application approved by the department is subject to any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of the water applied for and any terms, conditions, and limitations related to the use of water contained in any special use authorization required by federal law.

~~(2)~~*(3)* ~~However, an~~ *Except as provided in subsection (2), an* application may not be denied or approved in a modified form or upon terms, conditions, or limitations specified by the department, unless the applicant is first granted an opportunity to be heard. If ~~no~~ *an* objection is *not* filed against the application but the department is of the opinion that the application should be denied or approved in a modified form or upon terms, conditions, or limitations specified by it, the department shall prepare a statement of its opinion and its reasons for the opinion. The department shall serve a statement of its opinion by first-class mail upon the applicant, with a notice that the applicant may obtain a hearing by filing a request within 30 days after the notice is mailed. The notice must further state that the application will be modified in a specified manner or denied unless a hearing is requested.

~~(3)~~*(4)* The department may cease action upon an application for a permit or change in appropriation right and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for either of these reasons must be accompanied by a statement of the reasons for which it was returned, and for a permit application there is not a right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection is a final decision of the department.

~~(4)~~*(5)* For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable timeline for the completion of the project and the actual application of the water to a beneficial use.

(iv) for appropriations not covered in subsection (4)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and

(v) if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement costs or fees, if any, are not paid as required by 85-2-124."

Section 8. Section 85-2-311, MCA, is amended to read:

"85-2-311. Criteria for issuance of permit. (1) A permit may be issued under this part prior to the adjudication of existing water rights in a source of supply. In a permit proceeding under this part, there is no presumption that an applicant for a permit cannot meet the statutory criteria of this section prior to the adjudication of existing water rights pursuant to this chapter. In making a determination under this section, the department may not alter the terms and conditions of an existing water right or an issued certificate, permit, or state water reservation. Except as provided in subsections (3) and (4), the department shall issue a permit if the applicant proves by a preponderance of evidence that the following criteria are met:

(a) (i) there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate; and

(ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

(B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and

(C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

(b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that the applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the applicant has a possessory interest~~,~~ or the written consent of the person with the possessory interest~~,~~ in the property where the water is to be put to beneficial use*, or if the proposed use has a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit*;

(f) the water quality of a prior appropriator will not be adversely affected;

(g) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and

(h) the ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(2) The applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been met only if a valid objection is filed. A valid objection

must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not be met. For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

(3) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the proposed appropriation is a reasonable use. A finding must be based on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands, such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (4) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

(5) To meet the preponderance of evidence standard in this section, the applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the applicant, the department, the U.S. geological survey, or the U.S. natural resources conservation service and other specific field studies.

(6) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section.

(7) The department may adopt rules to implement the provisions of this section."

Section 9. Section 85-2-312, MCA, is amended to read:

"85-2-312. Terms of permit. (1) *(a)* The department may issue a permit for less than the amount of water requested, but may not issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. The department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria listed in 85-2-311 *and subject to subsection (1)(b)*, and it may issue temporary or seasonal permits. A permit must be issued subject to existing rights and any final determination of those rights made under this chapter.

(b) If the permit is for use of water with a point of diversion, conveyance, or place of use on national forest system lands, the permit is subject to any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of the water under the permit and any terms, conditions, and limitations related to the use of water contained in any special use authorization required by federal law.

(2) The department shall specify in the permit or in any authorized extension of time provided in subsection (3), the time limits for commencement

of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. The department shall issue the permit or authorized extension of time subject to the terms, conditions, restrictions, and limitations it considers necessary to ensure that the work on the appropriation is commenced, conducted, and completed and that the water is actually applied in a timely manner to the beneficial use specified in the permit.

(3) The department shall by rule or by condition to a permit establish a process allowing for the extension of the time limits specified in the permit for commencement of the appropriation works, completion of construction, and actual application of water to the proposed beneficial use. If ~~a permit~~ *commencement of the appropriation works, completion of construction, or the actual application of water to the proposed beneficial use* is not completed within the time limit specified or within an extension of that time limit, the permit is void upon lapse of the time limit.

(4) The original of the permit must be sent to the permittee, and a copy must be kept in the office of the department in Helena."

Section 10. Section 85-2-316, MCA, is amended to read:

"85-2-316. State reservation of waters. (1) The state, any political subdivision or agency of the state, or the United States or any agency of the United States may apply to the department to acquire a state water reservation for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at periods or for a length of time that the department designates.

(2) (a) Water may be reserved for existing or future beneficial uses in the basin where it is reserved, as described by the following basins:

(i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) A state water reservation may be made for an existing or future beneficial use outside the basin where the diversion occurs only if stored water is not reasonably available for water leasing under 85-2-141 and the proposed use would occur in a basin designated in subsection (2)(a).

(3) (a) The department shall adopt rules that are necessary to determine whether or not an application is correct and complete based on the provisions

applicable to issuance of a state water reservation. The rules must be adopted in compliance with Title 2, chapter 4.

(b) An applicant shall submit a correct and complete application. The determination of whether an application is correct and complete must be based on rules adopted under this subsection (3) that are in effect at the time the application is submitted. The department shall proceed in accordance with 85-2-302 with regard to any defects in the application.

(c) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.

~~(3)~~*(d)* Upon receiving a correct and complete application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided for in 85-2-309, the department shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, must be paid by the applicant. In addition, a reasonable proportion of the department's cost of preparing an environmental ~~impact statement~~ *analysis* must be paid by the applicant unless waived by the department upon a showing of good cause by the applicant.

(4) (a) ~~The~~ *Except as provided in [section 1], the* department ~~may not adopt an order reserving water unless~~ *shall issue a state water reservation if* the applicant establishes to ~~the satisfaction of~~ the department by a preponderance of evidence:

(i) the purpose of the reservation;

(ii) the need for the reservation;

(iii) the amount of water necessary for the purpose of the reservation;

(iv) that the reservation is in the public interest.

(b) In determining the public interest under subsection (4)(a)(iv), the department ~~may not adopt an order reserving water for withdrawal and transport for use outside the state unless~~ *shall issue a water reservation for withdrawal and transport for use outside the state if* the applicant proves by clear and convincing evidence that:

(i) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(ii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(i) and (4)(b)(ii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a state water reservation to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, use, and reservation of water.

(5) If the purpose of the state water reservation requires construction of a storage or diversion facility, the applicant shall establish to ~~the satisfaction of~~ the department by a preponderance of evidence that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(6) The department shall limit any state water reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams ~~may be allocated at the discretion of the department~~ *are not subject to the limit under this subsection.*

(7) ~~After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may issue the permit subject to terms and conditions that it considers necessary for the protection of the objectives of the reservation.~~ *A state water reservation issued under this section has a priority of appropriation dating from the filing of a correct and complete application with the department.*

(8) (a) A person desiring to use water reserved to a conservation district for agricultural purposes shall make application for the use with the district, and the district, upon approval of the application, shall inform the department of the approved use and issue the applicant an authorization for the use. The department shall maintain records of all uses of water reserved to conservation districts and be responsible, when requested by the districts, for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the preparation and processing of the applications for the conservation districts. The department shall, within its staffing and budgeting limitations, complete any feasibility study requested by the districts within 12 months of the time that the request was made. The department shall extend the time allowed to develop a plan identifying projects for using a district's reservation as long as the conservation district makes a good faith effort, within its staffing and budget limitations, to develop a plan.

(b) Upon actual application of water to the proposed beneficial use, the authorized user shall notify the conservation district. The notification must contain a certified statement by a person with experience in the design, construction, or operation of project works for agricultural purposes describing how the reserved water was put to use. The department or the district may then inspect the appropriation to determine if it has been completed in substantial accordance with the authorization.

~~(9) Except as provided in 85-2-331, the priority of appropriation of a state water reservation and the relative priority of the reservation to permits with a later priority of appropriation must be determined according to this subsection (9), as follows:~~

~~(a) A state water reservation under this section has a priority of appropriation dating from the filing with the department of a notice of intention to apply for a state water reservation in a basin in which no other notice of intention to apply is currently pending. The notice of intention to apply must specify the basin in which the applicant is seeking a state water reservation.~~

~~(b) Upon receiving a notice of intention to apply for a state water reservation, the department shall identify all potential state water reservation applicants in the basin specified in the notice and notify each potential applicant of the opportunity to submit an application and to receive a state water reservation with the priority of appropriation as described in subsection (9)(a).~~

~~(c) To receive the priority of appropriation described in subsection (9)(a), the applicant shall submit a correct and complete state water reservation application within 1 year after the filing of the notice of intention to apply. Upon a showing of good cause, the department may extend the time for preparing the application.~~

~~(d) The department may by order subordinate a state water reservation to a permit or a certificate for ground water development issued pursuant to this part if:~~

~~(i) the permit application or the notice of completion of ground water development was accepted by the department before the date of the order granting the reservation;~~

~~(ii) the effect of subordinating the reservation to one or more permits or certificates for ground water development does not interfere substantially with the purpose of the reservation; and~~

~~(iii) in the case of a certificate for ground water development, the reservant consents to the subordination.~~

~~(e) The department shall by order establish the relative priority of state water reservations approved under this section that have the same day of priority. A state water reservation may not adversely affect any rights in existence at that time.~~

(9) A state water reservation issued under this section may not adversely affect any rights in existence at that time. The department may issue a state water reservation subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria of this section.

(10) ~~The~~ *Upon issuing a state water reservation for the purpose of maintaining a minimum flow, level, or quality of water, the appropriation of water is complete. Except as provided in [section 1], the* department shall, periodically but at least once every 10 years, review existing state water reservations to ensure that the objectives of the reservations are being met. When the objectives of a state water reservation are not being met, the department may extend, revoke, or modify the reservation. Any undeveloped water made available as a result of a revocation or modification under this subsection is available for appropriation by others pursuant to this part.

(11) ~~The~~ *Except as provided in [section 1], the* department may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate the state water reservation or portion of the reservation to an applicant who is a qualified reservant under this section. Reallocation of water reserved pursuant to a state water reservation may be made by the department following notice and hearing if the department finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water may not adversely affect the priority date of the reservation, and the reservation retains its priority date despite reallocation to a different entity for a different use. The department may not reallocate water

reserved under this section on any stream or river more frequently than once every 5 years.

(12) A reservant may not make a change in a state water reservation under this section, except as permitted under 85-2-402 and this subsection. If the department approves a change, the department shall give notice and require the reservant to establish that the criteria in subsection (4) will be met under the approved change.

(13) A state water reservation may be transferred to another entity qualified to hold a reservation under subsection (1). Only the entity holding the reservation may initiate a transfer. The transfer occurs upon the filing of a water right ownership update form with the department, together with an affidavit from the entity receiving the reservation establishing that the entity is a qualified reservant under subsection (1), that the entity agrees to comply with the requirements of this section and the conditions of the reservation, and that the entity can meet the objectives of the reservation as granted. If the transfer of a state water reservation involves a change in an appropriation right, the necessary approvals must be acquired pursuant to subsection (12).

(14) This section does not vest the department with the authority to alter a water right that is not a state water reservation.

(15) The department shall undertake a program to educate the public, other state agencies, and political subdivisions of the state as to the benefits of the state water reservation process and the procedures to be followed to secure the reservation of water. The department shall provide technical assistance to other state agencies and political subdivisions in applying for reservations under this section.

(16) Water reserved under this section is not subject to the state water leasing program established under 85-2-141."

Section 11. Section 85-2-319, MCA, is amended to read:

"85-2-319. Permit action in highly appropriated basins or subbasins. (1) With regard to a highly appropriated basin or subbasin, *except as provided in [section 1],* the legislature may by law preclude permit applications or the department may by rule reject permit applications or modify or condition permits already issued.

(2) A rule may be adopted under this section only upon a petition that is signed by at least 25% or 10, whichever is less, of the users of water in the source of supply within a basin or subbasin or upon petition of the department of environmental quality that alleges facts under subsection (2)(d). The petition must be in a form prescribed by the department and must allege facts showing that throughout or at certain times of the year or for certain beneficial uses:

(a) there are no unappropriated waters in the source of supply;

(b) the rights of prior appropriators will be adversely affected;

(c) further uses will interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved; or

(d) in the case of a petition filed by the department of environmental quality:

(i) the water quality of an appropriator will be adversely affected by the issuance of permits;

(ii) further use will not be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); or

(iii) the ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will be adversely affected by the issuance of permits.

(3) Within 60 days after submission of a petition, the department shall:

(a) deny the petition in writing, stating its reasons for denial;

(b) inform the petitioners that the department shall study the allegations further before denying or proceeding further with the petition; or

(c) initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.

(4) Title 2, chapter 4, parts 1 through 4, govern rulemaking proceedings conducted under this section, except that in addition to the notice requirements of those parts, the department notice of the rulemaking hearing must be published at least once in each week for 3 successive weeks, not less than 30 days before the date of the hearing, in a newspaper of general circulation in the county or counties in which the source is located. The department shall serve by mail a copy of the notice, not less than 30 days before the hearing, upon each person or public agency known from the examination of the records of the department to be a claimant, appropriator, or permitholder of water in the source.

(5) The department may adopt rules to implement the provisions of this section."

Section 12. Section 85-2-331, MCA, is amended to read:

"85-2-331. Reservations within Missouri River basin and Little Missouri River basin. (1) ~~The~~ *Except as provided in [section 1], the* state, an agency or political subdivision of the state, or the United States or an agency of the United States that desires to apply for a state water reservation in the Missouri River basin or in the Little Missouri River basin shall file an application pursuant to 85-2-316 no later than:

(a) July 1, 1989, for reservation of water above Fort Peck dam; or

(b) July 1, 1991, for reservation of water below Fort Peck dam and in the Little Missouri River basin.

(2) Subject to legislative appropriation, the department shall provide technical and financial assistance to other state agencies and political subdivisions in applying for state water reservations within the Missouri River basin and the Little Missouri River basin.

(3) *Except as provided in [section 1], the department shall:*

(a) ~~The department shall~~ make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1989, for state water reservations in the Missouri River basin above Fort Peck dam.

(b) ~~The department shall~~ make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1991, for state water reservations in the Missouri River basin below Fort Peck dam and in the Little Missouri River basin.

(c) ~~The department shall~~ determine which applications or portions of applications are considered to be above or below Fort Peck dam.

(4) ~~State~~ *Except as provided in [section 1], state* water reservations approved by the department under this section have a priority date of July 1, 1985, in the Missouri River basin and a priority date of July 1, 1989, in the Little Missouri River basin. If the department issued a permit under Title 85, chapter 2, part 3, prior to the granting of a state water reservation under this section, the department may subordinate the state water reservation to the permit if it finds that the subordination does not interfere substantially with the purpose of any state water reservation. If the department issued a certificate for ground water development under Title 85, chapter 2, part 3, prior to the granting of a reservation under this section, the department may subordinate the reservation to the certificate if it finds that the subordination does not interfere substantially with the purpose of any reservation and the reservant consents to the subordination. The department shall by order establish the relative priority of applications approved under this section."

Section 13. Section 85-2-336, MCA, is amended to read:

"85-2-336. Basin closure — exception. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water within the Upper Clark Fork River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application filed prior to January 1, 2000, for a permit to appropriate water to conduct response actions or remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or Title 75, chapter 10, part 7, at sites designated as of January 1, 1994. The total flow rates for all permits issued under this subsection (2)(b) may not exceed 10 cubic feet per second. A permit issued to conduct response actions or remedial actions may not be used for dilution and must be limited to a term not to exceed the necessary time to complete the response or remedial action, and the permit may not be transferred to any person for any purpose other than the designated response or remedial action.

(c) an application for a permit to appropriate water for stock use;

(d) an application to store water; ~~or~~

(e) an application submitted pursuant to [section 1, Article VI]; or

~~(e)~~*(f)* an application for power generation at existing hydroelectric dams. The department may not approve a permit for power generation if approval results in additional consumption of water.

(3) ~~Applications~~ *Except as provided in [section 1], applications* for state water reservations in the Upper Clark Fork River basin filed pursuant to 85-2-316 and pending as of May 1, 1991, have a priority date of May 1, 1991. The filing of a state water reservation application does not provide standing to object under 85-2-402.

(4) ~~The~~ *Except as provided in [section 1], the* department may not process or approve applications for state water reservations in the Upper Clark Fork River basin filed pursuant to 85-2-316."

Section 14. Section 85-2-341, MCA, is amended to read:

"85-2-341. Basin closure — exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not

process or grant an application for a permit to appropriate water or for a state water reservation to reserve water within the Jefferson River basin or Madison River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows;

(e) an application submitted pursuant to [section 1, Article VI]; or

~~(e)~~*(f)* temporary emergency appropriations as provided for in 85-2-113(3)."

Section 15. Section 85-2-343, MCA, is amended to read:

"85-2-343. Basin closure — exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the upper Missouri River basin until the final decrees have been issued in accordance with part 2 of this chapter for all of the subbasins of the upper Missouri River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows;

(e) an application for a permit to use water from the Muddy Creek drainage, which drains to the Sun River, if the proposed use of water will help control erosion in the Muddy Creek drainage;

(f) an application submitted pursuant to [section 1, Article VI]; or

~~(f)~~*(g)* temporary emergency appropriations as provided for in 85-2-113(3)."

Section 16. Section 85-2-344, MCA, is amended to read:

"85-2-344. Bitterroot River subbasin temporary closure — definitions — exceptions. (1) Unless the context requires otherwise, in this section, the following definitions apply:

(a) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(b) "Bitterroot River basin" means the drainage area of the Bitterroot River and its tributaries above the confluence of the Bitterroot River and Clark Fork of the Columbia River and designated as "Basin 76H".

(c) "Bitterroot River subbasin" means one of the following hydrologically related portions of the Bitterroot River basin:

(i) the mainstem subbasin, designated as "Subbasin 76HA";

(ii) the north end subbasin, designated as "Subbasin 76HB";

(iii) the east side subbasin, designated as "Subbasin 76HC";

(iv) the southeast subbasin, designated as "Subbasin 76HD";

(v) the south end subbasin, designated as "Subbasin 76HE";

(vi) the southwest subbasin, designated as "Subbasin 76HF";

(vii) the west central subbasin, designated as "Subbasin 76HG"; or

(viii) the northwest subbasin, designated as "Subbasin 76HH".

(2) As provided in 85-2-319, the department may not process or grant an application for a permit to appropriate water or for a state water reservation within a Bitterroot River subbasin until the closure for the basin is terminated pursuant to subsection (3) of this section, except for:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a municipal water supply;

(c) temporary emergency appropriations pursuant to 85-2-113(3);

(d) an application submitted pursuant to [section 1, Article VI]; or

~~(d)~~*(e)* an application to store water during high spring flow in an impoundment with a capacity of 50 acre-feet or more.

(3) Each Bitterroot River subbasin is closed to new appropriations and new state water reservations until 2 years after all water rights in the subbasin arising under the laws of the state are subject to an enforceable and administrable decree as provided in 85-2-406(4)."

Section 17. Section 85-2-401, MCA, is amended to read:

"85-2-401. Priority — recognition and confirmation of changes in appropriations issued after July 1, 1973. (1) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of streamflow or the lowering of a water table, artesian pressure, or water level, if the prior appropriator can reasonably exercise the water right under the changed conditions.

(2) Priority of appropriation made under this chapter dates from the filing of an application for a permit with the department, except as otherwise provided in 85-2-301 through 85-2-303, 85-2-306, ~~85-2-310(3)~~ *85-2-310(4)*, and 85-2-313.

(3) Priority of appropriation perfected before July 1, 1973, must be determined as provided in part 2 of this chapter.

(4) All changes in appropriation rights actions of the department after July 1, 1973, are recognized and confirmed subject to this part and any terms, conditions, and limitations placed on a change in appropriation authorization by the department."

Section 18. Section 85-2-402, MCA, is amended to read:

"85-2-402. (Temporary) Changes in appropriation rights — *definition.* (1) *(a)* The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and

subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(b) If an application involves a change in a point of diversion, conveyance, or place of use located on national forest system lands, the application is not correct and complete until the applicant has submitted proof to the department of any written special use authorization required by federal law for the proposed change in occupancy, use, or traverse of national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(c) As used in this part, "national forest system lands" has the same meaning as that provided in [section 1, Article I].

(2) Except as provided in subsections (4) through (6), (15), and (16) *and, if applicable, subject to subsection (17)*, the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a lease authorization pursuant to 85-2-436 or a temporary change in appropriation right authorization to maintain or enhance streamflows to benefit the fishery resource pursuant to 85-2-408 *or a change in appropriation right to instream flow to protect, maintain, or enhance streamflows pursuant to [section 2]*, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a lease authorization pursuant to 85-2-436 or a temporary change in appropriation right authorization pursuant to 85-2-408 *or a change in appropriation right to instream flow to protect, maintain, or enhance streamflows pursuant to [section 2]*, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use *or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water*.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the

department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year for all other wells;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) *(A)* The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(B) If the replacement well is located on national forest system lands, the notice is not correct and complete under this subsection (15) until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the replacement well.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The

appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion. *If the redundant water supply well is located on national forest system lands, the notice is not correct and complete under this subsection until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the redundant water supply well.*

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this ~~section~~ *subsection (16).*

(17) The department shall accept and process an application for a change in appropriation right to instream flow to protect, maintain, or enhance streamflows pursuant to [section 2] and this section. (Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)

85-2-402. (Effective July 1, 2009) Changes in appropriation rights—*definition.* (1) *(a)* The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this section, an appropriator may not make a change

in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(b) If an application involves a change in a point of diversion, conveyance, or place of use located on national forest system lands, the application is not correct and complete until the applicant has submitted proof to the department of any written special use authorization required by federal law for the proposed change in occupancy, use, or traverse of national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(c) As used in this part, "national forest system lands" has the same meaning as that provided in [section 1, Article I].

(2) Except as provided in subsections (4) through (6), (15), and (16) *and, if applicable, subject to subsection (17)*, the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a temporary change in appropriation right authorization to maintain or enhance streamflows to benefit the fishery resource pursuant to 85-2-408 *or a change in appropriation right to instream flow to protect, maintain, or enhance streamflows pursuant to [section 2]*, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a temporary change in appropriation right authorization pursuant to 85-2-408 *or a change in appropriation right to instream flow to protect, maintain, or enhance streamflows pursuant to [section 2]*, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use *or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.*

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year for all other wells;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete. *If the replacement well is located on national forest system lands, the notice is not correct and complete under this subsection (15) until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the replacement well.*

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion. *If the redundant water supply well is located on national forest system lands, the notice is not correct and complete under this subsection until after the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the redundant water supply well.*

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this ~~section~~ *subsection (16).*

(17) The department shall accept and process an application for a change in appropriation right to instream flow to protect, maintain, or enhance streamflows pursuant to [section 2] and this section."

Section 19. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 85, chapter 2, and the provisions of Title 85, chapter 2, apply to [section 2].

Section 20. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2007

CHAPTER NO. 214

[SB 282]

AN ACT CLARIFYING THAT IF A PERSON GIVES WARNING OF RECORDING A CONVERSATION, EITHER PARTY MAY RECORD; AMENDING SECTION 45-8-213, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-213, MCA, is amended to read:

"45-8-213. Privacy in communications. (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with a person by electronic communication and uses obscene, lewd, or profane language, suggests a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person. The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend.

(b) uses an electronic communication to attempt to extort money or any other thing of value from a person or to disturb by repeated communications the peace, quiet, or right of privacy of a person at the place where the communications are received;

(c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation. This subsection (1)(c) does not apply to:

(i) elected or appointed public officials or to public employees when the transcription or recording is done in the performance of official duty;

(ii) persons speaking at public meetings;

(iii) persons given warning of the transcription or recording*, and if one person provides the warning, either party may record*; or

(iv) a health care facility*,* as defined in 50-5-101*,* or a government agency that deals with health care if the recording is of a health care emergency telephone communication made to the facility or agency.

(2) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person purposely intercepts an electronic communication. This subsection does not apply to elected or appointed public officials or to public employees when the interception is done in the performance of official duty or to persons given warning of the interception.

(3) (a) A person convicted of the offense of violating privacy in communications shall be fined *an amount* not to exceed $500 or *be* imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed $1,000, or both.

(c) On a third or subsequent conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $10,000, or both.

(4) "Electronic communication" means any transfer between persons of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system."

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved April 17, 2007

CHAPTER NO. 215

[SB 285]

AN ACT REVISING THE CAPITOL COMPLEX MASTER PLAN BY EXCEPTING THE MONTANA WILDLIFE REHABILITATION AND EDUCATION CENTER FROM THE DEFINITION OF "CAPITOL COMPLEX" SO THAT THE STATE BUILDING NAMING PROVISIONS AND OTHER MASTER PLAN REQUIREMENTS DO NOT APPLY TO THE MONTANA WILDLIFE REHABILITATION AND EDUCATION CENTER; AMENDING SECTION 2-17-802, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-802, MCA, is amended to read:

"2-17-802. Definitions. As used in this part, the following definitions apply:

(1) "Capitol complex" means the capitol building and all the state buildings within a 10-mile radius of the capitol building *but does not include the Montana wildlife rehabilitation and education center*.

(2) "Council" means the capitol complex advisory council established in 2-17-803.

(3) "Legislative council" means the legislative council established in 5-11-101."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2007

CHAPTER NO. 216

[SB 286]

AN ACT REVISING THE RESTRICTIONS ON THE NAMING OF CERTAIN BUILDINGS, SPACES, AND ROOMS IN THE CAPITOL COMPLEX; PROVIDING THAT THE CAPITOL BUILDING MAY NOT BE NAMED AFTER ANY PERSON; AMENDING SECTION 2-17-807, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-807, MCA, is amended to read:

"2-17-807. Approval for displays and naming buildings, spaces, and rooms. (1) A state building, space, or room in the capitol complex may not be named after an individual or a bust, plaque, statue, memorial, monument, or art display may not be displayed on a long-term basis in the capitol complex or on the capitol complex grounds unless the building, space, or room name or display is approved by the legislature and complies with this part. *The capitol building, including any future additions and expansions, may not be named after any person, as defined in 2-4-102.*

(2) (a) Except as provided in ~~subsection~~ *subsections* (2)(b) *and (2)(c)*, a state building, space, or room in the capitol complex may not be named after an individual or a bust, plaque, statue, memorial, monument, or art display commemorating an individual may not be displayed on a long-term basis in the capitol complex unless the individual has been deceased for at least 10 years.

(b) The statue of Mike and Maureen Mansfield authorized in 2-17-808(1)(d)(iii) and the plaque commemorating President George H. W. Bush authorized in 2-17-808(2)(b)(ii) may continue to be displayed in the capitol complex.

(c) A public building within the capitol complex constructed with private funds after [the effective date of this act] or a space or room constructed with private funds after [the effective date of this act] in a public building, other than the capitol building, may bear a name designated by the benefactor of the building, space, or room if:

(i) the building, space, or room is to be owned by or used exclusively or primarily by the Montana historical society to store or display artifacts or other property owned by the Montana historical society; and

(ii) the building, space, or room and the designated name are approved by the council and by the board of the historical society, provided for in 2-15-1512.

(3) A bust, plaque, statue, memorial, monument, or art display commemorating an event, including a military event, may not be displayed on a long-term basis in the capitol complex until 10 years after the end of the event.

(4) All busts, plaques, statues, memorials, monuments, or art displays authorized, but not installed within 5 years of authorization, must be reauthorized.

(5) The department of administration may review and approve the temporary display of a bust, plaque, statue, memorial, monument, or art display for up to 1 year in the capitol complex or on the capitol complex grounds."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2007

CHAPTER NO. 217

[SB 299]

AN ACT REVISING LAWS RELATING TO HERITAGE PRESERVATION AND CULTURAL TOURISM; PROVIDING FOR THE LEASE OR EXCHANGE OF HISTORIC PROPERTY; PROVIDING FOR HERITAGE PRESERVATION AND CULTURAL TOURISM COMMISSIONS; PROVIDING FOR THE DESIGNATION, ADMINISTRATION, AND PROMOTION OF HERITAGE AND CULTURAL TOURISM RESOURCES;

PROVIDING FUNDING; AMENDING SECTIONS 7-16-2201, 7-16-2205, AND 18-2-105, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Lease or exchange of historic property. (1) A state agency, after consultation with the state historic preservation officer, shall, to the extent practicable, establish and implement alternatives for historic properties, including adaptive uses, that are not needed for current or projected agency purposes. A state agency may lease a historic property owned by the state agency to any person or organization or exchange any property owned by the state agency for comparable historic property if the state agency head determines that the lease or exchange will adequately ensure the preservation of the historic property. If the consent of the board of land commissioners is required for a property exchange, the state agency must receive approval from the board prior to completing an exchange.

(2) The proceeds of any lease under subsection (1) may be retained by the state agency entering into the lease and used to defray the costs of administration, maintenance, repair, and related expenses incurred by the state agency with respect to the property or other historic properties that are owned by, or are under the jurisdiction or control of, the state agency. Any surplus proceeds from the leases must be deposited into the appropriate fund at the end of the fiscal year in which the proceeds were received.

(3) The head of a state agency with responsibility for the management of a historic property may, after consultation with the state historic preservation officer, enter into contracts for the management of the property. A contract must contain terms and conditions that the head of the state agency considers necessary or appropriate to protect the interests of the state and ensure adequate preservation of the historic property.

(4) As used in this section, "state agency" means a department, board, commission, office, bureau, or other public authority of state government.

Section 2. Section 7-16-2201, MCA, is amended to read:

"7-16-2201. ~~Definition of museums~~ *Definitions.* For the purposes of this part, the ~~word~~ *following definitions apply:*

(1) "Heritage and cultural tourism resources" has the meaning provided in [section 5].

(2) "Heritage preservation and cultural tourism commission" means an entity organized pursuant to [section 6].

(3) ~~"museums"~~ *"Museums"* means buildings or parts of buildings of which a principal purpose is the exhibition, display, or performance of matters of historical, artistic, cultural, or scientific interest."

Section 3. Section 7-16-2205, MCA, is amended to read:

"7-16-2205. Authorization for mill levy. (1) The board of county commissioners of any county ~~owning, acquiring, contributing, or making a grant to any museum, facility for the arts and the humanities, or collection of exhibits as set forth in 7-16-2202~~:

(a) ~~(i)~~ may make an appropriation in its annual budget for*:*

(i) the upkeep, care, maintenance, operation, and support of ~~the~~ *a* museum, facility *for the arts and the humanities*, or collection *of exhibits as set forth in 7-16-2202*;

(ii) the support of a heritage preservation and cultural tourism commission and for heritage and cultural tourism resources;

~~(ii)~~*(iii)* ~~may make an appropriation in its annual budget for~~ a grant program for private, nonprofit museums and private, nonprofit facilities for the arts and the humanities*, including a heritage preservation and cultural tourism commission*; and

(b) ~~in order to fund the appropriation or grant program,~~ may, subject to 15-10-420, annually levy a tax on the taxable valuation of the property subject to taxation in the county *for the purposes described in subsection (1)(a) of this section*.

(2) The levy must be made at the same time as other levies are made for county and school purposes.

(3) The proceeds from the collection of the levy must be kept in a special fund by the county treasurer and used, at the discretion of the board of county commissioners, solely for the purpose for which the levy was made."

Section 4. Purpose. The purposes of [sections 4 through 11] are to:

(1) assist the state and local governments in identifying, protecting, and promoting heritage and cultural tourism resources;

(2) further support local preservation programs and encourage participation in the Montana historical society Montana-certified local government program, provided for in [section 10];

(3) enhance the ability of localities and agencies to exhibit and advertise the heritage and cultural tourism resources of the state;

(4) stimulate business investment, assist in retaining existing small businesses, and promote new businesses related to heritage and cultural tourism;

(5) strengthen the local tax base;

(6) create employment opportunities for the people of the state; and

(7) generally enhance the economic viability of communities and regions of the state.

Section 5. Definitions. As used in [sections 4 through 11], the following definitions apply:

(1) "Heritage and cultural tourism resources" means sites, districts, routes of travel, objects, artifacts, or collections with demonstrable cultural, artistic, architectural, folkway, historic, prehistoric, or traditional qualities.

(2) "Montana historical society" means the entity established pursuant to 22-3-101.

Section 6. Heritage preservation and cultural tourism commissions. (1) Counties, consolidated governments, and municipalities may create heritage preservation and cultural tourism commissions or authorize existing historic preservation commissions to conduct heritage preservation and cultural tourism programs according to the provisions of [sections 4 through 11].

(2) A heritage preservation and cultural tourism commission must have at least five members. Commission members must have professional backgrounds and be trained in or have a demonstrated interest in historic preservation, the

arts or culture of the locality, and the tourism and economic development interests of the locality.

Section 7. Commission duties. (1) A heritage preservation and cultural tourism commission:

(a) may prepare a heritage and cultural tourism promotion and development plan, as provided in [section 8], and shall operate according to the provisions of that plan;

(b) must be operated in a manner that allows the county, consolidated government, or municipality to obtain support through grants and other funding assistance available for heritage and cultural tourism promotion and development programs and may solicit, request, and apply for funds;

(c) may own and lease property in its own name and may acquire property through bequest, purchase, lease, or other means except eminent domain;

(d) may hire and supervise staff consistent with the personnel regulations of the county, consolidated government, or municipality;

(e) may solicit, request, and apply for funds in the name of the commission; and

(f) shall identify, record, register, preserve, protect, develop, and promote heritage and cultural tourism resources.

(2) Funds may be budgeted and expended, including by contract, by the heritage preservation and cultural tourism commission in a manner consistent with the laws, rules, and regulations of the county, consolidated government, or municipality.

(3) A heritage preservation and cultural tourism commission shall prepare an annual report describing its activities and file the report with the appropriate county, consolidated government, or municipality.

(4) Upon the dissolution of a heritage preservation and cultural tourism commission, the property of the commission becomes the property of the county, consolidated government, or municipality.

Section 8. Heritage and cultural tourism promotion and development plan. (1) A heritage preservation and cultural tourism commission may prepare a heritage and cultural tourism promotion and development plan and shall operate according to the provisions of that plan.

(2) A heritage and cultural tourism promotion and development plan must be created in consultation with the tourism advisory council, the Montana historical society, the Montana arts council, and interested stakeholders, including businesses and institutions that have a demonstrable interest in cultural tourism, historic preservation, economic development, the arts, and cultural affairs.

(3) A heritage and cultural tourism promotion and development plan:

(a) may include but is not limited to:

(i) inventories of public displays and interpretations of heritage and cultural tourism resources;

(ii) mapping of and guidance to heritage and cultural tourism resources; and

(iii) advertising and promoting heritage and cultural tourism resources, economic development, heritage protection, and heritage incentives; and

(b) may recommend ordinances or resolutions to counties, consolidated governments, and municipalities to assist and protect the qualities of heritage and cultural tourism resources as long as those ordinances are based on uniform standards and procedures.

Section 9. Cultural treasures — coordination. (1) A heritage preservation and cultural tourism commission may designate individuals possessing the highest quality artistic, traditional, or folkway skills, talents, and knowledge as Montana cultural treasures and may conduct programs to honor and promote the individuals with the individuals' express consent and in a manner consistent with administrative rule.

(2) This section may be administered in conjunction with the treasure state living cultural treasures program provided for in 2-15-236 through 2-15-238.

Section 10. Certified local governments. (1) Counties, consolidated governments, and municipalities may participate in the Montana-certified local government program administered by the Montana historical society pursuant to the National Historic Preservation Act of 1966, 16 U.S.C. 470 through 470w-6.

(2) A county, consolidated government, or municipality that became a certified local government, as described in subsection (1), prior to [the effective date of this act] may participate in the program.

Section 11. Highway signs. Upon receipt of a petition from a heritage preservation and cultural tourism commission, the department of transportation shall erect and maintain signs designating heritage and cultural tourism resources along highways in the vicinity of the heritage and cultural tourism resources. The department of transportation shall accomplish the signing changes in accordance with the department's normal sign maintenance and replacement schedule.

Section 12. Section 18-2-105, MCA, is amended to read:

"18-2-105. General powers and duties of department of administration. In carrying out powers relating to the construction of buildings, the department of administration may:

(1) inspect buildings not under construction;

(2) contract with the federal government for advance planning funds;

(3) transfer funds and authority to agencies and accept funds and authority from agencies;

(4) *subject to [section 1],* purchase, lease, and acquire by exchange or otherwise, land and buildings in Lewis and Clark County and equipment and furnishings for the buildings;

(5) issue and sell bonds and other securities;

(6) maintain an inventory of all buildings;

(7) appoint a project representative to supervise architects' and consulting engineers' inspection of construction of buildings to ensure that all construction is in accordance with the contracts, plans, and specifications. The cost of supervision may be charged against money available for construction.

(8) negotiate deductive changes, not to exceed 7% of the total cost of a project, with the lowest responsible bidder when the lowest responsible bid causes the project cost to exceed the appropriation or with the lowest responsible bidders, if multiple contracts will be awarded on the project, when the total of the lowest

responsible bids causes the project cost to exceed the appropriation. A bidder is not required to negotiate a bid but is required to honor the bid for the time specified in the bidding documents. The department may terminate negotiations at any time."

Section 13. Codification instructions. (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 17, part 1, and the provisions of Title 2, chapter 17, part 1, apply to [section 1].

(2) [Sections 4 through 11] are intended to be codified as an integral part of Title 90, chapter 1, part 1, and the provisions of Title 90, chapter 1, part 1, apply to [sections 4 through 11].

Section 14. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 15. Effective date. [This act] is effective July 1, 2007.

Approved April 17, 2007

CHAPTER NO. 218

[SB 305]

AN ACT ALLOWING OFF-PREMISES DISPLAY AND SALE OF NEW MOTOR VEHICLES IN COUNTIES OTHER THAN THE COUNTY IN WHICH THE DEALER'S ESTABLISHED PLACE OF BUSINESS IS LOCATED UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 61-4-123, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-4-123, MCA, is amended to read:

"61-4-123. Dealer requirements and restrictions. (1) A dealer may not offer for sale, trade, or consignment any motor vehicle type not authorized by the license issued to the dealer by the department or use a dealer or demonstrator plate on a motor vehicle of a type for which the dealer is not licensed.

(2) A dealer may not display at the dealer's established place of business or any approved off-premises sale location a motor vehicle offered for sale, trade, or consignment unless the Monroney label required for new motor vehicles pursuant to 15 U.S.C. 1232 or the buyer's guide label required for used motor vehicles pursuant to 16 CFR, part 455, is affixed to the side window of the motor vehicle or is conspicuously displayed within the motor vehicle in a fashion that is readily readable by a customer.

(3) Except as provided in subsection (4), a dealer may not sell or display a motor vehicle offered for sale at any geographic location other than that of the dealer's established place of business as listed on the dealer's license.

(4) (a) A dealer may conduct an off-premises display and sale at a geographic location other than that of the dealer's established place of business as listed on the dealer's license if the dealer notifies the department 10 days in advance, on a form prescribed by the department, of the opening date and location of an off-premises display and sale and obtains a permit from the department. The department may require proof from the dealer that the location proposed for the off-premises display and sale is in compliance with local zoning ordinances. ~~Except for recreational~~ *Recreational* vehicle, motor home, or travel trailer

dealers~~,~~ *may conduct* an off-premises display and sale ~~must be conducted within~~ *in a county other than* the county of the dealer's licensed location. *A new motor vehicle dealer whose area of responsibility under the dealer's franchise agreement includes a county different from the county in which the dealer's established place of business is located may conduct an off-premises display and sale, subject to the agreement, in the other county if there is no other new motor vehicle dealer with an established place of business in that county.* The display and sale *authorized by this subsection (4)(a)* may not exceed 10 consecutive days, and a licensed dealer may not conduct more than 10 off-premises displays and sales during any 1 calendar year.

(b) A dealer may display one or more motor vehicles inside an airport terminal or shopping mall without obtaining an off-premises display and sale permit if no actual sales are made, or could be made, at the terminal or mall.

(c) Upon prior written notice to the department, a dealer may display one motor vehicle at a geographic location other than that of the dealer's established place of business as listed on the dealer's license if no actual sales are made, or could be made, at the display location and the display:

(i) conspicuously promotes or supports an event or a program sponsored by a nonprofit corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes and the motor vehicle is displayed at a location where the event is being held or the program is being promoted; or

(ii) conspicuously promotes a joint commercial endeavor between the dealer and another clearly identified business entity and the motor vehicle is displayed on premises owned or leased by the other business entity and where the other entity regularly conducts its business. A display under this subsection (4)(c)(ii) may not exceed 90 days.

(5) If more than one dealer displays motor vehicles and maintains an established place of business at the same geographic location, each dealer shall ensure that all motor vehicle records, office facilities, and inventory, if applicable, are physically segregated from those of the other dealer and clearly identified and attributed to the appropriate dealer.

(6) A dealer shall install and maintain telephone service at the dealer's established place of business. The telephone service must be listed in the directory assistance that applies to the area in which the business is located.

(7) A dealer shall conspicuously post at the dealer's established place of business written notice indicating the regular and customary office hours maintained by the dealer.

(8) (a) A dealer shall carry and continuously maintain a general liability insurance policy that covers any motor vehicle bearing a set of dealer plates or a demonstrator plate that is offered for demonstration or loan to a customer or that otherwise may be operated by a customer in the regular course of the dealer's business operations.

(b) A dealer shall ensure that the department is named as a certificate holder on any general liability insurance policy held by the dealer, that the minimum term of the policy is 1 year, and that a lapse of insurance does not occur as a result of cancellation or termination of a previously certified policy.

(c) This subsection (8) does not relieve a dealer of the mandatory motor vehicle liability insurance obligation imposed under chapter 6 of this title.

(9) A dealer shall display at the dealer's established place of business at least one sign stating the name of the business and indicating that motor vehicles are offered for sale, trade, or consignment. The letters of the sign must be at least 6 inches in height and clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet."

Approved April 17, 2007

CHAPTER NO. 219

[SB 364]

AN ACT REVISING PROVISIONS GOVERNING VACANCIES ON BOARDS OF COUNTY COMMISSIONERS; PROVIDING PROCEDURES WHEN MULTIPLE VACANCIES OCCUR THAT PREVENT ESTABLISHMENT OF A QUORUM; REQUIRING THAT APPOINTMENTS BE MADE BY THE COUNTY COMPENSATION BOARD OR BY THE DISTRICT JUDGE IF NO COMPENSATION BOARD EXISTS; REQUIRING APPOINTMENTS TO BE MADE FROM LISTS PROVIDED BY PARTISAN COUNTY CENTRAL COMMITTEES UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 7-4-2106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2106, MCA, is amended to read:

"7-4-2106. Vacancy on board of county commissioners. (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Whenever a vacancy occurs in the board of county commissioners from a failure to elect or otherwise, the remaining county commissioners shall fill the vacancy and the appointee shall hold office until the next general election unless otherwise provided in subsection (3) or (4). The procedure to be used to fill the vacancy is as follows:

(a) If the former incumbent represented a party eligible for a primary election under 13-10-601, the county central committee of that party shall submit to the remaining commissioners three names of people who have lived in the unrepresented district for at least 2 years preceding the day the vacancy occurs. The remaining commissioners shall appoint one of these three to fill the vacancy. Whenever the remaining commissioners are unable to elect an appointee from the submitted list, they shall request a second list of three names from the county central committee. The second list may not contain any of the names submitted on the first list. The remaining commissioners shall then select an appointee from the individuals named on both lists.

(b) If the former incumbent was independent or was originally nominated by a party that does not meet the requirements of 13-10-601 or if the vacancy occurs from a failure to elect, the remaining commissioners shall invite applications for the vacancy in a notice published as provided in 13-1-108 and shall accept an application from any person who has lived in the unrepresented district for at least 2 years preceding the day the vacancy occurs. The remaining commissioners shall appoint one of these applicants to fill the vacancy.

(3) Whenever a vacancy occurs 75 days or more before the general election held during the second or fourth year of the term, an individual must be elected

to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 75 days or more before the primary election during the second or fourth year of the term, the same procedure must be used as is used to elect county commissioners to full 6-year terms.

(b) Whenever the vacancy occurs after the 75th day preceding the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate must be filed with the clerk and recorder on or before the 75th day prior to the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after the 75th day preceding the general election held during the fourth year of the term, the person appointed by the remaining county commissioners under subsection (2) shall serve until the end of the term.

(5) (a) If multiple vacancies occur simultaneously so that a quorum cannot be established, the county compensation board provided for in 7-4-2503 shall, subject to subsection (5)(c), appoint enough commissioners to allow for a quorum to be established. The vacancies must be filled in the order in which the commissioners' terms would have expired.

(b) If vacancies occur at different times but, because appointments have not yet been made, a quorum cannot be established, the county compensation board shall, subject to subsection (5)(c), appoint enough commissioners to allow for a quorum to be established. The county compensation board shall appoint each commissioner in the order that the vacancy occurred.

(c) (i) A commissioner appointed under this subsection (5) must meet the residency requirement in 7-4-2104(2) and must be from the same district as the commissioner being replaced.

(ii) If a commissioner being replaced represented a party eligible for a primary election under 13-10-601, the county central committee of that party shall, within 30 days of the occurrence of the vacancy, submit to the county compensation board three names of people who have lived in the unrepresented district for at least 2 years prior to the occurrence of the vacancy. The county compensation board shall appoint each commissioner from the list of names provided by the county central committee.

(d) Once a quorum can be established, the county commissioners forming the quorum shall appoint the remaining commissioners as provided in this section.

(e) If a county compensation board does not exist, appointments under this subsection (5) must be made by a district judge having jurisdiction in the county."

Approved April 17, 2007

CHAPTER NO. 220

[SB 367]

AN ACT INSTRUCTING THE CODE COMMISSIONER TO RENUMBER TITLE 69, CHAPTER 8, PART 10, MCA, AS AN INTEGRAL PART OF TITLE 69, CHAPTER 3, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Directions to code commissioner. The code commissioner shall renumber Title 69, chapter 8, part 10, as an integral part of Title 69, chapter 3.

Approved April 17, 2007

CHAPTER NO. 221

[SB 374]

AN ACT AUTHORIZING A PERSON WHO HOLDS A POWER OF ATTORNEY FROM A MEMBER OF THE UNITED STATES ARMED FORCES TO APPLY FOR AN ABSENTEE BALLOT ON BEHALF OF THE MEMBER OF THE ARMED FORCES; AMENDING SECTIONS 13-13-212 AND 13-21-210, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-13-212, MCA, is amended to read:

"13-13-212. Application for absentee ballot — special provisions. (1) *(a)* ~~An~~ *Except as provided in subsection (1)(b), an* elector may apply for an absentee ballot by using a standardized form provided by rule by the secretary of state or by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (2) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a

replacement ballot. The request for a replacement ballot may be made orally to the election administrator.

(4) (a) When applying for an absentee ballot under this section, an elector may also request to be mailed an absentee ballot, as soon as the ballot becomes available, for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application.

(b) The election administrator shall mail an address confirmation form at least 75 days before the election to each elector who has requested an absentee ballot for subsequent elections. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for each subsequent election.

(c) An elector who has been removed from the register may subsequently request to be mailed an absentee ballot for each subsequent election."

Section 2. Section 13-21-210, MCA, is amended to read:

"13-21-210. Application for absentee ballots. (1) *(a)* A United States elector may apply for regular absentee ballots as follows:

~~(a)~~*(i)* by making a written request, which must include the elector's birth date and signature;

~~(b)~~*(ii)* by properly completing, signing, and returning to the election administrator the federal post card application; or

~~(c)~~*(iii)* by properly completing, signing, and returning to the appropriate county election administrator the federal write-in absentee ballot transmission envelope.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) An application for a federal write-in absentee ballot must be received by the appropriate county election administrator not less than 30 days before the date of an election. An application received less than 30 days before the date of an election must be processed for the next election.

(3) An application under this section is valid for all state and local elections in the calendar year in which the application is made and the next two regularly scheduled federal general elections. The elector's county election administrator shall provide the elector with a regular absentee ballot for the elections described in this subsection as soon as the ballots become available."

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved April 17, 2007

CHAPTER NO. 222

[SB 378]

AN ACT PROVIDING THAT, FOR INDIVIDUAL INCOME TAXES AND CORPORATE LICENSE AND INCOME TAXES, IF A TERM IS NOT DEFINED, THEN THE DEFINITION IN THE INTERNAL REVENUE CODE APPLIES; AMENDING SECTIONS 15-30-305 AND 15-31-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-305, MCA, is amended to read:

"15-30-305. Department rules — *conformance with Internal Revenue Code.* *(1)* The department ~~is hereby authorized to make such~~ *may adopt* rules and ~~to~~ *may* require ~~such~~ facts and information to be reported as it ~~may deem~~ *considers* necessary to enforce the provisions of this chapter.

(2) If a term is not defined in this chapter, the term has the same meaning as it does when used in a comparable context in the Internal Revenue Code."

Section 2. Section 15-31-501, MCA, is amended to read:

"15-31-501. Department rules — *conformance with Internal Revenue Code.* *(1)* The department of revenue shall ~~have power to~~ prescribe forms for returns and notices and ~~such~~ other regulations as may ~~from time to time~~ be ~~found~~ necessary for the purpose of carrying into effect the provisions of this chapter.

(2) If a term is not defined in this chapter, the term has the same meaning as it does when used in a comparable context in the Internal Revenue Code."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2006.

Approved April 17, 2007

CHAPTER NO. 223

[SB 414]

AN ACT CLARIFYING THAT THE LAWS GOVERNING MOTOR CARRIERS DO NOT APPLY TO THE TRANSPORTATION OF HOUSEHOLD GOODS AND GARBAGE IN THE COMMERCIAL AREAS OF A CITY, TOWN, OR VILLAGE WITH A POPULATION OF LESS THAN 500 PERSONS; AND AMENDING SECTION 69-12-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-102, MCA, is amended to read:

"69-12-102. Scope of chapter — exemptions. (1) This chapter does not affect:

(a) the operation of school buses that are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities that are sponsored or supervised by school authorities;

(b) the transportation by means of motor vehicles in the regular course of business of employees by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees in construction and production is concerned;

(c) the transportation of household goods and garbage by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas of a city, town, or village *with a population of less than 500 persons*, as determined by the commission;

(d) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

(e) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(f) ambulances;

(g) the transportation by motor vehicle of not more than 15 passengers between their places of residence or termini near their residences and their places of employment in a single daily round trip if the driver is also going to or from the driver's place of employment;

(h) the operation of:

(i) a transportation system by a municipality or transportation district as provided in Title 7, chapter 14, part 2;

(ii) a municipal bus service pursuant to Title 7, chapter 14, part 44; or

(iii) any public transportation system recognized by the Montana department of transportation as a federal transit administration provider pursuant to 49 U.S.C. 5311;

(i) armored motor vehicles used for the transportation of valuable paintings and other items of unusual value requiring special handling and security;

(j) the transportation of household goods or garbage under an agreement between a motor carrier and an office or agency of the United States government; or

(k) the transportation of persons provided by private, nonprofit organizations, including those recognized by the Montana department of transportation as federal transit administration providers pursuant to 49 U.S.C. 5310. As used in this subsection, "private, nonprofit organization" means an organization recognized as nonprofit under section 501(c) of the Internal Revenue Code.

(2) Except for the identification of ownership requirements provided in 69-12-408, this chapter does not affect commercial tow trucks designed and exclusively used in towing wrecked, disabled, or abandoned vehicles or while these tow trucks are rendering assistance to wrecked, disabled, or abandoned vehicles. However, commercial tow truck firms shall file policies of insurance showing coverage required by 61-8-906.

(3) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

Approved April 17, 2007

CHAPTER NO. 224

[SB 440]

AN ACT REQUIRING A MILITARY VETERAN IN THE MEMBERSHIP OF THE STATE WORKFORCE INVESTMENT BOARD; AMENDING SECTION 53-2-1203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-2-1203, MCA, is amended to read:

"53-2-1203. State workforce investment board — membership — duties. (1) There is a state workforce investment board.

(2) The state board consists of:

(a) the governor or a person designated by the governor to act on behalf of the governor;

(b) two members of the house of representatives, each from a different political party, and two members of the senate, each from a different political party, appointed by the presiding officer of each respective chamber; and

(c) individuals appointed by the governor, including:

(i) representatives of businesses located in Montana who:

(A) are owners of businesses, chief executive or operating officers, and other business executives or employers with optimum policymaking or hiring authority, including business members of local boards; and

(B) represent businesses with employment opportunities that reflect the employment opportunities in Montana;

(ii) chief elected officials of local government;

(iii) representatives of labor organizations;

(iv) representatives of individuals and organizations who have experience with respect to youth activities;

(v) representatives of individuals and organizations who have experience and expertise in the delivery of workforce investment activities;

(vi) representatives of the state agencies who are responsible for the programs and activities that are carried out by the one-stop centers, including but not limited to:

(A) the department of labor and industry;

(B) the department of public health and human services;

(C) the office of the commissioner of higher education; and

(D) the office of public instruction; ~~and~~

(vii) at least one representative of military veterans; and

~~(vii)~~*(viii)* other representatives ~~that~~ *who* the governor may designate.

(3) The selection and appointment of members of the state board must follow the nominating provisions of section 111 of the Act, ~~(~~29 U.S.C. 2821~~)~~.

(4) The governor shall appoint enough individuals described in subsection (2)(c)(i) so that those persons compose a majority of the membership of the state board.

(5) The governor shall consider the special needs of Montana's hard-to-serve Indian population and the state's relationship with tribal governments when making appointments to the state board.

(6) The state board shall perform the functions described in section 111 of the Act, {29 U.S.C. 2821}."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2007

CHAPTER NO. 225

[SB 453]

AN ACT CREATING A UNIFORM FRAMEWORK TO INFORM THE PUBLIC OF MATTERS BEFORE THE BOARDS AND PROGRAMS OF THE DEPARTMENT OF LABOR AND INDUSTRY WITH RESPECT TO DISCIPLINARY PROCEEDINGS; AMENDING SECTIONS 37-1-101, 37-1-131, 37-1-136, 37-1-311, AND 37-1-405, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-1-101, MCA, is amended to read:

"37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department of labor and industry shall:

(1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;

(2) standardize policies and procedures and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) contract for or administer and grade examinations required by each board;

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;

(6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;

(7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307~~(1)(c)~~*(1)(d)*;

(9) provide notice to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;

(10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary; ~~and~~

(11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided.

(12) adopt uniform rules for all boards and department programs to comply with the public notice requirements of 37-1-311 and 37-1-405. The rules may require the posting of only the licensee's name and the fact that a hearing is being held when the information is being posted on a publicly available website prior to a decision leading to a suspension or revocation of a license or other final decision of a board or the department."

Section 2. Section 37-1-131, MCA, is amended to read:

"37-1-131. Duties of boards — quorum required. *(1)* A quorum of each board within the department shall:

~~(1)~~*(a)* set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

~~(2)~~*(b)* sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

~~(3)~~*(c)* suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection ~~(2)~~ *(1)(b)*, is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

~~(4)~~*(d)* pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

~~(5)~~*(e)* consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

~~(6)~~*(2)* A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

~~(7)~~*(3)* The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of

performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure as provided in 37-1-306. If the board or department requires continuing education for continued licensure, the board or department may not audit or verify continuing education requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement after the renewal period closes.

~~(8)~~*(4)* A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

(5) A board shall adopt rules governing the provision of public notice as required by 37-1-311."

Section 3. Section 37-1-136, MCA, is amended to read:

"37-1-136. Disciplinary authority of boards — injunctions. (1) Subject to 37-1-138, each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

(a) revocation of a license;

(b) suspension of its judgment of revocation on terms and conditions determined by the board;

(c) suspension of the right to practice for a period not exceeding 1 year;

(d) placing a licensee on probation;

(e) reprimand or censure of a licensee; or

(f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

(4) An action may not be taken against a person who is in compliance with Title 50, chapter 46.

(5) Rules adopted under subsection (1) must provide for the provision of public notice as required by 37-1-311."

Section 4. Section 37-1-311, MCA, is amended to read:

"37-1-311. Findings of fact — order — report. (1) If the board decides by a preponderance of the evidence, following a hearing or on default, that a violation of this part occurred, the department shall prepare and serve the board's findings of fact and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the

department shall prepare and serve the board's findings of fact and an order of dismissal of the charges.

~~(2) The department may report the issuance of a notice and final order to:~~

~~(a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;~~

~~(b) appropriate public and private organizations that serve the profession or occupation; and~~

~~(c) the public.~~

(2) (a) The department shall within a reasonable amount of time report to the public the issuance of a summary suspension, a notice under 37-1-309, an accepted stipulation, a hearing examiner's proposed decision, and a final order.

(b) In addition to any other means of notice, the department shall post the required information on a publicly available website.

(c) This subsection (2) may not be construed to require a meeting to be open or records to be disseminated when the demands of individual privacy clearly exceed the merits of public disclosure."

Section 5. Section 37-1-405, MCA, is amended to read:

"37-1-405. Findings of fact — order — report. (1) If the department finds by a preponderance of the evidence, following a hearing or on default, that a violation of this part has occurred, the department shall prepare and serve findings of fact, conclusions of law, and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve an order of dismissal of the charges.

~~(2) The department may report the issuance of a notice and final order to:~~

~~(a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;~~

~~(b) appropriate public and private organizations that serve the profession or occupation; and~~

~~(c) the public.~~

(2) (a) The department shall within a reasonable amount of time report to the public the issuance of a summary suspension, a notice under 37-1-403, an accepted stipulation, a hearing examiner's proposed decision, and a final order.

(b) In addition to any other means of notice, the department shall post the required information on a publicly available website.

(c) This subsection (2) may not be construed to require a meeting to be open or records to be disseminated when the demands of individual privacy clearly exceed the merits of public disclosure."

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective date. [This act] is effective January 1, 2009.

Approved April 17, 2007

CHAPTER NO. 226

[SB 459]

AN ACT GIVING PREFERENCE TO PRODUCTS MADE IN THE UNITED STATES WHEN EQUAL CHOICES EXIST; AND AMENDING SECTIONS 18-4-301 AND 18-4-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-4-301, MCA, is amended to read:

"18-4-301. Definitions. As used in this part, the following definitions apply:

(1) "Alternative procurement method" means a method of procuring supplies or services in a manner not specifically described in this chapter, but instead authorized by the department under 18-4-302.

(2) "American-made" means either a product made exclusively within the United States or a value-added product consisting of a product that contains 50% or more of materials from the United States.

~~(2)~~*(3)* "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs that are allowable and allocable in accordance with the contract terms and the provisions of this chapter and a fee, if any.

~~(3)~~*(4)* (a) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee.

(b) Displacement does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

~~(4)~~*(5)* "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

~~(5)~~*(6)* "Invitation for bids" means all documents, whether attached or incorporated by reference, used for soliciting bids.

~~(6)~~*(7)* "Office supply" means an item included under the office supply commodity class codes maintained by the department.

~~(7)~~*(8)* "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

~~(8)~~*(9)* "Request for proposals" means all documents, whether attached or incorporated by reference, used for soliciting proposals.

~~(9)~~*(10)* "Responsible" means the capability in all respects to perform fully the contract requirements and the integrity and reliability that will ensure good faith performance.

~~(10)~~*(11)* "Responsive" means conforms in all material respects to the invitation for bids or request for proposals.

~~(11)~~*(12)* "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time."

Section 2. Section 18-4-303, MCA, is amended to read:

"18-4-303. Competitive sealed bidding. (1) An invitation for bids must be issued and must include a purchase description and conditions applicable to the procurement.

(2) Adequate public notice of the invitation for bids must be given a reasonable time before the date set forth in the invitation for the opening of bids, in accordance with rules adopted by the department. Notice may include publication in a newspaper of general circulation at a reasonable time before the bid opening.

(3) Bids must be opened publicly at the time and place designated in the invitation for bids. Each bidder and any member of the public has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids after they are opened and reviewed by the procurement officer for release, subject to the same limitations specified in 18-4-304(4) for competitive sealed proposals.

(4) The amount of each bid and other relevant information as may be specified by rule, together with the name of each bidder, must be recorded. The record must be open to public inspection.

(5) After the time of award, all bids and bid documents must be open to public inspection in accordance with the provisions of 18-4-126.

(6) Bids must be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs. The invitation for bids must set forth the evaluation criteria to be used. Only criteria set forth in the invitation for bids may be used in bid evaluation.

(7) Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on bid mistakes may be permitted in accordance with rules adopted by the department. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the state or fair competition may not be permitted. Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes must be supported by a written determination made by the department.

(8) If an award is made, it must be made with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, including the preferences established by Title 18, chapter 1, part 1. If all bids exceed available funds as certified by the appropriate fiscal officer and the lowest responsible and responsive bid does not exceed the funds by more than 5%, the director or the head of a purchasing agency may, in situations in which time or economic considerations preclude resolicitation of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the lowest responsible and responsive bidder in order to bring the bid within the amount of available funds.

(9) When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

(10) In case of a tie bid, preference must be given to the bidder, if any, offering American-made products or supplies."

Approved April 17, 2007

CHAPTER NO. 227

[SB 480]

AN ACT REQUIRING DISCLOSURE OF THE COLLECTION AND USE OF CERTAIN DATA GATHERED BY RENTAL VEHICLE ENTITIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Disclosure of data from rental vehicle — definitions. (1) (a) Except as provided in subsection (1)(b), a rental vehicle entity that rents a rental vehicle equipped with a global positioning system or a satellite navigation system to a person in this state shall disclose in the rental agreement or a written addendum to the rental agreement the presence and purpose of the system.

(b) A rental vehicle entity that uses a global positioning system or a satellite navigation system only to track lost or stolen vehicles or provide navigational services is not required to provide the disclosure in subsection (1)(a).

(2) As used in this section:

(a) "rental agreement" means a written agreement setting forth the terms and conditions governing the use of a rental vehicle that is provided by a rental vehicle entity for the rental of a rental vehicle for a period of not more than 90 days;

(b) "rental vehicle" means a light vehicle, a motorcycle, a motor-driven cycle, a quadricycle, or an off-highway vehicle that is used under a rental agreement by a person other than the owner of the rental vehicle;

(c) "rental vehicle entity" means a business entity that provides rental vehicles to the public without a driver, pilot, or operator under a rental agreement for a fee.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 12, and the provisions of Title 61, chapter 12, apply to [section 1].

Approved April 17, 2007

CHAPTER NO. 228

[SB 502]

AN ACT CLARIFYING CURRENT EXEMPTIONS TO THE ACCESSIBILITY STANDARDS FOR POLLING PLACES; AMENDING SECTIONS 13-3-202, 13-3-205, 13-3-206, 13-3-207, 13-3-212, AND 13-3-213, MCA; AND REPEALING SECTIONS 13-3-203 AND 13-3-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-3-202, MCA, is amended to read:

"13-3-202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Accessible" means accessible to individuals with disabilities and elderly individuals for purposes of voting as determined in accordance with standards established by the secretary of state under 13-3-205.

(2) "Disability" means a temporary or permanent physical impairment such as:

(a) impaired vision;

(b) impaired hearing; or

(c) impaired mobility. Individuals having impaired mobility include those who require use of a wheelchair and those who are ambulatory but are physically impaired because of age, disability, or disease.

(3) "Elderly" means 65 years of age or older.

(4) "Election" means a general, special, or primary election held in an even-numbered year, as provided for in 13-1-104(1) and 13-1-107(1).

(5) "Inaccessible" means not accessible under standards adopted pursuant to 13-3-205.

(6) "Rural polling place" means a location that is expected to serve less than 200 registered electors."

Section 2. Section 13-3-205, MCA, is amended to read:

"13-3-205. Adoption of standards for polling place accessibility — rulemaking authority. (1) ~~(a)~~ The secretary of state, with advice from election administrators and individuals with disabilities and elderly individuals, shall establish standards for accessibility of polling places.

~~(b)~~*(2) (a)* ~~For~~ *Standards for* polling places approved pursuant to ~~this~~ subsection (1) prior to October 1, 2005, ~~the standards, whenever possible,~~ must be consistent with the standards for accessibility established by the American national standards institute and the uniform federal accessibility standards.

~~(2)~~*(b)* ~~Polling~~ *Standards for polling* places approved on or after October 1, 2005, must comply with the accessibility standards in the Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq.

(3) The secretary of state:

(a) may adopt rules to implement the provisions of this part; and

(b) shall adopt rules to implement the exemption provisions of 13-3-212."

Section 3. Section 13-3-206, MCA, is amended to read:

"13-3-206. Survey of polling places to determine accessibility — procedures. (1) ~~Except as provided in 13-3-207 and 13-3-211, the~~ *The* election administrator in each county shall conduct an onsite survey of each polling place used in an election to determine whether ~~such polling place~~ *it* meets the standards for accessibility established under 13-3-205.

(2) Each election administrator shall conduct the survey in a manner that represents the path of travel *that* an elector would reasonably be expected to take in order to reach the polling place on election day.

(3) A polling place that has been surveyed ~~and designated as accessible~~ *pursuant to this section* need not be surveyed again ~~so long as~~ *unless* the conditions of accessibility ~~remain unchanged~~ *change*."

Section 4. Section 13-3-207, MCA, is amended to read:

"13-3-207. Polling place classifications. ~~(1)~~ As a result of the survey provided in 13-3-206, each polling place must be classified as:

~~(a)~~*(1)* accessible; *or*

~~(b)~~*(2)* inaccessible~~;~~

~~(c) technically inaccessible but usable; or~~

~~(d) rural~~.

~~(2) An accessible polling place is one that meets the standards for accessibility established by the secretary of state under 13-3-205.~~

~~(3) An inaccessible polling place is one that does not meet the standards for accessibility and cannot be made accessible through safe, practical, and cost-effective methods.~~

~~(4) A technically inaccessible but usable polling place is one that does not meet all the standards for accessibility but has been surveyed, evaluated, and certified as being adequate for use as a polling place. The certification is cause for the secretary of state to grant the polling place an exemption from the standards for accessibility. However, in a future election, the secretary of state may issue an objection to the criteria used for determining that the facility is usable as a polling place.~~

~~(5) A rural polling place is one that serves less than 200 registered electors and is:~~

~~(a) granted an exemption from the standards for accessibility established under 13-3-205; and~~

~~(b) subject to review and redesignation 45 days prior to an election.~~

~~(6) A rural designation may not be construed as cause for denying electors with disabilities or elderly electors at a polling place the right to choose an alternative means for casting a ballot on election day as provided in 13-3-213.~~"

Section 5. Section 13-3-212, MCA, is amended to read:

"13-3-212. Exemption if no accessible polling place is *reasonably* available. ~~(1) If an existing polling place has been surveyed and designated as being inaccessible, the election administrator shall make a reasonable effort to locate and survey all potential sites with comparable utility as a polling place.~~

~~(2)~~*(1)* ~~The~~ *If an election administrator desires to designate as a polling place a location that is inaccessible, the* election administrator ~~shall~~ *shall make a* request in writing to the secretary of state *asking* that an inaccessible polling place be exempt from the standards for accessibility.

(2) The secretary of state may grant an exemption pursuant to rules adopted under 13-3-205 if~~:~~

~~(a)~~ all potential polling places have been surveyed and it is determined that*:*

(a) ~~no~~ *an* accessible polling place is *not* available~~;~~ and

~~(b)~~ the county cannot safely or reasonably make a polling place temporarily accessible in the area involved.*; or*

~~(3) Nothing in this section may require an election administrator to select~~

(b) the location is a rural polling place and designation of an accessible facility as a polling place ~~if its location requires~~ *will require* excessive travel or ~~imposes~~ *impose* other hardships for the majority of qualified electors in the precinct."

Section 6. Section 13-3-213, MCA, is amended to read:

"13-3-213. Alternative means for casting ballot. (1) The election administrator shall provide individuals with disabilities and elderly individuals an alternative means for casting a ballot on election day if they are assigned to an inaccessible polling place. These alternative means for casting a ballot include:

(a) delivery of a ballot to the elector as provided in 13-13-118;

(b) voting by absentee ballot as provided in 13-13-222; and

(c) prearranged assignment to an accessible polling place within the county.

(2) An elector with a disability or an elderly elector assigned to an inaccessible polling place who desires to vote at an accessible polling place:

(a) shall request assignment to an accessible polling place by notifying the election administrator in writing at least 7 days preceding the election;

(b) must be assigned to the nearest accessible polling place ~~or technically inaccessible polling place~~ for the purpose of voting in the election;

(c) shall sign the elector's name on a special addendum to the official precinct register as required in 13-2-601; and

(d) must receive the same ballot to which the elector is otherwise entitled.

(3) For the purpose of subsection (2), the ballot cast at an alternative polling place must be processed and counted in the same manner as an absentee ballot."

Section 7. Repealer. Sections 13-3-203 and 13-3-204, MCA, are repealed.

Approved April 17, 2007

CHAPTER NO. 229

[SB 527]

AN ACT REVISING WHEN CONDOMINIUM CONSTRUCTION IS EXEMPT FROM REVIEW UNDER CERTAIN PROVISIONS OF THE MONTANA SUBDIVISION AND PLATTING ACT; AMENDING SECTION 76-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-203, MCA, is amended to read:

"76-3-203. Exemption for certain condominiums. Condominiums constructed on land ~~divided~~ *subdivided* in compliance with *parts 5 and 6 of* this chapter *or on lots within incorporated cities and towns* are exempt from the provisions of this chapter if:

(1) the approval of the original ~~division~~ *subdivision* of land expressly contemplated the construction of the condominiums and any applicable park dedication requirements in 76-3-621 are complied with; or

(2) the condominium proposal is in conformance with applicable local zoning regulations ~~where~~ *when* local zoning regulations are in effect."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2007

CHAPTER NO. 230

[HB 12]

AN ACT GENERALLY REVISING LAWS RELATED TO PROSECUTION SERVICES; PROVIDING LEGISLATIVE FINDINGS; REVISING THE FUNDING OF AND BUDGETING FOR COUNTY ATTORNEY SALARIES; CLARIFYING CERTAIN PROVISIONS ON COUNTY POPULATION AND FULL-TIME OR PART-TIME COUNTY ATTORNEY POSITIONS; PROVIDING FOR THE STATUTORY APPROPRIATION OF STATE CONTRIBUTIONS FOR COUNTY ATTORNEY SALARIES; AMENDING SECTIONS 7-4-2502, 7-4-2503, 7-4-2704, 7-4-2706, 17-7-112, AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings — county attorney workload and salaries. The legislature finds that:

(1) a significant portion of the work done by county attorneys is for the prosecution of criminal cases under state law and for the enforcement of state civil law concerning child abuse and neglect pursuant to Title 41, chapter 3;

(2) the county attorney workloads vary greatly from county to county;

(3) it is in the state's best interest to promote consistent statewide prosecution services and to support the office of county attorney as a career position that will attract experienced and well-qualified attorneys, especially considering the enactment of a statewide public defender system in 2005;

(4) because a county attorney is an elected county official and has a vital role in providing civil legal services to the county and because each county has unique needs to consider, the county attorney's salary should be set by the county;

(5) because county attorneys provide both state and county services, the responsibility for funding county attorney salaries should be a responsibility shared by the state and the counties; and

(6) the state's funding responsibility should be met through a predictable and ongoing appropriation, thus through a statutory appropriation.

Section 2. Section 7-4-2502, MCA, is amended to read:

"7-4-2502. Payment of salaries of county officials and assistants — *state share for county attorney — statutory appropriation.* (1) The salaries of the county officers and their assistants may be paid monthly, twice monthly, or every 2 weeks out of the general fund of the county and upon the order of the board of county commissioners.

(2) ~~(a)~~ The *funding for the* salary ~~of~~ *and health insurance benefits for* the county attorney is ~~payable one-half from the general fund of the county and, if the county has supplied the information to the department of justice for inclusion in its budget, the other one-half from the state treasury upon the warrant of the state treasurer. If the county has not supplied information concerning any scheduled or proposed increase in salary for the county attorney~~

~~to the department of justice for inclusion in material submitted to the budget director under Title 17, chapter 7, part 1, the county is responsible for any increased salary. The state's share of the county attorney's salary is payable every 2 weeks.~~

~~(b) The county commissioners of each county shall, within 30 days after the election or appointment to fill a vacancy for any cause in the office of county attorney, certify the election or appointment to the department of justice. The department shall notify the state treasurer of the salary of the county attorney. The state treasurer shall draw warrants for the county attorney salaries in the same manner as for state officers. In case of a vacancy, the county commissioners shall immediately notify the department of justice, and the department shall compute the salary due on the basis of the notification~~ *a shared responsibility of the state and the county. The state's share is payable as provided in subsection (3).*

(3) (a) For each fiscal year, the department of justice shall pay to each county and consolidated government the amount calculated under subsection (3)(b). Payments must be made quarterly.

(b) (i) For each county and consolidated government with a full-time county attorney, the amount paid each fiscal year must be equal to 50% of 85% of a district court judge's salary most recently set under 3-5-211 plus an amount equal to 50% of the employer contribution for group benefits under 2-18-703(2) for an employee as defined in 2-18-701.

(ii) For each county and consolidated government with a part-time county attorney, the total amount paid each fiscal year must be equal to the amount calculated under subsection (3)(b)(i) prorated according to the position's regular work hours.

(c) For the purpose of this subsection (3), the following definitions apply:

(i) "Full-time county attorney" means that as of July 1 immediately preceding the regular legislative session, the county attorney position has been established as a full-time position pursuant to 7-4-2706.

(ii) "Part-time county attorney" means that as of July 1 immediately preceding the regular legislative session, the county attorney position has been established as a part-time position pursuant to 7-4-2706.

(iii) "Salary" means wage plus the employer contributions required for retirement, workers' compensation insurance, and the Federal Insurance Contributions Act as determined for a district court judge.

(4) The amount to be paid to each county pursuant to subsection (3) is statutorily appropriated, as provided in 17-7-502, from the general fund to the department of justice.

~~(3)~~*(5)* The board may, under limitations and restrictions prescribed by law, fix the compensation of all county officers not otherwise fixed by law and provide for the payment of the compensation and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504, set their salaries at the prior fiscal year level."

Section 3. Section 7-4-2503, MCA, is amended to read:

"7-4-2503. Salary schedule for certain county officers — county compensation board. (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor in counties where

county surveyors receive salaries as provided in 7-4-2812, justice of the peace, and county auditor in all counties where the office is authorized must be established by the county governing body based upon the recommendations of the county compensation board provided for in subsection (4).

(b) The annual salary established pursuant to subsection (1)(a) must be uniform for all county officers referred to in subsection (1)(a).

(2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon subsection (1), the sum of $400 a year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 a year.

(b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of $2,000 a year.

(c) The county sheriff must receive a longevity payment amounting to 1% of the salary determined under subsection (1) for each year of service with the sheriff's office, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(d) If the clerk and recorder is also the county election administrator, the clerk and recorder may receive, in addition to the base salary provided in subsection (1)(a), up to $2,000 a year. The additional salary provided for in this subsection (2)(d) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.

(3) (a) ~~In each county with a population in excess of 30,000, the county attorney must be a full-time official under 7-4-2704, and the salary is $50,000 a year, subject to adjustment as provided in subsection (3)(c). In counties with a population less than 30,000, the county attorney who is a part-time official is entitled to receive an annual base salary equal to the salary received for the fiscal year ending June 30, 2001.~~

~~(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney is the same as that established for full-time county attorneys in subsection (3)(a).~~

~~(c) Each~~ *Subject to subsection (3)(b), the salary for the county attorney must be set as provided in subsection (4).*

(b) If the uniform base salary set for county officials pursuant to subsection (1) is increased, then the county attorney is entitled to ~~an~~ *at least the same* increase ~~in salary based upon the schedule developed and approved by the county compensation board as provided in subsection (4)~~*, unless the increase would cause the county attorney's salary to exceed the salary of a district court judge.*

~~(d)~~*(c)* (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of

employment. After completing 6 years of service as deputy county attorney and for each year of additional service up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase.

(4) (a) There is a county compensation board consisting of the county commissioners, three of the county officials described in subsection (1) appointed by the board of county commissioners, the county attorney, and two to four resident taxpayers appointed initially by the board of county commissioners to staggered terms of 3 years, with the initial appointments of one or two taxpayer members for a 2-year term and one or two taxpayer members for a 3-year term. The county compensation board shall hold hearings annually for the purpose of reviewing the compensation paid to county officers. The county compensation board may consider the compensation paid to comparable officials in other Montana counties, other states, state government, federal government, and private enterprise.

(b) The county compensation board shall prepare a compensation schedule for the elected county officials, including the county attorney, for the succeeding fiscal year. The schedule must take into consideration county variations, including population, the number of residents living in unincorporated areas, assessed valuation, motor vehicle registrations, building permits, and other factors considered necessary to reflect the variations in the workloads and responsibilities of county officials as well as the tax resources of the county.

(c) A recommended compensation schedule requires a majority vote of the county compensation board, and at least two county commissioners must be included in the majority. A recommended compensation schedule may not reduce the salary of a county officer that was in effect on May 1, 2001.

(d) The provisions of this subsection (4) do not apply to a county that has adopted a charter form of government or to a charter, consolidated city-county government."

Section 4. Section 7-4-2704, MCA, is amended to read:

"7-4-2704. Limitations on activities of county attorneys and deputy county attorneys. (1) The county attorney, except for ~~his~~ *the county attorney's* own services, ~~must~~ *may* not present ~~any~~ *a* claim, account, or other demand for allowance against the county or in any way advocate the relief asked on the claim or demand made by another.

(2) ~~In~~ *Except as provided in subsection (4), in* each county ~~with a population in excess of 30,000,~~ *in which the office of county attorney is a full-time position pursuant to 7-4-2706,* the county attorney is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law, except that ~~he~~ *the county attorney may engage in self-representation and* may *represent the county attorney's* ~~represent himself and his~~ immediate family ~~and except as provided in subsection (4)~~.

(3) ~~Any~~ *Except as provided in subsection (4), a* deputy county attorney in a county ~~with a population in excess of 30,000~~ *in which the office of county attorney is a full-time position pursuant to 7-4-2706 and* who is paid 70% or more of the county attorney's salary is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law,

except as to those matters in which ~~he~~ *the deputy county attorney* has a direct interest ~~and except as provided in subsection (4)~~.

(4) Any elected or appointed county attorney and any deputy county attorney ~~shall~~ *must*, upon demonstration of need to the board of county commissioners, be granted a period of time, not to exceed 3 months from the date ~~he~~ *that the person* takes office, to complete any pending matters remaining from ~~any~~ *a* previous private practice of law. During ~~such~~ *that* time, the county attorney and any appointed deputy are bound by the customary rules of ethics applicable to attorneys at law."

Section 5. Section 7-4-2706, MCA, is amended to read:

"7-4-2706. County attorney to be full or part time — resolution — ~~salary~~. (1) *(a)* In ~~any~~ *a* county with a population of less than 30,000, the county commissioners may, ~~upon~~ *with* the consent of the county attorney, ~~on July 1 of any year~~ by resolution *effective July 1 of any year* establish the office of county attorney as a full-time *or part-time* position ~~subject to the provisions of 7-4-2701 and 7-4-2704. The salary for this position is the salary established pursuant to 7-4-2503.~~

~~(2) In any county in which the office of county attorney has been established as a full-time position under subsection (1), the county commissioners may, by resolution and upon the consent of the county attorney, establish the office as a part-time position on July 1 of any year~~.

(b) A copy of a resolution adopted under subsection (1)(a) must be provided to the department of justice.

(2) In a county with a population of 30,000 or more, the office of county attorney must be a full-time position."

Section 6. Section 17-7-112, MCA, is amended to read:

"17-7-112. Submission deadlines — budgeting schedule. The following is the schedule for the preparation of a state budget for submission to the legislature convening in the following year:

(1) By August 1, forms necessary for preparation of budget estimates must be distributed pursuant to 17-7-111(2).

(2) ~~(a)~~ By September 1, each agency shall submit the information required under 17-7-111 to the budget director. ~~The department of justice shall submit information received from counties concerning the state's share of county attorney salaries.~~

~~(b) As provided in 7-4-2502(2)(a), the department of justice is not obligated to provide more than one-half of the salary of a county attorney based on the amount included in the department's budget and appropriated for that purpose.~~

(3) By September 1, the budget director shall submit each state agency's budget request required under 17-7-111(3) to the legislative fiscal analyst. The transfer of budget information must be done on a schedule mutually agreed to by the budget director and the legislative fiscal analyst in a manner that facilitates an even transfer of budget information that allows each office to maintain a reasonable staff workflow.

(4) By October 10, the budget director shall furnish the legislative fiscal analyst with a preliminary budget reflecting the base budget in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst.

(5) By October 30, a budget request must be prepared by the budget director and submitted to the legislative fiscal analyst on behalf of any agency that did not present the information required by this section. The budget request must be based upon the budget director's studies of the operations, plans, and needs of the institution, university unit, or agency.

(6) By November 1, the budget director shall furnish the legislative fiscal analyst with a present law base for each agency and a copy of the documents that reflect the anticipated receipts and other means of financing the base budget and present law base for each fiscal year of the ensuing biennium. The material must be in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst.

(7) By November 12, the budget director shall furnish the legislative fiscal analyst with the documents, in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst, that reflect expenditures to the second level, as provided in 17-1-102(3), by funding source and detailed by accounting entity.

(8) By November 15, the proposed pay plan schedule and the information technology summary required by 17-7-111(4), a preliminary budget that meets the statutory requirements for submission of the budget to the legislature, and a summary of the preliminary budget designed for distribution to members and members-elect of the legislature must be submitted to the legislative fiscal analyst.

(9) By December 15, the budget director shall submit a preliminary budget to the governor and to the governor-elect, if there is one, as provided in 17-7-121, and shall furnish the legislative fiscal analyst with all amendments to the preliminary budget.

(10) By January 7, recommended changes proposed by a governor-elect must be transmitted to the legislative fiscal analyst and the legislature as provided in 17-7-121."

Section 7. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; *7-4-2502;* 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204;

23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 8. Effective date. [This act] is effective July 1, 2007.

Approved April 23, 2007

CHAPTER NO. 231

[HB 526]

AN ACT REVISING THE TERRITORIAL INTEGRITY ACT LAWS TO AVOID WASTEFUL DUPLICATION OF FACILITIES; CLARIFYING AND DEFINING CERTAIN TERMS; ELIMINATING THE REBUTTABLE PRESUMPTION THAT THE NEAREST LINE IS THE LEAST-COST ELECTRIC SERVICE FACILITY FOR A NEW CUSTOMER; CLARIFYING ELECTRIC SERVICE FACILITIES PROVIDED TO LARGE CUSTOMERS; PROVIDING A PROCESS FOR SERVICING NEW SUBDIVISIONS; PROVIDING A DISPUTE RESOLUTION PROCESS; AMENDING SECTIONS 69-5-102, 69-5-105, 69-5-106, AND 69-5-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-5-102, MCA, is amended to read:

"69-5-102. Definitions. When used in this part, the following definitions apply:

(1) "Agreement" means a written agreement between two or more electric facilities providers that identifies the geographical area to be served exclusively by each electric facilities provider that is a party to the agreement and any terms and conditions pertinent to the agreement.

(2) "Cost" means the gross cost of constructing new electric service facilities to the premises, using new materials and similar design standards required to meet the load, from a point where there is existing electrical capacity to serve.

~~(2) "Electric cooperative" means a rural electric cooperative organized under Title 35, chapter 18, or a foreign corporation admitted thereunder to do business in Montana.~~

~~(3)~~*(3)* "Electric facilities provider" means any utility that provides electric service facilities to the public.

~~(4)~~*(4)* "Electric service facilities" means any distribution or transmission system or related facility necessary to provide electricity to the premises, including lines.

~~(5) "Electric utility" means a person, firm, or corporation other than an electric cooperative that provides electric service facilities to the public.~~

(5) "Large customer" means any premises, except subdivisions, with the estimated connected load for full operation at an individual service for the premises of 500 kilowatts or larger.

(6) "Line" means any ~~electric supply conductor~~ *material that is used to convey electrical energy and that is normally energized between 2,400 volts phase to ground and 14,400 volts phase to ground*.

(7) "Premises" means a building, residence, structure, *irrigation pump,* or facility to which electric service facilities are provided or are to be installed~~;~~*.* ~~however~~ *However*, two or more buildings, structures, *irrigation pumps,* or facilities that are located on one tract or contiguous tracts of land and that are used by one electric consumer for farming, business, commercial, industrial, institutional, governmental, or trailer court purposes must together constitute one premises, except that any building, structure, *irrigation pump,* or facility, other than a trailer court, may not, together with any other building, structure, *irrigation pump,* or facility, constitute one premises if the electric service to it is separately metered and the charges for that service are calculated independently of charges for service to any other building, structure, *irrigation pump,* or facility.

(8) "Regulated utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

(9) "Subdivision" has the meaning provided for in 76-3-103. The definition includes subdivisions that may be developed in one or more phases of development at different periods of time.

~~(8)~~*(10)* "Utility" means a public utility regulated by the commission pursuant to Title 69, chapter 3, or a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18*, or their successors or assignees*.

(11) "Vector" means a straight line between two points."

Section 2. Section 69-5-105, MCA, is amended to read:

"69-5-105. Service to new consumers. (1) ~~Subject to this part,~~ *Except as provided in 69-5-106 and [section 5],* the electric facilities provider ~~having~~ *that has* a line nearest the premises~~,~~ *and that has the capacity to serve the premises,* as measured in accordance with subsection (2), shall provide electric service facilities to the premises initially requiring service after May 2, 1997~~, which creates a rebuttable presumption that the nearest line is the least-cost electric~~

~~service facility to the new customer. However, a customer or another electric facilities provider may rebut the presumption, and another electric facilities provider may provide the electric service facilities if it can do so at less cost~~.

(2) All measurements under this part must be made on the shortest ~~straight line~~ *vector* that can be drawn from the ~~conductor~~ *line* nearest the premises to the nearest permanent portion of the premises.

~~(3) If the electric facilities providers are unable to reach agreement as to which electric facilities provider can provide electric service facilities at least cost, an independent consultant engineer agreeable to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric facilities provider can extend its lines to the consumer at the least cost. The cost of those engineering services must be paid equally by the electric facilities providers involved.~~"

Section 3. Section 69-5-106, MCA, is amended to read:

"69-5-106. Electric service facilities to large customers. ~~(1) An electric~~ *A regulated* utility *electric facilities provider* has the right to furnish electric service facilities to ~~any premises if the estimated connected load for full operation at the premises will be 400 kilowatts or larger within 2 years from the date of initial service and~~ *the premises of a large customer* if the ~~electric~~ *regulated* utility *electric facilities provider* can extend its *electric service* facilities to the premises *of a large customer* at less cost ~~to the electric utility than the electric cooperative cost~~ *than other electric facilities providers*. The estimated connected load must be determined from the plans and specifications prepared for construction of the premises or, if an estimate is not available, must be determined by *mutual* agreement of the electric facilities provider and the *large* customer. ~~The fact that the actual connected load after 2 years from the date of initial service is less than 400 kilowatts does not affect the right of the electric facilities provider initially providing electric service facilities to continue to provide electric service facilities to the premises.~~

~~(2) An independent consultant engineer agreeable to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric facilities provider can extend its facilities at the least cost to the utility. The cost of those engineering services must be paid equally by the electric facilities providers involved.~~"

Section 4. Section 69-5-110, MCA, is amended to read:

"69-5-110. Jurisdiction of district courts over disputes. The district courts of the county or counties within which the premises*, vectors,* or lines involved in any dispute are located have jurisdiction under this part over all electric facilities providers subject to this part."

Section 5. Service to new subdivisions. (1) Except as provided in 69-5-108, if two or more electric facilities providers have lines in general proximity to a new subdivision, electric service to the new subdivision must be apportioned by drawing a series of vectors through the subdivision equidistant from the lines of each electric facilities provider with that part of the subdivision closest to an electric facilities provider's line receiving service from that electric facilities provider.

(2) Nothing in this section prohibits electric facilities providers from agreeing among themselves on how to provide service to a new subdivision.

Section 6. Review by independent consultant. (1) If electric facilities providers that have provided cost estimates to a new large customer are unable to reach agreement as to which electric facilities provider can provide electric service facilities at the least cost, an independent consultant engineer agreeable to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric facilities provider can extend its line to the new large customer at the least cost. The cost of those engineering services must be paid equally by the electric facilities providers involved.

(2) If electric facilities providers proposing to provide service to a subdivision do not agree on the location of a vector, as provided in [section 5(1)], an independent consultant engineer agreeable to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine the location of a vector. The cost of those engineering services must be paid equally by the electric facilities providers involved.

(3) If electric facilities providers having lines near the premises of a new consumer do not agree if a line has capacity to serve the premises, an independent consultant engineer agreeable to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine if a line has capacity to serve the premises. The cost of those engineering services must be paid equally by the electric facilities providers involved.

Section 7. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 8. Codification instruction. [Sections 5 and 6] are intended to be codified as an integral part of Title 69, chapter 5, part 1, and the provisions of Title 69, chapter 5, part 1, apply to [sections 5 and 6].

Section 9. Effective date. [This act] is effective on passage and approval.

Section 10. Applicability. [This act] does not apply to any pending litigation filed under the Territorial Integrity Act on or before [the effective date of this act].

Approved April 23, 2007

CHAPTER NO. 232

[HB 540]

AN ACT REVISING SILICOSIS BENEFITS; APPROPRIATING FUNDS TO THE DEPARTMENT OF LABOR AND INDUSTRY TO INCREASE SILICOSIS BENEFITS BY $50 A MONTH FOR EACH INDIVIDUAL RECEIVING BENEFITS; AMENDING SECTIONS 39-73-101, 39-73-103,

39-73-104, 39-73-107, AND 39-73-109, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-73-101, MCA, is amended to read:

"39-73-101. Definitions. (1) "Examining board" means a well-qualified physician or physicians, as designated by the department of labor and industry.

(2) The term "gainful occupation" may not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential but means any person having an income from any other source exceeding ~~$300 per~~ *$350 a* month.

(3) "Payments" means money payments to persons having silicosis.

(4) "Silicosis" means a fibrotic condition of the lungs due to the inhalation of silica dust."

Section 2. Section 39-73-103, MCA, is amended to read:

"39-73-103. Conformity with acts of federal government. If the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, the department of labor and industry is authorized to administer the grants-in-aid and payments in addition to grants made by this chapter. The total payments to any individual under this chapter may not exceed ~~$300~~ *$350* a month, exclusive of any grants made by congress."

Section 3. Section 39-73-104, MCA, is amended to read:

"39-73-104. Eligibility requirements for benefits. Payment must be made under this chapter to any person who:

(1) has silicosis, as defined in 39-73-101, that results in the person's total disability so as to render it impossible for the person to follow continuously any substantially gainful occupation;

(2) has resided in and been an inhabitant of the state of Montana for 10 years or more immediately preceding the date of the application;

(3) is not receiving, with respect to any month for which the person would receive a payment under this chapter, compensation under 39-71-115 equal to the sum of ~~$300~~ *$350*."

Section 4. Section 39-73-107, MCA, is amended to read:

"39-73-107. Amount of payments. Subject to the provisions of this chapter and the deductions provided in this chapter, any person who has silicosis and who has, subject to the regulations and standards of the department of labor and industry, been determined by the department to be entitled *to* payment under this chapter for silicosis must be granted a payment by the department of ~~$300~~ *$350* a month, subject to any additional appropriations. If the person is receiving payments under 39-71-715 that are less in the aggregate than ~~$300~~ *$350*, then the person is entitled to a payment under this chapter of the difference between the amount received under 39-71-715 and ~~$300~~ *$350* a month. The legislature shall authorize additional appropriations that may be necessary to make the increased monthly payments provided in this section."

Section 5. Section 39-73-109, MCA, is amended to read:

"39-73-109. Payment of benefits to surviving spouse. (1) Upon the death of a person receiving payments for silicosis under 39-73-104 or 39-73-108,

the surviving spouse, as long as the spouse remains unmarried, is entitled to receive the payments granted *to* the deceased spouse.

(2) A person who otherwise is qualified to receive payments under subsection (1) but whose spouse died prior to March 14, 1974, is eligible to begin receiving ~~$300~~ *$350* a month."

Section 6. Appropriation. The following money is appropriated from the general fund to the department of labor and industry to fund an increase of $50 a month for each individual who receives silicosis benefits:

Fiscal year 2008 $21,000

Fiscal year 2009 $21,000

Section 7. Effective date. [This act] is effective July 1, 2007.

Approved April 23, 2007

CHAPTER NO. 233

[SB 185]

AN ACT PROVIDING FOR THE OPERATION OF ELECTRIC VEHICLES; DEFINING "MEDIUM-SPEED ELECTRIC VEHICLE"; PROHIBITING OPERATION OF A MEDIUM-SPEED ELECTRIC VEHICLE ON CERTAIN HIGHWAYS; REQUIRING CERTAIN EQUIPMENT ON A MEDIUM-SPEED ELECTRIC VEHICLE; ALLOWING FOR THE OPERATION OF A VEHICLE EQUIPPED A CERTAIN WAY WITHOUT A MOTORCYCLE ENDORSEMENT; AMENDING SECTIONS 61-1-101 AND 61-5-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-101, MCA, is amended to read:

"61-1-101. Definitions. As used in this title, unless the context indicates otherwise, the following definitions apply:

(1) (a) "Authorized agent" means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department's motor vehicle titling, registration, or driver records, using an approved automated interface, for specific functions or purposes upon behalf of a third party.

(b) For purposes of this subsection (1), "person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.

(2) "Authorized agent agreement" means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent must operate in performing specific motor vehicle or driver-related record functions.

(3) "Bus" means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(4) (a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(b) The term does not include a truck canopy cover or topper.

(5) "Certificate of title" means the paper record issued by the department or by the appropriate agency of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons and the motor vehicle specifically described in the record and that provides notice of a perfected security interest in the motor vehicle.

(6) "Commercial driver's license" means:

(a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; and

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.

(7) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(i) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(iii) is designed to transport at least 16 passengers, including the driver;

(iv) is a school bus; or

(v) is of any size and is used in the transportation of hazardous materials as defined in 61-8-801.

(b) The following vehicles are not commercial motor vehicles:

(i) an authorized emergency service vehicle:

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) entitled to the exemptions granted under 61-8-107;

(ii) a vehicle:

(A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;

(B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and

(C) not used to transport goods for compensation or for hire; or

(iii) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in part-time national guard training, and national guard military technicians, or active duty United States coast guard personnel.

(c) For purposes of this subsection (7):

(i) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;

(ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle;

(iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; and

(iv) "school bus" has the meaning provided in 49 CFR 383.5.

(8) "Commission" means the state transportation commission.

(9) "County where a vehicle is domiciled" means the county in which the vehicle owner permanently resides or, if a vehicle is owned by a corporation or is leased or used for commercial purposes, the county in which the vehicle is permanently assigned or most frequently used, dispatched, or controlled.

(10) "Custom vehicle" means a motor vehicle other than a motorcycle that:

(a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or

(ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(11) (a) "Dealer" means a person, firm, association, or corporation that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker, as defined in 61-4-131, of new or used motor vehicles, trailers, semitrailers, or pole trailers that are not registered in the name of the person, firm, association, or corporation and that are required to be licensed under chapter 4 of this title.

(b) The term does not include the following:

(i) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(ii) employees of the persons included in subsection (11)(b)(i) when engaged in the specific performance of their duties as employees; or

(iii) public officers while performing or in the operation of their duties.

(12) "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.

(13) "Department" means the department of justice acting directly or through its duly authorized officers or agents.

(14) "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.

(15) "Driver" means a person who drives or is in actual physical control of a vehicle.

(16) "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

(a) any temporary license or instruction permit;

(b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;

(c) any nonresident's driving privilege;

(d) a motorcycle endorsement; or

(e) a commercial driver's license.

(17) "Electric personal assistive mobility device" means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour.

(18) "For hire" means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(19) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

(20) "Highway" or "public highway" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

(21) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(22) "Implement of husbandry" means a vehicle that is designed for agricultural purposes and exclusively used by the owner of the vehicle in the conduct of the owner's agricultural operations.

(23) "Kit vehicle" is a motor vehicle assembled from a manufactured kit either as:

(a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle; or

(b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain, commonly referred to as a donor vehicle.

(24) "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

(25) "Manufactured home" has the meaning provided in 15-1-101.

(26) "Manufacturer" includes any person, firm, corporation, or association engaged in the manufacture of motor vehicles, trailers, or semitrailers as a regular business.

(27) "Manufacturer's certificate of origin" means the original paper record produced and issued by the manufacturer of a vehicle or, if in a medium authorized by the department, an electronic record created and transmitted by the manufacturer of a vehicle to the manufacturer's agent or a licensed dealer. The record must establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of ownership of the vehicle to the person or persons named in the certificate.

(28)(a) "Medium-speed electric vehicle" is a motor vehicle, upon or by which a person may be transported, that:

(i) has a maximum speed of 35 miles an hour as certified by the manufacturer;

(ii) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;

(iii) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;

(iv) is fully enclosed and includes at least one door for entry;

(v) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;

(vi) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle identification number as provided in 49 CFR, part 565;

(vii) bears a sticker, affixed by the manufacturer or dealer, on the left side of the rear window that indicates the vehicle's maximum speed rating; and

(viii) as certified by the manufacturer, is equipped as provided in [section 3].

(b) A medium-speed electric vehicle must be treated as a light vehicle for purposes of titling and registration under Title 61, chapter 3.

~~(28)~~*(29)* "Mobile home" or "housetrailer" has the meaning provided in 15-1-101.

~~(29)~~*(30)* (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

~~(30)~~*(31)* (a) "Motor carrier" means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles upon a public highway in this state for the transportation of property for hire on a commercial basis.

(b) The term does not include motor carriers regulated under Title 69, chapter 12.

~~(31)~~*(32)* (a) "Motorcycle" means a motor vehicle having not more than three wheels in contact with the ground and a *seat or* saddle on which the operator sits or a platform on which the operator stands and a driving wheel in contact with the ground in addition to the wheels of the vehicle itself. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.

(b) The term does not include a tractor, a bicycle as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.

~~(32)~~*(33)* (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.

(b) The term does not include a bicycle, as defined in 61-8-102, or a motorized nonstandard vehicle.

~~(33)~~*(34)* "Motor home" means a motor vehicle:

(a) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

(b) containing permanently installed independent life support systems that meet the ANSIA/A119.2 standard; and

(c) providing at least four of the following types of facilities:

(i) cooking, refrigeration, or icebox;

(ii) self-contained toilet;

(iii) heating or air-conditioning, or both;

(iv) potable water supply, including a faucet and sink; or

(v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply; or both.

~~(34)~~*(35)* (a) "Motorized nonstandard vehicle" means a vehicle, upon or by which a person may be transported, that:

(i) is propelled by its own power, using an internal combustion engine or an electric motor;

(ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(c) The term does not include an electric personal assistive mobility device or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

~~(35)~~*(36)* (a) "Motor vehicle" means a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state.

(b) The term does not include a bicycle as defined in 61-8-102 or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

~~(36)~~*(37)* "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.

~~(37)~~*(38)* "Nonresident" means a person who is not a resident of this state.

~~(38)~~*(39)* (a) "Not used for general transportation purposes" means the operation of a motor vehicle, registered as a collector's item, a custom vehicle, or a street rod, to or from a car club activity or event or an exhibit, show, cruise night, or parade, or other occasional transportation activity.

(b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.

~~(39)~~*(40)* (a) "Off-highway vehicle" means a self-propelled vehicle used for recreation or cross-country travel on public lands, trails, easements, lakes,

rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) The term does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) vehicles otherwise issued a certificate of title and registered under the laws of the state, unless the vehicle is used for off-road recreation on public lands.

~~(40)~~*(41)* "Operator" means a person who is in actual physical control of a motor vehicle.

~~(41)~~*(42)* "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested the right of possession or control.

~~(42)~~*(43)* "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

~~(43)~~*(44)* "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

~~(44)~~*(45)* "Pole trailer" means a vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

~~(45)~~*(46)* "Police officer" means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

~~(46)~~*(47)* (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor capable of producing not more than 50 horsepower.

(b) The term does not include golf carts.

~~(47)~~*(48)* "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

~~(48)~~*(49)* (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated upon rails.

(b) The term does not include streetcars.

~~(49)~~*(50)* "Recreational vehicle" includes self-propelled vehicles originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use.

~~(50)~~*(51)* "Registration" or "register" means the act or process of creating an electronic record, maintained by the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records.

~~(51)~~*(52)* "Registration decal" means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county treasurer to the owner of a motor vehicle, trailer, semitrailer, or pole trailer as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department under 61-3-101.

~~(52)~~*(53)* "Registration receipt" means a paper record that is produced and issued or, if authorized by the department, an electronic record that is transmitted by the department, its authorized agent, or a county treasurer to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the vehicle for the registration period indicated in the receipt.

~~(53)~~*(54)* "Retail sale" means the sale of a new motor vehicle or used motor vehicle, a recreational vehicle, a trailer, a travel trailer, a motorcycle, a quadricycle, or special mobile equipment by a dealer to a person for purposes other than resale.

~~(54)~~*(55)* "Revocation" means that the driver's license and privilege to drive a motor vehicle on the public highways are terminated and may not be renewed or restored. An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.

~~(55)~~*(56)* "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways, the term refers to any roadway separately but not to all roadways collectively.

~~(56)~~*(57)* (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

~~(57)~~*(58)* "Semitrailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.

~~(58)~~*(59)* "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, that is designed primarily for travel on snow or ice, that may be steered by skis or runners, and that is not otherwise registered or licensed under the laws of the state of Montana.

~~(59)~~*(60)* "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this subsection is partial and

does not exclude other vehicles that are within the general terms of this subsection.

~~(60)~~*(61)* (a) "Specially constructed vehicle" means a motor vehicle, including a motorcycle, that:

(i) was not originally constructed under a distinctive make, model, or type by a generally recognized manufacturer of motor vehicles;

(ii) has been structurally modified so that it does not have the same appearance as similar vehicles from a generally recognized manufacturer of motor vehicles;

(iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from other vehicles;

(iv) has been constructed or assembled by using major component parts from one or more manufactured vehicles and that cannot be identified as a specific make or model; or

(v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.

(b) The term does not include a motor vehicle that has been repaired or restored to its original design by replacing parts.

~~(61)~~*(62)* (a) "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use.

(b) The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.

~~(62)~~*(63)* (a) "Stop", when required, means complete cessation from movement.

(b) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrol officer, or traffic control sign or signal.

~~(63)~~*(64)* "Street" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

~~(64)~~*(65)* "Street rod" means a motor vehicle, other than a motorcycle, that:

(a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949, including a kit vehicle intended to resemble a vehicle manufactured before 1949; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

~~(65)~~*(66)* "Suspension" means that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn, but only during the period of suspension.

~~(66)~~*(67)* "Temporary registration permit" means a paper record:

(a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:

(i) required vehicle and owner information; and

(ii) the purpose for which the record was generated; and

(b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs.

~~(67)~~*(68)* "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

~~(68)~~*(69)* (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

~~(69)~~*(70)* "Transaction summary receipt" means an electronic record produced and issued by the department, its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain a unique transaction record number and summarize and verify the electronic filing of the transaction described in the receipt on the electronic record of title maintained under 61-3-101.

~~(70)~~*(71)* "Travel trailer" means a vehicle:

(a) that is 40 feet or less in length;

(b) that is of a size or weight that does not require special permits when towed by a motor vehicle;

(c) with gross trailer area of less than 320 square feet; and

(d) that is designed to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.

~~(71)~~*(72)* "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

~~(72)~~*(73)* "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

~~(73)~~*(74)* "Under the influence" has the meaning provided in 61-8-401.

~~(74)~~*(75)* "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, given away, or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as "secondhand" within the ordinary meaning of that term.

~~(75)~~*(76)* "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.

~~(76)~~*(77)* (a) "Vehicle" means a device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.

(b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

~~(77)~~*(78)* "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the motor vehicle or a component part of the motor vehicle.

~~(78)~~*(79)* "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~(79)~~*(80)* "Wholesaler" means a person, firm, partnership, association, or corporation that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, recreational vehicle, trailer, semitrailer, pole trailer, special mobile equipment, motorcycle, or quadricycle only to vehicle dealers and auto auctions licensed under chapter 4, part 1."

Section 2. Medium-speed electric vehicle — operating requirements. (1) A medium-speed electric vehicle may only be operated on a highway for which the posted speed limit does not exceed 45 miles an hour.

(2) Except as provided in subsection (1), the provisions of this chapter apply to the operator of a medium-speed electric vehicle.

Section 3. Medium-speed electric vehicles — required equipment. A medium-speed electric vehicle, as defined in 61-1-101, must be equipped with:

(1) headlamps, front and rear turn signal lamps, taillamps, and stop lamps;

(2) three red reflectors, two of which must be placed on each side as far to the rear of the vehicle as practicable, and one of which must be placed on the rear of the vehicle;

(3) an exterior mirror mounted on the driver's side of the vehicle and either an exterior mirror mounted on the passenger's side of the vehicle or an interior mirror;

(4) a parking brake;

(5) a windshield that conforms to the federal motor vehicle safety standard provided in 49 CFR 571.205;

(6) a seatbelt assembly that conforms to the federal motor vehicle safety standard provided in 49 CFR 571.209; and

(7) a roll bar, roll cage, or crush-proof body design.

Section 4. Section 61-5-102, MCA, is amended to read:

"61-5-102. Drivers to be licensed. (1) Except as provided in 61-5-104, a person may not drive a motor vehicle upon a highway in this state unless the person has a valid Montana driver's license. A person may not receive a Montana driver's license until the person surrenders to the department all valid driver's licenses issued by any other jurisdiction. A person may not have in the

person's possession or under the person's control more than one valid Montana driver's license at any time.

(2) (a) *(i)* ~~A~~ *Except as provided in subsection (2)(a)(ii), a* license is not valid for the operation of a motorcycle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement".

(ii) A motorcycle endorsement is not required for the operation of a motorcycle that is propelled by an electric motor or other device that transforms stored electrical energy into the motion of the vehicle, has a fully enclosed cab, is equipped with three wheels in contact with the ground, and is equipped with a seat and seatbelts.

(b) A license is not valid for the operation of a commercial motor vehicle unless the holder of the license has completed the requirements of 61-5-110, the license has been clearly marked with the words "commercial driver's license", and the license bears the proper endorsement for:

(i) the specific vehicle type or types being operated; or

(ii) the passengers or type or types of cargo being transported.

(3) When a city or town requires a licensed driver to obtain a local driving license or permit, a license or permit may not be issued unless the applicant presents a state driver's license valid under the provisions of this chapter."

Section 5. Codification instruction. (1) [Section 2] is intended to be codified as an integral part of Title 61, chapter 8, part 3, and the provisions of Title 61, chapter 8, part 3, apply to [section 2].

(2) [Section 3] is intended to be codified as in integral part of Title 61, chapter 9, part 4, and the provisions of Title 61, chapter 9, part 4, apply to [section 3].

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 23, 2007

CHAPTER NO. 234

[SB 369]

AN ACT ELIMINATING THE REQUIREMENT THAT RURAL COOPERATIVES USE THE FORMULAS PROVIDED IN POLE ATTACHMENT RULES OF THE FEDERAL COMMUNICATIONS COMMISSION OR SUCCESSOR FORMULAS RELATED TO RATES, TERM, OR CONDITIONS OF POLE ATTACHMENT AGREEMENTS; AMENDING SECTION 35-18-104, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-18-104, MCA, is amended to read:

"35-18-104. Exemption from jurisdiction of public service commission ~~— federal pole regulation~~. Cooperatives and foreign corporations transacting business in this state pursuant to this chapter:

~~(1)~~ are exempt in all respects from the jurisdiction and control of the public service commission of this state~~; and~~

~~(2) if they operate in a rural area described in 35-18-102(6)(d), shall use the formulas provided in pole attachment rules of the federal communications commission or successor formulas with respect to any matters pertaining to rates, terms, or conditions of any pole attachment agreement between themselves and any pole tenant or lessee made after April 28, 2001~~."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective June 30, 2009.

Approved April 23, 2007

CHAPTER NO. 235

[HB 361]

AN ACT REVISING REQUIREMENTS FOR A PROXY MARRIAGE; REQUIRING ONE PARTY TO A PROXY MARRIAGE TO BE A MEMBER OF THE ARMED FORCES OF THE UNITED STATES ON FEDERAL ACTIVE DUTY OR A RESIDENT OF MONTANA; AMENDING SECTIONS 40-1-202 AND 40-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-1-202, MCA, is amended to read:

"40-1-202. License issuance. ~~When~~ *Except as provided in 40-1-301, when* a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the clerk of the district court and paid the marriage license fee of $53, the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained ~~the age of~~ 18 years *of age* at the time the marriage license is effective or will have attained ~~the age of~~ 16 years *of age* and has obtained judicial approval as provided in 40-1-213;

(2) satisfactory proof that the marriage is not prohibited; and

(3) a certificate of the results of any medical examination required by the laws of this state."

Section 2. Section 40-1-301, MCA, is amended to read:

"40-1-301. Solemnization and registration. (1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, by a mayor, city judge, or justice of the peace, by a tribal judge, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the clerk of the district court.

(2) If a party to a marriage is unable to be present at the solemnization, ~~he~~ *the party* may authorize in writing a third person to act as ~~his~~ proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, ~~he~~ *the person* may solemnize the

marriage by proxy. If ~~he~~ *the person solemnizing the marriage* is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

(3) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it~~,~~ if either party to the marriage believed ~~him~~ *that person* to be ~~so~~ qualified.

(4) One party to a proxy marriage must be a member of the armed forces of the United States on federal active duty or a resident of Montana at the time of application for a license and certificate pursuant to 40-1-202. One party or a legal representative shall appear before the clerk of court and pay the marriage license fee. For the purposes of this subsection, residency must be determined in accordance with 1-1-215."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 24, 2007

CHAPTER NO. 236

[HB 369]

AN ACT INCREASING THE AMOUNTS THAT A COUNTY MAY BORROW WITHOUT A VOTE OF THE ELECTORATE; AMENDING SECTION 7-7-2402, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-2402, MCA, is amended to read:

"7-7-2402. Election required to borrow money — exceptions. (1) Except as provided in subsection (4), the board of county commissioners may not borrow money for any of the purposes mentioned in this title or for any single purpose in an amount exceeding the limits set in subsection (2) without:

(a) first submitting the question of a loan to a vote of the electors of the county; and

(b) obtaining the approval of a majority of the electors of the county.

(2) Based upon the taxable valuation of a county *and not exceeding the limits on county indebtedness established in 7-7-2101*, a county may borrow the following amounts without a vote of the electorate:

(a) up to ~~$500,000~~ *$1 million* if the county's taxable value is less than $50 million;

(b) up to ~~$750,000~~ *$1.5 million* if the county's taxable value is between $50 million and $100 million; and

(c) up to ~~$1~~ *$2* million if the county's taxable valuation is greater than $100 million.

(3) If a majority of the votes cast are in favor of the loan, then the board of county commissioners may enter into the loan, issuing bonds or otherwise as is in the best interests of the county.

(4) It is not necessary to submit to the electors the question of borrowing money:

(a) to refund outstanding bonds; or

(b) for the purpose of enabling any county to liquidate its indebtedness to another county incident to the creation of a new county or the change of any county boundary lines."

Section 2. Effective date. [This act] is effective on July 1, 2007.

Approved April 24, 2007

CHAPTER NO. 237

[HB 450]

AN ACT ALLOWING THE USE OF A PARTIAL RATHER THAN A FULL SOCIAL SECURITY NUMBER ON AN APPLICATION FOR A RECREATIONAL LICENSE, CONTINGENT UPON THE GRANT OF AN EXEMPTION FROM THE FEDERAL GOVERNMENT ALLOWING THE USE OF THE LAST FOUR DIGITS OF A SOCIAL SECURITY NUMBER AND UPON WRITTEN CERTIFICATION THAT THE CONTINGENCY HAS OCCURRED; AMENDING SECTIONS 87-2-106 AND 87-2-202, MCA, AND SECTION 3, CHAPTER 321, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A CONTINGENT TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-106, MCA, is amended to read:

"87-2-106. Application for license — penalties for violation — forfeiture of privileges. (1) A license may be procured from the director, a warden, or an authorized agent of the director. The applicant shall state the applicant's name, age, [*last four digits of the applicant's* social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and other facts, data, or descriptions as may be required by the department. An applicant for a resident license shall present a valid Montana driver's license, Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a license. It is a misdemeanor for a license agent to sell a hunting, fishing, or trapping license to an applicant who fails to produce the required identification at the time of application for licensure. Except as provided in subsections (2) through (4), the statements made by the applicant must be subscribed to before the officer or agent issuing the license.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by telephone, by mail, on the internet, or by other electronic means. Statements on an application for a license to be issued by telephone, by mail, on the internet, or by other electronic means need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102(7), the applicant shall apply to the director and shall submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102(7). The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing license for the resident's spouse, parent, child, brother, or sister who is otherwise qualified to obtain the license.

(5) A license is void unless subscribed to by the licensee.

(6) It is unlawful to subscribe to or make any statement, on an application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. A person violating any provision of this subsection is guilty of a misdemeanor.

(7) It is unlawful for a nonresident to apply for or purchase for a nonresident's use the following resident licenses and permits:

(a) wildlife conservation license;

(b) hunting license or permit; or

(c) fishing license or permit.

(8) (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of affirming to or making a false statement to obtain a resident license or who is convicted of applying for or purchasing a resident license in violation of subsection (7) shall be:

(i) fined not less than the greater of $100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than $1,000;

(ii) imprisoned in the county jail for not more than 6 months; or

(iii) both fined and imprisoned.

(b) In addition to the penalties specified in subsection (8)(a), upon conviction or forfeiture of bond or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt, fish, and trap in Montana for not less than 18 months.

(9) It is a misdemeanor for a person to purposely or knowingly assist an unqualified applicant in obtaining a resident license in violation of this section.

[(10) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(11) The department shall delete an applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001.)"

Section 2. Section 87-2-202, MCA, is amended to read:

"87-2-202. Application — fee — expiration. (1) Except as provided in 87-2-803(12), a wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [*last four digits of the applicant's* social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's

identity and qualifications to purchase a wildlife conservation license or to receive a free wildlife conservation license pursuant to 87-2-803(12). It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of $8, of which 25 cents is a search and rescue surcharge.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of $10, of which 25 cents is a search and rescue surcharge.

(c) In addition to the fee in subsection (3)(a), the first time in any license year that a resident uses the wildlife conservation license as a prerequisite to purchase a hunting license, an additional hunting access enhancement fee of $2 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The resident hunting access enhancement fee is chargeable only once during any license year.

(d) In addition to the fee in subsection (3)(b), the first time in any license year that a nonresident uses the wildlife conservation license as a prerequisite to purchase a hunting license, except a variably priced outfitter-sponsored Class B-10 or Class B-11 license issued under 87-1-268, an additional hunting access enhancement fee of $10 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The nonresident hunting access enhancement fee is chargeable only once during any license year.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

[(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(6) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001; the $2 wildlife conservation license fee increases in subsections (3)(a) and (3)(b) enacted by Ch. 596, L. 2003, are void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)"

Section 3. Section 3, Chapter 321, Laws of 2001, is amended to read:

"**Section 3. Contingent termination.** (1) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted the state of Montana an exemption from the requirement that an applicant under 16 years of age provide a social security number on an application for a recreational license, the

bracketed language in 87-2-106(1) *and [section 1 of this act]* and 87-2-202(1) *and [section 2 of this act]* must read: "*last four digits of the* social security number for an applicant 16 years of age or older".

(2) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted the state of Montana an exemption from the requirement that a Montana resident provide a social security number on an application for a recreational license, the bracketed language in 87-2-106(1) *and [section 1 of this act]* and 87-2-202(1) *and [section 2 of this act]* must read: "social security number for a nonresident applicant, *last four digits of the* social security number *for a resident applicant*, *a* driver's license number, or *a* Montana identification card number issued by the department of justice for a resident who does not hold a Montana driver's license if the applicant has provided a social security number when applying for the Montana identification card".

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted the state of Montana an exemption from the requirement that any applicant provide a social security number on an application for a recreational license, the bracketed language in 87-2-106(1) *and [section 1 of this act]* and 87-2-202(1) *and [section 2 of this act]* must read: "*last four digits of the* social security number for a nonresident applicant who does not hold and present a valid driver's license from the applicant's state of residence, *last four digits of the* social security number *for a resident applicant*, *a* driver's license number, or *a* Montana identification card number issued by the department of justice for a resident who does not hold a Montana driver's license if the applicant has provided a social security number when applying for the Montana identification card".

(4) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government, through repeal or amendment of federal law, no longer requires an applicant to provide a social security number on an application for a recreational license, the bracketed language in 87-2-106(1) *and [section 1 of this act]* and 87-2-202(1) *and [section 2 of this act]* is void, the bracketed language in ~~87-2-106(9)~~ *87-2-106(10)* and 87-2-202(5) is void, and the bracketed language in ~~87-2-106(10)~~ *87-2-106(11)* and 87-2-202(6) must read: "maintained by the department".

(5) The secretary of state shall notify the code commissioner of the occurrence of any of the contingencies described in subsections (1) through (4)."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Contingent termination. [This act] terminates 3 years after [the effective date of this act] unless the director of the department of public health and human services certifies to the governor and the secretary of state and provides written notice to the code commissioner that an extension to the use of the last four digits of a social security number for recreational licenses has been granted by the federal government.

Approved April 24, 2007

CHAPTER NO. 238

[HB 452]

AN ACT PROVIDING FOR THE ACKNOWLEDGMENT OF EDUCATIONAL AND EMPLOYMENT ACHIEVEMENT CREDIT BY THE DEPARTMENT OF CORRECTIONS TO A PAROLEE THAT MAY REDUCE SUPERVISED TIME SPENT ON PAROLE; AND AMENDING SECTION 46-23-1021, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Parole achievement credit. (1) The department shall acknowledge achievements by a parolee who, by completion of an activity described in subsection (2), has shown a willingness to reenter society as a productive and responsible member.

(2) The department shall acknowledge achievements, such as:

(a) obtaining a high school diploma or general equivalency diploma;

(b) obtaining a degree from an accredited postsecondary educational institution;

(c) completion of an approved apprenticeship program;

(d) completion of an accredited vocational certification program;

(e) employment of at least 20 scheduled hours a week, for 6 or more months;

(f) attendance at a faith-based, social service, or rehabilitation activity for 6 or more months; or

(g) any other achievement designated by a department rule.

Section 2. Section 46-23-1021, MCA, is amended to read:

"46-23-1021. Supervision on parole. (1) The department shall retain custody of all persons placed on parole and shall supervise the persons during their parole periods in accordance with the conditions set by the board.

(2) The department shall assign personnel to assist a person who is eligible for parole in preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board prior to its consideration of the case of the eligible person.

(3) A copy of the conditions of parole must be signed by the parolee and given to the parolee and to the parolee's probation and parole officer, who shall report on the parolee's progress under the rules of the board.

(4) The probation and parole officer shall regularly advise and consult with the parolee, assist the parolee in adjusting to community life, and inform the parolee of the restoration of rights on successful completion of the sentence.

(5) The probation and parole officer shall keep records as the board or department may require. All records must be entered in the master file of the individual.

(6) (a) Upon recommendation of the probation and parole officer, the board may conditionally discharge a parolee from supervision before expiration of the parolee's sentence if the board determines that a conditional discharge from supervision is in the best interests of the parolee and society and will not present unreasonable risk of danger to the victim of the offense.

(b) Any of the achievements listed in [section 1(2)] must be considered a significant achievement by the board in deciding whether to grant a conditional discharge from supervision to a parolee.

(c) If the board discharges a parolee from supervision, the department is relieved of the obligation of supervising the parolee.

(d) For good cause, the board may return a parolee who was conditionally discharged to the status of a regular parolee.

~~(b)~~*(e)* Subsection (6)(a) does not prohibit the board from revoking the parole, as provided in 46-23-1025, of a parolee who has been conditionally discharged from supervision.

~~(c)~~*(f)* If the department certifies to the board that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the board may not parole a prisoner to that district office unless it grants a conditional discharge to a parolee being supervised by that district office. The department may recommend parolees to the board for conditional discharge. The board may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 23, part 10, and the provisions of Title 46, chapter 23, part 10, apply to [section 1].

Approved April 24, 2007

CHAPTER NO. 239

[HB 36]

AN ACT REPEALING THE TERMINATION DATE FOR INCREASING THE LIMIT TO $3 MILLION FOR A LOAN TO A WATER USERS' ASSOCIATION OR DITCH COMPANY FROM THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM STATE SPECIAL REVENUE ACCOUNT OR THE RENEWABLE RESOURCE LOAN PROCEEDS ACCOUNT; REPEALING SECTION 2, CHAPTER 418, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 2, Chapter 418, Laws of 2005, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 25, 2007

CHAPTER NO. 240

[HB 153]

AN ACT ADOPTING THE MODEL REGISTERED AGENTS ACT; PROVIDING FOR FILING OF REGISTRATION FOR AGENTS FOR SERVICE OF PROCESS WITH THE SECRETARY OF STATE; PROVIDING THAT A REGISTERED AGENT'S ADDRESS IS NOT THE MEANS OF DETERMINING WHERE PUBLICATION IS APPROPRIATE; ELIMINATING THE REQUIREMENT FOR A REGISTERED OFFICE;

PROVIDING FOR JURISDICTION IF A PRINCIPAL OFFICE IS NOT LOCATED IN MONTANA; AMENDING SECTIONS 15-31-103, 35-1-116, 35-1-216, 35-1-226, 35-1-425, 35-1-518, 35-1-523, 35-1-838, 35-1-940, 35-1-1028, 35-1-1029, 35-1-1037, 35-1-1038, 35-1-1040, 35-1-1104, 35-1-1109, 35-1-1309, 35-2-115, 35-2-130, 35-2-213, 35-2-222, 35-2-423, 35-2-528, 35-2-535, 35-2-609, 35-2-613, 35-2-729, 35-2-822, 35-2-823, 35-2-832, 35-2-904, 35-2-909, 35-2-1109, 35-3-202, 35-3-209, 35-3-210, 35-4-311, 35-4-411, 35-6-102, 35-8-202, 35-8-208, 35-8-209, 35-8-1003, 35-8-1011, 35-8-1014, 35-8-1203, 35-9-207, 35-9-501, 35-12-508, AND 35-12-601, MCA; REPEALING SECTIONS 35-1-313, 35-1-314, 35-1-315, 35-1-316, 35-1-317, 35-1-1032, 35-1-1033, 35-1-1034, 35-1-1036, 35-2-309, 35-2-310, 35-2-311, 35-2-314, 35-2-315, 35-2-827, 35-2-828, 35-2-829, 35-8-105, 35-8-911, 35-8-1004, 35-8-1005, 35-8-1006, 35-8-1103, AND 35-12-507, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 17] may be cited as the "Model Registered Agents Act".

Section 2. Definitions. Unless the context requires otherwise, as used in [sections 1 through 17], the following definitions apply:

(1) "Appointment of agent" means a statement appointing an agent for service of process filed by:

(a) a domestic or foreign unincorporated nonprofit association; or

(b) a domestic entity that is not a filing entity or a nonqualified foreign entity under [section 12].

(2) "Commercial registered agent" means an individual or a domestic or foreign entity listed under [section 6].

(3) "Domestic entity" means an entity whose internal affairs are governed by the law of this state.

(4) "Entity" means a person that has a separate legal existence or has the power to acquire an interest in real property in its own name other than:

(a) an individual;

(b) a testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust, or similar trust;

(c) an association or relationship that is not a partnership by reason of 35-10-202(3) or a similar provision of the law of any other jurisdiction;

(d) a decedent's estate; or

(e) a public corporation, government, governmental subdivision, agency, instrumentality, or quasi-governmental instrumentality.

(5) "Filing entity" means an entity that is created by the filing of a public organic document.

(6) "Foreign entity" means an entity other than a domestic entity.

(7) "Foreign qualification document" means an application for a certificate of authority or other foreign qualification filing with the secretary of state by a foreign entity.

(8) "Governance interest" means the right under the organic law or organic rules of an entity, other than as a governor, agent, assignee, or proxy, to:

(a) receive or demand access to information concerning or to the books and records of the entity;

(b) vote for the election of the governors of the entity; or

(c) receive notice of or vote on any or all issues involving the internal affairs of the entity.

(9) "Governor" means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(10) "Interest" means:

(a) a governance interest in an unincorporated entity;

(b) a transferable interest in an unincorporated entity; or

(c) a share or membership in a corporation.

(11) "Interest holder" means a direct holder of an interest.

(12) "Jurisdiction of organization", with respect to an entity, means the jurisdiction whose law includes the organic law of the entity.

(13) "Noncommercial registered agent" means a person that is not listed as a commercial registered agent under [section 6] and that is an individual or a domestic or foreign entity that serves in this state as the agent for service of process of an entity.

(14) "Nonqualified foreign entity" means a foreign entity that is not authorized to transact business in this state pursuant to a filing with the secretary of state.

(15) "Nonresident LLP statement" means:

(a) a statement of qualification of a domestic limited liability partnership that does not have an office in this state; or

(b) a statement of foreign qualification of a foreign limited liability partnership that does not have an office in this state.

(16) "Organic law" means the statutes, if any, other than [sections 1 through 17], governing the internal affairs of an entity.

(17) "Organic rules" means the public organic document and private organic rules of an entity.

(18) "Person" means an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government, governmental subdivision, agency, instrumentality, or any other legal or commercial entity.

(19) "Private organic rules" mean the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic document, if any.

(20) "Public organic document" means the public record that when filed creates an entity and any amendment to or restatement of that record.

(21) "Qualified foreign entity" means a foreign entity that is authorized to transact business in this state pursuant to a filing with the secretary of state.

(22) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) "Registered agent" means a commercial registered agent or a noncommercial registered agent.

(24) "Registered agent filing" means:

(a) the public organic document of a domestic filing entity;

(b) a nonresident LLP statement;

(c) a foreign qualification document; or

(d) an appointment of agent.

(25) "Represented entity" means:

(a) a domestic filing entity;

(b) a domestic or qualified foreign limited liability partnership that does not have an office in this state;

(c) a qualified foreign entity;

(d) a domestic or foreign unincorporated nonprofit association for which an appointment of agent has been filed;

(e) a domestic entity that is not a filing entity for which an appointment of agent has been filed; or

(f) a nonqualified foreign entity for which an appointment of agent has been filed.

(26) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic sound, symbol, or process.

(27) "Transferable interest" means the right under an entity's organic law to receive distributions from the entity.

(28) "Type", with respect to an entity, means a generic form of entity:

(a) recognized at common law; or

(b) organized under an organic law, whether or not some entities organized under that organic law are subject to provisions of that law that create different categories of the form of entity.

Section 3. Fees. The secretary of state shall by rule set fees for filings and the services provided under [sections 1 through 17].

Section 4. Addresses in filings. Whenever a provision of [sections 1 through 17] other than [section 11(1)(d)] requires that a filing state an address, the filing must state:

(1) an actual street address or rural route box number in this state; and

(2) a mailing address in this state, if different from the address under subsection (1).

Section 5. Appointment of registered agent. (1) A registered agent filing must state:

(a) the name of the represented entity's commercial registered agent; or

(b) if the entity does not have a commercial registered agent, the name and address of the entity's noncommercial registered agent.

(2) The appointment of a registered agent pursuant to subsection (1)(a) or (1)(b) is an affirmation by the represented entity that the agent has consented to serve as a registered agent.

(3) The secretary of state shall notify the registered agent as soon as practicable of filings that contain the name of the registered agent. The list must:

(a) be available for at least 14 calendar days; and

(b) state the type of filing and name of the represented entity making the filing.

Section 6. Listing of commercial registered agent. (1) An individual or a domestic or foreign entity may become listed as a commercial registered agent by filing with the secretary of state a commercial registered agent listing statement signed by or on behalf of the person that states:

(a) the name of the individual or the name, type, and jurisdiction of organization of the entity;

(b) that the person is in the business of serving as a commercial registered agent in this state; and

(c) the address of a place of business of the person in this state to which service of process and other notice and documents being served on or sent to entities represented by it may be delivered.

(2) If the name of a person filing a commercial registered agent listing statement is not distinguishable on the records of the secretary of state from the name of another commercial registered agent listed under this section, the person shall adopt a fictitious name that is distinguishable and use that name in its statement and when it does business in this state as a commercial registered agent.

(3) A commercial registered agent listing statement takes effect on filing.

(4) The secretary of state shall note the filing of the commercial registered agent listing statement in the index of filings maintained by the secretary of state for each entity represented by the registered agent at the time of the filing. The statement has the effect of deleting the address of the registered agent from the registered agent filing of each of those entities.

Section 7. Termination of listing of commercial registered agent. (1) A commercial registered agent may terminate its listing as a commercial registered agent by filing with the secretary of state a commercial registered agent termination statement signed by or on behalf of the agent that states:

(a) the name of the agent as currently listed under [section 6]; and

(b) that the agent is no longer in the business of serving as a commercial registered agent in this state.

(2) A commercial registered agent termination statement takes effect on the 31st day after the day on which it is filed.

(3) The commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of the commercial registered agent termination statement.

(4) When a commercial registered agent termination statement takes effect, the registered agent ceases to be an agent for service of process on each entity formerly represented by it. Until an entity formerly represented by a

terminated commercial registered agent appoints a new registered agent, service of process may be made on the entity as provided in [section 13]. Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity may have against the agent or that the agent may have against the entity.

Section 8. Change of registered agent by entity. (1) A represented entity may change the information currently on file under [section 5(1)] by filing with the secretary of state a statement of change signed on behalf of the entity that states:

(a) the name of the entity; and

(b) the information that is to be in effect as a result of the filing of the statement of change.

(2) The interest holders or governors of a domestic entity need not approve the filing of:

(a) a statement of change under this section; or

(b) a similar filing changing the registered agent or registered office of the entity in any other jurisdiction.

(3) The appointment of a registered agent pursuant to subsection (1) is an affirmation by the represented entity that the agent has consented to serve as a registered agent.

(4) A statement of change filed under this section takes effect on filing.

(5) As an alternative to using the procedures in this section, a represented entity may change the information currently on file under [section 5(1)] by amending its most recent registered agent filing in the manner provided by the laws of this state other than [sections 1 through 17] for amending that filing.

Section 9. Change of name or address by noncommercial registered agent. (1) If a noncommercial registered agent changes its name or its address as currently in effect with respect to a represented entity pursuant to [section 5(1)], the agent shall file with the secretary of state, with respect to each entity represented by the agent, a statement of change signed by or on behalf of the agent that states:

(a) the name of the entity;

(b) the name and address of the agent as currently in effect with respect to the entity;

(c) if the name of the agent has changed, its new name; and

(d) if the address of the agent has changed, the new address.

(2) A statement of change filed under this section takes effect on filing.

(3) A noncommercial registered agent shall promptly furnish the represented entity with notice in a record of the filing of a statement of change and the changes made by the filing.

Section 10. Change of name, address, or type of organization by commercial registered agent. (1) If a commercial registered agent changes its name as a result of a merger, conversion, exchange, sale, reorganization, or amendment, its address as currently listed under [section 6(1)], or its type or jurisdiction of organization, the agent shall file with the secretary of state a statement of change signed by or on behalf of the agent that states:

(a) the name of the agent as currently listed under [section 6(1)];

(b) if the name of the agent has changed, its new name;

(c) if the address of the agent has changed, the new address; and

(d) if the type or jurisdiction of organization of the agent has changed, the new type or jurisdiction of organization.

(2) The filing of a statement of change under subsection (1) is effective to change the information regarding the commercial registered agent with respect to each entity represented by the agent.

(3) A statement of change filed under this section takes effect on filing.

(4) A commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of a statement of change relating to the name or address of the agent and the changes made by the filing.

(5) If a commercial registered agent changes its address without filing a statement of change as required by this section, the secretary of state may cancel the listing of the agent under [section 6]. A cancellation under this subsection has the same effect as a termination under [section 7]. Promptly after canceling the listing of an agent, the secretary of state shall serve notice in a record in the manner provided in [section 13(2) or (3)] on:

(a) each entity represented by the agent, stating that the agent has ceased to be an agent for service of process on the entity and that, until the entity appoints a new registered agent, service of process may be made on the entity as provided in [section 13]; and

(b) the agent, stating that the listing of the agent has been canceled under this section.

(6) The secretary of state shall note the filing of the commercial registered agent change statement in the index of filings maintained by the secretary of state for each entity represented by the registered agent at the time of filing.

Section 11. Resignation of registered agent. (1) A registered agent may resign at any time with respect to a represented entity by filing with the secretary of state a statement of resignation signed by or on behalf of the agent that states:

(a) the name of the entity;

(b) the name of the agent;

(c) that the agent resigns from serving as agent for service of process for the entity; and

(d) the name and address of the person to which the agent will send the notice required by subsection (3).

(2) A statement of resignation takes effect on the earlier of the 31st day after the day on which it is filed or the appointment of a new registered agent for the represented entity.

(3) The registered agent shall promptly furnish the represented entity notice in a record of the date on which a statement of resignation was filed.

(4) When a statement of resignation takes effect, the registered agent ceases to have responsibility for any matter tendered to it as agent for the represented entity. A resignation under this section does not affect any contractual rights the entity has against the agent or that the agent has against the entity.

(5) A registered agent may resign with respect to a represented entity whether or not the entity is in good standing.

Section 12. Appointment of agent by nonfiling or nonqualified foreign entity. (1) A domestic entity that is not a filing entity or a nonqualified foreign entity may file with the secretary of state a statement appointing an agent for service of process signed on behalf of the entity that states:

(a) the name, type, and jurisdiction of organization of the entity; and

(b) the information required by [section 5(1)].

(2) A statement appointing an agent for service of process takes effect on filing.

(3) The appointment of a registered agent under this section does not qualify a nonqualified foreign entity to do business in this state and is not sufficient alone to create personal jurisdiction over the nonqualified foreign entity in this state.

(4) A statement appointing an agent for service of process may not be rejected for filing because the name of the entity filing the statement is not distinguishable on the records of the secretary of state from the name of another entity appearing in those records. The filing of a statement appointing an agent for service of process does not make the name of the entity filing the statement unavailable for use by another entity.

(5) An entity that has filed a statement appointing an agent for service of process may cancel the statement by filing a statement of cancellation, which takes effect upon filing, and must state the name of the entity and that the entity is canceling its appointment of an agent for service of process in this state. A statement appointing an agent for service of process that has not been canceled earlier is effective for a period of 5 years after the date of filing.

(6) A statement appointing an agent for service of process for a nonqualified foreign entity terminates automatically on the date the entity becomes a qualified foreign entity.

Section 13. Service of process on entities. (1) A registered agent is an agent of the represented entity authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity.

(2) If an entity that previously filed a registered agent filing with the secretary of state no longer has a registered agent or if its registered agent cannot with reasonable diligence be served, the entity may be served in accordance with any applicable judicial rules and procedures.

(3) Service of process, notice, or demand on a registered agent must be in the form of a written document.

(4) Service of process, notice, or demand may be perfected by any other means prescribed by law other than [sections 1 through 17].

Section 14. Duties of registered agent. The only duties under [sections 1 through 17] of a registered agent that has complied with [sections 1 through 17] are:

(1) to forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand that is served on the agent;

(2) to provide the notices required by [sections 1 through 17] to the entity at the address most recently supplied to the agent by the entity;

(3) if the agent is a noncommercial registered agent, to keep current the information required by [section 5(1)] in the most recent registered agent filing for the entity; and

(4) if the agent is a commercial registered agent, to keep current the information listed for it under [section 6(1)].

Section 15. Jurisdiction. The appointment or maintenance in this state of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in this state.

Section 16. Consistency of application. In applying and construing [sections 1 through 17], consideration must be given to the need to promote consistency of the law with respect to its subject matter among states that enact it.

Section 17. Relation to electronic signatures in global and national commerce act. [Sections 1 through 17] modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but do not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Section 18. Section 15-31-103, MCA, is amended to read:

"15-31-103. Research and development firms exempt from taxation — application. (1) A research and development firm organized to engage in business in the state of Montana for the first time is not subject to any of the taxes imposed by this chapter on net income earned from research and development activities during its first 5 taxable years of activity in Montana. For purposes of 15-31-401 and this section, "taxable year" means a research and development firm's taxable year for federal income tax purposes.

(2) (a) To be considered a research and development firm, the chief executive officer of the firm or ~~his~~ *the officer's* agent shall file with the department of revenue an application for treatment as a research and development firm.

(b) The application must be made on a form to be provided by the department. The form must include, at a minimum:

(i) the name and address of each officer of the research and development firm;

(ii) the name of the research and development firm as required for the purpose of incorporation in 35-1-216;

(iii) the ~~address of its initial registered office required for the purpose of incorporation as required in 35-1-216~~ *information required in [section 5(1)]*;

(iv) the date the articles of incorporation were filed with the secretary of state as required in 35-1-215; and

(v) other information the department requires to effectively administer the provisions of this section.

(c) The application must be filed with the department before the end of the first calendar quarter during which the research and development firm engages in business in Montana.

(3) On receipt of the information required in subsection (2)(b), provided that it was filed in the time allowed under subsection (2)(c), the department shall designate the applicant as a research and development firm for the purposes of this section.

(4) Failure by an applicant to provide information required by the department under subsection (2)(b) or, except as provided in subsection (5), failure to file within the time allowed under subsection (2)(c) automatically disqualifies the applicant from being designated and treated as a research and development firm for the purposes of this section.

(5) The director of the department may grant an extension of time for an applicant to file an application for treatment as a research and development firm, provided the extension is given in writing and the extension does not extend beyond 30 days from the date the application was required to be filed under subsection (2)(c).

(6) For the purpose of calculating or otherwise determining the period for which a deduction, exclusion, exemption, or credit may be taken under the provisions of this chapter, the department shall disregard a research and development firm's first 5 taxable years of activity in Montana and administer the deduction, exclusion, exemption, or credit as if the corporation did not exist during those taxable years. This treatment of a research and development firm extends to net operating loss carryback and net operating loss carryforward provisions allowed under this chapter."

Section 19. Section 35-1-116, MCA, is amended to read:

"35-1-116. Notice. (1) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances.

(2) Notice may be communicated in person; by telephone, telegraph, teletype, facsimile, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where it is published or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its shareholders, if in a comprehensible form, is effective when mailed if it is mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state~~,~~ may be addressed to:

(a) its registered agent ~~at its registered office~~; or

(b) the corporation or its secretary at its principal office as shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsections (3) and (4), written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) when received;

(b) 5 days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid with correct postage; or

(c) on the date shown on the return receipt, if sent by certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if it is communicated in a comprehensible manner.

(7) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws

prescribe notice requirements that are consistent with this section or other provisions of this chapter, those requirements govern."

Section 20. Section 35-1-216, MCA, is amended to read:

"35-1-216. Articles of incorporation. (1) The articles of incorporation must set forth:

(a) a corporate name for the corporation that satisfies the requirements of 35-1-308;

(b) the number of shares the corporation is authorized to issue;

(c) (i) the ~~complete business street address of the corporation's initial registered office and, if different, the mailing address~~ *information required by [section 5(1)]*; and

(ii) the name of its initial registered agent ~~at that office~~; and

(d) the name and address of each incorporator.

(2) The articles of incorporation may set forth:

(a) the names and complete street addresses of the individuals who are to serve as the initial directors;

(b) provisions consistent with law regarding:

(i) the purpose or purposes for which the corporation is organized;

(ii) managing the business and regulating the affairs of the corporation;

(iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(iv) a par value for authorized shares or classes of shares; and

(v) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(c) any provision that under this chapter is required or permitted to be set forth in the bylaws; and

(d) a provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any actions taken or any failure to take any action, as a director, except liability for:

(i) the amount of a financial benefit received by a director to which the director is not entitled;

(ii) an intentional infliction of harm on the corporation or the shareholders;

(iii) a violation of 35-1-713; or

(iv) an intentional violation of criminal law.

(3) The articles of incorporation are not required to set forth any of the corporate powers enumerated in this chapter."

Section 21. Section 35-1-226, MCA, is amended to read:

"35-1-226. Amendment by board of directors. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

(1) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) to delete the names and addresses of the initial directors;

(3) to ~~delete the names and address of the initial registered agent or registered office if a statement of~~ change ~~is on file with the secretary of state~~ *the information required by [section 5(1)]*;

(4) to change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding;

(5) to change the corporate name by substituting the word "corporation", "incorporated", "company", "limited" or the abbreviation "corp.", "inc.", "co.", or "ltd." for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution for the name; or

(6) to make any other change expressly permitted by this chapter to be made without shareholders' action."

Section 22. Section 35-1-425, MCA, is amended to read:

"35-1-425. Removal of directors by judicial proceeding. (1) The district court of the county where a corporation's principal office *is located* or, if the office is not located in this state, ~~the county where its registered office is located~~ *in Lewis and Clark County* may remove a director of the corporation from office in a proceeding begun either by the corporation or by its shareholders holding at least 10% of the outstanding shares of any class if the court finds that:

(a) the director engaged in fraudulent or dishonest conduct or in gross abuse of authority or discretion, with respect to the corporation; and

(b) removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(3) If shareholders begin a proceeding under subsection (1), they shall make the corporation a party defendant."

Section 23. Section 35-1-518, MCA, is amended to read:

"35-1-518. Court-ordered meeting. (1) The district court of the county where a corporation's principal office *is located* or, if its principal office is not located in this state, in ~~the county where its registered office is located~~ *Lewis and Clark County* may summarily order a meeting to be held:

(a) on application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting; or

(b) on application of a shareholder who signed a demand for a special meeting valid under 35-1-517, if:

(i) notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation's secretary; or

(ii) the special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting."

Section 24. Section 35-1-523, MCA, is amended to read:

"35-1-523. Shareholders' list for meeting. (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must:

(a) be arranged by voting group, and within each voting group by class or series of shares; and

(b) show the address of and number of shares held by each shareholder.

(2) The shareholders' list must be available for inspection by any shareholder, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder or a shareholder's agent or attorney is entitled on written demand to inspect and, subject to the requirements of 35-1-1107(3), to copy the list, during regular business hours and at that shareholder's expense, during the period it is available for inspection.

(3) The corporation shall make the shareholders' list available at the meeting, and any shareholder or the shareholder's agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect the shareholders' list before or at the meeting or to copy the list as permitted by subsection (2), on application of the shareholder, the district court of the county where a corporation's principal office *is located* or, if the principal office is not located in this state, ~~its registered office is located,~~ *in Lewis and Clark County* may summarily order the inspection or copying at the corporation's expense and may provide recovery to a shareholder for costs, including reasonable attorney fees, in bringing the action.

(5) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting."

Section 25. Section 35-1-838, MCA, is amended to read:

"35-1-838. Court action. (1) If a demand for payment under 35-1-837 remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and shall petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The corporation shall commence the proceeding in the district court of the county where a corporation's principal office *is located* or, if its principal office is not located in this state, ~~where its registered office is located~~ *in Lewis and Clark County*. If the corporation is a foreign corporation ~~without a registered office in this state~~, it shall commence the proceeding in the county in this state where the ~~registered~~ *principal* office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located *or, if the domestic corporation did not have its principal office in the state at the time of the transaction, in Lewis and Clark County*.

(3) The corporation shall make all dissenters whose demands remain unsettled, whether or not residents of this state, parties to the proceeding as in an action against their shares, and all parties must be served with a copy of the

petition. Nonresidents may be served by certified mail or by publication as provided by law.

(4) The jurisdiction of the district court in which the proceeding is commenced under subsection (2) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(5) Each dissenter made a party to the proceeding is entitled to judgment:

(a) for the amount, if any, by which the court finds the fair value of the dissenter's shares plus interest exceeds the amount paid by the corporation; or

(b) for the fair value plus accrued interest of ~~his~~ *the dissenter's* after-acquired shares for which the corporation elected to withhold payment under 35-1-836."

Section 26. Section 35-1-940, MCA, is amended to read:

"35-1-940. Procedure for judicial dissolution. (1) Venue for a proceeding by the attorney general or any other party named in 35-1-938 to dissolve a corporation lies in the county where a corporation's principal office *is or was located* or, if its principal office is not located in this state, ~~where its registered office is or was last located~~ *in Lewis and Clark County*.

(2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held."

Section 27. Section 35-1-1028, MCA, is amended to read:

"35-1-1028. Application for certificate of authority. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of 35-1-1031;

(b) the name of the state or country under whose law it is incorporated;

(c) its date of incorporation and period of duration;

(d) the street address of its principal office;

(e) the ~~address of its registered office in this state and the name of its registered agent at that office~~ *information required in [section 5(1)]*;

(f) the names and usual business addresses of its current directors and officers; and

(g) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business in this state.

(2) The foreign corporation shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated."

Section 28. Section 35-1-1029, MCA, is amended to read:

"35-1-1029. Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

(a) its corporate name;

(b) the period of its duration; ~~or~~

(c) any of the information required by [section 5(1)]; or

~~(c)~~*(d)* the state or country of its incorporation.

(2) The requirements of 35-1-1028 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section."

Section 29. Section 35-1-1037, MCA, is amended to read:

"35-1-1037. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(d) a mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subsection (3);

(e) a commitment to notify the secretary of state in the future of any change in its mailing address;

(f) that all taxes imposed on the corporation by Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana; and

(g) additional information as may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation as prescribed by 35-1-1026 through ~~35-1-1034 and 35-1-1036~~ *35-1-1031, 35-1-1038* through 35-1-1040*, and this section*.

(3) After the withdrawal of the corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (2)."

Section 30. Section 35-1-1038, MCA, is amended to read:

"35-1-1038. Grounds for revocation. The secretary of state may commence a proceeding under 35-1-1039 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) the foreign corporation does not deliver its annual report to the secretary of state within 90 days after it is due;

(2) the foreign corporation does not pay within 90 days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(3) the foreign corporation is without a registered agent ~~or registered office~~ in this state for 90 days or more;

(4) the foreign corporation does not inform the secretary of state ~~under 35-1-1033 or 35-1-1036~~ *by an appropriate filing* that its registered agent ~~or registered office~~ has changed~~, that its registered agent has~~ *or* resigned~~, or that its registered office has been discontinued~~ within 60 days of the change~~,~~ *or* resignation~~, or discontinuance~~;

(5) an incorporator, director, officer, or agent of the foreign corporation signed a document the person knew was false in any material respect with the intent that the document be delivered to the secretary of state for filing; or

(6) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger."

Section 31. Section 35-1-1040, MCA, is amended to read:

"35-1-1040. Appeal from revocation. (1) A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the district court within 30 days after service of the certificate of revocation is perfected ~~pursuant to 35-1-1034~~. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

(2) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings."

Section 32. Section 35-1-1104, MCA, is amended to read:

"35-1-1104. Annual report for secretary of state. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the corporation and the ~~state or country~~ *jurisdiction* under whose law it is incorporated;

(b) the ~~mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state~~ *information required by [section 5(1)]*;

(c) the address of its principal office*, wherever located*;

(d) the names ~~and business addresses~~ of its ~~directors and~~ principal officers*, except that in the case of a corporation that has eliminated its board of directors pursuant to 35-1-820, the annual report must set forth the names of shareholders instead*; *and*

~~(e) a brief description of the nature of its business;~~

~~(f) the total number of authorized shares, itemized by class and series, if any, within each class; and~~

~~(g) the total number of issued and outstanding shares, itemized by class and series, if any, within each class~~

(e) the names of its directors, except that in the case of a corporation that has eliminated its board of directors pursuant to 35-1-820, the annual report must set forth the names of shareholders instead.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed."

Section 33. Section 35-1-1109, MCA, is amended to read:

"35-1-1109. Court-ordered inspection. (1) If a corporation does not allow a shareholder who complies with 35-1-1107(1) to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the corporation's principal office *is located* or, if there is no principal office in this state, ~~where its registered office is located~~ *in Lewis and Clark County* may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with 35-1-1107(2) and (3) may apply to the district court in the county where the corporation's principal office *is located* or, if there is no principal office in this state, ~~where its registered office is located~~ *in Lewis and Clark County* for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable attorney fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder."

Section 34. Section 35-1-1309, MCA, is amended to read:

"35-1-1309. Filing duty of secretary of state. (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of 35-1-217 and 35-1-218, if applicable, the secretary of state shall file it.

(2) The secretary of state shall file a document by stamping or otherwise endorsing on the document "Filed", the secretary of state's official title, and the date and time the document was received by the secretary of state for filing. ~~Except as provided in 35-1-315 and 35-1-1034, after~~ *After* filing a document, the secretary of state shall deliver a certification letter to the domestic or foreign corporation or its representative as acknowledgment that the document has been filed and all applicable fees have been paid.

(3) If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign corporation or the corporation's representative within 10 days after the document was delivered to the secretary of state, together with a brief written explanation of the reason for the refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not:

(a) affect the validity or invalidity of the document in whole or part;

(b) relate to the correctness or incorrectness of information contained in the document; or

(c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect."

Section 35. Section 35-2-115, MCA, is amended to read:

"35-2-115. Notice. (1) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances.

(2) (a) Notice may be communicated in person; by telephone, telegraph, teletype, facsimile, or other form of wire or wireless communication; or by mail or private carrier.

(b) If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where it is published or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its members, if in a comprehensible form, is effective when mailed if it is mailed postpaid and correctly addressed to the member's address shown in the corporation's current record of members.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to:

(a) its registered agent ~~at its registered office~~; or

(b) the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsections (3) and (4), written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) when received;

(b) 5 days after its deposit in the United States mail, as evidenced by the postmark, if it is mailed postpaid and with correct postage; or

(c) on the date shown on the return receipt, if it is sent by certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if it is communicated in a comprehensible manner.

(7) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If the articles of incorporation or bylaws prescribe notice requirements that are consistent with this section or other provisions of this chapter, those requirements govern."

Section 36. Section 35-2-130, MCA, is amended to read:

"35-2-130. Judicial relief. (1) If for any reason it is impractical or impossible for a corporation to call or conduct a meeting of its members, delegates, or directors or to otherwise obtain their consent, in the manner prescribed by its articles, bylaws, or this chapter, then upon petition of a director, officer, delegate, member, or the attorney general, the state district court for the judicial district in which the ~~registered office~~ *principal office* is located *or, if the principal office is not located in this state, in Lewis and Clark County* may order that a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authorized, in the manner the court finds fair and equitable under the circumstances.

(2) In an order issued pursuant to this section, the court shall provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws, and this chapter, whether or not the method results in actual notice to all persons entitled to notice or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the court may determine who the members or directors are.

(3) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or this chapter.

(4) Whenever practical, an order issued pursuant to this section must limit the subject matter of meetings or other forms of consent authorized to approve items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section. However, an order under this section may also authorize the obtaining of votes and approvals necessary for dissolution, merger, or sale of assets.

(5) A meeting or other method of obtaining the vote of members, delegates, or directors that is conducted pursuant to an order issued under this section and that complies with all the provisions of the order is for all purposes a valid meeting or vote, and has the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and this chapter."

Section 37. Section 35-2-213, MCA, is amended to read:

"35-2-213. Articles of incorporation. (1) The articles of incorporation must set forth:

(a) a corporate name for the corporation that satisfies the requirements of 35-2-305;

(b) a statement that:

(i) the corporation is a public benefit corporation;

(ii) the corporation is a mutual benefit corporation; or

(iii) the corporation is a religious corporation;

(c) ~~(i)~~ the ~~street address of the corporation's initial registered office and, if different, the mailing address; and~~

~~(ii) the name of its initial registered agent at that office~~ *information required by [section 5(1)]*;

(d) the name and address of each incorporator;

(e) whether or not the corporation will have members; and

(f) provisions consistent with law regarding the distribution of assets on dissolution.

(2) The articles of incorporation may set forth:

(a) the purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;

(b) the names and addresses of the individuals who are to serve as the initial directors;

(c) provisions consistent with law regarding:

(i) managing and regulating the affairs of the corporation;

(ii) defining, limiting, and regulating the powers of the corporation, its board of directors, its members, or any class of members; and

(iii) the characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members;

(d) any provision that under this chapter is required or permitted to be set forth in the bylaws; and

(e) provisions eliminating or limiting the personal liability of a director to the corporation or members of the corporation for monetary damages for breach of a director's duties to the corporation and its members, provided that the provision may not eliminate or limit the liability of a director:

(i) for a breach of the director's duty of loyalty to the corporation or its members;

(ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

(iii) for a transaction from which a director derived an improper personal economic benefit; or

(iv) under 35-2-418, 35-2-435, or 35-2-436.

(3) A provision referred to in subsection (2)(e) may not eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective.

(4) Each incorporator and director named in the articles shall sign the articles.

(5) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter."

Section 38. Section 35-2-222, MCA, is amended to read:

"35-2-222. Amendment by directors. (1) Unless the articles provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles without member approval:

(a) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(b) to delete the names and addresses of the initial directors;

(c) to ~~delete the name and address of the initial registered agent or registered office if a statement of change is on file with the secretary of state~~ *change the information required by [section 5(1)]*;

(d) to change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd." for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution to the name; or

(e) to make any other change expressly permitted by this chapter to be made by action of the board of directors.

(2) If a corporation has no members, its incorporators, until directors have been chosen, and later its board of directors may adopt one or more amendments to the corporation's articles subject to any approval required pursuant to 35-2-232. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice must be in accordance with 35-2-429(3). The notice must also state that the purpose or one of the purposes of the meeting is to consider a proposed amendment to the articles and must contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted."

Section 39. Section 35-2-423, MCA, is amended to read:

"35-2-423. Removal of directors by judicial proceeding. (1) The district court for the judicial district of the county where a corporation's principal office is located or, if the principal office is not located in the state, ~~the county where its registered office is located~~ *Lewis and Clark County* may remove any director of the corporation from office in a proceeding commenced by the corporation, by its members holding at least 10% of the voting power of any class, or by the attorney general in the case of a public benefit corporation~~,~~ if the court finds that:

(a) (i) the director engaged in fraudulent or dishonest conduct or in gross abuse of authority or discretion~~,~~ with respect to the corporation; or

(ii) a final judgment has been entered finding that the director has violated a duty set forth in 35-2-416, 35-2-418, 35-2-435, or 35-2-436; and

(b) removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from serving on the board for a period prescribed by the court.

(3) If members or the attorney general commence a proceeding under subsection (1), the corporation must be made a party defendant.

(4) If a public benefit corporation or its members commence a proceeding under subsection (1), they shall give the attorney general written notice of the proceeding.

(5) The articles or bylaws of a religious corporation may limit or prohibit the application of this section."

Section 40. Section 35-2-528, MCA, is amended to read:

"35-2-528. Court-ordered meeting. (1) The district court for the judicial district of the county where a corporation's principal office is located~~,~~ or, if the principal office is not located in this state, ~~where its registered office is located~~ *in Lewis and Clark County* may summarily order a meeting to be held:

(a) on application of a member or other person entitled to participate in an annual or regular meeting and, in the case of a public benefit corporation, the attorney general, if an annual meeting was not held within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting;

(b) on application of a member or other person entitled to participate in a regular meeting and, in the case of a public benefit corporation, the attorney general, if a regular meeting is not held within 40 days after the date it was required to be held; or

(c) on application of a member who signed a demand for a special meeting valid under 35-2-527, a person entitled to call a special meeting and, in the case of a public benefit corporation, the attorney general, if:

(i) notice of the special meeting was not given within 30 days after the date the demand was delivered to a corporate officer; or

(ii) the special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(3) If the court orders a meeting, it may also order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order."

Section 41. Section 35-2-535, MCA, is amended to read:

"35-2-535. Members' list for meeting. (1) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare, on a current basis through the time of the membership meeting, a list of members, if any, who are entitled to vote at the meeting but not entitled to notice of the meeting. This list must be prepared on the same basis and be part of the list of members.

(2) The list of members must be available:

(a) for inspection by any member for the purpose of communication with other members concerning the meeting, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting; and

(b) at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or a member's attorney is entitled, on written demand, to inspect and, subject to the limitations of 35-2-907(3) and 35-2-910, to copy the

list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(3) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or a member's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting or to copy the list as permitted by subsection (2), the district court for the judicial district of the county where a corporation's principal office *is located* or, if the principal office is not located in this state, ~~where its registered office is located~~ *in Lewis and Clark County*, on application of the member, may summarily order the inspection or copying at the corporation's expense, may postpone the meeting for which the list was prepared until the inspection or copying is complete, and may order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order.

(5) Unless a written demand to inspect and copy a membership list has been made under subsection (2) prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

(6) The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy any corporate record."

Section 42. Section 35-2-609, MCA, is amended to read:

"35-2-609. Limitations on mergers by public benefit or religious corporations. (1) Except as provided in subsection (4) or without the prior approval of the district court for the judicial district in which the corporation's ~~registered~~ *principal* office is located *or, if the principal office is not located in this state, in Lewis and Clark County*, in a proceeding of which the attorney general has been given written notice, a public benefit corporation or religious corporation may merge only with:

(a) a public benefit corporation or religious corporation;

(b) a foreign corporation that would qualify under this chapter as a public benefit corporation or religious corporation;

(c) a wholly owned foreign or domestic business or mutual benefit corporation, if the public benefit corporation or religious corporation is the surviving corporation and continues to be a public benefit corporation or religious corporation after the merger; or

(d) a business or mutual benefit corporation, provided that:

(i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including good will, of the public benefit corporation or the fair market value of the public benefit corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under 35-2-725(1)(e) and (1)(f) had it dissolved;

(ii) it shall return, transfer, or convey any assets held by it upon condition requiring return, transfer, or conveyance in case of merger, in accordance with the condition; and

(iii) the merger is approved by a majority of directors of the public benefit corporation or religious corporation who are not and will not become members or

shareholders in or officers, employees, agents, or consultants of the surviving corporation.

(2) At least 20 days before consummation of any merger of a public benefit corporation or a religious corporation pursuant to subsection (1)(d), notice, including a copy of the proposed plan of merger, must be delivered to the attorney general.

(3) Without the prior written consent of the attorney general or of the district court in a proceeding in which the attorney general has been given notice, a member of a public benefit corporation or religious corporation may not receive or keep anything as a result of a merger other than a membership in the surviving public benefit corporation or religious corporation. The court shall approve the transaction if it is in the public interest.

(4) A public benefit corporation or a religious corporation that is considered a nonprofit health entity, as defined in 50-4-701, is subject to the provisions of 35-2-617 and Title 50, chapter 4, part 7."

Section 43. Section 35-2-613, MCA, is amended to read:

"35-2-613. Merger with foreign corporation. (1) Except as provided in 35-2-609, one or more foreign business or nonprofit corporations may merge with one or more domestic nonprofit corporations if:

(a) the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger; or

(b) the foreign corporation complies with 35-2-611 if it is the surviving corporation of the merger; and

(c) each domestic nonprofit corporation complies with the applicable provisions of 35-2-608 through 35-2-610 and, if it is the surviving corporation of the merger, with the provisions of 35-2-611.

(2) When the merger takes effect, the surviving foreign business or nonprofit corporation ~~is considered to have irrevocably appointed the secretary of state as its agent for service of~~ *may be served with* process in any proceeding brought against it *as provided in [section 13]*."

Section 44. Section 35-2-729, MCA, is amended to read:

"35-2-729. Procedure for judicial dissolution. (1) Venue for a proceeding by the attorney general to dissolve a corporation lies in the district court for the first judicial district. Venue for a proceeding brought by any other party named in 35-2-728 lies in the judicial district for the county where a corporation's principal office *is or was last located* or, if the principal office is not located in this state, ~~the~~ *in Lewis and Clark County* ~~county where its registered office is or was last located~~.

(2) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) In a proceeding brought to dissolve a corporation, a court may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.

(4) A person other than the attorney general who brings an involuntary dissolution proceeding for a public benefit corporation or religious corporation

shall give written notice of the proceeding to the attorney general who may intervene."

Section 45. Section 35-2-822, MCA, is amended to read:

"35-2-822. Application for certificate of authority. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state. The application must set forth:

(a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of 35-2-826;

(b) the name of the state or country under whose law it is incorporated;

(c) the date of incorporation and period of duration;

(d) the street address and, if different, the mailing address of its principal office;

(e) the ~~street address and, if different, the mailing address of its registered office in this state and the name of its registered agent at that office~~ *information required by [section 5(1)]*;

(f) the names and usual business or home addresses of its current directors and officers;

(g) whether the foreign corporation has members;

(h) whether the corporation, if it had been incorporated in this state, would be a public benefit corporation, mutual benefit corporation, or religious corporation; and

(i) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business in this state.

(2) The foreign corporation shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated."

Section 46. Section 35-2-823, MCA, is amended to read:

"35-2-823. Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

(a) its corporate name;

(b) the period of its duration;

(c) any of the information required by [section 5(1)];

~~(c)~~*(d)* the state or country of its incorporation; or

~~(d)~~*(e)* its designation as a public benefit corporation, mutual benefit corporation, or religious corporation.

(2) The requirements of 35-2-822 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section."

Section 47. Section 35-2-832, MCA, is amended to read:

"35-2-832. Grounds for revocation. (1) The secretary of state may commence a proceeding under 35-2-833 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(a) the foreign corporation does not deliver the annual report to the secretary of state within 90 days after it is due;

(b) the foreign corporation does not pay within 90 days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(c) the foreign corporation is without a registered agent ~~or registered office~~ in this state for 90 days or more;

(d) the foreign corporation does not inform the secretary of state ~~under 35-2-828 or 35-2-829~~ *by an appropriate filing* that its registered agent ~~or registered office~~ has changed~~, that its registered agent has~~ *or* resigned~~, or that its registered office has been discontinued,~~ within 90 days of the change~~,~~ *or* resignation~~, or discontinuance~~;

(e) an incorporator, director, officer, or agent of the foreign corporation signed a document that the person knew was false in any material respect, with the intent that the document be delivered to the secretary of state for filing; or

(f) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated~~, which~~ *and the* certificate states that the foreign corporation has been dissolved or disappeared as the result of a merger.

(2) The attorney general may commence a proceeding under 35-2-833 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(a) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(b) the corporation is designated as a foreign public benefit corporation and its corporation assets in this state are being misapplied or wasted; or

(c) the corporation is designated as a foreign public benefit corporation and it is no longer able to carry out its purpose."

Section 48. Section 35-2-904, MCA, is amended to read:

"35-2-904. Annual report for secretary of state. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report on a form prescribed and furnished by the secretary of state that sets forth:

(a) the name of the corporation and the ~~state or country~~ *jurisdiction* under whose law it is incorporated;

(b) the ~~address of its registered office and the name of its registered agent at the office in this state~~ *information required by [section 5(1)]*;

(c) the address of its principal office*, wherever located*;

(d) the names and business or residence addresses of its directors and principal officers;

(e) a brief description of the nature of its activities; and

(f) whether or not it has members.

(2) The information in the annual report must be current on the date the annual report is executed on behalf of the corporation.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which

a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed."

Section 49. Section 35-2-909, MCA, is amended to read:

"35-2-909. Court-ordered inspection. (1) If a corporation does not allow a member who complies with 35-2-907(1) to inspect and copy any records required by that subsection to be available for inspection, the district court~~,~~ for the judicial district of the county where the corporation's principal office~~,~~ *is located* or, if none in this state, ~~its registered office, is located~~ *in Lewis and Clark County* may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(2) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with 35-2-907(2) and (3) may apply to the district court~~,~~ for the judicial district of the county where the corporation's principal office *is located* or, if the principal office is not located in this state, ~~the~~ *in Lewis and Clark County* ~~county where its registered office is located~~ for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member."

Section 50. Section 35-2-1109, MCA, is amended to read:

"35-2-1109. Filing duty of secretary of state. (1) If a document delivered to the office of the secretary of state for filing satisfies the applicable requirements of 35-2-119 and 35-2-120, the secretary of state shall file it.

(2) The secretary of state shall file a document by stamping or otherwise endorsing on the document "Filed", the secretary of state's official title, and the date and time the secretary of state received the document. Except as provided in ~~35-2-314 and~~ 35-2-830, after filing a document, the secretary of state shall deliver a certification letter to the domestic or foreign corporation or its representative as acknowledgment that the document has been filed and the fee has been paid.

(3) If the secretary of state refuses to file a document, the secretary of state shall return the document to the domestic or foreign corporation or its representative within 10 days after the document was delivered to the secretary of state and include a brief written explanation of the reason for the refusal.

(4) The secretary of state's duty concerning the documents under this section is ministerial. Filing or refusal to file a document does not:

(a) affect the validity or invalidity of the document in whole or in part;

(b) relate to the correctness or incorrectness of information contained in the document; or

(c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect."

Section 51. Section 35-3-202, MCA, is amended to read:

"35-3-202. Articles of incorporation. (1) The articles of incorporation ~~shall~~ *must* set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the name of the religious denomination, society, or church creating the corporation sole;

(d) the name of the bishop, chief priest, or presiding elder whose office is incorporated under this chapter, together with a designation of the boundaries of the territory over which ~~he~~ *that person* presides or over which ~~his~~ *that person's* jurisdiction extends and the facts authorizing ~~such~~ *the* incorporation;

(e) the manner in which any vacancy occurring in the incumbency of ~~such~~ *the* bishop, chief priest, or presiding elder, as required by the rules or discipline of ~~such~~ *the* religious denomination, society, or church, ~~shall~~ *must* be filled;

(f) any provisions, not inconsistent with law, ~~which~~ *that* the incorporator elects to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provisions for distribution of assets on dissolution or final liquidation;

(g) the address of its ~~initial registered~~ *principal* office and the ~~name of its initial registered agent at such address~~ *information specified in [section 5(1)]*;

(h) the name and address of the incorporator.

(2) It ~~shall~~ *is* not ~~be~~ necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(3) The articles ~~shall~~ *must* be verified by affidavit of the incorporator, and ~~he~~ *the incorporator* shall also file the original or a copy or translation of ~~his~~ *the incorporator's* commission, certificate, or letters of appointment as ~~such~~ bishop, chief priest, or presiding elder, duly attested, and ~~his~~ *the incorporator's* affidavit that the ~~same~~ *document* is a true copy or translation ~~shall~~ *must* be ~~deemed~~ *considered* as sufficient attestation ~~thereof~~."

Section 52. Section 35-3-209, MCA, is amended to read:

"35-3-209. Annual report. (1) Each corporation, subject to the provisions of this chapter, shall file within the time and in the manner prescribed by the Montana Nonprofit Corporation Act~~,~~ an annual report on forms or in a computerized format prescribed by the secretary of state, setting forth:

(a) the name of the corporation and the name of the present incumbent chief corporate officer;

(b) the address of the ~~registered~~ *principal* office of the corporation*,* ~~in Montana~~ *wherever located,* and the ~~name of its registered agent in Montana at that address~~ *information specified in [section 5(1)]*;

(c) the names and respective addresses of the present members of the board of advisers or consultors of the corporation.

(2) The report must be executed by the chief corporate officer or by an attorney-in-fact acting under a power of attorney filed with the secretary of state by the chief corporate officer."

Section 53. Section 35-3-210, MCA, is amended to read:

"35-3-210. Registered agent — ~~registered~~ *corporate* office. ~~(1)~~ A corporation sole organized under the provisions of this chapter shall maintain a corporate office in this state and shall appoint a resident registered agent *as provided in [section 5(1)]*.

~~(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment.~~"

Section 54. Section 35-4-311, MCA, is amended to read:

"35-4-311. Death or disqualification of a shareholder. (1) Upon the death of a shareholder of a professional corporation or if a shareholder of a professional corporation becomes a disqualified person or if shares of a professional corporation are transferred by operation of law or court decree to a disqualified person, the shares may be transferred to a qualified person and if not so transferred must be purchased or redeemed by the corporation to the extent that the corporation has funds legally available for the purchase.

(2) If the share price is not fixed by the articles of incorporation or bylaws of the corporation or by private agreement, the corporation must within 6 months after ~~such~~ *the* death or 30 days after ~~such~~ *the* disqualification or transfer to a disqualified person make a written offer to pay for the shares at a specified price considered by the corporation to be the fair value ~~thereof~~ as of the date of death, disqualification, or transfer. The offer must be given to the personal representative of the estate of a deceased shareholder or to the disqualified shareholder or transferee and must be accompanied by both a balance sheet of the corporation as of the latest available date and not more than 12 months prior to the offer and a profit and loss statement of the corporation for the 12-month period ending on the date of the balance sheet.

(3) If the fair value of the shares is agreed upon within 30 days after the date of the written offer, payment must be made within 60 days after the date of the offer or within ~~such other~~ *another* period ~~as~~ *that* the parties fix by agreement and upon surrender of the certificate or certificates representing ~~such~~ *the* shares. Upon payment the transferor ceases to have any interest in ~~such~~ *the* shares.

(4) If the fair value is not agreed upon within 30 days after the date of the written offer, the corporation ~~must~~ *shall* within the next 30 days file a petition in the district court of the county in this state where the ~~registered~~ *principal* office of the corporation is located *or, if the principal office is not located in this state, in Lewis and Clark County*, requesting that the fair value of ~~such~~ *the* shares be found and determined. If the corporation fails or refuses to institute the proceeding, the disqualified person may do so. The disqualified person must be made a party to a proceeding brought by the corporation, and a copy of the petition must be served on the disqualified person if a resident of this state and must be served by certified mail if a nonresident. Service on nonresidents must also be made by publication as provided by law. The jurisdiction of the court is

plenary and exclusive. The disqualified person is entitled to judgment against the corporation for the fair value of ~~his~~ *the person's* shares as of the date of death, disqualification, or transfer and upon payment of the judgment ~~must~~ *shall* surrender to the corporation the certificates representing the shares. The court may ~~in its discretion~~ order that judgment be paid in installments determined by the court and may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value.

(5) The judgment must include interest from the date of death, disqualification, or transfer, at a rate the court finds equitable under the circumstances.

(6) The costs and expenses of a proceeding must be determined by the court and either assessed against the corporation or assessed as the court considers equitable if the court finds that an agreed share value was not reached because the disqualified person was arbitrary or vexatious or did not act in good faith. Expenses include reasonable compensation for and expenses of the appraisers, but do not include fees and expenses of counsel for and experts employed by any party, except that if the court determines that the fair value of shares materially exceeds the amount the corporation offered ~~therefor~~ or if no offer was made, the court may award to the disqualified person reasonable compensation for any expert employed by the disqualified person.

(7) If a purchase, redemption, or transfer of shares is not completed within 10 months after the death of the deceased shareholder or 5 months after the disqualification or transfer, the corporation shall cancel the shares on its books and the disqualified person has no further interest as a shareholder other than ~~his~~ *the* right under this section to payment for ~~such~~ *the* shares.

(8) Shares acquired by a corporation upon payment of their agreed value or payment of a judgment decreeing their fair value may be held and disposed of as in the case of other treasury shares.

(9) This section does not apply to shares of a disqualified person if the period of disqualification is less than 5 months.

(10) Any provision regarding purchase, redemption, or transfer of shares of a professional corporation contained in the articles of incorporation, the bylaws, or any private agreement is specifically enforceable in the courts of this state.

(11) This section does not prevent or relieve a professional corporation from paying pension benefits or other deferred compensation for services rendered to or on behalf of a former shareholder as otherwise permitted by law."

Section 55. Section 35-4-411, MCA, is amended to read:

"35-4-411. Admission of foreign professional corporations — application — revocation. (1) A foreign professional corporation is entitled to a certificate of authority to transact business in this state only if:

(a) the name of the corporation meets the requirements of 35-4-206;

(b) the corporation is organized only for purposes for which a professional corporation may be organized under this chapter; and

(c) all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

(2) ~~No~~ *A* foreign professional corporation is *not* required to obtain a certificate of authority to transact business in this state unless it maintains an office in this state for the conduct of business or professional practice.

(3) The application for a certificate of authority must include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer are licensed in at least one state or territory or the District of Columbia to render a professional service described in the statement of purposes of the corporation.

(4) The certificate of authority may be revoked by the secretary of state if the corporation fails to comply with any provision of this chapter. The licensing authority shall certify to the secretary of state, from time to time, the names of all foreign professional corporations that have given cause for revocation, together with the facts pertinent ~~thereto~~ *to the cause*, and shall concurrently mail to each corporation ~~at~~ *through* its registered ~~office in this state~~ *agent* a notice that ~~such~~ *the* certification has been made. ~~No~~ *A* certificate of authority of a foreign professional corporation may *not* be revoked unless there has been both 60 days' notice of intent to revoke and a failure to correct the noncompliance during ~~such~~ *the* 60 days."

Section 56. Section 35-6-102, MCA, is amended to read:

"35-6-102. Involuntary dissolution — grounds. (1) Any domestic corporation, whether for profit or not for profit, may be dissolved involuntarily by order of the secretary of state when:

(a) the corporation has failed to file its annual report within the time required by law or failed to remit any fees required by law;

(b) the corporation procured its certificate of incorporation through fraud;

(c) the corporation has exceeded or abused the authority conferred upon it by law and ~~such~~ *the* excesses or abuses have continued after a written notice specifying the manner in which the corporation has exceeded or abused ~~such~~ *the* authority has been received by the registered agent of the corporation from the secretary of state;

(d) the corporation has failed for 60 days to appoint and maintain a registered agent in this state; or

(e) the corporation has failed for 60 days after change of its ~~registered office or~~ registered agent to file in the office of the secretary of state a statement of ~~such~~ *the* change.

(2) If dissolution is sought under subsection (1)(b) or (1)(c) ~~of this section~~, the secretary of state may ~~so~~ dissolve *the corporation* only when ~~such~~ *that* fact is established by an order of the district court. In addition to other persons ~~so~~ authorized by law, the secretary of state or the attorney general may maintain an action in the district court to implement the provisions of this section."

Section 57. Section 35-8-202, MCA, is amended to read:

"35-8-202. Articles of organization. (1) The articles of organization must set forth:

(a) the name of the limited liability company that satisfies the requirements of 35-8-103;

(b) whether the company is a term company and, if so, the term specified;

(c) the complete street address of its principal ~~place of business in this state and, if different, its registered office and the name and complete street address of its registered agent at the registered~~ office*, wherever located* ~~in this state~~;

(d) the information required by [section 5(1)];

~~(d)~~*(e)* (i) if the limited liability company is to be managed by a manager or managers, a statement that the company is to be managed in that fashion and the names and street addresses of managers who are to serve as managers until the first meeting of members or until their successors are elected;

(ii) if the management of a limited liability company is reserved to the members, a statement that the company is to be managed in that fashion and the names and street addresses of the initial members;

~~(e)~~*(f)* whether one or more members of the company are to be liable for the limited liability company's debts and obligations under 35-8-304(3);

~~(f)~~*(g)* if the limited liability company is a professional limited liability company, a statement to that effect and a statement of the professional service or services it will render; and

~~(g)~~*(h)* any other provision, not inconsistent with law, that the members elect to set out in the articles, including but not limited to a statement of whether there are limitations on the authority of members or management to bind the limited liability company.

(2) It is not necessary to set out in the articles of organization any of the powers enumerated in 35-8-107.

(3) The articles of organization may not vary the nonwaivable provisions set out in 35-8-109. As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(a) the operating agreement controls as to managers, members, and a member's transferee; and

(b) the articles of organization control as to a person, other than a manager, member, and member's transferee, that reasonably relies on the articles of organization to that person's detriment."

Section 58. Section 35-8-208, MCA, is amended to read:

"35-8-208. Annual report for secretary of state. (1) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the limited liability company and the ~~state or country~~ *jurisdiction* under whose law it is organized;

(b) the ~~mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state~~ *information required by [section 5(1)]*;

(c) the address of its principal office*, wherever located*;

(d) (i) if the limited liability company is managed by a manager or managers, a statement that the company is managed in that fashion and the names and street addresses of the managers;

(ii) if the management of a limited liability company is reserved to the members, a statement to that effect;

(e) if the limited liability company is a professional limited liability company, a statement that all of its members and not less than one-half of its managers are qualified persons with respect to the limited liability company.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic limited liability company is organized or a foreign limited liability company is authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction.

(5) The annual report must be executed by at least one member of the limited liability company and must include the street address of the member.

(6) A domestic professional limited liability company or a foreign professional limited liability company authorized to transact business in this state shall annually file before April 15, with each licensing authority having jurisdiction over a professional service of a type described in its articles of organization, a statement of qualification setting forth the names and addresses of the members and managers of the company and additional information that the licensing authority may by rule prescribe as appropriate in determining whether the company is complying with the provisions of part 13 of this chapter and rules promulgated under part 13 of this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification."

Section 59. Section 35-8-209, MCA, is amended to read:

"35-8-209. Administrative dissolution — rules. (1) A domestic limited liability company may be dissolved involuntarily by order of the secretary of state if the limited liability company:

(a) (i) has failed for 60 days after a change of its ~~registered office or~~ registered agent to file in the office of the secretary of state a statement of the change; or

(ii) has failed for 60 days to appoint and maintain a registered agent in this state;

(b) has failed for 140 days to file its annual report within the time required by law;

(c) has failed to remit any fees required by law;

(d) procured its certificate of existence through fraud; or

(e) has exceeded or abused the authority conferred upon it by law and the excesses or abuses have continued after a written notice of the alleged excesses or abuses has been received from the secretary of state by the registered agent of the limited liability company.

(2) If dissolution is sought under subsection (1)(d) or (1)(e), the secretary of state may dissolve a limited liability company when an alleged violation of subsection (1)(d) or (1)(e) is established by an order of a district court. In addition to any other person authorized by law, the secretary of state or the attorney

general may maintain an action in district court to implement the provisions of this section."

Section 60. Section 35-8-1003, MCA, is amended to read:

"35-8-1003. Application for certificate of authority. (1) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign limited liability company or, if its name is unavailable for use in this state, a name that satisfies the requirements of 35-8-1009;

(b) the name of the ~~state or country~~ *jurisdiction* under whose law it is organized;

(c) its date of organization and period of duration;

(d) the street address of its principal office*, wherever located*;

(e) the ~~address of its registered office in this state and the name of its registered agent at that office~~ *information required by [section 5(1)]*; and

(f) the names and usual business addresses of its current managers, if different from its members.

(2) A foreign limited liability company shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the ~~state or country~~ *jurisdiction* under whose law the foreign limited liability company is organized."

Section 61. Section 35-8-1011, MCA, is amended to read:

"35-8-1011. Grounds for revocation. The secretary of state may commence a proceeding under 35-8-1012 to revoke the certificate of authority of a foreign limited liability company authorized to transact business in this state if:

(1) the foreign limited liability company does not deliver its annual report to the secretary of state within 140 days after it is due;

(2) the foreign limited liability company is without a registered agent or registered office in this state for 60 days or more;

(3) the foreign limited liability company does not inform the secretary of state ~~under 35-8-105~~ that its registered agent ~~or registered office~~ has changed~~, that its registered agent has~~ *or* resigned~~, or that its registered office has been discontinued~~ within 60 days of the change~~,~~ *or* resignation~~, or discontinuance~~; or

(4) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of company records in the state or country under whose law the foreign limited liability company is organized, stating that it has been dissolved or disappeared as the result of a merger."

Section 62. Section 35-8-1014, MCA, is amended to read:

"35-8-1014. Admission of foreign professional limited liability companies — application — revocation. (1) A foreign professional limited liability company is entitled to a certificate of authority to transact business in this state only if:

(a) the name of the foreign professional limited liability company meets the requirements of 35-8-1302;

(b) the foreign professional limited liability company is organized only for purposes for which a professional limited liability company may be organized under part 13 of this chapter; and

(c) all the members and not less than one-half of the managers of the foreign professional limited liability company are qualified persons with respect to the foreign professional limited liability company.

(2) Notwithstanding 35-8-1001, a foreign professional limited liability company may not be required to obtain a certificate of authority to transact business in this state unless it maintains an office in this state for the conduct of business or professional practice.

(3) The application for a certificate of authority must include a statement that all the members and not less than one-half of the managers are licensed in at least one state or territory or the District of Columbia to render a professional service described in the statement of purposes of the foreign professional limited liability company.

(4) The certificate of authority may be revoked by the secretary of state if the foreign professional limited liability company fails to comply with any provision of part 13 of this chapter. The licensing authority shall certify to the secretary of state, from time to time, the names of all foreign professional limited liability companies that have given cause for revocation, together with the pertinent facts, and shall concurrently mail to each foreign professional limited liability company ~~at~~ *through* its registered ~~office in this state~~ *agent* a notice that the certification has been made. A certificate of authority of a foreign professional limited liability company may not be revoked unless there have been both 60 days' notice of intent to revoke and a failure to correct the noncompliance during the 60 days.

(5) A foreign professional limited liability company is subject to all other provisions of part 13 of this chapter not inconsistent with this section."

Section 63. Section 35-8-1203, MCA, is amended to read:

"35-8-1203. Effect of merger. (1) When a merger takes effect:

(a) the separate existence of each limited liability company and other entity that are a party to the merger, other than the surviving entity, terminates;

(b) all property owned by each of the limited liability companies and other entities that are a party to the merger vests in the surviving entity;

(c) all debts, liabilities, and other obligations of each limited liability company and other entity that are a party to the merger become the obligations of the surviving entity;

(d) an action or proceeding pending by or against a limited liability company or other entity that is a party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and

(e) except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of every limited liability company and other entity that are a party to a merger vest in the surviving entity.

(2) ~~The secretary of state is an agent for service of process in an action or proceeding against a surviving foreign entity to enforce an obligation of any party to the merger if~~ *If* the surviving foreign entity fails to appoint or maintain an agent designated for service of process in this state or if the agent for service

of process cannot with reasonable diligence be found, ~~at the designated office. Upon receipt of process, the secretary of state shall send a copy of the process by registered mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger~~ *service of process may be made on the foreign entity as provided in [section 13(2)]*. Service is effected under this subsection at the earliest of:

(a) the date on which the company receives the process, notice, or demand;

(b) the date shown on the return receipt, if signed on behalf of the company; or

(c) 5 days after its deposit in the mail, if mailed postpaid and correctly addressed.

(3) A member of the surviving limited liability company is liable for all obligations of a party to the merger for which the member was personally liable before the merger.

(4) Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger does not require the limited liability company to wind up its business under this chapter or to pay its liabilities and distribute its assets pursuant to this chapter.

(5) Articles of merger serve as articles of dissolution for a limited liability company that is not the surviving entity in the merger."

Section 64. Section 35-9-207, MCA, is amended to read:

"35-9-207. Court action to compel purchase. (1) (a) If an offer to purchase shares made under 35-9-206 is rejected or if no offer is made, the person exercising the compulsory purchase right may commence a proceeding against the corporation to compel the purchase in the district court of the county where the corporation's principal office is located or, if there is no principal office in this state, ~~its registered office~~ *in Lewis and Clark County*.

(b) The corporation at its expense shall notify in writing all of its shareholders, and any other person the court directs, of the commencement of the proceeding.

(c) The jurisdiction of the court in which the proceeding is commenced under this subsection is plenary and exclusive.

(2) (a) The court shall determine the fair value of the shares subject to compulsory purchase in accordance with the standards set forth in 35-9-503, together with terms for the purchase.

(b) Upon making these determinations, the court shall order the corporation to purchase or cause the purchase of the shares or empower the person exercising the compulsory purchase right to have the corporation dissolved.

(3) After the purchase order is entered, the corporation may petition the court to modify the terms of purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.

(4) If the corporation or other purchaser does not make a payment required by the court's order within 30 days of its due date, the seller may petition the court to dissolve the corporation and, absent a showing of good cause for not making the payment, the court shall do so.

(5) A person making a payment to prevent or cure a default by the corporation or other purchaser is entitled to recover the payment from the defaulter."

Section 65. Section 35-9-501, MCA, is amended to read:

"35-9-501. Court action to protect shareholders. (1) Subject to satisfying the conditions of subsections (3) and (4), a shareholder of a statutory close corporation may petition the district court for any of the relief described in 35-9-502 through 35-9-504 if:

(a) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner, whether in ~~his~~ *the petitioner's* capacity as shareholder, director, or officer of the corporation;

(b) the directors or those in control of the corporation are deadlocked in the management of the corporation's affairs, the shareholders are unable to break the deadlock, and the corporation is suffering or will suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

(c) there exists one or more grounds for judicial dissolution of the corporation under 35-1-938.

(2) A shareholder shall commence a proceeding under subsection (1) in the district court of the county where the corporation's principal office is located or, if there is no principal office in this state, ~~its registered office~~ *in Lewis and Clark County*. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(3) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters, ~~he~~ *the shareholder* may not commence a proceeding under this section with respect to the matters until ~~he~~ *the shareholder* has exhausted the nonjudicial remedy.

(4) If a shareholder has dissenters' rights under this chapter or 35-1-826 through 35-1-839 with respect to proposed corporate actions, ~~he must~~ *the shareholder shall* commence a proceeding under this section before ~~he~~ *the shareholder* is required to give notice of ~~his~~ *the* intent to demand payment under 35-1-826 through 35-1-839 or the proceeding is barred.

(5) Except as provided in subsections (3) and (4), a shareholder's right to commence a proceeding under this section and the remedies available under 35-9-502 through 35-9-504 are in addition to any other right or remedy ~~he~~ *the shareholder* may have."

Section 66. Section 35-12-508, MCA, is amended to read:

"35-12-508. Records to be kept. (1) Each limited partnership shall keep at the *principal* office ~~referred to in 35-12-507(1)~~ the following:

(a) a current list of the full name and last-known business address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;

(b) a copy of the certificate of limited partnership and all certificates of amendment, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;

(c) copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the 3 most recent years;

(d) copies of any then-effective written partnership agreements and of any financial statements of the limited partnership for the 3 most recent years; and

(e) unless contained in a written partnership agreement, a writing setting out:

(i) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and that each partner has agreed to contribute;

(ii) the times at which or the events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(iii) any right of a partner to receive or of a general partner to make distributions to a partner that include a return of all or any part of the partner's contribution; and

(iv) any events, upon the happening of which, the limited partnership is to be dissolved and its affairs wound up.

(2) Records kept under this section must be available for inspection and copying at the reasonable request and at the expense of any partner during ordinary business hours."

Section 67. Section 35-12-601, MCA, is amended to read:

"35-12-601. Certificate of limited partnership. (1) In order to form a limited partnership, a certificate of limited partnership must be executed, must be filed in the office of the secretary of state, and must set forth:

(a) the name of the limited partnership;

(b) the ~~complete street address of the office and the name and complete street address of the agent for service of process required to be maintained by 35-12-507~~ *information required by [section 5(1)]*;

(c) the name and the complete business street address of each general partner; and

(d) any other matters the general partners, in their sole discretion, determine to include.

(2) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in each case, there has been substantial compliance with the requirements of this section."

Section 68. Repealer. Sections 35-1-313, 35-1-314, 35-1-315, 35-1-316, 35-1-317, 35-1-1032, 35-1-1033, 35-1-1034, 35-1-1036, 35-2-309, 35-2-310, 35-2-311, 35-2-314, 35-2-315, 35-2-827, 35-2-828, 35-2-829, 35-8-105, 35-8-911, 35-8-1004, 35-8-1005, 35-8-1006, 35-8-1103, and 35-12-507, MCA, are repealed.

Section 69. Codification instruction. [Sections 1 through 17] are intended to be codified as an integral part of Title 35, and the provisions of Title 35 apply to [sections 1 through 17].

Section 70. Effective date. [This act] is effective October 1, 2008.

Approved April 25, 2007

CHAPTER NO. 241

[HB 433]

AN ACT REQUIRING STATE AGENCIES AND LOCAL GOVERNMENTS TO MAKE READILY AVAILABLE FOR PUBLIC INSPECTION A SUMMARY REPORT ITEMIZING EXPENDITURES FOR LOBBYING AN ELECTED OR APPOINTED FEDERAL OFFICIAL; REQUIRING STATE AGENCIES AND LOCAL GOVERNMENTS TO DESIGNATE AN OFFICE FROM WHICH THE SUMMARY REPORT MAY BE OBTAINED; AND REQUIRING STATE AGENCIES AND LOCAL GOVERNMENTS TO POST THE SUMMARY REPORT TO THE INTERNET.

Be it enacted by the Legislature of the State of Montana:

Section 1. Full disclosure of public expenditures on federal lobbying. (1) Each quarter of a fiscal year that a state agency or a local government, as the terms are defined in 2-2-102, makes an expenditure for the services of a lobbyist to lobby an elected federal official or an appointee of an elected federal official, the state agency or local government shall make readily available for public inspection upon request a summary report itemizing each lobbying service provided and how much money was spent for each service.

(2) Each state agency and local government subject to subsection (1) shall:

(a) designate an office from which a copy of the report may be obtained; and

(b) post a copy of the report to the agency's or local government's website on the internet, if the agency or local government has a website.

(3) For purposes of this section, "expenditure" means a payment by the state agency or local government or a payment by a contractor of the state agency or local government.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 5, chapter 7, part 1, and the provisions of Title 5, chapter 7, part 1, apply to [section 1].

Approved April 25, 2007

CHAPTER NO. 242

[HB 496]

AN ACT ALLOWING ADVANCED PRACTICE REGISTERED NURSES OR LICENSED PHYSICIAN ASSISTANTS TO COMPLETE MEDICAL EXAMS REQUIRED BY TRAFFIC LAWS; AND AMENDING SECTIONS 61-5-105, 61-5-111, 61-5-120, 61-5-207, 61-9-428, AND 61-13-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-105, MCA, is amended to read:

"61-5-105. Who may not be licensed. The department may not issue a license under this chapter to a person:

(1) who is under 16 years of age unless:

(a) the person is at least 15 years of age and has passed a driver's education course approved by the department and the superintendent of public instruction; or

(b) the person is at least 13 years of age and, because of individual hardship, to be determined by the department, needs a restricted license;

(2) whose license or driving privilege is currently suspended, revoked, or canceled or who is disqualified from operating a commercial motor vehicle in this or any state, as evidenced by an ineligible status report from the national driver register, established under 49 U.S.C. 30302, or from the commercial driver's license information system, established under 49 U.S.C. 31309;

(3) who is addicted to the use of alcohol or narcotic drugs;

(4) who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who, at the time of application, has not been restored to competency by the methods provided by law;

(5) who is required by this chapter to take an examination;

(6) who has not deposited proof of financial responsibility when required under the provisions of chapter 6 of this title;

(7) who has any condition characterized by lapse of consciousness or control, either temporary or prolonged, that is or may become chronic. However, the department, may in its discretion, issue a license to an otherwise qualified person suffering from a condition if the afflicted person's attending physician, *licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102,* attests in writing that the person's condition has stabilized and would not be likely to interfere with that person's ability to operate a motor vehicle safely and, if a commercial driver's license is involved, the person is physically qualified to operate a commercial motor vehicle under applicable state or federal regulations;

(8) who lacks the functional ability, due to a physical or mental disability or limitation, to safely operate a motor vehicle on the highway;

(9) who is not a resident of or domiciled in Montana except as provided in 61-5-103(3); or

(10) who does not submit proof satisfactory to the department that the applicant's presence in the United States is authorized under federal law. The department may not accept as a primary source of identification a driver's license issued by a state if the state does not require that a driver licensed in that state be lawfully present in the United States under federal law."

Section 2. Section 61-5-111, MCA, is amended to read:

"61-5-111. Contents of driver's license, renewal, renewal by mail, license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration. (1) (a) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's license receipts. The department shall adopt necessary rules governing sales. In areas in which the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may appoint an agent to sell receipts.

(b) The department may enter into an authorized agent agreement with the county treasurer of any county in which the department no longer maintains a driver examination station for the purpose of providing driver's license renewal services.

(2) (a) The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain:

(i) a full-face photograph of the licensee in the size and form prescribed by the department;

(ii) a distinguishing number issued to the licensee;

(iii) the full legal name, date of birth, Montana mailing address, and a brief description of the licensee; and

(iv) either the licensee's customary signature or a digital reproduction of the licensee's customary signature.

(b) The department may not use the licensee's social security number as the distinguishing number unless the licensee expressly authorizes the use. A license is not valid until it is signed by the licensee.

(3) (a) When a person applies for renewal of a driver's license, the department shall conduct a records check in accordance with 61-5-110(1) to determine the applicant's eligibility status and shall test the applicant's eyesight. The department may also require the applicant to submit to a knowledge and road or skills test if:

(i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

(b) In the case of a commercial driver's license, the department shall, if the information was not provided in a prior licensing cycle, require the renewal applicant to provide the name of each jurisdiction in which the applicant was previously licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the renewal application and may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license. Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.

(d) (i) Except as provided in subsections (3)(d)(iv) through (3)(d)(vi), a person may renew a driver's license by mail if the person certifies that the person is temporarily out of state and will not be returning to the state prior to the expiration of the license. A person may not renew by mail for a subsequent license term after a mail renewal, except that a spouse or dependent of a person stationed outside Montana on active military duty may renew a driver's license by mail for one additional consecutive term following a mail renewal.

(ii) An applicant who renews a driver's license by mail shall submit to the department an approved vision examination and a medical evaluation from a

licensed physician*, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102,* in addition to the fees required for renewal.

(iii) If the department does not have a digitized photograph or signature record of the renewal applicant from the expiring license, then the department may require the renewal applicant to submit a personal photograph and signature that meets the requirements prescribed by the department.

(iv) Except as provided in subsections (4)(b) and (4)(c), the term of a license renewed by mail is 8 years.

(v) The department may not renew a license by mail if:

(A) the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant; or

(B) the applicant holds a commercial driver's license with a hazardous materials endorsement, the retention of which requires additional testing and a security threat assessment under 49 CFR, part 1572.

(vi) If a license was issued to a foreign national whose presence in the United States is temporarily authorized under federal law, the license may not be renewed by mail.

(e) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a driver's license. Except as provided in 61-3-119 and 61-5-115, the department shall mail the notice to the Montana mailing address shown on the driver's license.

(4) (a) Except as provided in subsections (4)(b) through (4)(e), a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(d) (i) Except as provided in subsection (4)(d)(ii), a commercial driver's license expires on the anniversary of the licensee's birthday 5 years or less after the date of issue.

(ii) When a person obtains a Montana commercial driver's license with a hazardous materials endorsement after surrendering a comparable commercial driver's license with a hazardous materials endorsement from another licensing jurisdiction, the license expires on the anniversary of the licensee's birthday 5 years or less after the date of the issue of the surrendered license if, as reported in the commercial driver's license information system, a security threat assessment was performed on the person as a condition of issuance of the surrendered license.

(e) A license issued to a person who is a foreign national whose presence in the United States is temporarily authorized under federal law expires, as determined by the department, no later than the expiration date of the official document issued to the person by the bureau of citizenship and immigration services of the department of homeland security authorizing the person's presence in the United States.

(5) When the department issues a driver's license to a person under 18 years of age, the license must be clearly marked with a notation that conveys the restrictions imposed under 61-5-133.

(6) (a) Upon application for a driver's license or commercial driver's license and any combination of the specified endorsements, the following fees must be paid:

(i) driver's license, except a commercial driver's license — $5 a year or fraction of a year;

(ii) motorcycle endorsement — 50 cents a year or fraction of a year;

(iii) commercial driver's license:

(A) interstate — $10 a year or fraction of a year; or

(B) intrastate — $8.50 a year or fraction of a year.

(b) A renewal notice for either a driver's license or a commercial driver's license is 50 cents."

Section 3. Section 61-5-120, MCA, is amended to read:

"61-5-120. Medical assessment and rehabilitation driving permit. (1) Upon the written request of a licensed physician*, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102,* on a form prescribed by the department, the department may authorize a driver rehabilitation specialist to issue a temporary medical assessment and rehabilitation driving permit to a person who is not licensed to drive or whose license has expired under the provisions of this chapter for the purpose of driver assessment, rehabilitation, and training.

(2) The temporary permit may be issued only to a person who is 16 years of age or older.

(3) The permit is valid for up to 6 weeks, beginning with the date of the first evaluation of the permitholder by the driver rehabilitation specialist. The driver rehabilitation specialist shall sign and date the permit at the time of the first evaluation.

(4) The permit is valid only when the permitholder is operating a motor vehicle under the immediate supervision of the driver rehabilitation specialist during the permitholder's participation in an actual in-vehicle evaluation process.

(5) The department may extend the duration of a medical assessment and rehabilitation permit for an additional 6-week period if the driver rehabilitation specialist*,* ~~or the~~ licensed physician*, licensed physician assistant, or advanced practice registered nurse* certifies that the permitholder needs additional time to complete the driver assessment, rehabilitation, and training process."

Section 4. Section 61-5-207, MCA, is amended to read:

"61-5-207. Reexamination or medical evaluation — when required. (1) If the department receives reliable evidence that a licensed driver lacks the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, the department may, upon written notice of at least 5 days to the licensee, require the licensee to obtain a medical evaluation from a licensed physician*, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102,* or submit to one or more tests customarily conducted by the department for licensure under 61-5-110.

(2) Upon the review of a medical evaluation, the conclusion of testing, or both, the department may:

(a) impose restrictions on the license, as provided in 61-5-113, that are appropriate to the licensee's acknowledged or demonstrated functional abilities;

(b) suspend the license indefinitely based upon a licensee's inability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; or

(c) take no action modifying the license or placing restrictions on the licensee.

(3) The age of a licensee, by itself, does not constitute evidence of a condition requiring a reexamination or a medical evaluation ~~by a licensed physician~~.

(4) A suspension under this section continues in effect until evidence satisfactory to the department establishes that the licensee has regained the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on a highway.

(5) Refusal or neglect of the licensee to obtain a medical evaluation from a licensed physician*, licensed physician assistant, or advanced practice registered nurse* or submit to testing as required by the department is grounds for suspension of the person's license."

Section 5. Section 61-9-428, MCA, is amended to read:

"61-9-428. Window tinting and sunscreening — waiver — conditions. The highway patrol or a local law enforcement agency may grant a waiver of the standards of 61-9-405(4) for reasons of safety or security or for medical reasons based on an affidavit signed by a licensed physician*, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102*. The waiver must be in writing and must include the vehicle identification number, registration number, or other description to clearly identify the motor vehicle to which the waiver applies and the date issued, the name of the owner of the vehicle, the reason for granting the waiver, the dates the waiver is effective, and the signature of the law enforcement officer granting the waiver. The highway patrol or the local law enforcement agency shall keep a copy of the waiver until the waiver expires."

Section 6. Section 61-13-103, MCA, is amended to read:

"61-13-103. Seatbelt use required — exceptions. (1) A driver may not operate a motor vehicle upon a highway of the state of Montana unless each occupant of a designated seating position is wearing a properly adjusted and fastened seatbelt or, if 61-9-420 applies, is properly restrained in a child safety restraint.

(2) The provisions of this section do not apply to:

(a) an occupant of a motor vehicle who possesses a written statement from a licensed physician*, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102,* that the occupant is unable to wear a seatbelt for medical reasons;

(b) an occupant of a motor vehicle in which all seatbelts are being used by other occupants;

(c) an operator of a motorcycle or a motor-driven cycle;

(d) an occupant of a vehicle licensed as special mobile equipment; or

(e) an occupant who makes frequent stops with a motor vehicle during official job duties and who may be exempted by the department.

(3) The department may adopt rules to implement subsection (2)(e).

(4) The department or its agent may not require a driver who may be in violation of this section to stop except upon reasonable cause to believe that the driver has violated another traffic regulation or that the driver's vehicle is unsafe or not equipped as required by law."

Approved April 25, 2007

CHAPTER NO. 243

[HB 594]

AN ACT DESIGNATING AN OFFICIAL LULLABY FOR MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. State lullaby. The song "Montana Lullaby", written by Ken Overcast and Wylie Gustafson, is the official lullaby of Montana.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 5, and the provisions of Title 1, chapter 1, part 5, apply to [section 1].

Approved April 25, 2007

CHAPTER NO. 244

[HB 636]

AN ACT PROHIBITING QUOTAS FOR STOPS, CITATIONS, AND ARRESTS BY LAW ENFORCEMENT OFFICERS; PROHIBITING THE USE OF QUOTAS IN EVALUATING LAW ENFORCEMENT OFFICERS; AMENDING SECTIONS 7-32-103, 7-32-2107, 7-32-4105, 44-1-302, AND 46-6-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-103, MCA, is amended to read:

"7-32-103. Structure of department of public safety — duties — *restrictions on evaluations.* (1) The director ~~shall have~~ *has* the powers and *shall* perform the duties conferred on and required of sheriffs, police officers, and chiefs of police, except in cases involving the discharge or termination of employment of subordinate employees.

(2) Officers and patrol officers of the city or town police department and deputies of the county sheriff's office ~~shall be~~ *are* subordinate to the director and ~~shall~~ have the power and *shall* perform the duties conferred on and required of police officers and patrol officers in cities and towns and of sheriff's deputies in counties, as required by state law and municipal ordinance.

(3) Quotas for investigative stops, citations, or arrests may not be established and may not be used in evaluating officers."

Section 2. Section 7-32-2107, MCA, is amended to read:

"7-32-2107. Tenure for deputy sheriffs — grounds for termination of employment — *restrictions on evaluations.* *(1)* Any deputy sheriff ~~now~~ employed or who may ~~hereafter~~ be employed shall continue in service until

relieved of ~~his~~ employment in the manner ~~hereinafter~~ provided *in this part* and only for one or more of the following specified causes:

~~(1)~~*(a)* conviction of a felony subsequent to the commencement of ~~such~~ employment;

~~(2)~~*(b)* willful disobedience of an order or orders given by the sheriff;

~~(3)~~*(c)* drinking intoxicating liquor while in uniform or while on official duty or being intoxicated in a public place while in uniform or while on official duty;

~~(4)~~*(d)* sleeping while on duty;

~~(5)~~*(e)* incapacity materially affecting ability to perform official duties;

~~(6)~~*(f)* gross inefficiency in the performance of official duties.

(2) Quotas for investigative stops, citations, or arrests may not be established and may not be used in evaluating deputies."

Section 3. Section 7-32-4105, MCA, is amended to read:

"7-32-4105. Duties of chief of police. (1) It is the duty of the chief of police:

(a) to execute and return all process issued by the city judge or directed to ~~him~~ *the chief* by any legal authority and to attend upon the city court regularly;

(b) to arrest all persons guilty of a breach of the peace or for the violation of any city or town ordinance and bring them before the city judge for trial;

(c) to have charge and control of all ~~policemen~~ *police officers*, subject to ~~such~~ rules ~~as~~ *that* may be prescribed by ordinance, and to report to the council all delinquencies or neglect of duty or official misconduct of ~~policemen~~ *police officers* for action of the council;

(d) to perform ~~such~~ other duties as the council may prescribe.

(2) The chief of police has the same powers as a constable in the discharge of ~~his~~ *the chief's* duties, but ~~he must~~ *may* not serve a process in any civil action or proceeding except when a city or town is a party.

(3) Quotas for investigative stops, citations, or arrests may not be established and may not be used in evaluating police officers."

Section 4. Section 44-1-302, MCA, is amended to read:

"44-1-302. Powers relating to supervisory personnel — *quotas prohibited.* The duties and jurisdiction of the supervisory personnel ~~shall~~ *must* be outlined and defined by and under the control of the chief. *Quotas for investigative stops, citations, or arrests may not be established and may not be used in evaluating highway patrol officers.*"

Section 5. Section 46-6-420, MCA, is amended to read:

"46-6-420. Arrest, ~~or~~ citation, *or stop* quotas prohibited. (1) A state or local government agency employing a peace officer may not adopt and require a peace officer to comply with a quota and may not suggest a quota for arrests, ~~or~~ citations, *or investigative stops* for any criminal offense or class of criminal offenses, including violations of traffic or motor vehicle laws, contained in state law, an administrative rule adopted by an agency of the state government, or a local government ordinance.

(2) ~~(a)~~ For purposes of this section, "quota" means a specific number of arrests, ~~or~~ citations, *or investigative stops*.

~~(b) The term does not include the use of generally accepted management techniques that employ performance objectives as part of an overall employee evaluation.~~"

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 25, 2007

CHAPTER NO. 245

[HB 641]

AN ACT PROVIDING THAT A PERSON UNDER 21 YEARS OF AGE MAY NOT BE ARRESTED FOR OR CHARGED WITH THE OFFENSE OF POSSESSION OR CONSUMPTION OF AN ALCOHOLIC BEVERAGE SOLELY BECAUSE THE PERSON WAS AT A PLACE WHERE OTHER PERSONS WERE POSSESSING OR CONSUMING ALCOHOLIC BEVERAGES; AND AMENDING SECTION 45-5-624, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-624, MCA, is amended to read:

"45-5-624. Unlawful attempt to purchase or possession of intoxicating substance — interference with sentence or court order. (1) A person under 21 years of age commits the offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating substance. *A person may not be arrested for or charged with the offense solely because the person was at a place where other persons were possessing or consuming alcoholic beverages.* A person does not commit the offense if the person consumes or gains possession of ~~the~~ *an alcoholic* beverage because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages.

(2) (a) In addition to any disposition by the youth court under 41-5-1512, a person under 18 years of age who is convicted under this section:

(i) for the first offense, shall be fined an amount not less than $100 and not to exceed $300 and:

(A) shall be ordered to perform 20 hours of community service;

(B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9), if one is available; and

(C) if the person has a driver's license, must have the license confiscated by the court for 30 days, except as provided in subsection (2)(b);

(ii) for a second offense, shall be fined an amount not less than $200 and not to exceed $600 and:

(A) shall be ordered to perform 40 hours of community service;

(B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9), if one is available;

(C) if the person has a driver's license, must have the license confiscated by the court for 6 months, except as provided in subsection (2)(b); and

(D) shall be required to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (8);

(iii) for a third or subsequent offense, shall be fined an amount not less than $300 or more than $900, shall be ordered to perform 60 hours of community service, shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9), if one is available, and shall be required to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (8). If the person has a driver's license, the court shall confiscate the license for 6 months, except as provided in subsection (2)(b).

(b) If the convicted person fails to complete the community-based substance abuse course and has a driver's license, the court shall order the license suspended for 3 months for a first offense, 9 months for a second offense, and 12 months for a third or subsequent offense.

(c) The court shall retain jurisdiction for up to 1 year to order suspension of a license under subsection (2)(b).

(3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating substance:

(a) for a first offense:

(i) shall be fined an amount not less than $100 or more than $300;

(ii) shall be ordered to perform 20 hours of community service; and

(iii) shall be ordered to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9);

(b) for a second offense:

(i) shall be fined an amount not less than $200 or more than $600;

(ii) shall be ordered to perform 40 hours of community service; and

(iii) shall be ordered to complete and pay for an alcohol information course at an alcohol treatment program that meets the requirements of subsection (9), which may, in the court's discretion and upon recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both;

(c) for a third or subsequent offense:

(i) shall be fined an amount not less than $300 or more than $900;

(ii) shall be ordered to perform 60 hours of community service;

(iii) shall be ordered to complete and pay for an alcohol information course at an alcohol treatment program that meets the requirements of subsection (9), which may, in the sentencing court's discretion and upon recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both; and

(iv) in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed 6 months.

(4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed $150 if the person was under 21 years of age at the time that the offense was committed and may be ordered to perform community service.

(5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth in need of intervention as defined in 41-5-103. The youth court may enter its judgment under 41-5-1512.

(6) A person commits the offense of interference with a sentence or court order if the person purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined $100 or imprisoned in the county jail for 10 days, or both.

(7) A conviction or youth court adjudication under this section must be reported by the court to the department of public health and human services if treatment is ordered under subsection (8).

(8) (a) A person convicted of a second or subsequent offense of possession of an intoxicating substance shall be ordered to complete a chemical dependency assessment.

(b) The assessment must be completed at a treatment program that meets the requirements of subsection (9) and must be conducted by a licensed addiction counselor. The person may attend a program of the person's choice as long as a licensed addiction counselor provides the services. If able, the person shall pay the cost of the assessment and any resulting treatment.

(c) The assessment must describe the person's level of abuse or dependency, if any, and contain a recommendation as to the appropriate level of treatment if treatment is indicated. A person who disagrees with the initial assessment may, at the person's expense, obtain a second assessment provided by a licensed addiction counselor or program that meets the requirements of subsection (9).

(d) The treatment provided must be at a level appropriate to the person's alcohol or drug problem, or both, if any, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon the determination, the court shall order the appropriate level of treatment, if any. If more than one counselor makes a determination, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(e) Each counselor providing treatment shall, at the commencement of the course of treatment, notify the court that the person has been enrolled in a chemical dependency treatment program. If the person fails to attend the treatment program, the counselor shall notify the court of the failure.

(f) The court shall report to the department of public health and human services the name of any person who is convicted under this section. The department of public health and human services shall maintain a list of those persons who have been convicted under this section. This list must be made available upon request to peace officers and to any court.

(9) (a) A community-based substance abuse information course required under subsection (2)(a)(i)(B), (2)(a)(ii)(B), (2)(a)(iii), or (3)(a)(iii) must be:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(b) An alcohol information course required under subsection (3)(b)(iii) or (3)(c)(iii) must be provided at an alcohol treatment program:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(c) A chemical dependency assessment required under subsection (8) must be completed at a treatment program:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(10) Information provided or statements made by a person under 21 years of age to a health care provider or law enforcement personnel regarding an alleged offense against that person under Title 45, chapter 5, part 5, may not be used in a prosecution of that person under this section. This subsection's protection also extends to a person who helps the victim obtain medical or other assistance or report the offense to law enforcement personnel. (See compiler's comments for contingent termination of certain text.)"

Approved April 25, 2007

CHAPTER NO. 246

[HB 681]

AN ACT REVISING PROVISIONS OF THE MONTANA RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT; DEFINING TERMS; APPLYING CERTAIN PROVISIONS OF THE MONTANA RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT TO COMPETITIVE ELECTRICITY SUPPLIERS; AMENDING SECTIONS 69-8-1003, 69-8-1004, 69-8-1005, AND 69-8-1007, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-8-1003, MCA, is amended to read:

"69-8-1003. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric power other than simple generation,

transmission, or distribution. Ancillary services related to transmission services include energy losses, energy imbalances, scheduling and dispatching, load following, system protection, and reactive power.

(2) "Common ownership" means the same or substantially similar persons or entities that maintain a controlling interest in more than one community renewable energy project even if the ownership shares differ between two community renewable energy projects. Two community renewable energy projects may not be considered to be under common ownership simply because the same entity provided debt or equity or both debt and equity to both projects.

(3) "Community renewable energy project" means an eligible renewable resource that is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 5 megawatts in total calculated nameplate capacity.

(4) "Competitive electricity supplier" means any person, corporation, or governmental entity that is selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or cooperative.

~~(4)~~*(5)* "Compliance year" means each calendar year beginning January 1 and ending December 31, starting in 2008, for which compliance with this part must be demonstrated.

~~(5)~~*(6)* "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

~~(6)~~*(7)* "Eligible renewable resource" means a facility either located within Montana or delivering electricity from another state into Montana that commences commercial operation after January 1, 2005, and that produces electricity from one or more of the following sources:

(a) wind;

(b) solar;

(c) geothermal;

(d) water power, in the case of a hydroelectric project that does not require a new appropriation, diversion, or impoundment of water and that has a nameplate rating of 10 megawatts or less;

(e) landfill or farm-based methane gas;

(f) gas produced during the treatment of wastewater;

(g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;

(h) hydrogen derived from any of the sources in this subsection ~~(6)~~ *(7)* for use in fuel cells; and

(i) the renewable energy fraction from the sources identified in subsections ~~(6)(a)~~ *(7)(a)* through ~~(6)(h)~~ *(7)(h)* of electricity production from a multiple-fuel process with fossil fuels.

~~(7)~~*(8)* "Local owners" means:

(a) Montana residents or entities composed of Montana residents;

(b) Montana small businesses;

(c) Montana nonprofit organizations;

(d) Montana-based tribal councils;

(e) Montana political subdivisions or local governments;

(f) Montana-based cooperatives other than cooperative utilities; or

(g) any combination of the individuals or entities listed in subsections ~~(7)(a)~~ *(8)(a)* through ~~(7)(f)~~ *(8)(f)*.

~~(8)~~*(9)* "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on January 1, 2005, including the public utility's successors or assignees.

~~(9)~~*(10)* "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity generated by an eligible renewable resource that is tracked and verified by the commission and includes all of the environmental attributes associated with that 1 megawatt-hour unit of electricity production.

(11) "Small customer" means a retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts.

~~(10)~~*(12)* "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the community renewable energy project and other eligible renewable resources that are:

(a) located within 5 miles of the project;

(b) constructed within the same 12-month period; and

(c) under common ownership."

Section 2. Section 69-8-1004, MCA, is amended to read:

"69-8-1004. Renewable resource standard — administrative penalty — waiver. (1) Except as provided in 69-8-1007 and ~~subsection~~ *subsections* (11) *and (12)* of this section, a graduated renewable energy standard is established for public utilities *and competitive electricity suppliers* as provided in subsections (2) through (4) of this section.

(2) In each compliance year beginning January 1, 2008, through December 31, 2009, each public utility *and competitive electricity supplier* shall procure a minimum of 5% of its retail sales of electrical energy in Montana from eligible renewable resources.

(3) (a) In each compliance year beginning January 1, 2010, through December 31, 2014, each public utility *and competitive electricity supplier* shall procure a minimum of 10% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) As part of their compliance with subsection (3)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 50 megawatts in nameplate capacity.

(c) Public utilities shall proportionately allocate the purchase required under subsection (3)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2009.

(4) (a) In the compliance year beginning January 1, 2015, and in each succeeding compliance year, each public utility *and competitive electricity*

supplier shall procure a minimum of 15% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) (i) As part of their compliance with subsection (4)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 75 megawatts in nameplate capacity.

(ii) In meeting the standard in subsection (4)(b)(i), a public utility may include purchases made under subsection (3)(b).

(c) Public utilities shall proportionately allocate the purchase required under subsection (4)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2014.

(5) (a) In complying with the standards required under subsections (2) through (4), a public utility *or competitive electricity supplier* shall, for any given compliance year, calculate its procurement requirement based on the public utility's *or competitive electricity supplier's* previous year's sales of electrical energy to retail customers in Montana.

(b) The standard in subsections (2) through (4) must be calculated on a delivered-energy basis after accounting for any line losses.

(6) A public utility *or competitive electricity supplier* has until 3 months following the end of each compliance year to purchase renewable energy credits for that compliance year.

(7) (a) In order to meet the standard established in subsections (2) through (4), a public utility *or competitive electricity supplier* may only use:

(i) electricity from an eligible renewable resource in which the associated renewable energy credits have not been sold separately;

(ii) renewable energy credits created by an eligible renewable resource purchased separately from the associated electricity; or

(iii) any combination of subsections (7)(a)(i) and (7)(a)(ii).

(b) A public utility *or competitive electricity supplier* may not resell renewable energy credits and count those sold credits against the public utility's *or the competitive electricity supplier's* obligation to meet the standards established in subsections (2) through (4).

(c) Renewable energy credits sold through a voluntary service such as the one provided for in 69-8-210(4) may not be applied against a public utility's *or competitive electricity supplier's* obligation to meet the standards established in subsections (2) through (4).

(8) Nothing in this part limits a public utility *or competitive electricity supplier* from exceeding the standards established in subsections (2) through (4).

(9) If a public utility *or competitive electricity supplier* exceeds a standard established in subsections (2) through (4) in any compliance year, the public utility *or competitive electricity supplier* may carry forward the amount by which the standard was exceeded to comply with the standard in either or both of the 2 subsequent compliance years. The carryforward may not be double-counted.

(10) Except as provided in ~~subsection (11)~~ *subsections (11) and (12)*, if a public utility *or competitive electricity supplier* is unable to meet the standards established in subsections (2) through (4) in any compliance year, that public

utility *or competitive electricity supplier* shall pay an administrative penalty, assessed by the commission, of $10 for each megawatt hour of renewable energy credits that the public utility *or competitive electricity supplier* failed to procure. A public utility may not recover this penalty in electricity rates. Money generated from these penalties must be deposited in the universal low-income energy assistance fund established in 69-8-412(1)(a).

(11) A public utility *or competitive electricity supplier* may petition the commission for a short-term waiver from full compliance with the standards in subsections (2) through (4) and the penalties levied under subsection (10). The petition must demonstrate that the:

(a) public utility *or competitive electricity supplier* has undertaken all reasonable steps to procure renewable energy credits under long-term contract, but full compliance cannot be achieved either because renewable energy credits cannot be procured or for other legitimate reasons that are outside the control of the public utility *or competitive electricity supplier*; or

(b) integration of additional eligible renewable resources into the electrical grid will clearly and demonstrably jeopardize the reliability of the electrical system and that the public utility *or competitive electricity supplier* has undertaken all reasonable steps to mitigate the reliability concerns.

(12) (a) Retail sales made by a competitive electricity supplier made according to prices, terms, and conditions of a written contract executed prior to [the effective date of this act] are exempt from the standards in subsections (2) through (4).

(b) The exemption provided for in subsection (12)(a) is terminated upon modification after [the effective date of this act] of the prices, terms, or conditions in a written contract."

Section 3. Section 69-8-1005, MCA, is amended to read:

"69-8-1005. Procurement — cost recovery — reporting. (1) In meeting the requirements of this part, a public utility shall:

(a) conduct renewable energy solicitations under which the public utility offers to purchase renewable energy credits, either with or without the associated electricity, under contracts of at least 10 years in duration; and

(b) consider the importance of geographically diverse rural economic development when procuring renewable energy credits.

(2) A public utility that intends to enter into contracts of less than 10 years in duration shall demonstrate to the commission that these contracts will provide a lower long-term cost of meeting the standard established in 69-8-1004.

(3) (a) Contracts signed for projects located in Montana must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if the Montana residents have substantially equal qualifications to those of nonresidents.

(b) Contracts signed for projects located in Montana must require all contractors to pay the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), during the construction phase of the project.

(4) All contracts signed by a public utility to meet the requirements of this part are eligible for advanced approval under procedures established by the commission. Upon advanced approval by the commission, these contracts are

eligible for cost recovery from ratepayers, except that nothing in this part limits the commission's ability to subsequently, in any future cost-recovery proceeding, inquire into the manner in which the public utility has managed the contract and to disallow cost recovery if the contract was not reasonably administered.

(5) A public utility *or competitive electricity supplier* shall submit renewable energy procurement plans to the commission in accordance with rules adopted by the commission. The plans must be submitted to the commission on or before:

(a) January 1, 2007, for the standard required in 69-8-1004(2);

(b) June 1, 2008, for the standard required in 69-8-1004(3);

(c) June 1, 2013, for the standard required in 69-8-1004(4); and

(d) any additional future dates as required by the commission.

(6) A public utility *or competitive electricity supplier* shall submit annual reports, in a format to be determined by the commission, demonstrating compliance with this part for each compliance year. The reports must be filed by March 1 of the year following the compliance year.

(7) For the purpose of implementing this part, the commission has regulatory authority over competitive electricity suppliers."

Section 4. Section 69-8-1007, MCA, is amended to read:

"69-8-1007. Cost caps. (1) A public utility that has restructured pursuant to Title 69, chapter 8, is not obligated to take electricity from an eligible renewable resource unless the eligible renewable resource has demonstrated through a competitive bidding process that the total cost of electricity from that eligible resource, including the associated cost of ancillary services necessary to manage the transmission grid and firm the resource, is less than or equal to bids for the equivalent quantity of power over the equivalent contract term from other electricity suppliers.

(2) A public utility that has not restructured pursuant to Title 69, chapter 8, is not obligated to take electricity from an eligible renewable resource unless the cost per kilowatt hour of the generation from the renewable resource does not exceed by more than 15% the cost of power from any other alternate generating resource available to the public utility.

(3) A competitive electricity supplier is not obligated to take electricity from an eligible renewable resource unless the total cost of the electricity from that eligible renewable resource, including ancillary services, is less than or equal to a cost cap determined by the commission based on:

(a) the cost of alternate power supplies available to the competitive electricity supplier; and

(b) the cost caps applicable to other utilities under this section."

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 25, 2007

CHAPTER NO. 247

[HB 19]

AN ACT REVISING LAWS GOVERNING STATE LAND ADMINISTRATION TO CLARIFY THAT LAND GRANTED PURSUANT TO THE MORRILL ACT IS NOT SUBJECT TO DEDUCTIONS OF INTEREST OR INCOME FOR PURPOSES OF FUNDING THE ADMINISTRATION OF MORRILL ACT LAND OR FUNDS DERIVED FROM MORRILL ACT LAND; PROVIDING A STATUTORY APPROPRIATION FOR THE ADMINISTRATION OF MORRILL ACT LAND; PROVIDING FOR THE CARRYOVER OF THE UNEXPENDED PORTION OF THE STATUTORY APPROPRIATION; PROVIDING FOR REIMBURSEMENT FROM THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO THE MORRILL ACT TRUST FOR THE ADMINISTRATIVE COSTS OF INVESTING THE MORRILL ACT FUNDS; AMENDING SECTIONS 17-1-508, 17-6-201, 17-7-502, 77-1-108, 77-1-109, 77-1-602, 77-1-606, 77-1-613, 77-1-905, 77-2-328, AND 77-5-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-1-508, MCA, is amended to read:

"17-1-508. Review of statutory appropriations. (1) Each biennium, the office of budget and program planning shall, in development of the executive budget, review and identify instances in which statutory appropriations in current law do not appear consistent with the guidelines set forth in subsection (2).

(2) The review of statutory appropriations must determine whether a statutory appropriation meets the requirements of 17-7-502. A *Except as provided in 77-1-108, a* statutory appropriation from a continuing and reliable source of revenue may not be used to fund administrative costs. In reviewing and establishing statutory appropriations, the legislature shall consider the following guidelines. A statutory appropriation may be considered appropriate if:

(a) the fund or use requires an appropriation;

(b) the money is not from a continuing, reliable, and estimable source;

(c) the use of the appropriation or the expenditure occurrence is not predictable and reliable;

(d) the authority does not exist elsewhere;

(e) an alternative appropriation method is not available, practical, or effective;

(f) other than for emergency purposes, it does not appropriate money from the state general fund;

(g) the money is dedicated for a specific use;

(h) the legislature wishes the activity to be funded on a continual basis; and

(i) when feasible, an expenditure cap and sunset date are included.

(3) The office of budget and program planning shall prepare a fiscal note for each piece of legislation that proposes to create or amend a statutory appropriation. It shall, consistent with the guidelines in this section, review each of these pieces of legislation. Its findings concerning the statutory

appropriation must be contained in the fiscal note accompanying that legislation."

Section 2. Section 17-6-201, MCA, is amended to read:

"17-6-201. Unified investment program — general provisions. (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires an investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation.

(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring real property obtained through investments. Prior to the transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a qualified appraiser.

(b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund, *other than the fund derived from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329. An appropriation to pay the costs of administering and accounting for the Morrill Act fund is provided for in 77-1-108*."

Section 3. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; *77-1-108;* 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch.

422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 4. Section 77-1-108, MCA, is amended to read:

"77-1-108. Trust land administration account. (1) There is a trust land administration account in the state special revenue fund. Money in the account is available to the department by appropriation and must be used to pay the costs of administering state trust lands.

(2) Appropriations from the account for each fiscal year may not exceed the sum of 1 1/8% of the book value balance in the ~~nine~~ permanent funds administered by the department*, other than the fund containing proceeds derived from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329,* on the first day of January preceding the new biennium and 10% of the revenue deposited in the capitol building land grant trust fund in the last-completed fiscal year prior to the new biennium.

(3) ~~Unreserved~~ *Except as provided in subsection (4), unreserved* funds remaining in the account at the end of a fiscal year must be transferred to each of the permanent funds in proportionate shares to each fund's contribution to the account as calculated in 77-1-109(3).

(4) (a) The amount of $80,000 each biennium is transferred from the state general fund to an account in the state special revenue fund. The account is statutorily appropriated, as provided in 17-7-502, to the department for the purposes of administering the land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329. Any unexpended portion of the statutory appropriation may be retained in the account and used for the administration of the Morrill Act land.

(b) At the end of each fiscal year, the department shall pay from the appropriation in subsection (4)(a) to the trust containing proceeds derived from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, an amount calculated to be the cost of administering the investment of the fund derived from that trust. The payment must be based upon the percentage that the Morrill Act fund constitutes of the total fund derived from all trust lands."

Section 5. Section 77-1-109, MCA, is amended to read:

"77-1-109. Deposits of proceeds in trust land administration account. (1) *(a)* The department shall, until the deposit equals the amount appropriated for the fiscal year pursuant to 77-1-108, deposit into the trust land administration account created by 77-1-108 the following:

~~(a)~~*(i)* mineral royalties;

~~(b)~~*(ii)* the proceeds or income from the sale of easements and timber, except timber from public school and Montana university system lands;

~~(c)~~*(iii)* 5% of the interest and income annually credited to the public school fund in accordance with 20-9-341; and

~~(d)~~*(iv)* fees collected pursuant to 77-2-328.

(b) The department may not make deductions from interest or income generated from lands granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329.

(2) After the deposits in subsection (1) have been made, the remainder of the proceeds, other than proceeds from timber from Montana university system lands and other than those purchased pursuant to 17-6-340, must be deposited in the appropriate permanent fund and the capitol building land grant trust fund. Timber proceeds from university system lands must be paid over to the state treasurer, who shall deposit the money to the credit of the proper fund for use as provided in 17-3-1003(1). Royalty payments purchased pursuant to 17-6-340 must be used as provided in that section and 20-9-622.

(3) The amount of money that is deposited into the trust land administration account may not exceed 1 1/8% of the book value balance in each of the ~~nine~~ permanent funds*, other than the fund containing proceeds derived from lands granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329,* administered by the department on the first day of January preceding the new biennium and 10% of the previous fiscal year revenue deposited into the capitol building land grant trust fund."

Section 6. Section 77-1-602, MCA, is amended to read:

"77-1-602. Definition of terms. Unless the context requires otherwise, in this part*,* the following definitions apply:

(1) "Account" means the resource development account in the state special revenue fund.

(2) *(a)* "Income" means all proceeds received for the use of state land except*:*

(i) revenue required by law to be placed in the permanent fund type*;* and

(ii) revenue from the sale of timber.

(b) For purposes of subsection (2)(a), state land does not include land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329."

Section 7. Section 77-1-606, MCA, is amended to read:

"77-1-606. Restriction on use of income from school and institutional lands. Money in the resource development account created in 77-1-604 that is derived from the income from public school lands, university lands*, other than land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329,* agricultural college lands, scientific school lands, normal school lands, capitol building lands, or institutional lands must be expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in developing public lands of the same trust. If the board determines that public lands in a trust may be developed and ~~moneys~~ *money* in the account from that trust ~~are~~ *is* insufficient to defray the necessary costs and expenses incurred, the board may transfer sufficient ~~moneys~~ *money* from other trusts in the account. Trust accounts from which money is transferred must be reimbursed by a method approved by the board."

Section 8. Section 77-1-613, MCA, is amended to read:

"77-1-613. Deduction of portion of income received from sale of timber from state trust lands — creation of account. (1) There is an account in the state special revenue fund called the state timber sale account. Money in the account may be appropriated by the legislature for use by the department in the manner set out in this section to enhance the revenue creditable to the trusts. There must be placed in the account an amount from timber sales on state lands*, other than land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329,* each fiscal year equal to the amount appropriated from the account for the corresponding fiscal year.

(2) Timber sale program funds deducted under subsection (1) must be directly applied to timber sale preparation and documentation.

(3) In order to increase the volume of timber sold at the earliest possible time while continuing to meet the requirements of applicable state and federal laws and in order to avoid unnecessary delays and extra costs that would result from increasing its permanent staff, the department may contract for services that will enable achievement of the purposes of this section and that will achieve the highest net return to the trusts.

(4) To maximize overall return to the trusts, the timely salvage of timber must be considered. However, salvage timber sales may not adversely affect the implementation of green timber sales programs."

Section 9. Section 77-1-905, MCA, is amended to read:

"77-1-905. Rental provisions for commercial leasing — payments and credits — administration — lease options. (1) The first year's annual rental payment for state trust land leased for commercial purposes must be paid by cashier's check, and payment is due upon execution of the lease. The department may require the lessee of state trust land for commercial purposes to pay the department's cost of the request for proposals process, including publication and other reasonable expenses. Failure to pay the first year's rental at the time of lease execution must result in the cancellation of the lease and forfeiture of all money paid. In the event of cancellation or in the event that the successful proposer is offered and does not accept the lease, the board may enter into negotiations with other persons who submitted a proposal for commercial purposes in response to the department request for proposals on that tract.

(2) The board shall specify in any commercial lease an annual rental equal to the full market rental value of the land. The annual rent may not be less than the product of the appraised value of the land multiplied by a rate that is 2 percentage points a year less than the rate of return of the unified investment program administered by the board of investments pursuant to 17-6-201. The rate of return from the unified investment program used in this subsection must be determined no less than 30 days prior to the execution of the competitive bid. A commercial lease may include a rental adjustment formula established by the board that periodically adjusts the annual rent provided for in the lease at frequencies specified in the lease. The board may allow a credit against the annual rent due for payments made by the lessee on behalf of the state of Montana for construction of structures and improvements, special improvement district assessments, annexation fees, or other city or county fees attributable to the state's property interest in land leased for commercial purposes. The board may accept as lawful consideration in-kind payments of services or materials equal to the full market value of the rent calculated to be

owed on any commercial lease. A lease issued under this part may include an amortization schedule to be used to determine the value to the lessee of improvements when the lease is terminated.

(3) ~~The~~ *Except for rent received from lands granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, the* department may use up to 10% of the annual rent received from a commercial lease to contract with realtors, property managers, surveyors, legal counsel, or lease administrators to administer the commercial lease, either singly or in common with other leases, or to provide assistance to the department in the administration of commercial leases.

(4) In anticipation of entering into a commercial lease, the board may issue an option to lease at a rental rate that the board determines to be appropriate. An option to lease may not exceed a term of 2 years. An option to lease may not be construed to grant a right of immediate possession or control over the land but may only preserve the optionholder's exclusive right to obtain a commercial lease on the land in the future."

Section 10. Section 77-2-328, MCA, is amended to read:

"77-2-328. Additional rules — deposit of fees. The board may prescribe any additional rules for the conduct of sales of state land as in its judgment the interests of the state may demand. *The rules may not include a deduction of fees from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329.* Any fees collected by a rule adopted pursuant to this section must be deposited in the trust land administration account as provided in 77-1-108."

Section 11. Section 77-5-204, MCA, is amended to read:

"77-5-204. Sale of timber — fee for forest improvement. (1) The board may sell timber on state lands, at a price per 1,000 board feet, when appropriate, that, in the board's judgment, is in the best interest of the state, provided that live timber is not sold for less than full market value.

(2) Timber sold or cut from state lands must be cut and removed under rules that may be prescribed by the board for standing timber preservation and fire prevention. In all cases, the board shall require the person cutting the timber to pile and burn or otherwise dispose of the brush and slash in the manner that may be prescribed by the board.

(3) Before the sale of timber is granted, the value of the timber must be appraised under the direction of the department, upon the request and subject to the approval of the board. An appraisal must show as nearly as possible the value per 1,000 board feet, when appropriate, of all merchantable timber.

(4) In addition to the price of the timber established under subsection (1), the board may require a timber purchaser to pay a fee for forest improvement *unless the timber is to be harvested from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329.* Revenue from the fee must be deposited in the state special revenue fund to the credit of the department and, as appropriated by the legislature, may be used only for:

(a) disposing of logging slash;

(b) acquiring access and maintaining roads necessary for timber harvesting on state lands;

(c) reforesting, thinning, and otherwise improving the condition and income potential of forested state lands; and

(d) complying with legal requirements for timber harvesting."

Section 12. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2007

CHAPTER NO. 248

[HB 26]

AN ACT TRANSFERRING THE RAIL SERVICE COMPETITION COUNCIL FROM THE OFFICE OF THE GOVERNOR TO THE DEPARTMENT OF TRANSPORTATION FOR ADMINISTRATIVE PURPOSES; DECREASING, MODIFYING, AND STAGGERING THE MEMBERSHIP OF THE COUNCIL; EXPANDING THE DUTIES OF THE COUNCIL TO INCLUDE PROMOTING THE EXPANSION OF EXISTING RAIL LINES AND THE CONSTRUCTION OF NEW RAIL LINES IN MONTANA; PROVIDING AN APPROPRIATION; AND AMENDING SECTION 2-15-246, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-246, MCA, is amended to read:

"2-15-246. Rail service competition council. (1) There is a rail service competition council consisting of the following members:

(a) the director of the department of agriculture provided for in 2-15-3001;

(b) the director of the department of transportation provided for in 2-15-2501;

~~(c) the director of the department of revenue provided for in 2-15-1301;~~

~~(d) the chief business development officer of the office of economic development provided for in 2-15-218;~~

(c) the director of the department of revenue provided for in 2-15-1301;

(d) the chief business development officer of the office of economic development provided for in 2-15-218;

~~(e)~~*(e)* ~~six~~ *seven* people*,* appointed by the governor*, who shall serve staggered 4-year terms commencing January 1 following their appointment,* with the following qualifications:

(i) one person with substantial knowledge and experience related to Class I railroads;

(ii) one person with substantial knowledge and experience related to Class II railroads;

~~(iii)~~*(iii)* one person who is a farm commodity producer in the state ~~of~~ ~~Montana~~ and who has substantial knowledge and experience related to transportation of farm commodities;

~~(iv)~~*(iv)* one person with substantial knowledge and experience in the trucking industry in the state ~~of Montana~~;

~~(v)~~*(v)* one person with substantial knowledge and experience related to transportation for the mineral industry in the state ~~of Montana~~; ~~and~~

(vi) one person with substantial knowledge and experience related to transportation for the coal industry in the state; and

~~(vi)~~*(vii)* one person with substantial knowledge and experience related to transportation for the wood products industry in the state ~~of Montana~~; and

~~(f)~~*(f)* two members, one from each political party and one from each house of the legislature, from the economic affairs interim committee established in 5-5-223, selected by the presiding officer of the economic affairs interim committee with the concurrence of the vice presiding officer *at the first interim committee meeting at the beginning of each interim*.

(2) The rail service competition council shall perform the following duties:

(a) promote rail service competition in the state ~~of Montana~~ that results in reliable and adequate service at reasonable rates;

(b) develop a comprehensive and coordinated plan to increase rail service competition in the state ~~of Montana~~;

(c) reevaluate the state's railroad taxation practices to ensure reasonable competition while minimizing any transfer of tax burden. The reevaluation of the state's railroad taxation practices should include but is not limited to a reevaluation of property taxes, taxes that minimize highway damage, special fuel taxes, and corporate tax rates.

(d) develop various means to assist Montanans impacted by high rates and poor rail service;

(e) analyze the feasibility of developing legal structures to facilitate growth of producer transportation investment cooperatives and rural transportation infrastructure authorities;

(f) provide advice and recommendations to the department of transportation on the department's activities under 60-11-113 through 60-11-116;

(g) coordinate efforts and develop cooperative partnerships with other states and federal agencies to promote rail service competition; ~~and~~

(h) act as the state's liaison in working with Class I railroads to promote rail service competition*; and*

(i) promote the expansion of existing rail lines and the construction of new rail lines in the state.

(3) *(a)* The council shall cooperate with and report to any standing or interim legislative committee that is assigned to study or has oversight duties for rail service competition issues.

(b) The council shall report to the 2009 legislature on its activities and its progress in performing the duties required in subsection (2).

(4) The council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.

(5) The council is attached for administrative purposes only to the ~~governor's office~~ *department of transportation*, which may assist the council by providing staff and budgetary, administrative, and clerical services that the council or its presiding officer requests.

(6) Staffing and other resources may be provided to the council only from state and nonstate resources donated to the council and from direct appropriations by each legislature."

Section 2. Appropriation. There is appropriated from the general fund to the department of transportation the following amounts to support the rail service competition council and its work:

Fiscal Year 2008	$50,000
Fiscal Year 2009	50,000

Section 3. Directions to code commissioner. Section 2-15-246, MCA, is intended to be renumbered and codified as an integral part of Title 2, chapter 15, part 25.

Approved April 26, 2007

CHAPTER NO. 249

[HB 77]

AN ACT IMPLEMENTING MEDICAID PROVISIONS OF THE FEDERAL DEFICIT REDUCTION ACT OF 2005 BY ALLOWING RECOVERY OF PAYMENTS OWED TO MEDICAID RECIPIENTS AND REQUIRING COORDINATION OF ELIGIBILITY INFORMATION ABOUT MEDICAID RECIPIENTS; AMENDING SECTION 33-35-306, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Eligibility requirements of health insurance issuers. As a condition of doing business in the state of Montana, a health insurance issuer, a multiple employer welfare arrangement, a third-party administrator, a health maintenance organization, a pharmacy benefit manager, a health services corporation, or any other party that by statute, contract, or agreement is legally responsible for payment of a claim for a health-care item or service shall:

(1) upon request, provide to the department of public health and human services eligibility information for individuals who are eligible for or receiving medicaid, including but not limited to:

(a) data to determine during what period the medicaid recipient or medicaid-eligible individual or the spouse or dependents of the recipient or eligible individual may be or may have been covered by any of the entities listed in this section; and

(b) data regarding the nature of the coverage that is or was provided, including but not limited to the name, address, and identifying information of the entity providing coverage;

(2) respond to any inquiry from the department of public health and human services regarding a claim for payment for any health-care item or service submitted not later than 3 years after the date the item or service was provided;

(3) accept the department of public health and human services' right of recovery and the assignment from the medicaid recipient to the department of public health and human services of any right of an individual or other entity to payment from any of the entities listed in this section for an item or service for which medicaid has paid; and

(4) agree not to deny a claim submitted by the department of public health and human services solely on the basis of the date of submission of the claim, the

type or format of the claim form, or a failure to present proper documentation at the point of sale that is the basis of the claim if:

(a) the claim is submitted by the department of public health and human services within the 3-year period beginning on the date on which the service or item was provided; and

(b) any action by the department of public health and human services to enforce its rights with respect to the claim is commenced within 6 years after the department submitted the claim.

(5) This section may not be construed to:

(a) require that a third party pay any department claim for services or items that are not covered under the applicable health care plan;

(b) require that any third-party administrator, fiscal intermediary, or other contractor pay a department claim from its own funds unless the entity also bears the financial obligation for the claim under the applicable plan documents;

(c) impose any liability on an entity to pay claims that the entity does not otherwise bear; or

(d) negate any right of indemnification against a plan sponsor or other entity with ultimate liability for health care claims by a third-party administrator, fiscal intermediary, or other contractor that pays the claims.

Section 2. Section 33-35-306, MCA, is amended to read:

"33-35-306. Application of insurance code to arrangements. (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions:

(a) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(b) Title 33, chapter 1, part 7;

(c) [section 1];

~~(c)~~*(d)* 33-3-308;

~~(d)~~*(e)* Title 33, chapter 18, except 33-18-242;

~~(e)~~*(f)* Title 33, chapter 19;

~~(f)~~*(g)* 33-22-107, 33-22-131, 33-22-134, and 33-22-135; and

~~(g)~~*(h)* 33-22-525 and 33-22-526.

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 1, and the provisions of Title 33 apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2007.

Approved April 26, 2007

CHAPTER NO. 250

[HB 83]

AN ACT REVISING THE LAWS RELATING TO MEDICAL PAROLE OF PRISON INMATES; PROVIDING THAT THE BOARD OF PARDONS AND PAROLE SHALL HOLD A HEARING ON APPLICATIONS FOR MEDICAL PAROLE; REVISING PROCEDURES AND STANDARDS FOR APPLICATION FOR AND ELIGIBILITY FOR MEDICAL PAROLE; AMENDING SECTION 46-23-210, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-23-210, MCA, is amended to read:

"46-23-210. Medical parole. (1) The board may release on medical parole by appropriate order ~~a~~ *any* person ~~placed in a correctional institution or program, except a person under sentence of death. To be eligible for a medical parole, a person must have an examination and written diagnosis by a physician licensed under Title 37 to practice medicine. The diagnosis must include:~~

~~(a) a determination that the person suffers from an incapacitating physical condition, disease, or syndrome;~~

~~(b) a description of the physical condition, disease, or syndrome and a detailed description of the person's physical incapacity; and~~ *confined in a state prison or any person sentenced to a state prison and confined in a prerelease center who:*

(a) is not under sentence of death or sentence of life imprisonment without possibility of release;

(b) is unlikely to pose a detriment to the person, victim, or community; and

(c) (i) has a medical condition requiring extensive medical attention; or

(ii) has been determined by a physician to have a medical condition that will likely cause death within 6 months or less.

(2) A person designated ineligible for parole under 46-18-202(2) must have approval of the sentencing judge before being eligible for medical parole. The provisions of this subsection do not apply to a person who is ineligible for medical parole under subsection (1)(a).

(3) Medical parole may be requested by the board, the department, an incarcerated person, or an incarcerated person's spouse, parent, child, grandparent, or sibling by submitting a completed application to the administrator of the correctional institution in which the person is incarcerated. The application must include a detailed description of the person's proposed placement and medical care and an explanation of how the person's medical care will be financed if the person is released on medical parole. The application must include a report of an examination and written diagnosis by a physician licensed under Title 37 to practice medicine. The physician's report must include:

(a) a description of the medical attention required to treat the person's medical condition;

(b) a description of the person's medical condition, any diagnosis, and any physical incapacity; and

(c) a prognosis addressing the likelihood of the person's recovery from the ~~physical condition, disease, or syndrome~~ *medical condition or diagnosis* and the

extent of any potential recovery. *The prognosis may include whether the person has a medical condition causing the likelihood of death within 6 months.*

~~(2)~~*(4)* The ~~diagnosis~~ *application* must be reviewed and accepted by the department before the board may consider granting a medical parole. ~~The board may not grant a medical parole unless the incapacitating physical condition, disease, or syndrome renders the person highly unlikely to present a clear and present danger to public safety.~~

(5) Upon receiving the application from the department, the board shall hold a hearing. Any interested person or the interested person's representative may submit written or oral statements, including written or oral statements from a victim. A victim's statement may be kept confidential.

~~(3)~~*(6)* The board shall require as a condition of medical parole that the person agree to placement in an environment ~~chosen~~ *approved* by the department during the parole period, including but not limited to a hospital, nursing home, *hospice facility, or prerelease center, to intensive supervision, to some other appropriate community corrections facility or program,* or *to a* family home. The board may require as a condition of parole that the person agree to periodic examinations and diagnoses at the person's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the person's ~~physical capacity~~ *medical condition* has improved to the extent that the person *no longer requires extensive medical attention or* is likely to pose a ~~possible~~ detriment to ~~society~~ *the person, victim, or community*, the board may revoke the parole and return the person to the custody of the department.

~~(4) Medical parole may be requested by the board, the department, an incarcerated person, or an incarcerated person's parent, grandparent, child, or sibling by submitting the request in writing to the administrator of the correctional institution in which the person is incarcerated.~~

~~(5)~~*(7)* A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.

~~(6) Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply to nonmedical parole.~~

(8) Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply to medical parole.

(9) Before July 1 of each even-numbered year, the board shall report to the children, families, health, and human services interim committee and the law and justice interim committee regarding the outcome related to any person released on medical parole since the last report, including health care costs and payments related to the care of the person released on medical parole."

Section 2. Effective date. [This act] is effective July 1, 2007.

Section 3. Applicability. [This act] applies to applications for medical parole received on or after [the effective date of this act].

Approved April 26, 2007

CHAPTER NO. 251

[HB 117]

AN ACT REQUIRING NEWBORN HEARING SCREENINGS AND EDUCATION; AMENDING SECTIONS 53-19-401, 53-19-402, AND 53-19-404, MCA; AND REPEALING SECTION 53-19-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-19-401, MCA, is amended to read:

"53-19-401. Purpose. The purposes of this part are:

(1) to provide early detection of hearing loss in newborn infants as soon after birth as possible to enable children, their families, and primary health care providers to obtain any necessary multidisciplinary evaluation, audiologic assessment, treatment, and intervention services at the earliest opportunity and to prevent or mitigate the developmental delays and academic failures associated with late identification of hearing loss; and

(2) to provide the state with the necessary information to effectively plan, establish, and evaluate a comprehensive system of appropriate services for ~~newborn~~ infants *and children* ~~who have a hearing loss or~~ who are deaf *or hard of hearing*."

Section 2. Section 53-19-402, MCA, is amended to read:

"53-19-402. Statewide universal newborn hearing screening, tracking, and intervention program. (1) There is a universal newborn hearing screening program in the department of public health and human services. The department shall implement the program to ~~encourage~~ *ensure* a hearing screening test for all newborn infants ~~to undergo~~ for identification of newborn infant hearing loss. The department shall ~~encourage~~ *implement the program to ensure* newborn ~~infant~~ hearing *screening* tests ~~to be~~ *are* completed before discharge from a hospital or no later than ~~3 months~~ *1 month* after birth.

(2) The department shall adopt rules to:

~~(a) determine the volume of births that would allow a hospital or health care facility to be exempt from providing newborn infant hearing screenings onsite before discharge;~~

~~(b) develop information for and procedures by which health care providers, local health departments, health care clinics, school districts, and other appropriate resources may promote the importance of the screening of newborn infants' hearing and provide information regarding locations where screenings may be accessed for those newborn infants either not born in a hospital or who do not receive a screening in a hospital; and~~

(a) ensure that each licensed hospital, health care facility, or health care provider providing obstetric services:

(i) complete newborn hearing screenings for all infants before discharge or no later than 1 month after birth and report the results to each infant's primary care provider, including any recommendation for audiologic assessment for an infant with two failed hearing screenings; and

(ii) provide required education regarding hearing screenings and hearing loss;

(b) ensure monitoring of all babies screened in Montana and referred for audiologic assessment to ensure that they receive an audiologic assessment by 3 months of age;

(c) establish newborn hearing screening protocols that are objective and physiologically based;

(d) establish education protocols;

~~(c)~~*(e)* ~~determine any additional~~ *establish* reporting requirements that are related to newborn infant hearing screening, ~~evaluation, audiologic assessment, treatment, and intervention services.~~ *recommendation for audiologic assessment, and audiologic assessment results; and*

(f) ensure the electronic sharing of audiologic evaluation information of infants diagnosed as deaf or hard of hearing with the Montana school for the deaf and blind, pursuant to the school's responsibility for intervention tracking as provided in 20-8-102.

(3) The department shall assist ~~hospitals~~ *each licensed hospital, health care facility, or health care provider providing obstetric services* in developing systems for reporting and in accessing funds to purchase hearing screening equipment by providing information on funding sources known to the department.

(4) The department may accept contributions, gifts, grants, or endowments from public or private sources for the use and benefit of this program."

Section 3. Section 53-19-404, MCA, is amended to read:

"53-19-404. Required education — screening — *reporting*. (1) Each licensed hospital, health care facility, or health care provider that provides obstetric services shall provide education to parents of infants born in the hospital or health care facility of the importance of screening the hearing of newborn infants and *providing* followup care. ~~Education is not considered a substitute for the hearing screening.~~

~~(2) Every licensed hospital, health care facility, or health care provider that provides obstetric services shall report quarterly to the department of public health and human services and to the task force the following information and any other information required by rule:~~

~~(a) the number of infants born in the hospital;~~

~~(b) the number of infants screened;~~

~~(c) the number of infants who passed the screening, if administered;~~

~~(d) the number of infants who did not pass the screening, if administered;~~

~~(e) the number of infants who received followup care; and~~

~~(f) the number of infants with hearing impairment.~~

(2) Every licensed hospital or health care facility that provides obstetric services shall:

(a) perform newborn hearing screenings, including screening of infants transferred into the hospital or health care facility from another hospital or health care facility, unless the transferring facility has already performed the screening;

(b) report monthly to the department the following information:

(i) the infants born in the hospital or born outside of the hospital and transported or transferred to the hospital or health care facility;

(ii) the infants screened, including those infants born outside of the hospital or health care facility and transported or transferred to it from another hospital or health care facility or screened as part of a cooperative agreement with health care providers providing obstetric services in their service area;

(iii) the infants not screened and the reason each infant was not screened, in accordance with reporting requirements;

(iv) the infants who passed the screening; and

(v) the infants who do not pass their screenings and the contact information for the primary care provider who was notified of the screening results for each infant who did not pass the screenings.

(3) Every licensed audiologist performing audiologic evaluations of infants identified by hearing screening as needing audiologic assessment shall report monthly to the department the following information:

(a) the identity of infants referred to them for audiologic assessment;

(b) the referring person or health care facility;

(c) the birthing facility in which the infant was born; and

(d) the results of the audiologic assessment of each infant referred to them."

Section 4. Repealer. Section 53-19-403, MCA, is repealed.

Approved April 26, 2007

CHAPTER NO. 252

[HB 154]

AN ACT REVISING THE LAWS GOVERNING COMMITMENT PROCEEDINGS FOR THE DEVELOPMENTALLY DISABLED TO ALLOW A COURT TO ORDER COMMUNITY TREATMENT AS AN OPTION; DEFINING THE ELEMENTS OF A COMMUNITY TREATMENT PLAN; AND AMENDING SECTIONS 53-20-102, 53-20-112, 53-20-118, 53-20-121, 53-20-125, 53-20-126, 53-20-128, 53-20-129, 53-20-132, 53-20-133, AND 53-20-141, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-20-102, MCA, is amended to read:

"53-20-102. Definitions. As used in this part, the following definitions apply:

(1) (a) "Available" means:

(i) that services of an identified provider or providers have been found to be necessary and appropriate for the habilitation of a specific person by the person's individual treatment planning team;

(ii) that funding for the services has been identified and committed for the person's immediate use; and

(iii) that all providers have offered the necessary services for the person's immediate use.

(b) A service is not available simply because similar services are offered by one or more providers in one or more locations to other individuals or because the person has been placed on a waiting list for services or funding.

~~(1)~~*(2)* "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(3) "Case manager" means a person who is responsible for service coordination, planning, and crisis intervention for persons who are eligible for community-based developmental disability services from the department.

(4) "Community treatment plan" means a comprehensive, individualized plan of care that addresses the habilitation needs of and the risks posed by the behaviors of a respondent who is found to be seriously developmentally disabled.

~~(2)~~*(5)* "Community-based facilities" or "community-based services" means those facilities and services that are available for the evaluation, treatment, and habilitation of persons with developmental disabilities in a community setting.

~~(3)~~*(6)* "Court" means a district court of the state of Montana.

~~(4)~~*(7)* "Developmental disabilities professional" means a licensed psychologist, a licensed psychiatrist, or a person with a master's degree in psychology, who:

(a) has training and experience in psychometric testing and evaluation;

(b) has experience in the field of developmental disabilities; and

(c) is certified, as provided in 53-20-106, by the department of public health and human services.

~~(5)~~*(8)* "Developmental disability" means a disability that*:*

(a) is attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation ~~and that~~*;*

(b) requires treatment similar to that required by mentally retarded individuals~~. A developmental disability is a disability that~~*;*

(c) originated before the individual attained age 18~~, that~~*;*

(d) has continued or can be expected to continue indefinitely~~;~~*;* and ~~that~~

(e) results in the person having a substantial disability.

~~(6)~~*(9)* "Habilitation" means the process by which a person who has a developmental disability is assisted in acquiring and maintaining those life skills that enable the person to cope more effectively with personal needs and the demands of the environment and in raising the level of the person's physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

~~(7)~~*(10)* "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a resident. The resident is a member of the team.

~~(8)~~*(11)* "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

~~(9)~~*(12)* "Qualified mental retardation professional" means a professional program staff person for the residential facility who the department of public health and human services determines meets the professional requirements necessary for federal certification of the facility.

~~(10)~~*(13)* "Resident" means a person committed to a residential facility.

~~(11)~~*(14)* "Residential facility" or "facility" means the Montana developmental center.

~~(12)~~*(15)* "Residential facility screening team" means a team of persons, appointed as provided in 53-20-133, that is responsible for screening a respondent to determine if the commitment of the respondent to a residential facility *or imposition of a community treatment plan* is appropriate.

~~(13)~~*(16)* "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously developmentally disabled and ~~in need of developmental disability services in~~ *for whom the petition requests commitment to* a residential facility *or imposition of a community treatment plan*.

~~(14)~~*(17)* "Responsible person" means a person willing and able to assume responsibility for a person who is seriously developmentally disabled or alleged to be seriously developmentally disabled.

~~(15)~~*(18)* "Seriously developmentally disabled" means a person who:

(a) has a developmental disability;

(b) is impaired in cognitive functioning; and

(c) cannot be safely and effectively habilitated ~~in~~ *through voluntary use of* community-based services because of:

(i) behaviors that pose an imminent risk of serious harm to self or others; or

(ii) self-help deficits so severe as to require total care."

Section 2. Section 53-20-112, MCA, is amended to read:

"53-20-112. Procedural rights — *appointment of counsel.* (1) A respondent has all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of a person who suffers from a mental disorder and who requires commitment, as provided in 53-21-115 through 53-21-118.

(2) In addition, the parents or guardian of a respondent ~~have~~ *has* the right to:

(a) be present at any hearing held pursuant to this part;

(b) be represented by counsel in any hearing;

(c) offer evidence and cross-examine witnesses in any hearing; and

(d) have the respondent examined by a professional of ~~their~~ *the parents' or guardian's* choice when a professional is reasonably available~~,~~ unless the person chosen is objected to by the respondent or by a responsible person appointed by the court.

(3) Upon receipt of a petition for commitment, recommitment, or emergency commitment, the court shall order the office of the state public defender, provided for in 47-1-201, to assign counsel for the respondent. If the parents are indigent and if the parents request it or if the guardian is indigent and the guardian requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111."

Section 3. Community treatment plan — elements — placement. A court may order a respondent to be placed in a community treatment plan as a

less restrictive alternative to commitment to a residential facility. The plan may include but is not limited to requiring the respondent to:

(1) participate in a specified set of community-based services;

(2) participate in services addressing the risk to self or others, including but not limited to group or individual therapy, staff supervision, psychiatric care, or medication; and

(3) abide by individualized restrictions on the respondent's behavior or other conditions of continued participation that the court finds necessary to protect the respondent or the public, including but not limited to residential requirements, restrictions on access to intoxicants or weapons, productive use of free time, limited financial independence, curfew, or authorization for providers to share information about the respondent with law enforcement.

Section 4. Section 53-20-118, MCA, is amended to read:

"53-20-118. Venue for hearing. (1) ~~Hearings~~ *Except as provided in 53-20-129, hearings* held pursuant to this part must be held in the district court for the district in which ~~the respondent resides or in which the residential facility is located to which the respondent is or is to be committed.~~*:*

(a) the respondent resides; or

(b) the residential facility to which the respondent is committed or is to be committed is located.

(2) The cost of any hearing held pursuant to this part must be borne by the county where the respondent resides."

Section 5. Section 53-20-121, MCA, is amended to read:

"53-20-121. Petition for involuntary treatment — contents of. (1) A person who believes that there is a person who is seriously developmentally disabled and in need of commitment to a residential facility *or imposition of a community treatment plan* may request the county attorney to file a petition alleging that the person is seriously developmentally disabled and in need of commitment to a residential facility *or imposition of a community treatment plan*.

(2) The petition must contain:

(a) the name and address of the person requesting the petition and the person's interest in the case;

(b) the name and address of the respondent;

(c) the name and address of the parents or guardian of the respondent and of any other person believed to be legally responsible for the care, support, and maintenance of the respondent;

(d) the name and address of the respondent's next of kin, to the extent known;

(e) the name and address of any person who the county attorney believes might be willing and able to be appointed as a responsible person; ~~and~~

(f) a description of the relief requested, whether commitment to a residential facility or imposition of a community treatment plan; and

~~(f)~~*(g)* a statement of the rights of the respondent and the respondent's parents or guardian that must be in conspicuous print and identified by a suitable heading.

(3) If the petition requests imposition of a community treatment plan, a copy of the proposed community treatment plan must be attached to the petition.

~~(3)~~*(4)* ~~A copy of the petition must be sent to the residential facility screening team.~~ *The county attorney shall immediately mail a copy of the petition to the residential facility screening team, the respondent's parents or guardian, if any, and the respondent's counsel. The county attorney shall ensure that the petition is promptly hand-delivered to the respondent.*"

Section 6. Section 53-20-125, MCA, is amended to read:

"53-20-125. Outcome of screening — recommendation for commitment to residential facility *or imposition of community treatment plan* — hearing. (1) A *court may commit a* person ~~may be committed~~ to a residential facility *or impose a community treatment plan* only if the person:

(a) is 18 years of age or older; and

(b) is determined to be seriously developmentally disabled and in need of commitment to a residential facility *or imposition of a community treatment plan* by the residential screening team, as provided in 53-20-133, and by a court, as provided in 53-20-129 or in this section.

(2) ~~If as a result of~~ *After* the screening required by 53-20-133*,* the residential facility screening team ~~concludes that the respondent who has been evaluated is seriously developmentally disabled and recommends that the respondent be committed to a residential facility for treatment and habilitation on an extended basis, the team~~ shall file its written recommendation and report with the court. The report must include the factual basis for the recommendation and must describe any tests or evaluation devices that have been employed in evaluating the respondent. *The residential facility screening team shall provide to the court, the county attorney, the respondent's attorney, and any other party requesting it the social and placement information that the team relied upon in making its determination.*

~~(3) At the request of the respondent, the respondent's parents or guardian, or the responsible person, the court shall order the office of state public defender, provided for in 47-1-201, to assign counsel for the respondent. If the parents are indigent and if the parents request it or if a guardian is indigent and requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111.~~

~~(4)~~*(3)* Notice of the determination of the residential facility screening team must be mailed or delivered to:

(a) the respondent;

(b) the respondent's parents, guardian, or next of kin, if known;

(c) the responsible person;

(d) the respondent's advocate, if any;

(e) the county attorney;

(f) the residential facility;

(g) the attorney for the respondent, if any; and

(h) the attorney for the parents or guardian, if any.

~~(5)~~*(4)* The respondent, the respondent's parents or guardian, the responsible person, the respondent's advocate, if any, or the attorney for any party may request that a hearing be held on the recommendation of the residential facility screening team. *The request for a hearing must be made in writing within 15 days of service of the report.*

~~(6)~~*(5)* Notice of the hearing must be mailed or delivered to each of the parties listed in subsection ~~(5)~~ *(4)*.

~~(7)~~*(6)* The hearing must be held before the court without jury. The rules of civil procedure apply.

(7) Upon receiving the report of the residential facility screening team and after a hearing, if one is requested, the court shall enter findings of fact and take one of the following actions:

~~(8)~~*(a)* If *both the residential facility screening team and* the court ~~finds~~ *find* that the respondent is seriously developmentally disabled and in need of commitment to a residential facility, ~~it~~ *the court* shall order the respondent committed to a residential facility for an extended course of treatment and habilitation.

(b) If both the residential facility screening team and the court find that the respondent is seriously developmentally disabled but either the residential facility screening team or the court finds that a less restrictive community treatment plan has been proposed, the court may impose a community treatment plan that meets the conditions set forth in 53-20-133(4). If the court finds that a community treatment plan proposed by the parties or recommended by the residential facility screening team does not meet the conditions set forth in 53-20-133(4), it may order the respondent committed to a residential facility. The court may not impose a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions of 53-20-133(4)(c) and (4)(d).

(c) If *either the residential facility screening team or* the court finds that the respondent has a developmental disability but is not seriously developmentally disabled, ~~it~~ *the court* shall dismiss the petition and refer the respondent to the department of public health and human services to be considered for placement in *voluntary* community-based services according to 53-20-209.

(d) If *either the residential screening team or* the court finds that the respondent does not have a developmental disability or is not in need of developmental disability services, ~~it~~ *the court* shall dismiss the petition.

~~(9)~~*(8) (a)* If *the residential facility screening team recommends commitment to a residential facility or imposition of a community treatment plan and* none of the parties notified of the recommendation request a hearing *within 15 days of service of the screening team's report*, the court may*:*

(i) issue an order ~~for the commitment of~~ *committing* the respondent to the residential facility for an extended period of treatment and habilitation*;*

(ii) issue an order imposing a community treatment plan that the court finds meets the conditions set forth in 53-20-133(4); or ~~the court may~~

(iii) initiate its own inquiry as to whether ~~the~~ *an* order should be granted.

(b) The court may not impose a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions in 53-20-133(4)(c) and (4)(d).

~~(10)~~*(9)* The court may refuse to authorize commitment of a respondent to a residential facility for an extended period of treatment and habilitation if commitment is not in the best interests of the respondent.

~~(11) An order for commitment must be accompanied by findings of fact.~~

~~(12)~~*(10)* A court order entered in a proceeding under this part must be provided to the residential facility screening team."

Section 7. Section 53-20-126, MCA, is amended to read:

"53-20-126. Maximum period of commitment ~~to residential facility~~ *or treatment plan*. The court order approving the commitment *to a residential facility or the imposition of the community treatment plan* must specify the maximum period of time for which the person is committed ~~to the residential facility~~ *or for which a community treatment plan is imposed*. The maximum period may not exceed 1 year."

Section 8. Section 53-20-128, MCA, is amended to read:

"53-20-128. Recommitment — *extension of community treatment plan*. (1) ~~If the~~ *The* qualified mental retardation professional responsible for a resident's habilitation ~~determines that the resident continues to be seriously developmentally disabled and in need of commitment to a residential facility beyond the term of the current commitment order, the qualified mental retardation professional shall~~ *or the case manager responsible for habilitation of a person under a community treatment plan may* request ~~that~~ *the county attorney to file* a petition for recommitment ~~be filed~~ *or extension of the order imposing the community treatment plan*.

(2) A petition for recommitment *or extension* must be filed with the district court before the end of the current period of commitment *or the expiration of the order imposing the current community treatment plan*.

(3) ~~The~~ *A petition for recommitment or extension of a community treatment plan must be accompanied by a written report containing the* recommendation of the qualified mental retardation professional ~~must be presented in a written report that includes~~ *or case manager and* a summary of the current habilitation plan *or community treatment plan* for the ~~resident~~ *respondent*.

(4) The ~~resident~~ *petition* must be ~~screened~~ *reviewed* in accordance with 53-20-133 by the residential facility screening team.

(5) Copies of the petition for recommitment and the report of the qualified mental retardation professional *or case manager* must be sent to:

(a) the court that issued the current order;

(b) the residential screening team;

(c) the resident;

(d) the resident's parents or guardian or next of kin, if any;

(e) the attorney who most recently represented the resident, if any;

(f) the responsible person appointed by the court, if any; and

(g) the resident's advocate, if any.

(6) ~~If the residential facility screening team recommends that the resident be recommitted, the court may enter an order for recommitment without hearing unless a person notified as provided in subsection (5) requests that a hearing be held or the court determines that it would be in the best interest of~~

~~the resident to hold a hearing.~~ *The provisions of 53-20-125 apply to a petition for recommitment or extension of an order imposing a community treatment plan.*

~~(7) If the court sets a hearing, the court shall provide notice to all of the persons notified pursuant to subsection (5).~~

~~(8)~~*(7)* ~~A court may order a resident's recommitment to a residential facility if the court determines that the resident continues to be seriously developmentally disabled and in need of continued commitment to the residential facility. If the court finds that the resident is still in need of developmental disabilities services but does not require commitment to a residential facility or if all parties are willing for the resident to participate in a community-based program of habilitation, it shall refer the resident to the department of public health and human services to be considered for placement in community-based services according to 53-20-209.~~ If ~~the resident is~~ *either the court or the residential facility screening team finds that the respondent has been* placed *voluntarily* in community-based services or ~~if~~ *that* the need for developmental disabilities services no longer exists, the court shall dismiss the petition.

~~(9)~~*(8)* The court may not order recommitment to a residential facility that does not have an individualized habilitation plan for the resident.

(9) The court may not extend an order imposing a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions set forth in 53-20-133(4)(c) and (4)(d).

~~(10) At a hearing, the court may inquire concerning the suitability of continuing a resident's commitment to a residential facility.~~"

Section 9. Section 53-20-129, MCA, is amended to read:

"53-20-129. Emergency admission and commitment. (1) A person believed to be seriously developmentally disabled may be admitted ~~in~~ *to* a residential facility *or a temporary court-ordered community treatment plan may be imposed* on an emergency basis *without notice to the person or approval by the residential facility screening team* when necessary to protect the person or others from death or serious bodily ~~harm~~ *injury, as defined in 45-2-101*.

(2) An emergency admission to a residential facility may be initiated only by a developmental disabilities professional.

(3) An emergency admission *to a residential facility* may not proceed unless the residential facility and the department of public health and human services are given reasonable notice of the need for placement by the developmental disabilities professional responsible for emergency admission.

(4) A petition for emergency commitment must be filed on the next judicial day after an emergency admission *to a residential facility* by the county attorney of the county where the ~~person~~ *respondent* resides.

(5) A petition for imposition of an emergency community treatment plan may be filed by the county attorney of the county where the respondent resides and must include or attach the written report of a case manager. Any temporary community treatment plan must meet the conditions set forth in 53-20-133(4).

~~(5)~~*(6)* The residential facility screening team shall report back to the court on the seventh judicial day following the filing of the petition for emergency commitment *or imposition of a temporary community treatment plan*.

~~(6)~~*(7)* Once the report of the residential facility screening team is received by the court, continued placement in the residential facility *or continued imposition of the temporary community treatment plan* may not continue without an order of the court for emergency commitment *or continued imposition of the community treatment plan*.

~~(7)~~*(8)* A court may order an emergency commitment *or continue a temporary community treatment plan* only when *the residential facility screening team has recommended and* the court determines that the emergency commitment *or continued imposition of a community treatment plan* is necessary to protect the respondent or others from death or serious bodily ~~harm~~ *injury, as defined in 45-2-101. Any temporary community treatment plan must meet the conditions set forth in 53-20-133(4)*.

~~(8)~~*(9)* An order for emergency commitment *or continued imposition of a temporary community treatment plan* may be entered without a hearing before the court, if the court finds that the record supports the order.

~~(9)~~*(10)* An emergency commitment to a residential facility *or imposition of a temporary community treatment plan* may not continue for longer than 30 days after placement in the residential facility *or imposition of a temporary community treatment plan* unless a petition for an extended commitment to the residential facility *or for imposition of a community treatment plan as provided in 53-20-121* has been filed ~~before the court~~.

~~(10) The residential facility screening team may recommend that the respondent under a petition for emergency commitment be committed by court order to the residential facility on an extended basis.~~"

Section 10. Section 53-20-132, MCA, is amended to read:

"53-20-132. Court-ordered placement in community-based services prohibited *except through statutory process.* ~~Nothing in this~~ *This* part may *not* be construed as authorizing the placement of and delivery of services to persons with developmental disabilities in community-based services by court order*, except by imposing a community treatment plan pursuant to this part.* Placement of persons in *voluntary* community-based services is governed by 53-20-209."

Section 11. Section 53-20-133, MCA, is amended to read:

"53-20-133. Residential facility screening team — referral by court — membership — rules. (1) When the district court receives a petition for commitment to a residential facility *or for imposition of a community treatment plan* under this part, the court, prior to proceeding, shall refer the respondent to the residential facility screening team for screening to determine whether ~~placement and habilitation in~~ *commitment to* a residential facility ~~are~~ *or imposition of a community treatment plan is* appropriate for the respondent.

(2) A court may not commit a respondent to a residential facility *or impose a community treatment plan* under 53-20-125, 53-20-128, or 53-20-129 unless the residential facility screening team determines that ~~placement and habilitation in~~ *commitment to* a residential facility ~~are~~ *or imposition of a community treatment plan is* appropriate for the respondent.

(3) The residential facility screening team may not determine that ~~placement and habilitation in~~ *commitment to* a residential facility ~~are~~ *or imposition of a community treatment plan is* appropriate on an extended basis unless the residential facility screening team determines that the respondent is seriously developmentally disabled.

(4) ~~The residential facility screening team shall provide the court and the county attorney with the social and placement information relied upon by the residential facility screening team in making its determination.~~ *The residential facility screening team may not recommend commitment to a community treatment plan unless it finds that the proposed plan:*

(a) provides adequate assurances of safety from the consequences of the behaviors of the respondent for both the respondent and the community;

(b) provides effective habilitation services for the respondent's developmental disability;

(c) is funded from public or private sources that are identified, committed, and available to pay for all of the proposed services to the respondent; and

(d) ensures services from identified, qualified providers that are committed and available to provide all of the proposed services to the respondent.

(5) For purposes of this part, the department of public health and human services shall adopt rules providing for the membership and terms of the members of the residential facility screening team and setting forth the criteria and procedures to govern the determinations made by the residential facility screening team."

Section 12. Amendment to commitment order or treatment plan — emergency amendment. (1) A community treatment plan ordered pursuant to 53-20-125 or 53-20-128 may be amended with the consensus of the respondent's individual treatment planning team, including the respondent, without further order of the court. The amended plan must meet the conditions set forth in 53-20-133(4).

(2) An order of commitment to a residential facility may be amended to an order imposing a community treatment plan with the consensus of the respondent's individual treatment planning team, including the respondent, and the court shall issue an order imposing the agreed-upon community treatment plan. The community treatment plan must meet the conditions set forth in 53-20-133(4).

(3) Any party may request amendment of a commitment ordered or a community treatment plan imposed under 53-20-125 or 53-20-128 by bringing the matter to the attention of the respondent's individual treatment planning team. If consensus is not reached, any party may request a hearing on a proposed amendment. The court shall request an evaluation of any proposed amendment by the residential facility screening team prior to the hearing.

(4) After a hearing or upon the agreement of the parties on an amendment of a commitment or an order imposing a community treatment plan, the court may make any order which is authorized in 53-20-125, including:

(a) adding, removing, or modifying conditions of a community treatment plan;

(b) substituting commitment to a residential facility for a community treatment plan; or

(c) substituting imposition of a community treatment plan for commitment to a residential facility.

(5) Any community treatment plan imposed as a result of a request for amendment must meet the conditions set forth in 53-20-133(4). The court may not impose a community treatment plan unless the residential facility screening

team certifies that all services in the proposed plan meet the conditions of 53-20-133(4)(c) and (4)(d).

(6) If the court finds probable cause to believe that the respondent or others are in imminent risk of death or serious bodily injury, as defined in 45-2-101, the court may order a temporary amendment to a community treatment plan, for a period of up to 7 calendar days, without notice to the respondent. A hearing must be scheduled within the 7-day period of the temporary amendment. Any temporarily amended community treatment plan must meet the conditions set forth in 53-20-133(4). The court may not amend a community treatment plan for an extended period unless the residential facility screening team certifies that all services in the proposed amended plan meet the conditions of 53-20-133(4)(c) and (4)(d). The court may not order emergency commitment to a residential facility except through the process set forth in 53-20-129.

Section 13. Section 53-20-141, MCA, is amended to read:

"53-20-141. Denial of legal rights. (1) Unless specifically stated in an order by the court, a person ~~admitted~~ *committed* to a residential facility *or for whom a community treatment plan has been imposed* for an extended course of habilitation does not forfeit any legal right or suffer any legal disability by reason of the provisions of this part, except ~~insofar as~~ *to the extent that* it may be necessary to detain the person for habilitation, evaluation, or care.

(2) Whenever a person is admitted to a residential facility *or a community treatment plan is imposed for the person* for a period of more than 30 days ~~for an extended course of habilitation~~, the court ordering the ~~admission~~ *commitment or imposing the community treatment plan* may make an order stating specifically any legal rights that are denied ~~the respondent~~ and any legal disabilities that are imposed on ~~him~~ *the respondent*. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section terminates upon the conclusion of the ~~admission~~ *commitment or expiration of the order imposing the community treatment plan* if not ~~sooner~~ *previously* terminated by the court. A conservatorship or guardianship extending beyond the period of the ~~admission~~ *commitment or order imposing a community treatment plan* may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) A person who has been ~~admitted~~ *committed* to a residential facility *or for whom a community treatment plan has been imposed* pursuant to this part ~~must~~ *is*, upon the termination of the ~~admission~~ *commitment or expiration of the order imposing the community treatment plan*, ~~be~~ automatically restored to all of ~~his~~ *the person's* civil and legal rights that may have been lost when ~~he~~ *the person* was ~~admitted~~ *committed or the community treatment plan was imposed*. However, this subsection does not affect any guardianship or conservatorship created independently of the ~~admission~~ proceedings according to the provisions of Montana law relating to the appointment of conservators and guardians generally. ~~A person who leaves a residential facility following a period of evaluation and habilitation must be given~~ *Upon termination of any commitment or order imposing a community treatment plan under this part, the qualified mental retardation professional or case manager in charge of the person's care shall give the person* a written statement setting forth the substance of this subsection."

Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is

invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. Codification instruction. [Sections 3 and 12] are intended to be codified as an integral part of Title 53, chapter 20, part 1, and the provisions of Title 53, chapter 20, apply to [sections 3 and 12].

Approved April 26, 2007

CHAPTER NO. 253

[HB 235]

AN ACT EXPANDING BUSINESS IMPROVEMENT DISTRICT PURPOSES TO INCLUDE TOURISM, PROMOTION, AND MARKETING; REVISING OPTIONS FOR ASSESSMENT OF COSTS TO INCLUDE FLAT-FEE OPTIONS; PROVIDING FOR DISTRICTS COMPOSED OF NONCONTINGUOUS AREAS IF PROPERTY IS RELATED BY PURPOSE; ALLOWING CLASSIFICATION CRITERIA TO BE USED IN ASSESSING COSTS; AND AMENDING SECTIONS 7-12-1102, 7-12-1111, 7-12-1121, 7-12-1132, AND 7-12-1133, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-1102, MCA, is amended to read:

"7-12-1102. Purpose. The purpose of this part is to provide for the creation of business improvement districts having *one or more of* the purposes and powers provided in this part that will*:*

(1) serve a public use; ~~will~~

(2) promote the health, safety, prosperity, security, and general welfare of the inhabitants ~~thereof~~ *of the district* and of the people of this state; ~~and will~~

(3) be of special benefit to the property within the boundaries of any district created pursuant to the provisions of this part*; or*

(4) aid in tourism, promotion, and marketing within the district."

Section 2. Section 7-12-1111, MCA, is amended to read:

"7-12-1111. Establishment or expansion of district. (1) Upon receipt of a petition signed by the owners of more than 60% of the area of the property proposed in the petition to be included in a district or in the expansion of a district, a governing body shall establish a district or expand a district as provided in this part.

(2) The boundaries of a district must comply with applicable zoning regulations~~, and the~~.

(3) The district may not include areas that are zoned primarily as residential areas.

(4) (a) A district may be composed of noncontiguous areas if the properties in a district have a common purpose of providing overnight stays at lodging facilities.

(b) The boundaries of a district with noncontiguous areas must encompass all properties in the district with the same identified purpose."

Section 3. Section 7-12-1121, MCA, is amended to read:

"7-12-1121. Board of trustees — appointment — number — term of office. (1) When the governing body of a local government adopts an ordinance creating a business improvement district, the appointing authority, with the approval of the governing body, shall appoint not less than five or more than seven owners of property*, or their assignees,* within the district to comprise the board of trustees of the district. *The director for a business improvement district created for the purpose of 7-12-1102(4) must be the executive director of a nonprofit convention and visitors bureau, as defined in 15-65-101, if a nonprofit convention and visitors bureau is operating within the governing body's jurisdiction.*

(2) The number of members of the board, once established, may be changed within these limits from time to time by subsequent resolutions of the governing body of the local government. A resolution to reduce board membership may not require resignation of any member prior to completion of ~~his~~ *the member's* appointed term.

(3) Three of the members who are first appointed must be designated to serve for terms of 1, 2, and 3 years, respectively, from the date of their appointments, and two must be designated to serve for terms of 4 years from the date of their appointments. For a seven-member commission, there must be two additional appointments for terms of 2 years and 3 years, respectively.

(4) After initial appointment, members must be appointed for a term of office of 4 years, except that a vacancy occurring during a term must be filled for the unexpired term. A member ~~shall hold~~ *holds* office until ~~his~~ *the member's* successor has been appointed and qualified."

Section 4. Section 7-12-1132, MCA, is amended to read:

"7-12-1132. Annual budget and work plan — approval — procedure — tax. (1) At a time determined by the governing body, the board shall submit to the governing body for approval a work plan and budget for the ensuing fiscal year.

(2) A board created for the purpose of 7-12-1102(4) in a municipality or county where a nonprofit convention and visitors bureau, as defined in 15-65-101, is operating shall consult with the nonprofit convention and visitors bureau in developing a work plan and budget for the ensuing fiscal year.

~~(2)~~*(3)* Following public notice that a work plan and budget have been submitted and that the governing body will levy an assessment to defray the cost of the work plan and budget, the governing body shall hold a public hearing on objections to the work plan and budget. After the hearing, the governing body may modify the work plan and budget as it considers necessary and appropriate.

~~(3)~~*(4)* After approval of the work plan and budget and to defray the cost ~~thereof~~ *of the work plan and budget* for the next fiscal year, the governing body shall by resolution levy an assessment upon all of the property in the district using as a basis one of the methods prescribed in 7-12-1133.

~~(4)~~*(5)* A copy of the resolution ~~shall~~ *must* be delivered to the treasurer of the local government to be placed on the tax roll and collected in the same manner as other taxes."

Section 5. Section 7-12-1133, MCA, is amended to read:

"7-12-1133. Assessment of costs — area, lot, taxable valuation, ~~and~~ square footage, *and flat-fee* options — *provisions for property classifications.* (1) At the same time *that* the board submits the annual budget

and work plan to the governing body as provided in 7-12-1132, the board shall also recommend to the governing body a method of levying an assessment on the property within the district ~~which~~ *that* will best ensure that the assessment on each lot or parcel is equitable in proportion to the benefits to be received.

(2) The governing body shall annually assess the entire cost of the district against the entire district using a method ~~which~~ *that* best ensures that the assessment on each lot or parcel is equitable in proportion to the benefits to be received. In determining the method of assessment to be used, the governing body shall consider the recommendations of the board. The governing board shall levy the assessment using one of the following methods:

(a) each lot or parcel of land within ~~such~~ *the* district may be assessed for that part of the whole cost ~~which~~ *that* its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places;

(b) if the governing body determines that the benefits derived by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the district without regard to the area of the lot or parcel;

(c) if the governing body determines that benefits derived by each lot or parcel are proportional, the governing body may use a standard criteria, such as individual occupancy or daily use, and make the assessment on a flat-fee basis based on the criteria;

~~(c)~~*(d)* each lot or parcel of land, including the improvements ~~thereon~~ *on the lot or parcel*, may be assessed for that part of the whole cost of the district ~~which~~ *that* its taxable valuation bears to the total taxable valuation of the property of the district;

~~(d)~~*(e)* each building may be assessed for that part of the whole cost of the district that the occupied or income-producing area of the building above the first floor bears to the area of the entire district; ~~or~~

(f) if the governing body determines that benefits derived by each lot or parcel are disproportional, the governing body may use classification criteria, such as location within the district, economic impact, or any other measurable criteria, in conjunction with methods of assessing fees outlined in this subsection (2). Each classification must have its own rate. There may not be more than six classifications upon which a charge is imposed.

~~(e)~~*(g)* by using any combination of the assessment options provided in subsections (2)(a) through ~~(2)(d)~~ *(2)(f)*.

(3) If a district is expanded, the land within the expanded area *or property with a similar purpose in the district* must be assessed as provided for in subsection (2) for the duration of the district."

Approved April 26, 2007

CHAPTER NO. 254

[HB 272]

AN ACT ALLOWING DISSEMINATION OF THE PHOTOGRAPH OF A LEVEL 2 OR 3 SEXUAL OFFENDER; REQUIRING A NEW PHOTOGRAPH OF A LEVEL 2 OR 3 SEXUAL OFFENDER EVERY YEAR DURING THE

REGISTRATION PERIOD; AND AMENDING SECTIONS 46-23-504, 46-23-505, AND 46-23-508, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-23-504, MCA, is amended to read:

"46-23-504. Persons required to register — procedure. (1) A sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within 10 days of entering a county of this state for the purpose of residing or setting up a temporary domicile for 10 days or more or for an aggregate period exceeding 30 days in a calendar year.

(2) Registration under subsection (1)(a) or (1)(c) must be with the chief of police of the municipality or the sheriff of the county if the offender resides in an area other than a municipality. Whichever law enforcement official the offender registers with shall notify the other official of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a) shall verify the offender's registration status with the appropriate law enforcement agency.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by the department of justice. The chief of police or sheriff shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, and shall photograph the offender. Within 3 days, the chief of police or sheriff shall send copies of the statement, fingerprints, and photographs to the department of justice. *The chief of police or sheriff shall require an offender given a level 2 or level 3 designation to appear before the chief of police or sheriff for a new photograph every year.*

(4) (a) The department of justice shall mail a registration verification form:

(i) ~~each~~ *every* 90 days to an offender designated as a level 3 offender under 46-23-509; and

(ii) each year to a violent offender or an offender designated as a level 1 or level 2 offender under 46-23-509.

(b) The form must require the offender's current address and notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the department.

(5) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

(6) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Section 2. Section 46-23-505, MCA, is amended to read:

"46-23-505. Notice of change of address — duty to inform — forwarding of information. If an offender required to register under this part has a change of address, the offender shall within 10 days of the change give written notification of the new address to the agency with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the department and to the ~~chief of police of the municipality or~~ sheriff of the county *or the chief of police of the municipality* from which the offender is moving. The agency or department shall, within 3 days after receipt of the new address, forward ~~it~~ *the new address* to the department of justice, which shall forward a copy of the new address and photograph to the sheriff having jurisdiction over the new address and to the chief of police of the municipality ~~of~~ *where* the new address *is located* if the new address is *located* in a municipality. *The sheriff or chief of police shall require an offender given a level 2 or level 3 designation to appear before the sheriff or chief of police for a new photograph every year.*"

Section 3. Section 46-23-508, MCA, is amended to read:

"46-23-508. Dissemination of information. (1) Information maintained under this part is confidential criminal justice information, as defined in 44-5-103, except that:

(a) the name ~~and~~ *and* address of a registered sexual or violent offender are public criminal justice information, as defined in 44-5-103; and

(b) a law enforcement agency shall release any offender registration information relevant to the public if the agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information may protect the public and, at a minimum:

(i) if an offender was given a level 1 designation under 46-23-509, the agency with which the offender is registered shall notify the agency in whose jurisdiction the offense occurred of the registration;

(ii) if an offender was given a level 2 designation under 46-23-509, the agency with which the offender is registered may disseminate the offender's name *and photograph* to the public with the notation that the offender is a sexual or violent offender and may notify a victim of the offense and any agency, organization, or group serving persons who have characteristics similar to those of a previous victim of the offender of:

(A) the offender's address;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offenses for which the offender is required to register under this part; and

(E) any conditions imposed by the court upon the offender for the safety of the public; and

(iii) if an offender was given a level 3 designation under 46-23-509, the agency shall give the victim and the public notification that includes the information contained in subsection (1)(b)(ii). The agency shall also include the date of the offender's release from confinement or if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and shall include the community in which the offense occurred.

(c) prior to release of information under subsection (1)(b), a law enforcement agency may, in its sole discretion, request an in camera review by a district court of the determination by the law enforcement agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of the offender from confinement.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a law enforcement agency without the permission of the victim.

(3) A state or local law enforcement agency may use the internet to disseminate the information allowed by this section to the public."

Section 4. Coordination instruction. If both Senate Bill No. 547 and [this act] are passed and approved, then [section 1 of this act] amending 46-23-504 is void and 46-23-504 as amended by [this act] must read as follows:

"46-23-504. Persons required to register — procedure. (1) A sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within 10 days of entering a county of this state for the purpose of residing or setting up a temporary domicile for 10 days or more or for an aggregate period exceeding 30 days in a calendar year.

(2) Registration under subsection (1)(a) or (1)(c) must be with the chief of police of the municipality or the sheriff of the county if the offender resides in an area other than a municipality. Whichever law enforcement official the offender registers with shall notify the other official of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a) shall verify the offender's registration status with the appropriate law enforcement agency.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by the department of justice. The chief of police or sheriff shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, and shall photograph the offender. Within 3 days, the chief of police or sheriff shall send copies of the statement, fingerprints, and photographs to the department of justice. *The registration agency shall require an offender given a level 2 or level 3 designation to appear before the registration agency for a new photograph every year.*

(4) (a) The department of justice shall mail a registration verification form:

(i) each 90 days to an offender designated as a level 3 offender under 46-23-509; and

(ii) each year to a violent offender or an offender designated as a level 1 or level 2 offender under 46-23-509.

(b) The form must require the offender's current address and notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the department.

(5) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

(6) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Section 5. Coordination instruction. If both Senate Bill No. 547 and [this act] are passed and approved, then [section 2 of this act] amending 46-23-505 is void and 46-23-505 as amended by [this act] must read as follows:

"46-23-505. Notice of change of address — duty to inform — forwarding of information. If an offender required to register under this part has a change of address, the offender shall within 10 days of the change give written notification of the new address to the agency with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the ~~department and to the chief of police of the municipality or sheriff of the county~~ *registration agency for the county or municipality* from which the offender is moving. The agency or department shall, within 3 days after receipt of the new address, forward it to the department of justice, which shall forward a copy of the new address and photograph to the sheriff having jurisdiction over the new address and to the chief of police of the municipality of the new address if the new address is in a municipality. *The registration agency shall require the offender to appear before the registration agency for a new photograph every year*."

Section 6. Coordination instruction. If both Senate Bill No. 547 and [this act] are passed and approved, then [section 3 of this act] amending 46-23-508 is void.

Approved April 26, 2007

CHAPTER NO. 255

[HB 283]

AN ACT ESTABLISHING THE FINANCIAL ASSISTANCE AMOUNT FOR RESIDENT NONBENEFICIARY STUDENTS; REVISING ELIGIBILITY CRITERIA; AMENDING SECTION 20-25-428, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-25-428, MCA, is amended to read:

"20-25-428. Financial assistance for resident nonbeneficiary students. (1) Subject to a line item appropriation for purposes of this section, the regents shall provide financial assistance to tribally controlled community colleges for enrolled resident nonbeneficiary students who, except as provided in subsection (8), are taking courses for which credit is transferable to another Montana college or university.

(2) Each tribal community college shall apply for this assistance to the regents. Except as provided in subsection (6), the money must be distributed on

a prorated basis according to the eligible resident nonbeneficiary student enrollment in each tribal community college during the previous year. To qualify, a resident nonbeneficiary student must meet the residency requirements as prescribed for the system by the regents and, except as provided in subsection (8), must be enrolled in courses for which credit is transferable to another Montana college or university. The distribution for any student is ~~limited to a maximum of~~ ~~$3,024~~ *limited to a maximum of $3,024* each year for each full-time equivalent student.

(3) An expenditure is contingent upon the tribal community college:

(a) being accredited or being a candidate for accreditation by the northwest ~~association of schools and~~ *commission on* colleges *and universities*;

(b) entering into a contract or a state-tribal cooperative agreement, pursuant to Title 18, chapter 11, with the regents to provide the regents with information relating to eligibility of resident nonbeneficiary students and documentation on the curriculum to ensure that the content and quality of courses offered by the tribal community college are consistent with the standards adopted by the system;

(c) providing the regents with documentation that credits for the courses in which the resident nonbeneficiary students are enrolled, except as provided in subsection (8), will be accepted at another Montana college or university; and

(d) filing with the regents evidence that the college's enrollment of Indian students is at least 51%, as required by the Tribally Controlled Community College Assistance Act of 1978, 25 U.S.C. 1804.

(4) If funding is available pursuant to subsection (1), the legislature intends that the money be an amount in addition to the system budget approved in the general appropriations act.

(5) All funds appropriated under subsection (1) that are unspent revert to the state general fund.

(6) Prior to receiving money pursuant to subsection (1), each tribal community college shall grant to eligible resident nonbeneficiary students who meet the residency requirements, as prescribed for the system by the regents, fee waivers in the same percentage as the number of Indian students who are receiving fee waivers to attend a unit of the system bears to the total enrollment in the system.

(7) The calculation in subsection (6) is not intended to allow the university system to retain the calculated amount of funds. Waivers must be given to eligible students.

(8) The limit of financial assistance to nonbeneficiary students *is limited to students* enrolled in courses for which credit is transferable to another Montana college or university ~~does not apply to a nonbeneficiary student enrolled in a course directly related to a vocational degree program or to a 2- to 4-year degree program or certificate program~~."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2007

CHAPTER NO. 256

[HB 291]

AN ACT CLARIFYING THE POWERS OF THE BOARD OF ENVIRONMENTAL REVIEW RELATED TO AIR QUALITY PERMITTING AND RULEMAKING FOR AGRICULTURAL OPERATIONS; AMENDING SECTION 75-2-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-111, MCA, is amended to read:

"75-2-111. Powers of board. The board shall, subject to the provisions of 75-2-207:

(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant to that section*, except that, for purposes other than agricultural open burning, the board may not adopt permitting requirements or any other rule relating to:*

(a) any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661; or

(b) a commercial operation relating to the activities or equipment referred to in subsection (1)(a) that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will be available to the public at cost.

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits, permit applications, and registrations consistent with this chapter;

(6) have the power to issue orders under and in accordance with 42 U.S.C. 7419."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2007

CHAPTER NO. 257

[HB 300]

AN ACT CLARIFYING THE FALSE STATEMENT PROVISIONS BASED ON STATEMENTS MADE BY GOVERNMENTAL SOURCES RELATING TO AN APPLICATION FOR AN ALCOHOLIC BEVERAGE LICENSE; AMENDING

SECTION 16-4-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-402, MCA, is amended to read:

"16-4-402. Application — investigation. (1) Prior to the issuance of a license under this chapter, the applicant shall file with the department an application containing information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as required by the department.

(2) (a) Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department of justice shall make a thorough investigation of all matters relating to the application. Based on the results of the investigation or on other information, the department shall determine whether:

(i) the applicant is qualified to receive a license;

(ii) the applicant's premises are suitable for the carrying on of the business; and

(iii) the requirements of this code and the rules promulgated by the department are met and complied with.

(b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or 16-4-204(2), a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a special permit provided in 16-4-301.

(c) For an original license application and an application for transfer of location of a license, the department of justice's investigation and the department's determination under this subsection (2) must be completed within 90 days of the receipt of a completed application. If information is requested from the applicant by either department, the time period in this subsection (2)(c) is tolled until the requested information is received by the requesting department. The time period is also tolled if the applicant requests and is granted a delay in the license determination or if the license is for premises that are to be altered, as provided in 16-3-311, or newly constructed. The basis for the tolling of the deadline must be documented.

(3) *(a)* Upon proof that an applicant made a false statement in any part of the original application, in any part of an annual renewal application, or in any hearing conducted pursuant to an application, the application for the license may be denied, and if issued, the license may be revoked.

(b) A statement on an application or at a hearing that is based upon a verifiable assertion made by a governmental officer, employee, or agent that an applicant relied upon in good faith may not be used as the basis of a false statement for a denial or revocation of a license.

(4) The department shall issue a conditional approval letter upon the last occurrence of either:

(a) completion of the investigation and determination provided for in subsection (2) if the department has not received information that would cause the department to deny the application; or

(b) a final agency decision that either denies or dismisses a protest against the approval of an application pursuant to 16-4-207.

(5) The conditional approval letter must state the reasons upon which the future denial of the application may be based. The reasons for denial of the application after the issuance of the conditional approval letter are as follows:

(a) there is false or erroneous information in the application;

(b) the premises are not approved by local building, health, or fire officials;

(c) there are physical changes to the premises that if known prior to the issuance of the conditional approval letter would have constituted grounds for the denial of the application or denial of the issuance of the conditional approval; or

(d) a final decision by a court exercising jurisdiction over the matter either reverses or remands the department's final agency decision provided for in subsection (4)."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to license denial or revocation proceedings that have been commenced but have not been finally adjudicated on [the effective date of this act].

Approved April 26, 2007

CHAPTER NO. 258

[HB 310]

AN ACT PROVIDING FOR THE TRANSFER OF REAL PROPERTY BY A BENEFICIARY DEED; PROVIDING A FORM FOR A BENEFICIARY DEED; PROVIDING FOR THE REVOCATION OF A BENEFICIARY DEED; PROVIDING FOR THE RIGHTS OF CREDITORS AND OTHERS; AMENDING SECTION 72-6-111, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Beneficiary deed — form — definitions. (1) A deed that conveys an interest in real property, including any debt secured by a lien on real property, to a grantee beneficiary designated by the owner and that expressly states that the deed is effective on the death of the owner transfers the deceased owner's interest to the grantee beneficiary designated by name in the beneficiary deed effective on the death of the owner, subject to all conveyances, assignments, contracts, mortgages, deeds of trust, liens, security pledges, and other encumbrances made by the owner or to which the owner was subject during the owner's lifetime.

(2) A beneficiary deed may designate multiple grantees who take title as joint tenants with right of survivorship, tenants in common, or any other tenancy that is valid under the laws of this state.

(3) A beneficiary deed may designate a successor grantee beneficiary. If the beneficiary deed designates a successor grantee beneficiary, the deed must state the condition on which the interest of the successor grantee beneficiary would vest.

(4) If real property is owned by persons as joint tenants with the right of survivorship, a deed that conveys an interest in the real property to a grantee beneficiary designated by all of the then surviving owners and that expressly

states that the deed is effective on the death of the last surviving owner transfers the interest to the designated grantee beneficiary effective on the death of the last surviving owner. If a beneficiary deed is executed by fewer than all of the owners of real property owned as joint tenants with right of survivorship, the beneficiary deed is valid if the last surviving owner is one of the persons who executes the beneficiary deed. If the last surviving owner did not execute the beneficiary deed, the transfer lapses and the deed is void. An estate in joint tenancy with right of survivorship is not affected by the execution of a beneficiary deed that is executed by fewer than all of the owners of the real property, and the rights of a surviving joint tenant with right of survivorship prevail over a grantee beneficiary named in a beneficiary deed.

(5) A beneficiary deed is valid only if the deed is executed and recorded, as provided by law, in the office of the county clerk and recorder of the county in which the property is located, before the death of the owner or the last surviving owner. A beneficiary deed may be used to transfer an interest in real property to the trustee of a trust even if the trust is revocable.

(6) A beneficiary deed may be revoked at any time by the owner or, if there is more than one owner, by any of the owners who executed the beneficiary deed. To be effective, the revocation must be executed and recorded, as provided by law, in the office of the county clerk and recorder of the county in which the real property is located, before the death of the owner who executes the revocation. If the real property is owned as joint tenants with right of survivorship and if the revocation is not executed by all the owners, the revocation is not effective unless executed by the last surviving owner.

(7) If an individual who is a recipient of medicaid pursuant to 53-6-131 conveys an interest in real property by means of a beneficiary deed, the department of public health and human services may assert a claim pursuant to 53-6-167 against the property that is the subject of a beneficiary deed to the extent of medical assistance granted by the department.

(8) If an owner executes and records more than one beneficiary deed concerning the same real property, the last beneficiary deed that is recorded before the owner's death is the effective beneficiary deed.

(9) This section does not prohibit other methods of conveying property that are permitted by law and that have the effect of postponing enjoyment of an interest in real property until the death of the owner. This section does not invalidate any deed otherwise effective by law to convey title to the interests and estates provided in the deed that is not recorded until after the death of the owner.

(10) The signature, consent, or agreement of, or notice to, a grantee beneficiary of a beneficiary deed is not required for any purpose during the lifetime of the owner.

(11) A beneficiary deed that is executed, acknowledged, and recorded in accordance with this section is not revoked by the provisions of a will.

(12) The death of an owner of real property must, for the purposes of this section, be proved by affidavit or certificate of death.

(13) A beneficiary deed is sufficient if it complies with other applicable law and if it is in substantially the following form:

Beneficiary Deed

I (we) _____ (owner) hereby convey to _____ (grantee beneficiary) effective on my (our) death the following described real property:

(Legal description)

If a grantee beneficiary predeceases the owner, the conveyance to that grantee beneficiary must either (choose one):

☐ Become void.

☐ Become part of the estate of the grantee beneficiary.

_____

(Dated)

_____

(Signature of grantor(s))

(acknowledgment)

(14) An instrument revoking a beneficiary deed is sufficient if it complies with other applicable laws and is in substantially the following form:

Revocation of Beneficiary Deed

The undersigned hereby revokes the beneficiary deed recorded on _____ (date), in docket or book _____ at page _____, or instrument number _____, records of _____ County, Montana, concerning the following described real property:

(Legal description)

Dated: _____

_____

Signature

(acknowledgment)

(15) As used in this section, the following definitions apply:

(a) "Beneficiary deed" means a deed authorized by this section.

(b) "Grantee beneficiary" or "grantee" means the person to whom an owner grants an interest in the real property that is the subject of the beneficiary deed.

(c) "Owner" means a person who executes a beneficiary deed as provided in this section.

Section 2. Rights of creditors and others. (1) If other assets of the estate are insufficient, a transfer resulting from a beneficiary deed, as provided for in [section 1], is not effective against the estate and statutory allowances to the surviving spouse and children.

(2) A surviving party who receives title to real property pursuant to a beneficiary deed is liable to account to the personal representative of the decedent for the value of the property to the extent necessary to discharge the claims and allowances described in subsection (1) remaining unpaid after application of the decedent's estate. A proceeding to assert the liability may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent. The proceeding must be commenced within 1 year after death of the decedent.

(3) A surviving party against whom a proceeding to account is brought may join as a party to the proceeding any other person claiming an interest in the real property.

(4) Sums recovered by the personal representative must be administered as part of the decedent's estate.

Section 3. Section 72-6-111, MCA, is amended to read:

"72-6-111. Nonprobate transfers on death. (1) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, *beneficiary deed, as defined in [section 1],* marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

(a) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later;

(b) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(c) any property controlled by or owned by the decedent before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later.

(2) This section does not limit rights of creditors under other laws of this state."

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 72, chapter 6, part 1, and the provisions of Title 72, chapter 6, part 1, apply to [sections 1 and 2].

Section 5. Applicability. [This act] applies to a beneficiary deed filed by an owner, as both are defined in [section 1], who dies after October 1, 2007.

Approved April 26, 2007

CHAPTER NO. 259

[HB 319]

AN ACT PROVIDING CONTRACT INDEMNIFICATION PROVISIONS FOR PUBLIC CONSTRUCTION CONTRACTS AND HIGHWAY CONSTRUCTION CONTRACTS; AND PROVIDING FOR THE PAYMENT OF CONTRACTORS AND SUBCONTRACTORS ON HIGHWAY CONSTRUCTION CONTRACTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Construction contract indemnification provisions. (1) Except as provided in subsections (2) and (3), a construction contract provision that requires one party to the contract to indemnify, hold harmless, insure, or defend the other party to the contract or the other party's officers, employees, or agents for liability, damages, losses, or costs that are caused by the negligence,

recklessness, or intentional misconduct of the other party or the other party's officers, employees, or agents is void as against the public policy of this state.

(2) A construction contract may contain a provision:

(a) requiring one party to the contract to indemnify, hold harmless, or insure the other party to the contract or the other party's officers, employees, or agents for liability, damages, losses, or costs, including but not limited to reasonable attorney fees, only to the extent that the liability, damages, losses, or costs are caused by the negligence, recklessness, or intentional misconduct of a third party or of the indemnifying party or the indemnifying party's officers, employees, or agents; or

(b) requiring a party to the contract to purchase a project-specific insurance policy, including but not limited to an owner's and contractor's protective insurance, a project management protective liability insurance, or a builder's risk insurance.

(3) This section does not apply to indemnity of a surety by a principal on a construction contract bond or to an insurer's obligation to its insureds.

(4) As used in this section, "construction contract" means an agreement for architectural services, alterations, construction, demolition, design services, development, engineering services, excavation, maintenance, repair, or other improvement to real property, including an agreement to supply labor, materials, or equipment for an improvement to real property.

Section 2. Payment of contractors and subcontractors. Unless prohibited by federal law, payment under this part of a contractor or subcontractor for services performed by the contractor or subcontractor is governed by the provisions of Title 28, chapter 2, part 21.

Section 3. Contract indemnification provisions. (1) Except as provided in subsections (2) and (3), a contract subject to the provisions of this part with a provision that requires one party to the contract to indemnify, hold harmless, insure, or defend the other party to the contract or the other party's officers, employees, or agents for liability, damages, losses, or costs that are caused by the negligence, recklessness, or intentional misconduct of the other party or the other party's officers, employees, or agents is void as against the public policy of this state.

(2) A contract subject to the provisions of this part may contain a provision:

(a) requiring one party to the contract to indemnify, hold harmless, or insure the other party to the contract or the other party's officers, employees, or agents for liability, damages, losses, or costs, including but not limited to reasonable attorney fees, only to the extent that the liability, damages, losses, or costs are caused by the negligence, recklessness, or intentional misconduct of a third party or of the indemnifying party or the indemnifying party's officers, employees, or agents; or

(b) requiring a party to the contract to purchase a project-specific insurance policy, including but not limited to an owner's and contractor's protective insurance, a project management protective liability insurance, or a builder's risk insurance.

(3) This section does not apply to indemnity of a surety by a principal on a contract bond or to an insurer's obligation to its insureds.

(4) As used in this section, "contract" means, with respect to highway construction, an agreement for architectural services, alterations, construction,

demolition, design services, development, engineering services, excavation, maintenance, repair, or other improvement to real property, including an agreement to supply labor, materials, or equipment for an improvement to real property.

Section 4. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 18, chapter 2, and the provisions of Title 18, chapter 2, apply to [section 1].

(2) [Sections 2 and 3] are intended to be codified as an integral part of Title 60, chapter 2, part 1, and the provisions of Title 60, chapter 2, part 1, apply to [sections 2 and 3].

Approved April 26, 2007

CHAPTER NO. 260

[HB 328]

AN ACT CLARIFYING THE DEFINITION OF THE TERM "FACILITY" IN THE MONTANA MAJOR FACILITY SITING ACT; AND AMENDING SECTION 75-20-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility.

(b) The term does not include a transmission substation, a switchyard, voltage support, or other control equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Certificate" means the certificate of compliance issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(a) or (8)(b), including upgrading to a design capacity covered by subsection (8)(a), except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iii) does not include an electric transmission line that is less than 150 miles in length and extends from an electrical generation facility, as defined in 15-24-3001(4), *or a wind generation facility, as defined in 15-6-157,* to the point at which the transmission line connects to a regional transmission grid at an existing transmission substation or other facility for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iv) does not include an upgrade to an existing transmission line to increase that line's capacity within an existing easement or right-of-way; and

(v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;

(b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except that the term does not include:

(A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or

(B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;

(c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu's per hour or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant; or

(d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.

(9) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(10) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(11) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions including but not limited to:

(a) installing larger conductors;

(b) replacing insulators;

(c) replacing pole or tower structures; or

(d) changing structure spacing, design, or guying.

(12) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Approved April 26, 2007

CHAPTER NO. 261

[HB 364]

AN ACT CREATING THE LIVESTOCK LOSS REDUCTION AND MITIGATION BOARD TO ADMINISTER PROGRAMS FOR THE MITIGATION AND REIMBURSEMENT OF LIVESTOCK LOSSES BY WOLVES; ESTABLISHING BOARD MEMBERSHIP, POWERS, DUTIES, AND REPORTING REQUIREMENTS; ESTABLISHING ACCOUNTS AND A TRUST FUND TO FUND THE MITIGATION OF LIVESTOCK LOSSES BECAUSE OF WOLF PREDATION AND TO REIMBURSE LIVESTOCK OWNERS FOR LOSSES RELATED TO PREDATION BY WOLVES; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES.

WHEREAS, wolves are firmly established in Montana, and the long-term presence of wolves depends on implementing a comprehensive program that balances the complex biological, social, economic, and political aspects of wolf management; and

WHEREAS, wolf depredation on livestock has the potential to negatively impact some individual livestock producers; and

WHEREAS, the Montana Wolf Management Plan and Final EIS adopted by the Department of Fish, Wildlife, and Parks called for creation of a program to

reduce the risk of losses of livestock to wolves and to reimburse livestock producers for losses; and

WHEREAS, a working group of more than 30 Montana citizens, state and federal agency personnel, and tribal representatives developed a comprehensive proposal for the "Montana Livestock Loss Reduction and Mitigation Program".

Be it enacted by the Legislature of the State of Montana:

Section 1. Livestock loss reduction and mitigation board — purpose, membership, and qualifications. (1) There is a livestock loss reduction and mitigation board. The purpose of the board is to administer the programs called for in the Montana gray wolf management plan and established in [sections 2 through 4], with funds provided through the accounts established in [section 5], in order to minimize losses caused by wolves to livestock producers and to reimburse livestock producers for livestock losses from wolf predation.

(2) The board consists of seven members, appointed by the governor, as follows:

(a) three members from a list of names recommended by the board of livestock;

(b) three members from a list of names recommended by the fish, wildlife, and parks commission; and

(c) one member of the general public.

(3) Each board member must have knowledge of or have experience in at least one of the following:

(a) the raising of livestock in Montana;

(b) livestock marketing, valuations, sales, or breeding associations;

(c) the interaction of wolves with livestock and livestock mortality caused by wolves;

(d) wildlife conservation;

(e) administration; and

(f) fundraising.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the board.

(5) The board is allocated to the department of livestock for administrative purposes only as provided in 2-15-121.

(6) The board shall adopt rules to implement the provisions of [sections 1 through 7].

Section 2. Livestock loss reduction program. The livestock loss reduction and mitigation board shall establish and administer a program to cost-share with individuals or incorporated entities in implementing measures to prevent wolf predation on livestock, including:

(1) eligibility requirements for program participation;

(2) application procedures for program participation and procedures for awarding grants for wolf predation prevention measures, subject to grant priorities and the availability of funds;

(3) criteria for the selection of projects and program participants, which may include establishment of grant priorities based on factors such as chronic depredation, multiple depredation incidents, single depredation incidents, and potential high-risk geographical or habitat location;

(4) grant guidelines for prevention measures on public and private lands, including:

(a) grant terms that clearly set out the obligations of the livestock producer and that provide for a term of up to 12 months subject to renewal based on availability of funds, satisfaction of program requirements, and prioritization of the project;

(b) cost-share for prevention measures, which may be a combination of grant and livestock producer responsibility, payable in cash or in appropriate services, such as labor to install or implement preventive measures, unless the board adjusts the cost-share because of extenuating circumstances related to chronic or multiple depredation; and

(c) proactive preventive measures, including but not limited to fencing, fladry, night penning, increased human presence in the form of livestock herders and riders, guard animals, providing hay and dog food, rental of private land or alternative pasture allotments, delayed turnouts, and other preventive measures as information on new or different successful prevention measures becomes available; and

(5) reporting requirements for program participants to assist in determining the effectiveness of loss reduction relative to each grant.

Section 3. Livestock loss mitigation program — definitions. The livestock loss reduction and mitigation board shall establish and administer a program to reimburse livestock producers for livestock losses caused by wolves, subject to the following provisions:

(1) The board shall establish eligibility requirements for reimbursement, which must provide that all Montana livestock producers are eligible for coverage for losses by wolves to cattle, swine, horses, mules, sheep, goats, and livestock guard animals on state, federal, and private land and on tribal land that is eligible through agreement pursuant to [section 4(2)].

(2) Confirmed and probable livestock losses must be reimbursed at an amount not to exceed fair market value as determined by the board.

(3) Other losses may be reimbursed at rates determined by the board.

(4) A claim process must be established to be used when a livestock producer suffers a livestock loss for which wolves may be responsible. The claim process must set out a clear and concise method for documenting and processing claims for reimbursement for livestock losses.

(5) A process must be established to allow livestock producers to appeal reimbursement decisions. A producer may appeal a staff adjuster's decision by notifying the staff adjuster and the board in writing, stating the reasons for the appeal and providing documentation supporting the appeal. If the documentation is incomplete, the board or a producer may consult with the U.S. department of agriculture wildlife services to complete the documentation. The board may not accept any appeal on the question of whether the loss was or was not a confirmed or probable loss because that final determination lies solely with the U.S. department of agriculture wildlife services and may not be changed by the board. The board shall hold a hearing on the appeal within 90 days of receipt

of the written appeal, allowing the staff adjuster and the producer to present their positions. A decision must be rendered by the board within 30 days after the hearing. The producer must be notified in writing of the board's decision.

(6) As used in this section, the following definitions apply:

(a) "Confirmed" means reasonable physical evidence that livestock was actually attacked or killed by a wolf, including but not limited to the presence of bite marks indicative of the spacing of canine tooth punctures of wolves and associated subcutaneous hemorrhaging and tissue damage indicating that the attack occurred while the animal was alive, feeding patterns on the carcass, fresh tracks, scat, hair rubbed off on fences or brush, eyewitness accounts, or other physical evidence that allows a reasonable inference of wolf predation on an animal that has been largely consumed.

(b) "Fair market value" means:

(i) for commercial sheep more than 1 year old, the average price of sheep of similar age and sex paid at the most recent Billings livestock sale ring or other ring as determined by the board;

(ii) for commercial lambs, the average market weaning value;

(iii) for registered sheep, the average price paid to the specific breeder for sheep of similar age and sex during the past year at public or private sales for that registered breed;

(iv) for commercial cattle more than 1 year old, the average price of cattle of similar age and sex paid at the most recent Billings livestock sale ring or other ring as determined by the board;

(v) for commercial calves, the average market weaning value;

(vi) for registered cattle, the average price paid to the owner for cattle of similar age and sex during the past year at public or private sales for that registered breed;

(vii) for other registered livestock, the average price paid to the producer at public or private sales for animals of similar age and sex. A producer may provide documentation that a registered animal has a fair market value in excess of the average price, in which case the board shall seek additional verification of the value of the animal from independent sources. If the board determines that the value of that animal is greater than the average price, then the increased value must be accepted as the fair market value for that animal.

(viii) for other livestock, the average price paid at the most recent public auction for the type of animal lost or the replacement price as determined by the board.

(c) "Probable" means the presence of some evidence to suggest possible predation but a lack of sufficient evidence to clearly confirm predation by a particular species. A kill may be classified as probable depending on factors including but not limited to recent confirmed predation by the suspected depredating species in the same or a nearby area, recent observation of the livestock by the owner or the owner's employees, and telemetry monitoring data, sightings, howling, or fresh tracks suggesting that the suspected depredating species may have been in the area when the depredation occurred.

Section 4. Additional powers and duties of livestock loss reduction and mitigation board. (1) The livestock loss reduction and mitigation board shall:

(a) process claims;

(b) seek information necessary to ensure that claim documentation is complete;

(c) provide payments authorized by the board for confirmed and probable livestock losses, along with a written explanation of payment;

(d) submit monthly and annual reports to the board summarizing claims and expenditures and the results of action taken on claims and maintain files of all claims received, including supporting documentation;

(e) provide information to the board regarding appealed claims and implement any decision by the board;

(f) prepare the annual budget for the board; and

(g) provide proper documentation of staff time and expenditures.

(2) The livestock loss reduction and mitigation board may enter into an agreement with any Montana tribe, if the tribe has adopted a wolf management plan for reservation lands that is consistent with the state wolf management plan, to provide that tribal lands within reservation boundaries are eligible for mitigation grants pursuant to [section 2] and that livestock losses on tribal lands within reservation boundaries are eligible for reimbursement payments pursuant to [section 3].

(3) The livestock loss reduction and mitigation board shall:

(a) coordinate and share information with state, federal, and tribal officials, livestock producers, nongovernmental organizations, and the general public in an effort to reduce livestock losses caused by wolves;

(b) establish an annual budget for the prevention, mitigation, and reimbursement of livestock losses caused by wolves;

(c) perform or contract for the performance of periodic program audits and reviews of program expenditures, including payments to individuals, incorporated entities, and producers who receive loss reduction grants and reimbursement payments;

(d) adjudicate appeals of claims;

(e) investigate alternative or enhanced funding sources, including possible agreements with public entities and private wildlife or livestock organizations that have active livestock loss reimbursement programs in place;

(f) meet as necessary to conduct business; and

(g) report annually to the governor, the legislature, members of the Montana congressional delegation, the board of livestock, the fish, wildlife, and parks commission, and the public regarding results of the programs established in [sections 2 through 4].

Section 5. Livestock loss reduction and mitigation accounts. (1) There are livestock loss reduction and mitigation special revenue accounts administered by the department within the state special revenue fund and the federal special revenue fund established in 17-2-102.

(2) (a) All state proceeds allocated or budgeted for the purposes of [sections 1 through 7], except those appropriated to the department of livestock, must be deposited in the state special revenue account provided for in subsection (1).

(b) Money received by the state in the form of gifts, grants, reimbursements, or allocations from any source intended to be used for the purposes of [sections 2

through 4] must be deposited in the appropriate account provided for in subsection (1).

(c) All federal funds awarded to the state for compensation for wolf depredations on livestock must be deposited in the federal special revenue account provided for in subsection (1) for the purposes of [section 3].

(3) The livestock loss reduction and mitigation board may spend funds in the accounts only to carry out the provisions of [sections 2 through 4].

Section 5. Livestock loss reduction and mitigation trust fund. (1) The legislature shall provide for a fund, to be known as the livestock loss reduction and mitigation trust fund, to be funded with gifts, grants, reimbursements, appropriations, or allocations from any source.

(2) The principal of the livestock loss reduction and mitigation trust fund shall forever remain inviolate in an amount of $5 million unless appropriated by a vote of three-fourths of the members of each house of the legislature.

(3) The interest and income generated from the livestock loss reduction and mitigation trust fund must be deposited in the livestock loss reduction and mitigation state special revenue account provided for in [section 5]. The interest and income may be appropriated by a majority vote of each house of the legislature and may be used only to fund the livestock loss reduction program and the livestock loss mitigation program as provided in [sections 2 and 3].

(4) (a) Until the principal of the fund reaches $5 million, at the end of each biennium, any amount of interest and income from the trust fund that is not used for the livestock loss reduction program or the livestock loss mitigation program must be used to reimburse the state general fund up to $120,000. Any remaining interest and income must be deposited in the trust fund as principal.

(b) After the principal of the trust fund reaches $5 million, at the end of each biennium, any amount of interest and income that is not used for the livestock loss reduction program or the livestock loss mitigation program must be deposited in the general fund.

Section 6. Funding of programs — contingency. The awarding of grants and reimbursements and the performance of duties pursuant to [sections 2 through 4] are contingent upon the amount of money available in the accounts provided for in [sections 5 and 6].

Section 7. Appropriation. There is appropriated from the general fund to the department of livestock:

(1) $60,000 in fiscal year 2008 for 1.0 FTE and for operating expenses to establish the livestock loss reduction and mitigation board and board activities; and

(2) $60,000 in fiscal year 2009 for 1.0 FTE and for board expenses.

Section 8. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 9. Codification instruction. (1) [Sections 1 through 4 and 7] are intended to be codified as an integral part of Title 2, chapter 15, part 31, and the provisions of Title 2, chapter 15, part 31, apply to [sections 1 through 4 and 7].

(2) [Sections 5 and 6] are intended to be codified as an integral part of Title 81, chapter 1, part 1, and the provisions of Title 81, chapter 1, part 1, apply to [sections 5 and 6].

Section 10. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2007.

(2) [Sections 2 and 3] are effective October 1, 2007.

Approved April 26, 2007

CHAPTER NO. 262

[HB 389]

AN ACT REVISING THE POWERS AND DUTIES OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE FISH, WILDLIFE, AND PARKS COMMISSION REGARDING DEVELOPMENT OR IMPLEMENTATION OF THE STATE ELK MANAGEMENT PLAN; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO REQUEST, AS PART OF AN ELK MANAGEMENT PLAN, THAT PUBLIC LANDS AND PUBLIC ROADS REMAIN OPEN TO PUBLIC ACCESS DURING THE BIG GAME HUNTING SEASON; REQUIRING THE FISH, WILDLIFE, AND PARKS COMMISSION TO CONSIDER LANDOWNER TOLERANCE WHEN DECIDING WHETHER TO RESTRICT ELK HUNTING IN A HUNTING DISTRICT; AMENDING SECTIONS 87-1-201 AND 87-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-201, MCA, is amended to read:

"87-1-201. Powers and duties. (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) The department shall enforce all the laws of the state respecting the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is appropriated to and under control of the department.

(4) The department may discharge any appointee or employee of the department for cause at any time.

(5) The department may dispose of all property owned by the state used for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state

treasurer to be credited to the fish and game account in the state special revenue fund.

(6) The department may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) The department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of chapter 2 that in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or outside of the state.

(9) (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species; and

(iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. *In implementing an elk management plan, the department shall, as necessary to achieve harvest and population objectives, request that land management agencies open public lands and public roads to public access during the big game hunting season.*

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) Any management plan developed by the department pursuant to this subsection (9) is subject to the requirements of Title 75, chapter 1, part 1.

(d) This subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

(10) The department shall publish an annual game count, estimating to the department's best ability the numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative regions of the state. In preparing the publication, the department may incorporate field observations, hunter reporting statistics, or any other suitable method of determining game numbers. The publication must include an explanation of the basis used in determining the game count."

Section 2. Section 87-1-301, MCA, is amended to read:

"87-1-301. Powers of commission. (1) The commission:

(a) shall set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water, except as provided in 87-1-209(4);

(f) shall review and approve the budget of the department prior to its transmittal to the budget office;

(g) shall review and approve construction projects that have an estimated cost of more than $1,000 but less than $5,000; and

(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. *In developing or implementing an elk management plan, the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or documented verbal opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting district where a restriction on elk hunting on public property is proposed.*

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders:

(i) for the biologically sound management of big game populations of elk, deer, and antelope;

(ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321 through 87-1-325.

(5) The commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(6) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts.

(b) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2007

CHAPTER NO. 263

[HB 414]

AN ACT PROVIDING THAT RECORDS OF PERSONS WITH DEVELOPMENTAL DISABILITIES WHO ARE COMMITTED TO A RESIDENTIAL FACILITY BE MAINTAINED SEPARATELY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Court records to be kept separate — sealed — names omitted. Records and papers in proceedings under this part must be maintained separately by each clerk of court. Five days prior to the release of a respondent or resident committed to a residential facility, the facility shall notify the appropriate clerk of court, and the clerk shall immediately seal the record in the case and omit the name of the respondent or resident from the index or indexes of cases in the court unless the court orders the record opened for good cause shown.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 20, part 1, and the provisions of Title 53, chapter 20, part 1, apply to [section 1].

Approved April 26, 2007

CHAPTER NO. 264

[HB 415]

AN ACT REMOVING THE PROVISION THAT A PARK DEDICATION MAY NOT BE REQUIRED FOR A MINOR SUBDIVISION; MAKING PARK DEDICATION FOR A MINOR SUBDIVISION DISCRETIONARY; AND AMENDING SECTION 76-3-621, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-621, MCA, is amended to read:

"76-3-621. Park dedication requirement. (1) Except as provided in 76-3-509 or subsections (2), (3), and (6) through ~~(8)~~ *(9)* of this section, a subdivider shall dedicate to the governing body a cash or land donation equal to:

(a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

(b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

(c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

(d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

(a) ~~a minor subdivision;~~

~~(b)~~ land proposed for subdivision into parcels larger than 5 acres;

~~(c)~~*(b)* subdivision into parcels that are all nonresidential;

~~(d)~~*(c)* a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or

~~(e)~~*(d)* a subdivision in which only one additional parcel is created.

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1);

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

(ii) the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (1).

(7) The local governing body may waive the park dedication requirement if:

(a) the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

(b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of the dedication required under subsection (1).

(8) A local governing body may, at its discretion, require a park dedication for a minor subdivision. A local governing body that chooses to require a park dedication shall specify in regulations the circumstances under which a park dedication will be required.

~~(8)~~*(9)* Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided

in subsection (1) to a school district, adequate to be used for school facilities or buildings.

~~(9)~~*(10)* For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside.

~~(10)~~*(11)* A land donation under this section may be inside or outside of the subdivision."

Approved April 26, 2007

CHAPTER NO. 265

[HB 428]

AN ACT ALLOWING A VEHICLE THAT IS PERMANENTLY REGISTERED TO BE DETERMINED TO BE A JUNK VEHICLE IF IT MEETS ALL OTHER CRITERIA FOR DETERMINING JUNK VEHICLE STATUS; AND AMENDING SECTION 75-10-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-501, MCA, is amended to read:

"75-10-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Component part" means any identifiable part of a discarded, ruined, wrecked, or dismantled motor vehicle, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions, frames, axles, wheels, tires, and passenger compartment fixtures.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) *(a)* "Junk vehicle" means a *motor vehicle, including component parts:*

(i) that is discarded, ruined, wrecked, or dismantled ~~motor vehicle, including component parts,~~*;*

(ii) that*, except as provided in subsection (4)(b),* is not lawfully and validly licensed*;* and

(iii) that remains inoperative or incapable of being driven.

(b) If a vehicle is permanently registered under 61-3-562 and meets the criteria for a junk vehicle under subsection (4)(a), the vehicle is a junk vehicle.

(5) "Motor vehicle graveyard" means a collection point established by a county for junk motor vehicles prior to their disposal.

(6) "Motor vehicle wrecking facility" means:

(a) a facility buying, selling, or dealing in four or more vehicles per year, of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle; or

(b) a facility that buys or sells component parts, in whole or in part, and deals in secondhand motor vehicle parts. A facility that buys or sells component parts of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification. The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

(7) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(8) "Public view" means any point 6 feet above the surface of the center of a public road from which junk vehicles can be seen.

(9) "Shielding" means the construction or use of fencing or manmade or natural barriers to conceal junk vehicles from public view."

Approved April 26, 2007

CHAPTER NO. 266

[HB 435]

AN ACT AMENDING STATUTES REGARDING THE ABILITY OF A VICTIM OR DEPENDENT OF A DECEASED VICTIM TO RECOVER MONEY GAINED AS A DIRECT RESULT OF A HOMICIDE OR CERTAIN OTHER CRIMINAL OFFENSES; PROHIBITING CERTAIN PERSONS FROM SELLING CONFIDENTIAL CRIMINAL JUSTICE INFORMATION AND PROVIDING A PENALTY; REVISING THE STATUTE OF LIMITATIONS FOR CERTAIN WRONGFUL DEATH ACTIONS; AMENDING SECTIONS 27-2-204 AND 53-9-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-2-204, MCA, is amended to read:

"27-2-204. Tort actions — general and personal injury. (1) Except as provided in 27-2-216 and 27-2-217, the period prescribed for the commencement of an action upon a liability not founded upon an instrument in writing is within 3 years.

(2) The period prescribed for the commencement of an action to recover damages for the death of one caused by the wrongful act or neglect of another is within 3 years*, except when the wrongful death is the result of a homicide, in which case the period is within 10 years*.

(3) The period prescribed for the commencement of an action for libel, slander, assault, battery, false imprisonment, or seduction is within 2 years."

Section 2. Section 53-9-104, MCA, is amended to read:

"53-9-104. Powers and duties of office. (1) The office shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual ~~formally charged with or~~ convicted of a qualifying crime for any ~~rendition, interview, statement,~~ book, photograph, movie, television production, *or* play~~, or article relating to~~ *prepared for a commercial purpose that is based directly upon* the crime *or for the sale of an item owned or obtained by an individual convicted of a qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime* to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, ~~if the individual is convicted of the crime,~~ to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for in 47-1-201, for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be deposited in the state general fund.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program."

Section 3. Sale of confidential criminal justice information prohibited — penalty. (1) An individual convicted of a qualifying crime may not sell or exchange confidential criminal justice information, as defined in 44-5-103.

(2) The office shall require that any funds obtained in violation of subsection (1) be deposited into the escrow fund, provided for in 53-9-104, for the benefit of a victim of a qualifying crime, to be held as provided in 53-9-104.

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 53, chapter 9, part 1, and the provisions of Title 53, chapter 9, part 1, apply to [section 3].

Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Applicability. (1) [Section 1] applies to a death occurring after October 1, 2007.

(2) [Section 2] applies to a contract entered into after October 1, 2007.

Approved April 26, 2007

CHAPTER NO. 267

[HB 456]

AN ACT REMOVING REFERENCES TO MOBILE HOMES, MOBILE HOME OWNERS, AND MOBILE HOME PARKS FROM THE MONTANA RESIDENTIAL LANDLORD AND TENANT ACT OF 1977; CREATING THE MONTANA RESIDENTIAL MOBILE HOME LOT RENTAL ACT; PROVIDING REQUIREMENTS FOR MOBILE HOME LOT RENTAL AGREEMENTS; ESTABLISHING RIGHTS, OBLIGATIONS, AND REMEDIES FOR MOBILE HOME LOT TENANTS AND LANDLORDS; AMENDING SECTIONS 70-24-103, 70-24-305, 70-24-314, 70-24-422, 70-24-431, AND 70-24-441, MCA; AND REPEALING SECTIONS 70-24-313, 70-24-315, 70-24-432, AND 70-24-436, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-24-103, MCA, is amended to read:

"70-24-103. General definitions. Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Case of emergency" means an extraordinary occurrence beyond the tenant's control requiring immediate action to protect the premises or the tenant. A case of emergency may include the interruption of essential services, including heat, electricity, gas, running water, hot water, and sewer and septic system service, or life-threatening events in which the tenant or landlord has reasonable apprehension of immediate danger to the tenant or others.

(3) "Court" means the appropriate district court, justice's court, or city court.

(4) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household. Dwelling unit, in the case of a person who rents space in a mobile home park ~~but does not rent~~ *and rents* the mobile home, means ~~the space rented and not~~ the mobile home itself.

(5) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(6) "Landlord" means:

(a) the owner, lessor, or sublessor of~~:~~

~~(i)~~ the dwelling unit or the building of which it is a part; or

~~(ii) a mobile home park; or~~

(b) a manager of the premises who fails to disclose the managerial position.

~~(7) "Mobile home owner" means the owner of a manufactured mobile home dwelling unit entitled under a rental agreement to occupy a mobile home park space in a mobile home park.~~

~~(8) "Mobile home park" means a trailer court as defined in 50-52-101.~~

~~(9)~~*(7)* "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, or partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

~~(10)~~*(8)* "Owner" means one or more persons, jointly or severally, in whom is vested all or part of:

(a) the legal title to property; or

(b) the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

~~(11)~~*(9)* "Person" includes an individual or organization.

~~(12)~~*(10)* "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances in the structure, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

~~(13)~~*(11)* "Rent" means all payments to be made to the landlord under the rental agreement.

~~(14)~~*(12)* "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-24-311 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

~~(15)~~*(13)* "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of which are used in common by occupants in the structure.

~~(16)~~*(14)* "Single-family residence" means a structure maintained and used as a single dwelling unit. ~~Notwithstanding that a~~ *A* dwelling unit *that* shares one or more walls with another dwelling unit~~, it~~ is a single-family residence if it has direct access to a street or thoroughfare and ~~shares neither~~ *does not share* heating facilities, hot water equipment, ~~nor~~ *or* any other essential facility or service with another dwelling unit.

~~(17)~~*(15)* "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others."

Section 2. Section 70-24-305, MCA, is amended to read:

"70-24-305. Transfer of premises by tenant. ~~(1)~~ A tenant who vacates a dwelling unit during the term of a tenancy may not allow the possession of the property to be transferred to a third person or sublet the property unless the landlord or the landlord's agent has consented in writing.

~~(2) The sale or rental of a mobile home located upon a rental lot does not entitle the purchaser or renter to retain rental of the lot unless the purchaser or renter enters into a rental agreement with the owner of the lot.~~

~~(3) A mobile home owner who owns the mobile home but rents the lot space has the exclusive right to sell the mobile home without interference or conditions by the landlord. The new purchaser shall make suitable arrangements with the landlord in order to become a tenant on the mobile home lot. The purchase of the mobile home does not automatically entitle the purchaser to rent the mobile home lot.~~"

Section 3. Section 70-24-314, MCA, is amended to read:

"70-24-314. Resident associations — meetings. ~~(1)~~ The membership of a resident association may elect officers of the association at a meeting at which a majority of the members are present. All residents may attend meetings~~, but the mobile home park landlord and the landlord's employees may not be members and may not attend meetings unless specifically invited by the tenant association~~.

~~(2) The mobile home park landlord may not prohibit meetings by a tenant association or tenants relating to mobile home living.~~"

Section 4. Section 70-24-422, MCA, is amended to read:

"70-24-422. Noncompliance of tenant generally — landlord's right of termination — damages — injunction. (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the noncompliance and that the rental agreement will terminate upon a date specified in the notice not less than the minimum number of days after receipt of the notice provided for in this section. The rental agreement terminates as provided in the notice, subject to the following:

(a) If the noncompliance is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate.

(b) If the noncompliance involves an unauthorized pet, the notice period is 3 days.

(c) If the noncompliance involves unauthorized persons residing in the rental unit, the notice period is 3 days.

(d) If the noncompliance is not listed in subsection (1)(b) or (1)(c), the notice period is 14 days.

(e) If substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the noncompliance and the date of the termination of the rental agreement.

~~(f) This subsection (1) does not apply to a rental agreement involving a tenant who rents space for a mobile home but does not rent the mobile home.~~

(2) If rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement. ~~This subsection does not apply to a rental agreement involving a tenant who rents space for a mobile home but does not rent the mobile home.~~

(3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the noncompliance under the provisions of 70-24-321(2).

(4) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured, as evidenced by the tenant being arrested for or charged with an act that violates the provisions of 70-24-321(3), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the violation and noncompliance under the provisions of 70-24-321(3).

(5) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. Except as provided in subsection (6), if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

(6) Treble damages may not be recovered for the tenant's early termination of the tenancy.

~~(7) Subsections (3) through (6) apply to all rental agreements, including those involving a tenant who rents space for a mobile home but does not rent the mobile home.~~

~~(8)~~*(7)* The landlord is not bound by this section in the event that~~:~~

~~(a) the rental agreement does not involve a tenant who rents space for a mobile home but does not rent the mobile home; and~~

~~(b)~~ the landlord elects to use the 30-day notice for termination of tenancy as provided in 70-24-441."

Section 5. Section 70-24-431, MCA, is amended to read:

"70-24-431. Retaliatory conduct by landlord prohibited. (1) Except as provided in this section, a landlord may not retaliate by increasing rent, *by* decreasing services, or by bringing or threatening to bring an action for possession after the tenant:

(a) has complained of a violation applicable to the premises materially affecting health and safety to a governmental agency charged with responsibility for enforcement of a building or housing code;

(b) has complained to the landlord in writing of a violation under 70-24-303; or

(c) has organized or become a member of a tenant's union~~, mobile home park tenant association,~~ or similar organization.

(2) If the landlord acts in violation of subsection (1) of this section, the tenant is entitled to the remedies provided in 70-24-411 and has a defense in any retaliatory action against ~~him~~ *the tenant* for possession.

(3) In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. For purposes of this section, "rebuttable presumption" means that the trier of fact ~~must~~ *is required to* find the existence of the fact presumed unless and until evidence is introduced ~~which~~ *that* would support a finding of its nonexistence.

(4) ~~Notwithstanding subsections~~ *Subsections* (1), (2), and (3) ~~of this section,~~ *do not prevent* a landlord ~~may bring~~ *from bringing* an action for possession if:

(a) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of the tenant's family, or *any* other persons on the premises with ~~his~~ *the tenant's* consent;

(b) the tenant is in default in rent; or

(c) compliance with the applicable building or housing code requires alteration, remodeling, or demolition ~~which~~ *that* would effectively deprive the tenant of use of the dwelling unit.

(5) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under 70-24-405(2)."

Section 6. Section 70-24-441, MCA, is amended to read:

"70-24-441. Termination by landlord or tenant — ~~applicability~~. (1) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least 7 days before the termination date specified in the notice.

(2) The landlord or the tenant may terminate a month-to-month tenancy by giving to the other at any time during the tenancy at least 30 days' notice in writing prior to the date designated in the notice for the termination of the tenancy.

(3) The tenancy terminates on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

~~(4) The provisions of this section do not apply to a tenant who rents space for a mobile home in a mobile home park but does not rent the mobile home.~~"

Section 7. Short title. [Sections 7 through 51] may be cited as "The Montana Residential Mobile Home Lot Rental Act".

Section 8. Purpose — liberal construction. (1) [Sections 7 through 51] must be liberally construed and applied to promote the underlying purposes and policies of [sections 7 through 51].

(2) The underlying purposes and policies of [sections 7 through 51] are to:

(a) simplify and clarify the law governing the rental of land to owners of mobile homes and manufactured homes and the rights and obligations of landlords and tenants concerning lot rentals; and

(b) encourage landlords and tenants to maintain and improve the quality of housing.

Section 9. Definitions. Unless the context clearly requires otherwise, in [sections 7 through 51] the following definitions apply:

(1) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Case of emergency" means an extraordinary occurrence beyond the tenant's control requiring immediate action to protect the premises or the tenant. A case of emergency may include the interruption of essential services, including electricity, gas, running water, and sewer and septic system service, or life-threatening events in which the tenant or landlord has reasonable apprehension of immediate danger to the tenant or others.

(3) "Court" means the appropriate district court, justice's court, or city court.

(4) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(5) "Landlord" means:

(a) the owner, lessor, or sublessor of:

(i) space or land, including a lot, that is rented to a tenant for a mobile home; or

(ii) a mobile home park; or

(b) a manager of the premises who fails to disclose the managerial position.

(6) "Lot" means the space or land rented and not a mobile home itself.

(7) "Mobile home" has the same meaning as provided in 15-1-101 and includes manufactured homes as defined in 15-1-101.

(8) "Mobile home owner" means the owner of a mobile home entitled under a rental agreement to occupy a lot.

(9) "Mobile home park" means a trailer court as defined in 50-52-101.

(10) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(11) "Person" includes an individual or organization.

(12) "Premises" means a lot and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

(13) "Rent" means all payments to be made to a landlord under a rental agreement.

(14) "Rental agreement" means all agreements, written or oral, and valid rules adopted under [section 22] embodying the terms and conditions concerning the use and occupancy of the premises.

(15) "Tenant" means a person entitled under a rental agreement to occupy a lot to the exclusion of others.

Section 10. Applicability. (1) [Sections 7 through 51] apply to landlord-tenant relationships in which the landlord is renting a lot to the tenant for placement of the tenant's mobile home. [Sections 7 through 51] apply to land rental in a mobile home park as well as to the rental of individual parcels of land not in a mobile home park that are for the placement of a tenant's mobile home.

(2) Unless created to avoid the application of [sections 7 through 51], the following arrangements are not governed by [sections 7 through 51]:

(a) occupancy under a contract of sale of a lot if the occupant is the purchaser or a person who succeeds to the purchaser's interest;

(b) occupancy under a rental agreement covering premises used by the occupant primarily for commercial or agricultural purposes;

(c) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises;

(d) occupancy outside a municipality under a rental agreement that includes hunting, fishing, or agricultural privileges along with the use of the lot; and

(e) any rental premises that are governed by the Montana Residential Landlord and Tenant Act of 1977, Title 70, chapter 24.

(3) The combined rental of the lot and mobile home, when the landlord owns both, are covered by the Montana Residential Landlord and Tenant Act of 1977.

Section 11. Supplementary principles of law. Unless superseded by the provisions of [sections 7 through 51], the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes, supplement the provisions of [sections 7 through 51].

Section 12. Notice. (1) A person has notice of a fact if:

(a) the person has actual knowledge of the fact;

(b) in the case of a landlord, the notice is delivered at the place of business of the landlord through which the rental agreement was made; or

(c) in the case of a landlord or tenant, the notice is personally delivered to the landlord or tenant or mailed with a certificate of mailing or by certified mail to the place held out by the landlord or tenant as the place for receipt of the communication or, in the absence of a designation, to the landlord's or tenant's last-known address. When notice is made by certificate of mailing or certified mail, the service of the notice must be considered to have been made 3 days after the date of mailing.

(2) Notice received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction on behalf of the organization and, in any event, from the time the notice would have been brought to the individual's attention if the organization had exercised reasonable diligence.

Section 13. Obligation of good faith. Every duty under [sections 7 through 51] and every act that must be performed as a condition precedent to the exercise of a right or remedy under [sections 7 through 51] imposes an obligation of good faith in its performance or enforcement.

Section 14. Rental agreements. (1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by [sections 7 through 51] or other rule or law.

(2) Unless the rental agreement provides otherwise:

(a) the tenant shall pay as rent the fair rental value for the use and occupancy of the lot as determined by the landlord;

(b) rent is payable at the landlord's address;

(c) periodic rent is payable at the beginning of a term that is a month or less and otherwise in equal monthly installments at the beginning of each month;

(d) rent is uniformly apportionable from day to day; and

(e) the tenancy is from month to month.

(3) Rent is payable without demand or notice at the time and place agreed upon by the parties or as provided by subsection (2).

Section 15. Prohibited provisions in rental agreements. (1) A rental agreement may not require a party to:

(a) waive or forego rights or remedies under [sections 7 through 51];

(b) authorize any person to confess judgment on a claim arising out of the rental agreement; or

(c) agree to the exculpation or limitation of liability resulting from the other party's purposeful misconduct or negligence or to indemnify the other party for that liability or related costs or attorney fees.

(2) A rental agreement or a related document may not permit the receipt of rent free of the obligation to comply with the provisions of [section 19].

Section 16. Effect of unsigned or undelivered rental agreement. (1) If the landlord does not sign and deliver a written rental agreement signed and delivered to the landlord by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

(2) If the tenant does not sign and deliver a written rental agreement signed and delivered to the tenant by the landlord, acceptance of possession of the premises and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.

(3) If a rental agreement given effect by the operation of this section provides for a term longer than 1 year, it is effective for only 1 year.

Section 17. Duty to disclose name of person responsible. (1) A landlord or a person authorized to enter into a rental agreement on a landlord's behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

(a) the person authorized to manage the premises; and

(b) the owner of the premises or a person authorized to act for the owner for the purpose of service of process and receiving notices and demands.

(2) The information required to be furnished by this section must be kept current and in writing, and this section is enforceable against any successor landlord, owner, or manager.

(3) A person, other than the landlord, who fails to comply with subsection (1) becomes an agent of each person who is a landlord for the purpose of:

(a) service of process and receiving notices and demands; and

(b) performing the obligations of the landlord under [sections 7 through 51] and under the rental agreement and for expending or making available for the purpose of performing those obligations all rent collected from the premises.

Section 18. Landlord to deliver possession of premises. (1) At the commencement of the rental term, a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and [section 19]. A landlord may bring an action for possession against a person wrongfully in possession.

(2) If a landlord accepts rent or a deposit from a person intending to occupy the premises, the landlord is considered to have given consent for the person to take possession of the property and to have created a landlord-tenant relationship.

Section 19. Landlord to maintain premises — agreement that tenant perform duties. (1) A landlord shall:

(a) comply with the requirements of applicable building and housing codes materially affecting health and safety;

(b) make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(c) keep all common areas of the premises in a clean and safe condition;

(d) for the premises, maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(e) unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the lot and arrange for their removal; and

(f) supply running water at all times, unless the lot is not required by law to be equipped for that purpose or the running water is generated by an installation within the exclusive control of the tenant.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(f), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(e) and (1)(f) but only if the agreement is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants.

Section 20. Transfer of premises or termination of management — relief from liability. (1) Unless otherwise agreed, a landlord who conveys premises subject to a rental agreement, in a good faith sale to a bona fide purchaser, is relieved of liability under the rental agreement and [sections 7 through 51] as to events occurring after written notice to the tenant of the conveyance. The landlord remains liable to the tenant for all security recoverable by the tenant pursuant to Title 70, chapter 25, and all prepaid rent.

(2) Unless otherwise agreed, a manager of premises subject to a rental agreement is relieved of liability under the rental agreement and [sections 7 through 51] as to events occurring after written notice to the tenant of the termination of the manager's management duties.

Section 21. Transfer of premises by tenant. (1) A tenant who vacates a lot during the term of a tenancy may not allow the possession of the property to be transferred to a third person or sublet the property unless the landlord or the landlord's agent has consented in writing.

(2) The sale or rental of a mobile home located upon a lot does not entitle the purchaser or renter to retain rental of the lot unless the purchaser or renter enters into a rental agreement with the owner of the lot.

(3) A mobile home owner who owns the mobile home but rents the lot has the exclusive right to sell the mobile home without interference or conditions by the landlord. The new purchaser shall make suitable arrangements with the landlord in order to become a tenant on the mobile home lot. The purchase of the mobile home does not automatically entitle the purchaser to rent the mobile home lot.

Section 22. Landlord authorized to adopt rules. (1) A landlord may adopt a rule concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if:

(a) its purpose is to promote the convenience, safety, or welfare of the occupants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(b) it is reasonably related to the purpose for which it is adopted;

(c) it applies to all occupants in the premises in a fair manner;

(d) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant shall or may not do to comply;

(e) it is not for the purpose of evading the obligations of the landlord; and

(f) the tenant has notice of the rule at the time that the tenant enters into the rental agreement or when the rule is adopted.

(2) A rule adopted by a landlord must be in writing and must be given to each tenant residing on the premises and to each new tenant upon arrival.

(3) If a rule is adopted after a tenant enters into a rental agreement that involves a substantial modification of the rental agreement, it is not valid until after 30 days' written notice in the case of month-to-month tenancies.

Section 23. Access to premises by landlord. (1) A tenant may not unreasonably withhold consent to the landlord or the landlord's agent to enter the lot in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the lot to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) A landlord may enter the lot without consent of the tenant in case of emergency.

(3) A landlord may not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least 24 hours' notice of the intent to enter and may enter only at reasonable times.

(4) A landlord has no other right of access except:

(a) pursuant to court order;

(b) as permitted by [section 42] and [section 43(1)(b)]; or

(c) when the tenant has abandoned or surrendered the premises.

(5) A tenant may not remove a lock or replace or add a lock not supplied by the landlord to the premises without the written permission of the landlord. If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises, the tenant shall provide the landlord with a key to ensure that the landlord will have the right of access as provided by [sections 7 through 51].

Section 24. Lot rules. (1) A landlord may adopt a rule concerning the rental occupancy of a lot and the use of common areas and facilities in accordance with [section 22]. A rule may not be unreasonable, and a rule that does not apply uniformly to all tenants of a similar class creates a rebuttable presumption, as defined in [section 48(3)], that the rule is unfair.

(2) Each common area facility must be open or available to residents at all reasonable hours, and the hours of a common recreational facility must be posted at the facility.

Section 25. Resident associations — meetings. (1) The membership of a resident association may elect officers of the association at a meeting at which a majority of the members are present. All residents may attend meetings, but the landlord and the landlord's employees may not be members and may not attend meetings unless specifically invited by the tenants' resident association.

(2) The landlord may not prohibit meetings by a resident association or tenants relating to mobile home living.

Section 26. Road maintenance obligations. In addition to the obligations imposed by [section 19], the mobile home park landlord shall maintain common roads within the mobile home park in a safe condition, including arranging for snow plowing as is reasonable to keep the roads passable.

Section 27. Tenant to maintain lot. (1) A tenant shall:

(a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(b) keep that part of the premises that the tenant occupies and uses as reasonably clean and safe as the condition of the premises permits;

(c) dispose from the lot all ashes, garbage, rubbish, and other waste in a clean and safe manner;

(d) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;

(e) conduct oneself and require other persons on the premises with the tenant's consent to conduct themselves in a manner that will not disturb the tenant's neighbors' peaceful enjoyment of the premises; and

(f) use the parts of the premises in a reasonable manner considering the purposes for which they were designed and intended.

(2) This section does not preclude the right of the tenant to operate a limited business or cottage industry on the premises, subject to state and local laws, if the landlord has consented in writing. The landlord may not unreasonably withhold consent if the limited business or cottage industry is operated within reasonable rules of the landlord.

(3) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so.

(4) A tenant may not engage or knowingly allow any person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured by any of the following:

(a) criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;

(b) operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or

(c) gang-related activities, as prohibited by Title 45, chapter 8, part 4.

Section 28. Notice of extended absence. The rental agreement may require that the tenant notify the landlord of an anticipated extended absence from the premises in excess of 7 days not later than the first day of the extended absence.

Section 29. Administration of remedies — enforcement — agreement. (1) The remedies provided by [sections 7 through 51] must be administered so that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

(2) A right or obligation declared by [sections 7 through 51] is enforceable by action unless the provision declaring it specifies a different and limited effect.

(3) Rules and regulations that are not a part of [sections 7 through 51] and that affect the relationship between the landlord and tenant must be uniformly and fairly applied and enforced.

(4) A claim or right arising under [sections 7 through 51] or on a rental agreement, if disputed in good faith, may be settled by agreement.

Section 30. Prohibited provisions — damages. (1) A provision prohibited by [section 15] that is included in a rental agreement is unenforceable.

(2) If one party purposefully uses a rental agreement containing provisions known by that party to be prohibited, the other party may recover, in addition to actual damages, an amount up to 3 months' rent.

Section 31. Unconscionability — court discretion. (1) If the court, as a matter of law, finds that:

(a) a rental agreement or any provision of the rental agreement is unconscionable, the court in order to avoid an unconscionable result may refuse to enforce the agreement or may enforce the remainder of the agreement without the unconscionable provision result; or

(b) a settlement in which a party waives or agrees to forego a claim or right under [sections 7 through 51] or under a rental agreement is unconscionable, the court in order to avoid an unconscionable result may refuse to enforce the settlement, may enforce the remainder of the settlement without the unconscionable provision, or may limit the application of any unconscionable provision.

(2) If unconscionability is put into issue by a party or by the court upon its own motion, the parties must be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making its determination.

Section 32. Landlord's failure to deliver premises — tenant's remedies. (1) If the landlord fails to deliver possession of the lot to the tenant as provided in [section 18], rent abates until possession is delivered and the tenant may:

(a) terminate the rental agreement upon at least 5 days' written notice to the landlord and, upon termination, the landlord shall return all prepaid rent and security; or

(b) demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the lot against the landlord or a person wrongfully in possession and recover the actual damages sustained by the tenant.

(2) If a person's failure to deliver possession is purposeful and not in good faith, an aggrieved party may recover from that person an amount of not more than 3 months' rent or treble damages, whichever is greater.

Section 33. Landlord's failure to maintain premises — tenant's remedies. (1) Unless otherwise provided in [sections 7 through 51], if there is a noncompliance with [section 19] affecting health and safety, the following procedures apply:

(a) The tenant may deliver a written notice to the landlord specifying the nature of the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days. If the noncompliance results in a case of emergency and the landlord fails to remedy the situation within 3 working days after written notice by the tenant of the situation and the tenant's intention to terminate the rental agreement, the tenant may terminate the rental agreement. The rental agreement terminates as provided in the notice subject to the following exceptions:

(i) if the breach is remediable by repairs, the payment of damages, or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate by reason of the breach;

(ii) if substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within 6 months, the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement;

(iii) the tenant may not terminate the rental agreement for a condition caused by the tenant, a member of the tenant's family, or any other persons on the premises with the tenant's consent.

(b) (i) The tenant may make repairs that do not cost more than 1 month's rent and deduct the cost from the rent if the tenant has given the landlord notice and the landlord has not made the repairs within a reasonable time. If the repair is required in a case of emergency and the landlord has not made the repairs, the tenant may have repairs made only by a person qualified to make the repairs.

(ii) If the landlord fails to comply with the rental agreement or [section 19] and the reasonable cost of compliance is less than 1 month's rent, the tenant may recover damages for the breach under subsection (2).

(2) Unless otherwise provided in [sections 7 through 51], the tenant may recover actual damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or [section 19].

(3) The remedy provided in subsection (2) is in addition to a right of the tenant arising under subsection (1).

(4) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant pursuant to Title 70, chapter 25.

Section 34. Landlord's failure to provide essential services — tenant's remedies. (1) If contrary to the rental agreement or [section 19] the landlord purposefully or negligently fails to supply running water, electric, gas, or other essential services, the tenant may give written notice to the landlord specifying the breach and may:

(a) procure reasonable amounts of running water, electricity, gas, and other essential services during the period of the landlord's noncompliance and deduct the actual and reasonable cost from the rent;

(b) recover damages based upon the diminution in the fair rental value of the lot; or

(c) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) A tenant proceeding under this section may not proceed under [section 33] for a landlord's failure to provide essential services.

(3) The rights of a tenant under this section do not arise until the tenant has given notice to the landlord and the landlord has had a reasonable opportunity to correct the conditions.

(4) A tenant does not have rights under this section if the conditions were caused by the act or omission of the tenant, a member of the tenant's family, or any other person on the premises with the tenant's consent.

Section 35. Fire or casualty damage — rights and obligations of tenant. (1) (a) If the lot or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the lot is substantially impaired, the tenant may immediately vacate the premises and notify the landlord in writing within 14 days of vacating the premises that it is the tenant's intention to terminate the rental agreement.

(b) If the tenant complies with the provisions of subsection (1)(a), the rental agreement terminates as of the date the tenant vacates the premises.

(2) If the rental agreement is terminated pursuant to subsection (1), the landlord shall return any prepaid rent and all security recoverable pursuant to Title 70, chapter 25. Accounting or apportionment for rent in the event of termination must be made as of the date of the fire or casualty.

(3) If the tenant's mobile home is damaged or destroyed by fire or casualty to an extent that enjoyment of the mobile home is substantially impaired and [section 47] does not apply, it is the obligation of the mobile home owner to remove the mobile home from the lot within 30 days of the damage or destruction.

(4) All terms and conditions of the rental agreement remain in effect until the mobile home is removed from the premises and all required cleanup is completed.

Section 36. Unlawful or unreasonable entry by landlord — tenant's remedies. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry that is otherwise lawful but has the effect of unreasonably harassing the tenant, the tenant may either obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages.

Section 37. Unlawful ouster, exclusion, or diminution of services — tenant's remedies. (1) If a landlord unlawfully removes or excludes the tenant from the premises or purposefully diminishes services to the tenant by interrupting or causing the interruption of running water, electricity, gas, or other essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount of not more than 3 months' periodic rent or treble damages, whichever is greater.

(2) If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to Title 70, chapter 25, and any prepaid rent.

Section 38. Action for nonpayment of rent — tenant's counterclaim. (1) (a) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount recoverable under the rental agreement or [sections 7 through 51].

(b) (i) The court may order the tenant to pay into court all or part of the rent accrued and afterwards accruing, and the court shall determine the amount due to each party.

(ii) A party to whom a net amount is owed must be paid first from the money paid into court, and the balance must be paid by the other party.

(iii) The court may at any time release money paid into the court to any party if the parties agree or if the court finds a party is entitled to the money.

(c) If there is no rent remaining due after application of this section, judgment must be entered for the tenant in an action for possession.

(2) In an action for rent when the tenant is not in possession, the tenant may counterclaim as provided in subsection (1) but may not be required to pay any rent into court.

Section 39. Noncompliance of tenant generally — landlord's right of termination — damages — injunction. (1) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of [section 27(3)], the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the noncompliance under the provisions of [section 27(3)].

(2) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured, as evidenced by the tenant being arrested or charged with an act that violates the provisions of [section 27(4)], the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the violation and noncompliance under the provisions of [section 27(4)].

(3) Except as otherwise provided in [sections 7 through 51], the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or [section 27]. Except as provided in subsection (4) of this section, if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

(4) Treble damages may not be recovered for the tenant's early termination of the tenancy.

Section 40. Waiver of landlord's right to termination. (1) Acceptance by the landlord of full payment of rent due is a waiver of a claimed breach of a rental agreement only when the claimed breach is the nonpayment of rent.

(2) Acceptance of full payment of rent due when a claimed breach is something other than the nonpayment of rent does not constitute a waiver of any right.

(3) The acceptance of partial payment of rent due does not constitute a waiver of any right.

Section 41. Refusal of access — landlord's remedies. (1) If the tenant refuses to allow lawful access, the landlord may either obtain injunctive relief to compel access or terminate the rental agreement. In either case, the landlord may recover actual damages.

(2) If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises and fails to provide a key as required by [section 23(5)], the landlord may either obtain injunctive relief or terminate the rental agreement.

Section 42. Tenant's failure to maintain lot — landlord's right to enter and repair. If there is noncompliance by the tenant with [section 27] affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the tenant fails to comply as promptly as conditions require in case of emergency or within 14 days after written notice by the landlord specifying the breach and requesting that the tenant remedy the breach within that period of time, the landlord may enter the lot and cause the work to be done in a competent manner and submit an itemized bill for the actual and reasonable cost, the fair and reasonable cost, or the fair and reasonable value of the work as rent on the next date rent is due or, if the rental agreement has terminated, for immediate payment.

Section 43. Remedies for absence or abandonment. (1) (a) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of 7 days, as provided for in [section 28], and the tenant fails to do so, the landlord may recover actual damages from the tenant.

(b) During an absence of the tenant in excess of 7 days, the landlord may enter the lot when reasonably necessary.

(2) (a) If the tenant abandons the lot, the landlord shall make reasonable efforts to rent the lot at a fair rental. If the landlord rents the lot for a term beginning before the expiration of the rental agreement, the rental agreement terminates as of the date of the new tenancy.

(b) If the landlord fails to use reasonable efforts to rent the lot at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is terminated by the landlord as of the date the landlord has notice of the abandonment.

(c) If the tenancy is from month to month or week to week, the term of the rental agreement for the purposes of this subsection (2) is a month or a week, as appropriate.

Section 44. Landlord's remedies after termination — action for possession. (1) If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for any breach of the rental agreement.

(2) (a) An action filed pursuant to subsection (1) in a court must be heard within 20 days after the tenant's appearance or the answer date stated in the summons, except that if the rental agreement is terminated because of

noncompliance under [section 27(4)], the action must be heard within 5 business days after the tenant's appearance or the answer date stated in the summons.

(b) If the action is appealed to the district court, the hearing must be held within 20 days after the case is transmitted to the district court, except that if the rental agreement is terminated because of noncompliance under [section 27(4)], the hearing must be held within 5 business days after the case is transmitted to the district court.

(3) The landlord and tenant may stipulate to a continuance of the hearing beyond the time limit in subsection (2) without the necessity of an undertaking.

(4) In a landlord's action for possession filed pursuant to subsection (1), the court shall rule on the action within 5 days after the hearing.

Section 45. Landlord's recovery of possession limited. Except in the case of abandonment or surrender or as permitted in [sections 7 through 51], a landlord may not recover or take possession of the lot by action or otherwise, including purposeful diminution of services to the tenant by interrupting or causing the interruption of running water, electricity, gas, or other essential services.

Section 46. Holdover remedies — consent to continued occupancy. (1) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or other termination of the rental agreement, the landlord may bring an action for possession. If the tenant's holdover is purposeful and not in good faith, the landlord may recover an amount of not more than 3 months' rent or treble damages, whichever is greater.

(2) In an action for possession or unlawful holdover, the provisions of Title 25, chapter 23, apply, except that the time for filing an answer under Rule 4C(2)(b) is 10 days after service of summons and complaint, exclusive of the date of service.

(3) If the landlord consents to the tenant's continued occupancy [section 14(2)(e)] applies.

Section 47. Disposition of abandoned personal property. (1) If a tenancy terminates in any manner except by court order, if the landlord reasonably believes that the tenant has abandoned all personal property that the tenant has left on the premises, and if at least 5 days has elapsed since the occurrence of the events upon which the landlord has based the belief of abandonment, the landlord may remove the property from the premises.

(2) The landlord shall inventory and store all personal property of the tenant in a place of safekeeping and shall exercise reasonable care for the property. The landlord may charge a reasonable storage and labor charge if the property is stored by the landlord, plus the cost of removal of the property to the place of storage. The landlord may store the property in a commercial storage company, in which case the storage cost includes the actual storage charge plus the cost of removal of the property to the place of storage.

(3) After complying with subsections (1) and (2), the landlord shall:

(a) make a reasonable attempt to notify the tenant in writing that the property must be removed from the place of safekeeping;

(b) notify the local law enforcement office of the property held by the landlord;

(c) make a reasonable effort to determine if the property is secured or otherwise encumbered; and

(d) send a notice by certified mail to the last-known address of the tenant and each known party having a lien or encumbrance of record, stating that at a specified time, not less than 15 days after mailing the notice, the property will be disposed of if not removed.

(4) The landlord may dispose of the property after complying with subsection (3) by:

(a) selling all or part of the property at a public or private sale; or

(b) destroying or otherwise disposing of all or part of the property if the landlord reasonably believes that the value of the property is so low that the cost of storage or sale exceeds the reasonable value of the property.

(5) (a) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the landlord on or before the day specified in the notice that the tenant intends to remove the property and does not do so within 7 days after delivery of the tenant's response, the tenant's property is conclusively presumed to be abandoned.

(b) If the tenant removes the property, the landlord is entitled to storage costs for the period that the property remains in safekeeping, plus the cost of removal of the property to the place of storage. Reasonable storage costs are allowed to a landlord who stores the property, and actual storage costs are allowed to a landlord who stores the property in a commercial storage company. A landlord is entitled to payment of the storage costs allowed under this subsection before the tenant may remove the property.

(6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is caused by the landlord's purposeful or negligent act, in which case the landlord is liable for actual damages.

(7) (a) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, labor, and sale and, subject to any prior security interest of record, any delinquent rent or damages owing on the premises. The landlord shall remit to the tenant the remaining proceeds, if any, together with an itemized accounting.

(b) If the tenant cannot after due diligence be found, the remaining proceeds must be deposited with the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, must revert to the general fund of the county.

Section 48. Retaliatory conduct by landlord prohibited. (1) Except as provided in this section, a landlord may not retaliate by increasing rent, by decreasing services, or by bringing or threatening to bring an action for possession after the tenant:

(a) has complained of a violation applicable to the premises materially affecting health and safety to a governmental agency charged with responsibility for enforcement of a building or housing code;

(b) has complained to the landlord in writing of a violation under [section 19]; or

(c) has organized or become a member of a tenant's union, mobile home park resident association, or similar organization.

(2) If the landlord acts in violation of subsection (1), the tenant is entitled to the remedies provided in [section 37] and has a defense in any retaliatory action against the tenant for possession.

(3) In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. For purposes of this subsection, "rebuttable presumption" means that the trier of fact is required to find the existence of the fact presumed unless evidence is introduced that would support a finding of its nonexistence.

(4) Subsections (1), (2), and (3) do not prevent a landlord from bringing an action for possession if:

(a) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of the tenant's family, or any other persons on the premises with the tenant's consent;

(b) the tenant is in default in rent; or

(c) compliance with the applicable building or housing code requires alteration, remodeling, or demolition that would effectively deprive the tenant of use of the lot.

(5) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under [section 32(2)].

Section 49. Disposition of abandoned mobile home. (1) If a tenancy terminates, if the landlord reasonably believes that the tenant has abandoned a mobile home occupying a mobile home lot, and if at least 5 days has elapsed since the occurrence of events upon which the landlord has formed the belief that the mobile home has been abandoned, the landlord may remove the mobile home from the premises or keep the mobile home stored on the premises.

(2) If the landlord does not keep the mobile home stored on the premises, the landlord shall store the mobile home in a place of safekeeping and in either case shall exercise reasonable care for the mobile home. The landlord may charge the mobile home owner reasonable removal and storage charges.

(3) Regardless of where the landlord stores the mobile home, the landlord shall:

(a) notify the local law enforcement office of the storage;

(b) make a reasonable effort to determine if the mobile home is secured or otherwise encumbered; and

(c) send a notice by certified mail to the last-known address of the mobile home owner and to any person or entity the landlord determines has an interest referred to in subsection (3)(b), stating that at a specified time, not less than 15 days after mailing the notice, the mobile home will be disposed of if the mobile home owner does not respond and remove the mobile home.

(4) If the mobile home owner, within 15 days after receipt of the notice provided for in subsection (3)(c), responds in writing to the landlord that the owner intends to remove the mobile home from where it is stored and does not do so within 20 days after delivery of the owner's response, the mobile home may be conclusively presumed to be abandoned. A landlord is entitled to payment of the

removal and storage costs allowed under subsection (2) before the owner may remove the mobile home.

(5) The landlord may dispose of the mobile home after complying with subsection (3) by:

(a) selling the mobile home at a public or private sale; or

(b) destroying or otherwise disposing of the mobile home if the landlord reasonably believes that the value of the mobile home is so low that the cost of a sale would exceed the reasonable value of the mobile home. Disposal may include having the mobile home removed to an appropriate disposal site.

(6) A public or private sale authorized by this section must be conducted under the provisions of 30-9A-610 or the sheriff's sale provisions of Title 25, chapter 13, part 7.

(7) The landlord has a lien on the mobile home and the proceeds of a sale conducted pursuant to subsection (6) for the reasonable costs of removal, storage, notice, sale, or delinquent rent or damages owing on the premises. The sale proceeds are subject to any prior security interest of record. A writing or recording is not necessary to create the lien provided for in this section. In the case of a sheriff's sale, the sheriff shall conduct the sale upon receipt of an affidavit from the landlord stating facts sufficient to warrant a sale under this section. After satisfaction of the lien, the landlord shall remit to the mobile home owner the remaining proceeds, if any. If the owner cannot after due diligence be found, the remaining proceeds must be deposited in the general fund of the county in which the sale occurred and, if not claimed within 3 years, are forfeited to the county.

Section 50. Grounds for termination of rental agreement. (1) If there is a noncompliance by the tenant with the rental agreement or with a provision of [section 27], the landlord may deliver a written notice to the tenant pursuant to [section 12] specifying the acts or omissions constituting the noncompliance and stating that the rental agreement will terminate upon the date specified in the notice that may not be less than the minimum number of days after receipt of the notice provided for in this section. The rental agreement terminates as provided in the notice for one or more of the following reasons and subject to the following conditions:

(a) nonpayment of rent, late charges, or common area maintenance fees as established in the rental agreement, for which the notice period is 7 days;

(b) a violation of a rule other than provided for in subsection (1)(a) that does not create an immediate threat to the health and safety of any other tenant or the landlord or manager, for which the notice period is 14 days;

(c) a violation of a rule that creates an immediate threat to the health and safety of any other tenant or the landlord or manager, for which the notice period is 24 hours;

(d) late payment of rent, late charges, or common area maintenance fees, as established in the rental agreement, three or more times within a 12-month period if written notice is given by the landlord after each failure to pay, as required by subsection (1)(a), for which the notice period for termination for the final late payment is 30 days;

(e) a violation of a rule that creates an immediate threat to the health and safety of any other tenant or the landlord or manager whether or not notice was

given pursuant to subsection (1)(c) and the violation was remedied as provided in subsection (3), for which the notice period is 14 days;

(f) two or more violations within a 12-month period of the same rule for which notice has been given for each prior violation, as provided in subsection (1)(a), (1)(b), or (1)(c), for which the notice period for the final violation is 30 days;

(g) two or more violations of [section 27(1)] within a 12-month period, for which the notice period for the final violation is 14 days;

(h) any violation of [section 27(3)], for which the notice period is as provided in [section 39(1)];

(i) disorderly conduct that results in disruption of the rights of others to the peaceful enjoyment and use of the premises, for which the notice period is 30 days;

(j) any other noncompliance or violation not covered by subsections (1)(a) through (1)(i) that endangers other tenants or mobile home park personnel or the landlord or manager or causes substantial damage to the premises, for which the notice period is 14 days;

(k) conviction of the mobile home owner or a tenant of the mobile home owner of a violation of a federal or state law or local ordinance, when the violation is detrimental to the health, safety, or welfare of other tenants or the landlord or manager or the landlord's documentation of a violation of the provisions of Title 45, chapter 9, for which the notice period is 14 days;

(l) changes in the use of the land if the requirements of subsection (2) are met, for which the notice period is 180 days;

(m) any legitimate business reason not covered elsewhere in this subsection (1) if the landlord meets the following requirements:

(i) the termination does not violate a provision of this section or any other state statute; and

(ii) the landlord has given the mobile home owner or tenant of the mobile home owner a minimum of 90 days' written notice of the termination.

(2) If a landlord plans to change the use of all or part of the premises from mobile home lot rentals to some other use, each affected mobile home owner must receive notice from the landlord as follows:

(a) The landlord shall give the mobile home owner and a tenant of the mobile home owner at least 15 days' written notice that the landlord will be appearing before a unit of local government to request permits for a change of use of the premises.

(b) After all required permits requesting a change of use have been approved by the unit of local government, the landlord shall give the mobile home owner and a tenant of the mobile home owner 6 months' written notice of termination of tenancy. If the change of use does not require local government permits, the landlord shall give the written notice at least 6 months prior to the change of use. In the notice the landlord shall disclose and describe in detail the nature of the change of use.

(c) Prior to entering a rental agreement during the 6-month notice period referred to in subsection (2)(b), the landlord shall give each prospective mobile home owner, and any tenant of the mobile home owner whose identity and address have been provided to the landlord, written notice that the landlord is

requesting a change in use before a unit of local government or that a change in use has been approved.

(3) Subject to the right to terminate in subsections (1)(d) through (1)(k), if the noncompliance described in subsections (1)(a) through (1)(c) is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate as a result of that noncompliance.

(4) For purposes of calculating the total number of notices given within a 12-month period under subsection (1)(d), only one notice for each violation per month may be included in the calculation.

Section 51. Attorney fees — costs. In an action on a rental agreement or arising under [sections 7 through 51], reasonable attorney fees, together with costs and necessary disbursements, may be awarded to the prevailing party notwithstanding an agreement to the contrary.

Section 52. Repealer. Sections 70-24-313, 70-24-315, 70-24-432, and 70-24-436, MCA, are repealed.

Section 53. Codification instruction. [Sections 7 through 51] are intended to be codified as an integral part of Title 70, and the provisions of Title 70 apply to [sections 7 through 51].

Approved April 26, 2007

CHAPTER NO. 268

[HB 459]

AN ACT REQUIRING THE RESPECTFUL TRANSPORTATION AND DELIVERY OF A FETUS WHEN AN AUTOPSY IS REQUIRED; AND AMENDING SECTION 46-4-123, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-4-123, MCA, is amended to read:

"46-4-123. Inquiry report. The coroner shall make a full report of the facts discovered in all human deaths requiring an inquiry under the provisions of 46-4-122. *In the case of a fetal death inquiry under 46-4-122, the department of justice shall adopt rules for respectful transportation and delivery of the fetus to the place where the autopsy will be performed. The rules must require that a fetus be transported in a crush-proof container and be labeled with the words "fragile—human remains inside".* The report must be made in triplicate on a form provided by the division of forensic sciences of the department of justice. The coroner and the medical examiner shall each retain one copy and shall deliver the other copy to the county attorney. If the coroner orders an autopsy during the course of an inquiry, ~~he~~ *the coroner* shall also provide the medical examiner with a copy of the autopsy report. The forms must be completed and distributed as provided in this section as promptly as practicable."

Approved April 26, 2007

CHAPTER NO. 269

[HB 460]

AN ACT REVISING THE METAL MINE RECLAMATION LAWS; CLARIFYING RECLAMATION PLAN REQUIREMENTS; REQUIRING A TEMPORARY RECLAMATION BOND FOR CERTAIN UNANTICIPATED CIRCUMSTANCES; PROVIDING A PROCESS FOR DETERMINING THE TEMPORARY BOND AMOUNT; AMENDING SECTION 82-4-338, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-338, MCA, is amended to read:

"82-4-338. Performance bond. (1) (a) An applicant for an exploration license or operating permit shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than $200 for each acre or fraction of an acre of the disturbed land, conditioned upon the faithful performance of the requirements of this part, the rules of the board, and the permit. In lieu of a bond, the applicant may file with the department a cash deposit, an assignment of a certificate of deposit, an irrevocable letter of credit, or other surety acceptable to the department. The bond may not be less than the estimated cost to the state to ensure compliance with Title 75, chapters 2 and 5, this part, the rules, and the permit, including the potential cost of department management, operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment, until full bond liquidation can be effected.

(b) A public or governmental agency may not be required to post a bond under the provisions of this part.

(c) A blanket performance bond covering two or more operations may be accepted by the department. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

(d) (i) For an exploration license or operating permit authorizing activities on federal land within the state, the department may accept a bond payable to the state of Montana and the federal agency administering the land. The bond must provide at least the same amount of financial guarantee as required by this part.

(ii) The bond must provide that the department may forfeit the bond without the concurrence of the federal land management agency. The bond may provide that the federal land management agency may forfeit the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable to the department and may also be payable to the federal land management agency. If the bond is payable to the department and the federal land management agency, the department, before accepting the bond, shall enter into an agreement or memorandum of understanding with the federal land management agency providing for administration of the bond funds in a manner that will allow the department to provide for compliance with the requirements of this part, the rules adopted under this part, and the permit.

(iii) The department may not enter into an agreement or memorandum of understanding with a federal land management agency that would require the department to impose requirements on an operator that are more stringent than state law and rules.

(2) (a) The department may calculate one or more reclamation plan components within its jurisdiction with the assistance of one or more third-party contractors selected jointly by the department and the applicant and compensated by the applicant when, based on relevant past experience, the department determines that additional expertise is necessary to calculate the bond amount for reclamation plan components. The department may contract for assistance pursuant to this subsection in determining bond amounts for the initial bond and for any subsequent bond review and adjustment. The mine owner is responsible for the first $5,000 in contractor services provided under this subsection. The mine owner and the department are each responsible for 50% of any amount over $5,000.

(b) To select a third-party contractor as authorized in subsection (2)(a), the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(3) (a) The department shall conduct an overview of the amount of each bond annually and shall conduct a comprehensive bond review at least every 5 years. The department may conduct additional comprehensive bond reviews if, after modification of a reclamation or operation plan, an annual overview, or an inspection of the permit area, the department determines that an increase of the bond level may be necessary. The department shall consult with the licensee or permittee if a review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of compliance with this part, the rules, and the permit, the department shall modify the bonding requirements of that permit or license. The licensee or permittee must have 60 days to negotiate the preliminary bond determination with the department, at the end of which time period the department shall issue the proposed bond determination. The department shall give the licensee or permittee a copy of the bond calculations that form the basis for the proposed bond determination and, for operating permits, publish notice of the proposed bond determination in a newspaper of general circulation in the county in which the operation is located. The department shall issue a final bond determination in 30 days. Unless the licensee or permittee requests a hearing under subsection (3)(b), the licensee or permittee shall post bond with the department in the amount represented by the final bond determination no later than 30 days after issuance of the final bond determination. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a 30-day extension of the deadline.

(b) The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing before the board under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, on the final bond determination by filing with the department, within 30 days of the issuance of the final bond determination, a written request for hearing stating the reason for the request. The request for hearing must specify the amount of bond increase, if any, that the licensee or permittee considers appropriate and state the reasons that the licensee or permittee considers the department's final bond determination to be excessive. As a condition precedent to any right to request a hearing, the licensee or permittee shall post bond with

the department in the amount of the bond increase that the licensee or permittee has stated is appropriate in the request for hearing or the amount that is one-half of the increase contained in the department's final bond determination, whichever amount is greater. If the board determines that additional bond is necessary, the licensee or permittee shall post bond in the amount determined by the board within 30 days of receipt of the board's decision. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a reasonable extension of the deadline.

(c) If a licensee or permittee fails to post bond in accordance with subsection (3)(a) or (3)(b) in the required amounts by the required deadlines, the license or permit is suspended by operation of law and the licensee or permittee shall immediately cease mining and exploration operations until the required bond is posted with and approved by the department.

(4) A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

(5) A bond filed for an operating permit obtained under 82-4-335 may not be released or decreased until the public has been provided an opportunity for a hearing and a hearing has been held if requested. The department shall provide reasonable statewide and local notice of the opportunity for a hearing, including but not limited to publishing the notice in newspapers of general daily circulation.

(6) ~~All~~ *Except as provided in subsection (7), all* bonds required in accordance with the provisions of this section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply with conditions of an operating permit or license. Bonds may be required only for anticipated activities as described in subsection (1). Only those activities that themselves or in conjunction with other activities have a reasonable possibility of occurring may be bonded. Bond calculations, including calculations for the initial bond or for subsequent bond reviews and adjustments, may not include amounts for any occurrence or contingency that is not a reasonably forseeable result of any activity conducted by the applicant.

(7) (a) If the department determines, based on unanticipated circumstances that are discovered following the issuance of a mining permit, that a substantial and imminent danger to public health, public safety, or the environment exists or that there is a reasonable probability that a violation of water quality standards will occur, the department may require an operator to submit an amended reclamation plan to address the danger and to post a temporary bond to guarantee the performance of the amended portion of the reclamation plan. The temporary bond may only be required if the anticipated costs associated with the plan amendment would increase the total bond amount for the current plan by more than 10%, as determined in subsection (7)(b).

(b) (i) In determining the need for the temporary bond and the amount of the temporary bond under subsection (7)(a), the department shall select a third-party contractor in consultation with the operator pursuant to subsection (7)(b)(ii) to provide:

(A) a technical engineering analysis and report on the substantial and imminent danger to public health, public safety, or the environment identified in subsection (7)(a); and

(B) the estimated costs of addressing the potential danger in order to establish the amount of the temporary bond.

(ii) The department shall provide the operator with a list of at least four qualified third-party contractors. The operator shall select two qualified third-party contractors from that list. The department shall select its contractor from the list provided by the operator. The operator shall reimburse the department for the reasonable costs of the third-party contractor.

(c) An approved interim amended reclamation plan and interim bond must remain in effect until the earlier of:

(i) the date that a revised reclamation plan is approved pursuant to 82-4-337 and a permanent bond for the revised reclamation plan is submitted and accepted pursuant to this section; or

(ii) 2 years following the date of submission of a complete application pursuant to 82-4-337 to modify the reclamation plan provision or remedy the conditions that created the need to amend the reclamation plan unless the department approves or denies the complete application within 2 years of submission. The applicant may agree to an extension of this deadline.

(d) Except as provided in subsection (8), the process provided for in this subsection (7) is not subject to the provisions of Title 75, chapter 1.

(8) (a) In determining whether to require amendment of a reclamation plan under subsection (7)(a), the department shall prepare or require the permittee to prepare a written analysis of changes in the reclamation plan that may eliminate or mitigate to an acceptable level the environmental condition. The analysis must include an assessment of the effectiveness of the changes and any potential negative environmental impacts of the changes. The department shall prepare an environmental impact statement pursuant to Title 75, chapter 1, only if the department determines that the changes would not mitigate the condition to an acceptable level or may have potentially significant negative environmental impacts.

(b) If the department determines that preparation of an environmental impact statement is necessary, the permittee shall pay the department's costs pursuant to 75-1-205.

~~(7)~~*(9)* At the applicant's discretion, bonding in addition to that required by this section may be posted. These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section.

~~(8)~~*(10)* (a) If the department determines that there exists at an area permitted or licensed under this part an imminent danger to public health, *public* safety, or the environment caused by a violation of this part, the rules adopted pursuant to this part, or the permit or license and if the permittee or licensee fails or refuses to expeditiously abate the danger, the department may immediately suspend the permit or license, enter the site, and abate the danger. The department may thereafter institute proceedings to revoke the license or permit, declare the permittee or licensee in default, and forfeit a portion of the bond, not to exceed $150,000 or 10% of the bond, whichever is less, to be used to abate the danger. The department shall notify the surety of the forfeiture and the forfeiture amount by certified mail, and the surety shall pay the forfeiture amount to the department within 30 days of receipt of the notice. The department shall, as a condition of any termination of the suspension and revocation proceedings, require that the permittee or licensee reimburse the surety, with interest, for any amount paid to and expended by the department

pursuant to this subsection ~~(8)~~ *(10)* and for the actual cost of the surety's expenses in responding to the department's forfeiture demand.

(b) If the department is unable to permanently abate the imminent danger using the amount forfeited under subsection ~~(8)(a)~~ *(10)(a)*, the department may forfeit additional amounts under the procedure provided in subsection ~~(8)(a)~~ *(10)(a)*.

(c) The department shall return to the surety any money received from the surety pursuant to this subsection *(10)* and not used by the department to abate the imminent danger. The amount not returned to the surety must be credited to the surety and reduces the penal amount of the bond on a dollar-for-dollar basis.

(d) Any interest accrued on bond proceeds that is not required to abate the imminent danger determined in subsection ~~(8)(a)~~ *(10)(a)* must be returned to the surety, unless otherwise agreed to in writing by the surety.

~~(9)~~*(11)* If a bond is terminated as a result of the action or inaction of a licensee or permittee or is canceled or otherwise terminated by the surety issuing the bond and the licensee or permittee fails to post a new bond for the entire amount of the terminated bond within 30 days following the notice of termination provided to the department, then the license or permit must be immediately suspended without further action by the department."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] does not apply to a reclamation plan amendment for backfill of a pit required by or as a result of a court judgment entered prior to January 1, 2007, or by a subsequent judgment requiring backfill of the same pit at the same facility.

Approved April 26, 2007

CHAPTER NO. 270

[HB 467]

AN ACT REVISING THE MONTANA MEDICAL LEGAL PANEL ACT; CLARIFYING THAT CLAIMS AGAINST HEALTH CARE PROVIDERS IN CERTAIN GOVERNMENTAL INFIRMARIES ARE NOT SUBJECT TO THE PROVISIONS OF THE ACT; INCLUDING TELEMEDICINE PHYSICIANS UNDER THE PROVISIONS OF THE ACT; AMENDING SECTION 27-6-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-6-103, MCA, is amended to read:

"27-6-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Dentist" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the assessment:

(i) has as the individual's principal residence or place of dental practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of dentistry; or

(b) for all other purposes, a person licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as the principal residence or place of dental practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render dental services and whose shareholders, partners, or owners were individual dentists licensed to practice dentistry under the provisions of Title 37, chapter 4.

(2) (a) "Health care facility" means a facility~~, other than a governmental infirmary but including a university or college infirmary,~~ licensed as a health care facility under Title 50, chapter 5.

(b) For the purposes of this chapter, a health care facility does not include*:*

(i) an end-stage renal dialysis facility~~,~~*;*

(ii) a home infusion therapy agency~~, or~~*;*

(iii) a residential care facility*; or*

(iv) a governmental infirmary, except a university or college infirmary.

(3) "Health care provider" means a physician, a dentist, a podiatrist, or a health care facility.

(4) "Hospital" means a hospital as defined in 50-5-101.

(5) "Malpractice claim" means a claim or potential claim of a claimant against a health care provider for medical or dental treatment, lack of medical or dental treatment, or other alleged departure from accepted standards of health care that proximately results in damage to the claimant, whether the claimant's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

(6) "Panel" means the Montana medical legal panel provided for in 27-6-104.

(7) "Physician" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the assessment:

(i) has as the individual's principal residence or place of medical practice the state of Montana *or practices telemedicine as defined in 37-3-342*;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of medicine; or

(b) for all other purposes, a person licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as the principal residence or place of medical practice the state of Montana *or practiced telemedicine as defined in 37-3-342* and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render medical services and

whose shareholders, partners, or owners were individual physicians licensed to practice medicine under the provisions of Title 37, chapter 3.

(8) "Podiatrist" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice podiatry under the provisions of Title 37, chapter 6, who at the time of the assessment:

(i) has as the individual's principal residence or place of podiatric practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of podiatry; or

(b) for all other purposes, a person licensed to practice podiatry under the provisions of Title 37, chapter 6, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as the principal residence or place of podiatric practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render podiatric services and whose shareholders, partners, or owners were individual podiatrists licensed to practice podiatry under the provisions of Title 37, chapter 6."

Section 2. Section 27-6-105, MCA, is amended to read:

"27-6-105. What claims panel to review — *exceptions.* The panel shall review all malpractice claims or potential claims against health care providers covered by this chapter except*:*

(1) those claims subject to a valid arbitration agreement allowed by law or upon which suit has been filed prior to April 19, 1977*; and*

(2) a claim brought by an inmate of a correctional facility against a health care provider arising from a health care service provided by the health care provider within the facility."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2007

CHAPTER NO. 271

[HB 468]

AN ACT PROVIDING THAT THE PROCEEDINGS AND RECORDS OF THE MONTANA STATE BOARD OF MEDICAL EXAMINERS' PROGRAM TO ASSIST PHYSICIANS ARE CONFIDENTIAL.

Be it enacted by the Legislature of the State of Montana:

Section 1. Confidentiality of information — physician assistance program. (1) The proceedings and records of the program created by the board pursuant to 37-3-203(4) relating to a physician who has received assistance from the program are considered to be proceedings and records of a professional standards review committee under 37-2-201 and are not subject to discovery or introduction into evidence in any administrative or judicial proceeding, except

that the proceedings and records of the program, as they pertain to a physician, are subject to discovery or introduction into evidence in a disciplinary proceeding before the board against the physician.

(2) Proceedings and records of the program created by the board pursuant to 37-3-203(4) do not include health care information, as defined in 50-16-803, maintained by a health care provider in the provision of health care services to a physician who is receiving or has received assistance from the program. The health care information is subject to discovery from the physician or health care provider and to introduction into evidence in an administrative or judicial proceeding as may otherwise be allowed by law.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 3, part 2, and the provisions of Title 37, chapter 3, part 2, apply to [section 1].

Approved April 26, 2007

CHAPTER NO. 272

[HB 487]

AN ACT INCREASING THE AMOUNT OF REVENUE OR FINANCIAL ASSISTANCE RECEIVED BY A LOCAL GOVERNING ENTITY THAT IS NECESSARY TO REQUIRE THAT AN AUDIT BE CONDUCTED; AND AMENDING SECTION 2-7-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-7-503, MCA, is amended to read:

"2-7-503. Financial reports and audits of local government entities. (1) The governing body or managing or executive officer of a local government entity, other than a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, be in a form prescribed by the department, and be completed within 6 months of the end of the reporting period. The local government entity shall submit the financial report to the department for review.

(2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The superintendent of public instruction shall prescribe the reporting requirements for school districts.

(3) (a) The governing body or managing or executive officer of each local government entity receiving revenue or financial assistance in the period covered by the financial report in excess of ~~$200,000~~ *the threshold dollar amount established by the director of the office of management and budget pursuant to 31 U.S.C. 7502(a)(3), but regardless of the source of revenue or financial assistance,* shall cause an audit to be made at least every 2 years. The audit must cover the entity's preceding 2 fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to the department for review within 1 year from the close of the last fiscal year covered by the audit.

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection (3)(a) shall at least once every 4 years, if directed by the department, or, in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.

(4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance audit of an individual financial assistance program that a local government is required to conduct under any other state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency with the information that it requires to carry out its responsibilities under state or federal law or regulation, the state agency shall rely upon and use that information to plan and conduct its own audits or reviews in order to avoid a duplication of effort.

(5) In addition to the audits required by this section, the department may at any time conduct or contract for a special audit or review of the affairs of any local government entity referred to in this part. The special audit or review must, to the extent practicable, build upon audits performed pursuant to this part.

(6) The fee for the special audit or review must be a charge based upon the costs incurred by the department in relation to the special audit or review. The audit fee must be paid by the local government entity to the department of revenue and must be deposited in the enterprise fund to the credit of the department."

Approved April 26, 2007

CHAPTER NO. 273

[HB 520]

AN ACT GENERALLY REVISING ELECTION LAWS; REVISING TERMINOLOGY; AMENDING PROVISIONS RELATED TO PUBLIC NOTICE, OFFICE HOURS, WRITE-IN CANDIDATES, CANDIDATE VACANCIES, FILING PROCEDURES, BALLOTS, PRECINCT REGISTERS, THE ELIGIBILITY OF POLITICAL PARTIES TO HOLD PRIMARY ELECTIONS, AND VOTE-COUNTING SYSTEMS; AMENDING TIMELINES FOR NOMINATION OF PRESIDENTIAL AND VICE PRESIDENTIAL ELECTORS; REVISING WHEN BALLOTS ARE AVAILABLE FOR ABSENTEE VOTING; REVISING THE INFORMATION INCLUDED IN THE VOTER INFORMATION PAMPHLET; AMENDING SECTIONS 13-1-101, 13-1-108, 13-1-111, 13-1-202, 13-2-304, 13-10-204, 13-10-209, 13-10-211, 13-10-301, 13-10-311, 13-10-326, 13-10-503, 13-10-601, 13-12-205, 13-12-207, 13-13-117, 13-13-201, 13-13-205, 13-13-213, 13-13-214, 13-13-241, 13-15-107, 13-15-201, 13-15-206, 13-15-209, 13-15-301, 13-17-103, 13-17-211, 13-17-212, 13-25-101, AND 13-27-401, MCA; AND REPEALING SECTIONS 13-13-203, 13-16-414, 13-17-206, AND 13-17-305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-1-101, MCA, is amended to read:

"13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Active elector" means an elector who voted in the previous federal general election and whose name is on the active list.

(2) "Active list" means a list of active electors maintained pursuant to 13-2-220.

(3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) "Application for voter registration" means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, submitted to the election administrator, and contains voter registration information subject to verification as provided by law.

(5) "Ballot" means~~:~~

~~(a)~~ a paper ballot ~~used with a paper-based system~~ *counted manually or a paper ballot counted by a machine*, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots~~; or~~

~~(b) a nonpaper ballot, such as a ballot used with a nonpaper-based system, such as a lever machine, a direct recording electronic machine, or other technology~~.

(6) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; and

(c) an officeholder who is the subject of a recall election.

(7) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees; or

(iv) filing fees paid by the candidate.

(8) "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(9) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.

(10) "Elector" means an individual qualified to vote under state law.

(11) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (7);

(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

(12) "Federal election" means a general or primary election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

(13) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).

(14) "Inactive elector" means an individual who failed to vote in the preceding federal general election and whose name was placed on an inactive list pursuant to 13-2-220.

(15) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220.

(16) "Individual" means a human being.

(17) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question. For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon approval by the secretary of state of the form of the petition or referral.

(18) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

(19) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (6).

(20) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

(21) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

(22) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.

(23) "Provisional ballot" means a ballot cast by an elector whose identity and eligibility to vote have not been verified as provided by law.

(24) "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose eligibility has not yet been verified as provided by law.

(25) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(26) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(27) "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

(28) "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

(29) "Transfer form" means a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector's registration when the elector's residence address has changed within the county.

(30) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

(31) "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ~~or nonpaper~~ ballot."

Section 2. Section 13-1-108, MCA, is amended to read:

"13-1-108. Notice of special elections. Notice of any special election ~~shall~~ *must* be published at least ~~once a week for the 3 successive weeks before the election~~ *three times in the 4 weeks immediately preceding the close of registration* on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the jurisdiction where the election will be held. *The provisions of this section are fulfilled upon the third publication.*"

Section 3. Section 13-1-111, MCA, is amended to read:

"13-1-111. Qualifications of voter. (1) ~~No~~ *A* person may ~~be entitled to~~ *not* vote at elections unless ~~he has the following qualifications~~ *the person is*:

(a) ~~He must be~~ registered as required by law~~.~~*;*

(b) ~~He must be~~ 18 years of age or older~~.~~*;*

(c) ~~He must be~~ a resident of the state of Montana and of the county in which ~~he~~ *the person* offers to vote for at least 30 days~~.~~*, except as provided in 13-2-514; and*

(d) ~~He must be~~ a citizen of the United States.

(2) ~~No~~ *A* person convicted of a felony ~~has~~ *does not have* the right to vote while ~~he~~ *the person* is serving a sentence in a penal institution.

(3) ~~No~~ *A* person adjudicated to be of unsound mind ~~has~~ *does not have* the right to vote~~,~~ unless ~~he~~ *the person* has been restored to capacity as provided by law."

Section 4. Section 13-1-202, MCA, is amended to read:

"13-1-202. Forms and rules prescribed by secretary of state — consultation. (1) In carrying out the responsibilities under 13-1-201, the secretary of state shall prepare and deliver to the election administrators:

(a) written directives and instructions relating to and based on the election laws;

(b) sample copies of prescribed and suggested forms; and

(c) advisory opinions on the effect of election laws other than those laws in chapter 35, 36, or 37 of this title.

(2) The secretary of state may prescribe the design of any election form required by law. The secretary of state shall seek the advice of election administrators and printers in designing the required forms.

(3) Each election administrator shall comply with the directives and instructions and shall provide election forms prepared as prescribed.

(4) Each election administrator shall provide data to the secretary of state that the secretary of state determines is necessary to:

(a) evaluate voting system performance against the benchmark standard adopted pursuant to 13-17-103~~(2)~~;

(b) evaluate the security, accuracy, and accessibility of elections; and

(c) assist the secretary of state in making recommendations to improve voter confidence in the integrity of the election process.

(5) The secretary of state shall regularly consult with and seek the advice of local election administrators in implementing the provisions of this section."

Section 5. Section 13-2-304, MCA, is amended to read:

"13-2-304. Late registration — late changes — nonapplicability for school elections. (1) Except as provided in subsections (2) and (3), the following provisions apply:

(a) An elector may register or change the elector's voter registration information after the close of regular registration in 13-2-301 and vote in the election if the election administrator in the county where the elector resides receives and verifies the elector's voter registration information prior to the close of the polls on election day.

(b) *Late registration is closed from noon to 5 p.m. on the day before the election.*

(c) Except as provided in 13-2-514(2)(a), an elector who registers or changes the elector's voter information pursuant to this section may vote in the election only if the elector votes at the county election administrator's office.

(2) If an elector has already been sent an absentee ballot for the election, the elector may change the elector's voter registration information only with respect to the next election.

(3) The provisions of subsection (1) do not apply with respect to an elector's registration to vote in a school election held pursuant to Title 20."

Section 6. Section 13-10-204, MCA, is amended to read:

"13-10-204. Write-in nominations. *(1)* An individual nominated by having the individual's name written in and counted as provided in 13-15-206(5) or otherwise placed on the primary ballot and desiring to accept the nomination may not have the individual's name appear on the general election ballot unless the individual:

~~(1) files with the secretary of state or election administrator, no later than 10 days after the official canvass, a written declaration indicating acceptance of the nomination;~~

~~(2) pays the required filing fee or, if indigent, complies with 13-10-203;~~

~~(3)~~*(a)* received at least 5% of the total votes cast for the successful candidate for the same office at the last general election;

(b) files with the secretary of state or election administrator, no later than 10 days after the official canvass, a written declaration indicating acceptance of the nomination; and

~~(4)~~*(c)* complies with the provisions of 13-37-126.

(2) A write-in candidate who was exempt from filing a declaration of intent under 13-10-211 shall, at the time of filing the declaration of acceptance, pay the filing fee specified in 13-10-202 or, if indigent, file the appropriate documents described in 13-10-203."

Section 7. Section 13-10-209, MCA, is amended to read:

"13-10-209. Arrangement and preparing of primary ballots. (1) (a) Ballots for a primary election must be arranged and prepared in the same manner and number as provided in chapter 12 for general election ballots,

except that there must be separate ballots for each political party entitled to participate. The name of the political party must appear at the top of the separate ballot for that party and need not appear opposite each candidate's name.

(b) Nonpartisan offices and ballot issues may be prepared on separate ballots or may appear on the same ballot as partisan offices if:

(i) each section is clearly identified as separate;

(ii) the nonpartisan offices and ballot issues appear on each party's ballot; and

(iii) with respect to ballot issues, written approval is obtained as provided in 13-27-502.

(2) An election administrator does not need to prepare a primary ballot for a political party if:

(a) the party does not have candidates for more than half of the offices to appear on the ballot; or

(b) no more than one candidate files for nomination by that party for any of the offices to appear on the ballot.

(3) If, pursuant to subsection (2), a primary ballot for a political party is not prepared, the secretary of state shall certify that a primary election is unnecessary for that party and shall instruct the election administrator to certify the names of the candidates for that party for the general election ballot only.

(4) The separate ballots for each party must have the same appearance. Each set of party ballots must bear the same number. If prepared as a separate ballot, the nonpartisan ballot ~~must~~ *may* have a different appearance than the party ballots but must be numbered in the same order as the party ballots.

(5) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or a separate ballot. A separate ballot may have a different appearance than the other ballots in the election but must be numbered in the same order.

(6) Each elector must receive a set of ballots that includes the party, nonpartisan, and ballot issue choices."

Section 8. Section 13-10-211, MCA, is amended to read:

"13-10-211. Declaration of intent for write-in candidates. (1) Except as provided in subsection (7), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. Except as provided in subsections (2) and (3), the declaration must be filed no later than 5 p.m. on the 15th day before the election and must contain:

(a) (i) the candidate's first and last names;

(ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;

(iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and

(iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;

(b) the candidate's mailing address;

(c) a statement declaring the candidate's intention to be a write-in candidate;

(d) the title of the office sought;

(e) the date of the election;

(f) the date of the declaration; and

(g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office that the write-in candidate is seeking:

~~(a)~~ dies;

~~(b) withdraws from the election;~~ or

~~(c)~~ is charged with a felony offense.

(3) A person seeking to become a write-in candidate for a trustee position on a school board shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

(4) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(5) A declaration of intent may be sent by facsimile transmission if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state.

(6) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the secretary of state or the election administrator.

(7) The requirements in subsection (1) do not apply if:

(a) an election is held;

(b) a person's name is written in on the ballot;

(c) the person is qualified for and seeks election to the office for which the person's name was written in; and

(d) no other candidate has filed a declaration or petition for nomination or a declaration of intent."

Section 9. Section 13-10-301, MCA, is amended to read:

"13-10-301. Casting of ballot. (1) Unless otherwise provided by law, the conduct of the primary election, the voting procedure, the counting, tallying, and return of ballots and all election records and supplies, the canvass of votes, the certification and notification of nominees, recounts, procedures upon tie votes, and any other necessary election procedures must be at the same times and in the same manner as provided for in the laws for the general election.

(2) At a primary election, the elector shall cast votes on only one of the party ballots, preparing the ballot as provided in 13-13-117. After casting votes on any other ballots received other than the party ballots, the elector shall ensure the proper disposition of the ballots in accordance with instructions provided pursuant to 13-13-112.

(3) The ~~election judge shall handle the~~ elector's ballot *must be handled* as prescribed in 13-13-117."

Section 10. Section 13-10-311, MCA, is amended to read:

"13-10-311. Election judges' duties when preparing for count. (1) Except as otherwise provided in this section, election judges at the primary election shall prepare for a count of votes ~~cast on paper ballots~~ in the manner prescribed in 13-15-201.

(2) In preparing for a count ~~of paper ballots~~, the election judges shall:

(a) separate the ballots for each political party and count each party's ballots separately;

(b) reconcile the total number of party ballots and the separate total number of other ballots used at the election with the number of electors voting. Any discrepancies in the reconciliations must be handled as provided in 13-15-201.

(c) list each party's candidates separately in the tally books; and

(d) bundle the voted ballots for each party separately for return to the election administrator. The unvoted ballots must be bundled in accordance with rules established pursuant to 13-12-202.

~~(3) At a primary election, the election judges shall prepare for the counting of nonpaper ballots in the manner prescribed under rules adopted pursuant to 13-17-211.~~"

Section 11. Section 13-10-326, MCA, is amended to read:

"13-10-326. Vacancy prior to primary election. (1) If a candidate for nomination for a partisan office dies or withdraws 75 days or more before the primary election, the affected political party may appoint someone to replace the candidate by the procedure provided in 13-10-327.

(2) If ~~the death or withdrawal occurs~~ *a candidate for nomination for a partisan office dies* less than 75 days before the primary, the affected political party shall appoint a candidate after the primary as provided in 13-10-327 if a candidate for that office for that party was not nominated at the primary election.

(3) This section does not allow a political party to appoint a candidate for an office if no candidate for nomination by that party filed for the office before the primary election."

Section 12. Section 13-10-503, MCA, is amended to read:

"13-10-503. Filing deadlines. (1) A petition for nomination and the affidavits of circulation required by 13-27-302~~, accompanied by the required filing fee, must be filed with the same officer with whom other nominations for the office sought are filed. Petitions~~ must be submitted, at least 1 week before the deadline for filing *provided in subsection (2)(b)*, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306. In the event there are insufficient signatures on the petition, additional signatures may be submitted before the deadline for filing.

(2) *(a) If sufficient signatures are verified and certified pursuant to 13-10-502, the county election administrator shall file the petition for nomination with the same officer with whom other nominations for the office sought are filed.*

(b) Except as provided in 13-10-504, each petition *for nomination, accompanied by the required filing fee,* must be filed *by 5 p.m. on the day* before the scheduled primary election or *by 5 p.m. on* the *day of the* filing deadline for the special or general election if a primary election is not scheduled."

Section 13. Section 13-10-601, MCA, is amended to read:

"13-10-601. Parties eligible for primary election — petitions by minor parties. (1) Each political party that had a candidate for a statewide office *in either of the last two general elections* who received a total vote that was 5% or more of the total votes cast for the *most recent* successful candidate for governor ~~in either of the last two general elections~~ shall nominate its candidates for public office, except for presidential electors, by a primary election as provided in this chapter.

(2) *(a)* A political party that does not qualify to hold a primary election under subsection (1) may qualify to nominate its candidates by primary election by presenting a petition, in a form prescribed by the secretary of state, requesting the primary election ~~and~~.

(b) The petition must be signed by a number of registered voters equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election or 5,000 electors, whichever is less, which number must include the registered voters in more than one-third of the legislative districts equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election in those districts or 150 electors in those districts, whichever is less.

(c) ~~The~~ *At least 1 week before the filing deadline provided in subsection (2)(d), the* petition and the affidavits of circulation required by 13-27-302 must be presented to the election administrator of the county in which the signatures were gathered to be verified under the procedures provided in 13-27-303 through 13-27-306.

(d) The election administrator shall forward the verified petition to the secretary of state at least 75 days before the date of the primary. ~~The petition must be submitted to the election administrator at least 1 week before the deadline for submitting the verified petition to the secretary of state.~~"

Section 14. Section 13-12-205, MCA, is amended to read:

"13-12-205. Arrangement of names — rotation on ballot. (1) The candidates' names must be arranged alphabetically on the ballot according to surnames under the title of the respective offices and rotated as provided in this section.

(2) (a) ~~Except as provided in subsection (3), if~~ *If* two or more individuals are candidates for nomination or election to the same office, the election administrator shall divide the ballot forms into sets equal in number to the greatest number of candidates for any office. The candidates for nomination to an office by each political party must be considered separately in determining the number of sets necessary for a primary election.

(b) The election administrator shall begin with a form arranged alphabetically and rotate *the names of the candidates* so that each candidate's

name will be at the top of the list for each office on substantially an equal number of ballots. If it is not numerically possible to place each candidate's name at the top of the list, the names must be rotated in groups so that each candidate's name is as near the top of the list as possible on substantially an equal number of ballots.

(c) If the county contains more than one legislative district, the election administrator may rotate each candidate's name so that it will be at or near the top of the list for each office on substantially an equal number of ballots in each house district.

(d) For purposes of rotation, the offices of president and vice president and of governor and lieutenant governor must be considered as a group.

(e) No more than one of the sets may be used in preparing the ballot for use in any one precinct, and all ballots furnished for use in any precinct must be identical.

~~(3) In a precinct where a nonpaper-based voting system is used, the election administrator need not rotate candidates' names as provided in subsection (2) on the paper ballots required under 13-17-305 unless more than 5% of the electors voting in the precinct in the last preceding general election voted using paper ballots. If the candidates' names are not rotated, the election administrator shall determine by lot the arrangement of the names on the paper ballot required under 13-17-305.~~"

Section 15. Section 13-12-207, MCA, is amended to read:

"13-12-207. Order of placement. (1) The order on the ballot for state and ~~national~~ *federal* offices must be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a heavy black line must be the names and spaces for voting for candidates for president and vice president. The names of candidates for president and vice president for each political party must be grouped together.

(b) United States senator;

(c) United States representative;

(d) governor and lieutenant governor;

(e) secretary of state;

(f) attorney general;

(g) state auditor;

(h) ~~public service commissioners~~ *state superintendent of public instruction*;

(i) ~~state superintendent of public instruction~~ *public service commissioners*;

(j) clerk of the supreme court;

(k) chief justice of the supreme court;

(l) justices of the supreme court;

(m) district court judges;

(n) state senators;

(o) members of the house of representatives.

(2) The following order of placement must be observed for county offices:

(a) clerk of the district court;

(b) county commissioner;

(c) county clerk and recorder;

(d) sheriff;

(e) coroner;

(f) county attorney;

(g) county superintendent of schools;

(h) county auditor;

(i) public administrator;

(j) county assessor;

(k) county treasurer;

(l) surveyor;

(m) justice of the peace.

(3) The secretary of state shall designate the order for placement on the ballot of any offices not on the above lists, except that the election administrator shall designate the order of placement for municipal, charter, or consolidated local government offices and district offices when the district is part of only one county.

(4) Constitutional amendments must be placed before statewide referendum and initiative measures. Ballot issues for a county, municipality, school district, or other political subdivision must follow statewide measures in the order designated by the election administrator.

(5) If any offices are not to be elected they may not be listed, but the order of the offices to be filled must be maintained.

(6) If there is a short-term and a long-term election for the same office, the long-term office must precede the short-term."

Section 16. Section 13-13-117, MCA, is amended to read:

"13-13-117. Method of voting. (1) (a) ~~Upon receipt of a paper ballot or, if a nonpaper ballot is used, after~~ *After* marking the precinct register pursuant to 13-13-115 *and receiving a ballot*, an elector shall immediately retire to a voting station and prepare the elector's ballot in the manner prescribed in the instructions provided pursuant to 13-13-112.

(b) An elector who spoils the elector's ballot must be provided with another ballot in place of the spoiled ballot.

(2) (a) After the elector has completed voting, the elector shall ensure the proper disposition of the elector's ballot in accordance with instructions provided pursuant to 13-13-112.

(b) ~~If a paper ballot was cast, an~~ *An* election judge *or voting system* shall place the ballot in the ballot box immediately without ~~opening or examining~~ *allowing anyone to examine* the ballot. ~~Only an election judge may put a ballot in a ballot box, and nothing~~ *Nothing* other than a ballot may be put in a ballot box."

Section 17. Section 13-13-201, MCA, is amended to read:

"13-13-201. Voting by absentee ballot — procedures. (1) A legally registered elector or provisionally registered elector is entitled to vote by absentee ballot as provided for in this part.

(2) The elector may vote absentee ~~only by paper ballot and~~ by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope containing one ballot for each election being held in the return envelope;

(d) executing the affidavit printed on the return envelope; and

(e) returning the return envelope with all appropriate enclosures by regular mail, postage ~~prepaid~~ *paid*, or by delivering it to the election administrator ~~of~~ *or, pursuant to 13-13-229, to* the special absentee election board ~~established pursuant to 13-13-225~~.

(3) ~~(a)~~ A provisionally registered elector may also enclose in the outer return envelope a copy of the elector's photo identification showing the elector's name~~, including~~. *The photo identification may be* but *is* not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification. If the provisionally registered elector does not enclose a photo identification, the elector may enclose a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address.

~~(b) An elector's absentee ballot must be handled as provided in 13-13-241.~~"

Section 18. Section 13-13-205, MCA, is amended to read:

"13-13-205. When ~~paper~~ ballots to be available. (1) The election administrator shall ensure that ~~paper~~ ballots are printed ~~and available for absentee voting~~ at least:

(a) 30 days prior to an election for those elections held in compliance with 13-1-107(1);

(b) 20 days prior to an election for those elections held in compliance with 13-1-104(2) and (3) and 13-1-107(2); and

(c) 45 days prior to an election held in conjunction with a federal general election in compliance with 13-1-104(1).

(2) A ballot may not be provided to an elector for absentee voting sooner than 30 days before an election, except that an absentee ballot requested pursuant to Title 13, chapter 21, may be sent to the elector as soon as the ballot is printed.

~~(2) If paper ballots are sent more than 30 days before an election, the election administrator shall include a notice that the voter information pamphlet, when required to be distributed, will be provided pursuant to 13-27-410.~~"

Section 19. Section 13-13-213, MCA, is amended to read:

"13-13-213. Transmission of application to election administrator — delivery of ballot. (1) All absentee ballot application forms must be addressed to the appropriate election official.

(2) Except as provided in subsection (4), the elector may mail the application directly to the election administrator or deliver the application in person to the election administrator. An agent designated pursuant to 13-1-116 or a third party may collect the elector's application and forward it to the election administrator.

(3) The election administrator shall compare the signature on the application with the applicant's signature on the registration card. If convinced

that the individual making the application is the same as the one whose name appears on the registration card, the election administrator shall deliver the ballot to the elector in person or as otherwise provided in 13-13-214*, subject to 13-13-205*.

(4) In lieu of the requirement provided in subsection (2), an elector who requests an absentee ballot pursuant to 13-13-212(2) may return the application to the special absentee election board. Upon receipt of the application, the special absentee election board shall examine the signatures on the application and a copy of the voting registration card to be provided by the election administrator. If the special absentee election board believes that the applicant is the same person as the one whose name appears on the registration card, the special absentee election board shall provide a ballot to the elector*, subject to 13-13-205*."

Section 20. Section 13-13-214, MCA, is amended to read:

"13-13-214. Mailing absentee ballot to elector — delivery to person other than elector. (1) (a) Except as provided in 13-13-213 and in subsection (1)(b) of this section, ~~as soon as the official paper absentee ballots are printed,~~ the election administrator shall*, no sooner than authorized in 13-13-205,* ~~immediately send by~~ mail, postage prepaid, to each legally registered elector and provisionally registered elector from whom the election administrator has received a valid absentee ballot application under 13-13-211 and 13-13-212 whatever official ballots are necessary.

(b) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state or pursuant to 13-1-116;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots:

(a) a form prescribed by the secretary of state that allows the elector to request absentee ballots for each subsequent federal election only or for all subsequent elections, as provided for in 13-13-212(4);

(b) a secrecy envelope, free of any marks that would identify the voter; and

(c) an envelope for the return of the ballots. The envelope must be self-addressed by the election administrator and an affirmation in the form prescribed by the secretary of state must be printed on the back of the envelope.

(3) The election administrator shall ensure that the ballots provided to an absentee elector are marked as provided in 13-13-116 and remove the stubs from the ballots, attaching the stubs to the elector's absentee ballot application.

(4) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.

(5) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments that may be used to mark the absentee ballot. The instructions must include information regarding use of the secrecy envelope and use of the return envelope. The election administrator shall include a voter information pamphlet with the instructions if:

(a) a statewide ballot issue appears on the ballot mailed to the elector; and

(b) the elector requests a voter information pamphlet."

Section 21. Section 13-13-241, MCA, is amended to read:

"13-13-241. Examination of absentee ballot return envelopes — deposit of absentee and unvoted ballots. (1) (a) ~~As soon as~~ *After* an absentee ballot is received, an election administrator shall compare the signature of the elector on the absentee ballot request with the signature on the absentee ballot return envelope.

(b) If the elector is legally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall handle the ballot as a regular ballot.

(c) (i) If the elector is provisionally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall open the outer return envelope and determine whether the elector's voter identification information, if enclosed pursuant to 13-13-201, is sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.

(ii) If the voter identification information is sufficient to legally register the elector, the ballot must be handled as a regular ballot.

(iii) If voter identification information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.

(2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes.

(4) If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector by mail or by the most expedient method available under rules adopted by the secretary of state that the elector's identification information was insufficient and that the elector's ballot will be treated as a provisional ballot until the elector provides sufficient information, pursuant to rules adopted by the secretary of state. If the elector is notified by mail, the election administrator shall provide a self-addressed return envelope along with a description of the information necessary for the absentee elector to reclassify the provisional ballot as a regular ballot.

(5) If the signature on the absentee ballot return envelope does not match the signature on the absentee ballot request form, the absentee ballot must be rejected. The election administrator, without opening the absentee ballot return envelope, shall mark across it the reason for rejection. Unopened rejected

absentee ballot return envelopes must be handled in the same manner as provided for rejected ballots in 13-15-108(1).

(6) After receiving an absentee ballot secrecy envelope, without opening the secrecy envelope, the election judges shall on election day place the secrecy envelope in the proper ballot box."

Section 22. Section 13-15-107, MCA, is amended to read:

"13-15-107. Handling and counting provisional and challenged ballots. (1) To verify eligibility to vote, a provisionally registered elector who casts a provisional ballot ~~in person shall provide information to the election administrator as listed below:~~

~~(a) present in person at the office of the election administrator by 5 p.m. on the day after the election a photo identification or other identifying document as described in 13-13-114(1)(a);~~

~~(b) send by facsimile or electronic mail by 5 p.m. on the day after the election a copy or scanned document that meets the identification requirements of 13-13-114(1)(a);~~

~~(c) mail a nonreturnable copy or nonreturnable original document described in 13-13-114(1)(a) in a self-addressed return envelope provided by the election administrator. If the elector mails a document, the postmark on the envelope must be for the day of the election or the day following the election.~~

~~(d) if applicable, the information to respond to a challenge under 13-13-301~~ *has until 5 p.m. on the day after the election to provide valid identification information either in person, by facsimile, by electronic mail, or by mail postmarked no later than the day after the election*.

(2) (a) If a legally registered elector casts a provisional ballot because the elector failed to provide sufficient identification as required pursuant to 13-13-114(1)(a), the election administrator shall compare the elector's signature on the affirmation required under 13-13-601 to the elector's signature on the elector's voter registration card.

(b) If the signatures match, the election administrator shall handle the ballot as provided in subsection (6).

(c) If the signatures do not match, the ballot must be rejected and handled as provided in 13-15-108.

~~(3) The election administrator shall determine prior to an election whether an absentee voter has provided sufficient identification to allow a ballot to be counted. If the information is insufficient, the election administrator shall follow procedures described in 13-13-241 to allow an absentee elector who failed to provide proper identifying information in the outer return envelope to verify eligibility to vote. An absentee elector whose ballot is determined to be provisional has until 5 p.m. on the day after the election to provide valid identification information either in person, by facsimile, by electronic mail, or by mail postmarked on the day of the election or the day after the election.~~

~~(4)~~*(3)* A provisional ballot must be counted if the election administrator verifies the elector's eligibility pursuant to rules adopted under 13-13-603. However, if the election administrator cannot verify the elector's eligibility under the rules, the elector's provisional ballot must be rejected and handled as provided in 13-15-108. If the ballot is provisional because of a challenge and the challenge was made on the grounds that the elector is of unsound mind or serving a felony sentence in a penal institution, the elector's provisional ballot

must be counted unless the challenger provides documentation by 5 p.m. on the day after the election that a court has established that the elector is of unsound mind or that the elector has been convicted and sentenced and is still serving a felony sentence in a penal institution.

~~(5)~~*(4)* The election administrator shall provide an elector who cast a provisional ballot but whose ballot was not counted with the reasons why the ballot was not counted.

~~(6)~~*(5)* A provisional ballot cast by an elector whose voter information is verified before 5 p.m. on the day after the election must be removed from its provisional envelope, grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other ballot."

Section 23. Section 13-15-201, MCA, is amended to read:

"13-15-201. Preparation for count. (1) ~~(a)~~ Subject to 13-10-311, to prepare for a manual or automatic count of ~~paper~~ ballots ~~before or after the close of the polls~~, the counting board ~~of election judges designated under 13-15-112~~ *or, if appointed, the absentee counting board* shall take ballots out of the box ~~unopened~~ to determine whether each ballot is single.

~~(b) If an absentee ballot counting board has been appointed pursuant to 13-15-112, the absentee ballots must be delivered to the absentee ballot counting board and counted as provided in 13-15-104. If an absentee ballot counting board has not been appointed, the regular counting board shall, subject to 13-13-244, remove each absentee ballot secrecy envelope and open it to determine whether the ballot for each election is single.~~ *(2)* An absentee ballot must be rejected and handled as provided in 13-15-108 if in the envelope there is more than one voted ballot for each election.

~~(c)~~*(3)* The ~~counting~~ board shall count all ballots to ensure that the total number of ballots corresponds with the total number of names in the pollbook.

~~(d)~~*(4)* If the ~~counting~~ board cannot reconcile the total number of ballots with the pollbook, the board shall submit to the election administrator a written report stating how many ballots were missing or in excess and any reason of which they are aware for the discrepancy. Each judge on the board shall sign the report.

~~(e)~~*(5)* A ballot that is not marked as official is void and may not be counted unless all judges on the ~~counting~~ board agree that the marking is missing because of an error by election officials, in which case the ballot must be marked "unmarked by error" on the back and must be initialed by all judges.

~~(f)~~*(6)* If two or more ballots are folded or stuck together to look like a single ballot, they must be laid aside until the count is complete. The counting board shall compare the count with the pollbooks, and if a majority believes that the ballots folded together were voted by one elector, the ballots must be rejected and handled as provided in 13-15-108, otherwise they must be counted.

~~(2) For nonpaper ballots, the counting board shall prepare for the official count in a manner prescribed by the secretary of state pursuant to 13-17-211.~~"

Section 24. Section 13-15-206, MCA, is amended to read:

"13-15-206. Counting votes — uniformity — rulemaking — definitions. (1) When conducting vote counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and

determine the validity of each vote in a uniform manner as provided in this section.

(2) A manual count or recount of votes ~~cast on a paper ballot~~ must be conducted as follows:

(a) One election judge on the board shall read the ballot while the two other judges on the board shall each record on an official tally sheet the number of valid votes cast for each individual or ballot issue. Write-in votes must be counted in accordance with rules adopted pursuant to subsection (7). If a vote has not been cast according to instructions, the vote must be considered questionable and the entire ballot must be set aside and votes on the ballot must be handled as provided in subsection (4).

(b) (i) After the vote count is complete, the tally sheets of the two judges recording the votes must be compared.

(ii) If the two tallies match, the judges shall record in the pollbook:

(A) the names of all individuals who received votes;

(B) the offices for which individuals received votes;

(C) the total votes received by each individual as shown by the tally sheets; and

(D) the total votes received for or against each ballot issue, if any.

(iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the two tallies match.

(3) (a) When a voting system is ~~tabulating a vote cast on a nonpaper ballot~~ *counting votes*:

(i) if a vote is recognized and counted by the system, it is a valid vote;

(ii) if a vote is not recognized and counted by the system, it is not a valid vote;

(iii) write-in votes must be counted in accordance with rules adopted pursuant to subsection (7).

~~(b) When a voting system is tabulating a vote cast on a paper ballot:~~

~~(i) if the voting system recognizes and counts the vote, it is a valid vote;~~

~~(ii) if~~

(b) If the voting system cannot process the ballot because of the ballot's condition or if the voting system registers *an unvoted ballot or* an overvote ~~or undervote~~, which must be considered a questionable vote, the entire ballot must be set aside and the votes on the ballot must be counted as provided in subsection (4).

(c) If an election administrator or counting board has reason to believe that a voting system is not functioning correctly, the election administrator shall follow the procedures prescribed in 13-15-209.

(d) After all valid votes have been counted and totaled ~~pursuant to subsection (4) and this subsection (3)~~, the judges shall record in the pollbook the information specified in subsection (2)(b)(ii).

(4) (a) (i) Before being counted, each questionable vote on a ~~paper~~ ballot set aside under subsection (2)(a) or (3)(b) must be reviewed by the counting board. The counting board shall evaluate each questionable vote according to rules adopted by the secretary of state.

(ii) If a majority of the counting board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.

(iii) If a majority of the counting board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

(b) If a ballot was set aside under subsection (3)(b) because it could not be processed by the voting system due to the ballot's condition, the counting board shall transfer all valid votes to a new ballot that can be processed by the voting system.

(5) A write-in vote may be counted if:

(a) the write-in vote identifies an individual by a designation filed pursuant to 13-10-211(1)(a); or

(b) pursuant to 13-10-211(7), a declaration of nomination was not filed and the write-in vote identifies an individual who is qualified for the office.

(6) A vote is not valid and may not be counted if the elector's choice cannot be determined as provided in this section.

(7) The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each type of ballot and for each type of voting system used in the state. The rules must provide a sufficient guarantee that all votes are treated equally among jurisdictions using similar ballot types and voting systems.

(8) Local election administrators shall adopt policies to govern local processes that are consistent with the provisions of this title and that provide for:

(a) the security of the counting process against fraud;

(b) the place and time and public notice of each count or recount;

(c) public observance of each count or recount, including observance by representatives authorized under 13-16-411;

(d) the recording of objections to determinations on the validity of an individual vote or to the entire counting process; and

(e) the keeping of a public record of count or recount proceedings.

(9) For purposes of this section,~~:~~

~~(a)~~ "overvote" means an elector's vote that has been interpreted by the voting system as an elector casting more votes than allowable for a particular office or ballot issue~~; and~~

~~(b) "undervote" means an elector's vote that has been interpreted by the voting system as a nonvote~~."

Section 25. Section 13-15-209, MCA, is amended to read:

"13-15-209. Handling voting system error during count. (1) During a count ~~of paper or nonpaper ballots~~ in which votes are being ~~automatically tabulated~~ *counted* by a voting system, if the election administrator or counting board has reason to believe that the voting system is not operating correctly, the count must be halted and the system must be tested in accordance with rules adopted by the secretary of state pursuant to 13-17-211.

(2) If the test does not show any errors, the count must proceed using the voting system.

(3) If the test shows errors and the errors cannot be corrected or if a majority of the counting board agrees that the system may not be functioning correctly,~~:~~

~~(a)~~ votes ~~cast on paper ballots~~ must be counted manually in accordance with 13-15-206(2)~~;~~

~~(b) votes cast on a nonpaper ballot must be counted as provided in rules adopted under 13-17-211~~."

Section 26. Section 13-15-301, MCA, is amended to read:

"13-15-301. Disposition of items by election administrator. (1) The election administrator shall file the envelopes or packages containing the precinct registers, pollbooks, tally sheets, certificates of registration, and oaths of election officers. ~~He~~ *Except as provided in subsection (2), the election administrator* shall keep them unopened until the county board of canvassers meets to canvass the returns. The board shall open the envelopes or packages.

(2) The election administrator may open a package containing a precinct register to resolve questions concerning provisional ballots.

~~(2)~~*(3)* Immediately after the returns are canvassed, the election administrator shall file the pollbooks, election records, and ~~the~~ papers delivered to the board of canvassers with the unopened packages of ballots and ballot stubs."

Section 27. Section 13-17-103, MCA, is amended to read:

"13-17-103. Required specifications for voting systems. (1) A voting system may not be approved under 13-17-101 unless the voting system:

(a) allows an elector to vote in secrecy;

(b) prevents an elector from voting for any candidate or on any ballot issue more than once;

(c) prevents an elector from voting on any office or ballot issue for which the elector is not entitled to vote;

(d) allows an elector to vote only for the candidates of the party selected by the elector in the primary election;

(e) allows an elector to vote a split ticket in a general election if the elector desires;

(f) allows each valid vote cast to be registered and recorded within the performance standards adopted pursuant to subsection ~~(3)~~ *(2)*;

(g) may be protected from tampering for a fraudulent purpose;

(h) prevents an individual from seeing or knowing the number of votes registered for any candidate or on any ballot issue during the progress of voting;

(i) allows write-in voting;

(j) will, if purchased by a jurisdiction within the state, be provided with a guarantee that the training and technical assistance will be provided to election officials under the contract for purchase of the voting system;

(k) uses a paper ballot that allows votes to be manually counted~~, except as provided in subsection (2)~~; and

(l) allows auditors to access and monitor any software program while it is running on the system to determine whether the software is running properly.

~~(2) A direct recording electronic system that does not mark a paper ballot may be used to facilitate voting by a disabled voter pursuant to the Help America Vote Act of 2002, 42 U.S.C. 15301, et seq., if:~~

~~(a) (i) a direct recording electronic system that uses a paper ballot has not yet been certified by the federal election assistance commission; or~~

~~(ii) a direct recording electronic system that marks a paper ballot has not yet been approved by the secretary of state pursuant to 13-17-101; and~~

~~(b) the system records votes in a manner that will allow the votes to be printed and manually counted or audited if necessary.~~

~~(3)~~*(2)* To implement the provisions of subsection (1)(f), the secretary of state shall adopt rules setting a benchmark performance standard that must be met in tests by each voting system prior to approval under 13-17-101. The standard must be based on commonly accepted industry standards for readily available technologies."

Section 28. Section 13-17-211, MCA, is amended to read:

"13-17-211. Uniform procedures for using voting systems. (1) For each voting system approved under 13-17-101, the secretary of state shall adopt rules specifying the procedures to be uniformly applied in elections conducted with the voting system.

(2) The rules must, at a minimum, specify procedures that address the following:

(a) performance *testing and* certification under 13-17-212;

(b) how electors ensure the proper disposition of a ballot pursuant to 13-13-117(2);

~~(c) the process to be used to prepare for a vote count under 13-10-311(3) and 13-15-201(2) for nonpaper ballots so that election judges can determine the total number of electors voting in the election compared to the total number of ballots cast;~~

~~(d)~~*(c)* the procedures to be followed if the comparison under 13-15-206(2)(b) reveals discrepancies;

~~(e)~~*(d)* how to operate and test the system during counts ~~or recounts~~; *and*

~~(f)~~*(e)* the security measures necessary to secure the voting system before, during, and after an election, including security following a recount under 13-16-417~~; and~~

~~(g) testing and certification of voting systems pursuant to 13-17-212~~."

Section 29. Section 13-17-212, MCA, is amended to read:

"13-17-212. Performance *testing and* certification of voting systems prior to election. (1) No more than 30 days prior to an election in which a voting system is used, the election administrator shall *publicly* test and certify that the system is performing properly.

(2) The secretary of state shall ensure that at least 10% of all voting systems in the state have been randomly tested and certified at least once every calendar year.

(3) If any type of direct recording electronic voting system is approved pursuant to 13-17-101 after meeting the requirements of 13-17-103, provision must be made to ensure that, at a minimum, each system is tested and certified as follows:

(a) upon delivery;

(b) no more than 30 days prior to the election; and

(c) on election day.

(4) The provisions of this section must be implemented according to rules adopted by the secretary of state pursuant to 13-17-211."

Section 30. Section 13-25-101, MCA, is amended to read:

"13-25-101. Nomination of electors — ballot. (1) ~~Each~~ *In the manner and number provided by law, each* political party qualified under 13-10-601 shall nominate presidential electors for this state and file *with the secretary of state* certificates of nomination ~~for these candidates with the secretary of state~~ in a form *and by the date* prescribed by the secretary of state ~~no later than 76 days before the general election, in the manner and number provided by law~~. However, in the event of the death of a candidate for president or vice president *after a certificate of nomination has been filed*, a new candidate for president or vice president, or both, may be nominated for the affected political party and ~~certificates~~ *a new certificate* of ~~election~~ *nomination* may be filed with the secretary of state ~~less than 76 days before a general election~~ *by the date prescribed by the secretary of state*.

(2) The secretary of state shall certify to the election administrator the names of the candidates for president and vice president of the several political parties, which must be placed on the ballot by one of the methods provided in 13-12-204. If the name of a new candidate for president or vice president, or both, is certified to the secretary of state in less than 76 days pursuant to subsection (1), the secretary of state shall immediately certify the new name or names to the election administrators and the new name or names must be placed on the ballot by one of the methods provided in 13-12-204.

(3) The names of candidates for electors of president and vice president may not appear on the ballot."

Section 31. Section 13-27-401, MCA, is amended to read:

"13-27-401. Voter information pamphlet. (1) The secretary of state shall prepare for printing a voter information pamphlet containing *information relevant to the election, including but not limited to* the following information for each ballot issue to be voted on at an election, as applicable:

(a) ballot title, fiscal statement if applicable, and complete text of the issue;

(b) the form in which the issue will appear on the ballot;

(c) arguments advocating approval and rejection of the issue; and

(d) rebuttal arguments.

(2) The pamphlet must also contain a notice advising the recipient *as to* where additional copies of the pamphlet may be obtained.

(3) Whenever more than one ballot issue is to be voted on at a single election, the secretary of state may publish a single pamphlet for all of the ballot issues. The secretary of state may arrange the information in the order ~~which~~ *that* seems most appropriate, but the information for all issues in the pamphlet must be presented in the same order.

(4) The secretary of state may prescribe by rule the format and manner of submission of the arguments concerning the ballot issue."

Section 32. Repealer. Sections 13-13-203, 13-16-414, 13-17-206, and 13-17-305, MCA, are repealed.

Approved April 26, 2007

CHAPTER NO. 274

[HB 524]

AN ACT REVISING THE REQUIREMENTS FOR INCORPORATING A CITY OR TOWN; PROVIDING THAT ANY WARD OF A PROPOSED CITY OR TOWN MUST HAVE AT LEAST 200 INHABITANTS PER SQUARE MILE OF LAND AREA; REQUIRING THE PROPOSED AREA TO HAVE A POST OFFICE; AND AMENDING SECTION 7-2-4101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-4101, MCA, is amended to read:

"7-2-4101. Petition to organize ~~municipalities~~ *city or town.* (1) Whenever the inhabitants of any part of a county desire to ~~be organized into~~ *organize as* a city or town, ~~they~~ *the inhabitants* may apply by petition ~~in writing~~, signed by not less than *300 registered electors or* two-thirds of the registered electors*, whichever is less,* ~~but not more than 300 such electors,~~ who are residents of the state and residing within the limits of the proposed ~~incorporation~~ *city or town*, to the board of county commissioners of the county in which the ~~territory~~ *proposed area* is situated.

(2) (a) The petition must describe the limits of the proposed city or town and ~~of the several~~ wards ~~thereof~~ *of the proposed city or town*~~,~~. ~~each of which shall~~ *A proposed ward must* contain 50 or more registered electors and ~~must not exceed 1 square mile for each 500~~ *must have at least 200* inhabitants ~~resident therein.~~ *for each square mile of land area.*

(b) The proposed city or town must contain a post office within the proposed area of the city or town.

~~(b)~~*(c)* The petitioners ~~must~~ *shall* ~~annex~~ *attach* to the petition a map of the proposed ~~territory~~ *area* to be incorporated and state the name of the *proposed* city or town.

(3) The petition and map must be filed in the office of the election administrator."

Approved April 26, 2007

CHAPTER NO. 275

[HB 537]

AN ACT REVISING STATE HAIL INSURANCE LAWS; CLARIFYING THAT HAIL INSURANCE MAY BE ISSUED FOR ANY CROP OR OTHER AGRICULTURAL OR HORTICULTURAL PRODUCT SUBJECT TO INJURY OR DESTRUCTION BY HAIL; CLARIFYING REFERENCES TO CROPS; INCREASING THE AMOUNT OF ACTUAL INSURANCE THAT MAY BE WRITTEN FOR CROPS ON IRRIGATED AND NONIRRIGATED LANDS; AMENDING SECTIONS 80-2-203, 80-2-207, 80-2-208, 80-2-209, 80-2-227, 80-2-231, AND 80-2-244, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-2-203, MCA, is amended to read:

"80-2-203. Participation in program — fee. (1) A person or an association of persons engaged in the growing of crops ~~other than those specified in this part~~ or other agricultural or horticultural products subject to injury or destruction by hail may, by individual or joint election filed with and approved by the board of hail insurance, accept the provisions of this part and elect to become subject to this part. The risks may be classified by the board, and suitable fees may be imposed as agreed upon by the board and the persons. The persons are entitled to the benefits and protection afforded by the insurance provisions of this part.

(2) Each person who signifies a desire to become subject to the provisions of this part shall file with the department of revenue the properly filled out form not later than August 15. The person is chargeable with the fee provided for on lands growing crops subject to injury or destruction by hail and shall share in the protection and benefits under the hail insurance provisions of this part. The application for hail insurance is in full force and effect at 12:01 a.m. *on* the day immediately following the acceptance of the application by the department of revenue.

(3) This part may not be construed to empower anyone except the actual owner of the land to make the land subject to the hail fee provided in this part."

Section 2. Section 80-2-207, MCA, is amended to read:

"80-2-207. Delinquent fees — application by delinquent — crop lien. (1) An owner of land who has more than 1 year's delinquent fees on the land may not be allowed hail insurance under the provisions of this part, unless the owner's application is accompanied by a cash payment for the amount that would be due on the application for that year.

(2) Any ~~grain~~ grower *who is* unable to secure state hail insurance under the provisions of this part because of delinquent fees or for other reasons may make an application to the department of revenue, and the department of revenue may receive and accept the application when the applicant furnishes a sufficient crop lien that is subject only to a seed lien. The crop lien may be accepted only under rules and requirements that may be prescribed by the board of hail insurance and under the provision that the board may cancel any hail insurance accepted in violation of the rules and requirements. Upon receipt of the application, the department of revenue shall make a record of the application and shall file the original in the office of the clerk and recorder of the county. The department of revenue shall also send a bill to the ~~grain~~ grower for the proper amount due for hail insurance under the provisions of this part.

(3) A tenant who has delinquent hail insurance that was secured by a crop lien and was not secured by real estate may not be allowed another policy in any succeeding year until the delinquent amount is paid or until the tenant pays cash for the current hail insurance.

(4) If a tenant becomes delinquent for hail insurance after having failed to apply for relief as provided by the board under 80-2-229, the tenant may apply to the board for a reduction. If the reasons for requesting a reduction are approved by the board, the board may reduce the charge to not less than one-half the original amount charged."

Section 3. Section 80-2-208, MCA, is amended to read:

"80-2-208. Maximum insurance. When the reserve fund is determined actuarially sound, as provided in 80-2-228, the board may write not more than ~~$40~~ *$50* insurance on each acre of ~~grain~~ *crops* ~~that is~~ on nonirrigated land and not more than ~~$56~~ *$76* on each acre on irrigated land. When more than one party desires hail insurance on the same crop, each party is entitled to the share of the maximum provided on each acre as represented by that person's interest in the crop. Either party may insure the party's share in the crop for any amount up to and including the maximum on each acre if the others waive their right to insure."

Section 4. Section 80-2-209, MCA, is amended to read:

"80-2-209. Reinsurance. Because of the unusual or unexpected variation in the severity of damage to ~~grain~~ crops that occurs from year to year and in order to enable the hail insurance board to spread the effect of these variations more evenly over all years, the board may negotiate for and secure reinsurance of a part of the risk in any year when the need for reinsurance appears advisable to the board. The board ~~is~~ may use money from hail insurance fees for the purchase of reinsurance whenever it appears to the board that reinsurance is necessary and advisable."

Section 5. Section 80-2-227, MCA, is amended to read:

"80-2-227. Hail insurance secured by crop lien only. When any hail insurance issued under this part is secured by a crop lien only, ~~said~~ *the* crop lien is ~~hereby declared~~ a first lien on the insured crop, except ~~only~~ *for* any crop lien ~~which~~ *that* may have been given to secure the purchase price for the seed ~~which~~ *that* was bought and used to plant and produce the insured ~~grain~~ *crop*."

Section 6. Section 80-2-231, MCA, is amended to read:

"80-2-231. Foreclosure of lien. If the person receiving hail insurance secured by a crop lien fails to pay the fee for insurance to the department of revenue by December 1 of the year in which the crop is grown, the department shall on that day or as soon as possible after that day deliver to the sheriff of the county a full, true, and correct copy of the lien on file in the office of the clerk and recorder and the sheriff shall immediately demand from the person or persons signing the lien payment of the amount due. If the fee is not paid to the sheriff upon demand being made, the sheriff shall seize and sell in the manner provided by law for the sale of personal property under execution a sufficient amount of ~~grain~~ *crops* belonging to the person to pay the amount due for hail insurance, together with interest and costs and expenses of *the* seizure and sale."

Section 7. Section 80-2-244, MCA, is amended to read:

"80-2-244. Payment of losses. (1) The board of hail insurance shall, as soon as practicable after the loss has been sustained, arrange for the payment of the loss in the following manner. From the amount of the loss as adjusted for each claimant, the board shall deduct the amount that the claimant then owes as a delinquent hail insurance fee and the maximum amount assessed as a hail insurance fee for the current year.

(2) The board shall on or before November 1 order payment ~~for the amount deducted. The payment must be remitted to the county treasurer of the county in which the fee was imposed. The board shall then order payment~~ for the balance of the adjustment to be sent to the claimant, provided that the payment for loss may not exceed the maximum amounts established in 80-2-208. A claimant may not receive payment for any loss incurred if the loss does not equal or exceed 5% of the total value of the crop insured. If the losses in any year

exceed the current fees plus the reserve, then the payment of all losses must be prorated among all ~~grain~~ growers having loss claims adjusted and approved, and the unpaid balance of the losses must be paid out of the reserve without interest in the order that the board directs~~,~~ when in the judgment of the board, there is sufficient money to provide for the payment of the claims and other items payable out of the reserve. In any year, the board may by resolution authorize its presiding officer and secretary to borrow money that the board may consider necessary for the purpose of paying all warrants as issued.

(3) For any money borrowed under the provisions of this part, the board shall cause warrants to be drawn. The warrants must bear interest at a rate not to exceed 6% a year, and the warrants and the interest on the warrants must be paid out of funds from the state hail insurance program as they are collected ~~from the various counties in the state~~. The board may not at any time borrow a total sum greater than the amount of the fees imposed for the current year, together with delinquent fees that remain unpaid ~~on the books of the county treasurer~~."

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2007

CHAPTER NO. 276

[HB 630]

AN ACT PROVIDING THAT FRAUDULENT ELECTRONIC MISREPRESENTATION, "PHISHING", IS THE CRIME OF A THEFT OF IDENTITY; AND AMENDING SECTIONS 30-14-1701 AND 30-14-1702, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Fraudulent electronic misrepresentation — penalties — exemption. (1) An individual or business that, by means of a website, an electronic mail message, or otherwise through the internet, solicits, requests, or takes an action to induce another individual or business to provide personal information by purporting to be a third-party individual or a business without the authority or approval of the third-party individual or business is guilty of a theft of identity, as provided in 45-6-332(1). This crime of fraudulent electronic misrepresentation is commonly known as "phishing".

(2) An individual or a business that is adversely affected by a violation of subsection (1) has a private right of action, as provided in [section 2].

(3) The attorney general or a county attorney in a county where the violation under subsection (1) is reported may bring a criminal action against an individual or a business accused of engaging in a pattern and practice of violating subsection (1) and, in addition to bringing a criminal action, may request a court of competent jurisdiction to issue a temporary injunction against the continued use of a website, an electronic mail message, or the internet by the individual or business served with the injunction.

(4) An internet services provider may not be held liable for identifying, removing, or disabling access to an internet website or other online location if the internet services provider believes that the internet website or other online location is being used to engage in a violation of this section.

Section 2. Remedies for fraudulent electronic misrepresentation. (1) A business, including the owner of a website or the owner of a trademark, that is adversely affected by a violation of [section 1(1)] may bring an action to recover the greater of actual damages or $500,000.

(2) An individual who is adversely affected by a violation of [section 1(1)] may bring an action against an individual or a business that has directly violated [section 1(1)] for the greater of three times actual damages or $5,000 for each violation.

Section 3. Section 30-14-1701, MCA, is amended to read:

"30-14-1701. Purpose. The purpose of 30-14-1701 through 30-14-1705 *and [sections 1 and 2]* is to enhance the protection of individual privacy and to impede identity theft as prohibited by 45-6-332."

Section 4. Section 30-14-1702, MCA, is amended to read:

"30-14-1702. Definitions. As used in 30-14-1701 through 30-14-1705 *and [sections 1 and 2]*, unless the context requires otherwise, the following definitions apply:

(1) (a) "Business" means a sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit, including a financial institution organized, chartered, or holding a license or authorization certificate under the law of this state, any other state, the United States, or any other country or the parent or the subsidiary of a financial institution. The term includes an entity that destroys records. The term also includes industries regulated by the public service commission or under Title 30, chapter 10.

(b) The term does not include industries regulated under Title 33.

(2) "Customer" means an individual who provides personal information to a business for the purpose of purchasing or leasing a product or obtaining a service from the business.

(3) "Electronic mail message" means a message sent to a unique destination, commonly expressed as a string of characters, consisting of a unique user name or electronic mailbox and a reference to an internet domain, whether or not displayed, to which an electronic message can be sent or delivered.

~~(3)~~*(4)* "Individual" means a natural person.

(5) "Internet" has the meaning provided in 2-17-551.

(6) "Internet services provider" has the meaning provided in 2-17-602.

~~(4)~~*(7)* "Personal information" means an individual's name, signature, address, or telephone number, in combination with one or more additional pieces of information about the individual, consisting of the individual's passport number, driver's license or state identification number, insurance policy number, bank account number, credit card number, debit card number, passwords or personal identification numbers required to obtain access to the individual's finances, or any other financial information as provided by rule. A social security number, in and of itself, constitutes personal information.

~~(5)~~*(8)* (a) "Records" means any material, regardless of the physical form, on which personal information is recorded.

(b) The term does not include publicly available directories containing personal information that an individual has voluntarily consented to have publicly disseminated or listed, such as name, address, or telephone number.

(9) "Website" means an electronic location that has a single uniform resource locator or other single location with respect to the internet."

Section 5. Fraudulent electronic misrepresentation — penalties — exemption. (1) An individual or a business that, by means of a website, an electronic mail message, or otherwise through the internet, solicits, requests, or takes an action to induce another individual or business to provide personal information, as defined in 33-19-321, by purporting to be a licensee or insurance-support organization that conducts business in Montana without the authority or approval of the represented licensee or insurance-support organization that conducts business in Montana is guilty of a theft of identity, as provided in 45-6-332(1). This crime of fraudulent electronic misrepresentation is commonly known as "phishing".

(2) An individual or a business that is adversely affected by a violation of subsection (1) has a private right of action.

(3) The attorney general or a county attorney in a county where the violation under subsection (1) is reported may bring a criminal action against an individual or a business accused of engaging in a pattern and practice of violating subsection (1) and, in addition to bringing a criminal action, may request a court of competent jurisdiction to issue a temporary injunction against the continued use of a website, an electronic mail message, or the internet by the individual or business served with the injunction.

(4) An internet services provider may not be held liable for identifying, removing, or disabling access to an internet website or other online location if the internet services provider believes that the internet website or other online location is being used to engage in a violation of this section.

Section 6. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 30, chapter 14, part 17, and the provisions of Title 30, chapter 14, part 17, apply to [sections 1 and 2].

(2) [Section 5] is intended to be codified as an integral part of Title 33, chapter 19, and the provisions of Title 33, chapter 19, apply to [section 5].

Approved April 26, 2007

CHAPTER NO. 277

[HB 633]

AN ACT REVISING THE LAWS RELATING TO THE TRANSFER OF ALL-BEVERAGES LIQUOR LICENSES TO A QUOTA AREA PURSUANT TO A DEPARTMENT-CONDUCTED LOTTERY; PROVIDING THAT THE OWNER OF A LOTTERY-TRANSFERRED ALL-BEVERAGES LIQUOR LICENSE IS NOT ELIGIBLE TO OFFER GAMBLING; ALLOWING A PERSON TO APPLY FOR A LOTTERY ALL-BEVERAGES LIQUOR LICENSE TRANSFER ONLY ONCE IN EVERY 12-MONTH PERIOD; REQUIRING A LETTER OF CREDIT TO ACCOMPANY AN ALL-BEVERAGE LIQUOR LICENSE LOTTERY TRANSFER APPLICATION; PROVIDING THAT AN APPLICANT OR A PERSON WITH AN OWNERSHIP INTEREST IN AN APPLICANT MAY NOT HAVE AN OWNERSHIP INTEREST IN AN ALL-BEVERAGES LIQUOR LICENSE; REQUIRING THAT A SUCCESSFUL APPLICANT FOR A LOTTERY-AWARDED ALL-BEVERAGES LIQUOR LICENSE COMMENCE BUSINESS WITHIN 1 YEAR; AMENDING

SECTIONS 16-4-204 AND 23-5-119, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-204, MCA, is amended to read:

"16-4-204. Transfer — catering endorsement. (1) (a) Except as provided in subsection ~~(1)(b)~~ *(1)(d)*, a license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least 25% in the most recent census prescribed in 16-4-502;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred, exclusive of those issued under 16-4-209(1)(a) and (1)(b), did not exceed that area's quota in the most recent census prescribed in 16-4-502:

(A) by more than 33%; or

(B) in an incorporated city of more than 10,000 inhabitants and within a distance of 5 miles from its corporate limits by more than 43%; ~~and~~

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by ~~such~~ a transfer*; and*

(iv) an applicant for the new ownership to be awarded on a lottery basis by the department has met the following criteria:

(A) the applicant had not made another application under this subsection (1)(a) for a lottery-awarded license within the previous 12 months;

(B) the applicant has provided with the application an irrevocable letter of credit from a financial institution that guarantees the applicant's ability to pay $100,000; and

(C) the applicant or, if the applicant is not an individual, a person with an ownership interest in the applicant does not have an ownership interest in an all-beverages license.

(b) A license transferred pursuant to subsection (1)(a) that was issued pursuant to a lottery is not eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6.

(c) A successful lottery applicant shall commence business within 1 year of the lottery unless the department grants an extension because a delay was caused by circumstances beyond the control of the applicant.

~~(b)~~*(d)* A license within an incorporated quota area may be transferred to a new ownership and to a new unincorporated location within the same county on application to and with consent of the department when the quota of the all-beverages licenses in the original quota area, exclusive of those issued under 16-4-209(1)(a) and (1)(b), exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

~~(c)~~*(e)* For ~~3~~ *5* years after the transfer of a license between quota areas under subsection (1)(a), the license may not be mortgaged or pledged as security and may not be transferred to another person except for a transfer by inheritance upon the death of the licensee.

~~(d)~~*(f)* Once a license is transferred to a new quota area under subsection (1)(a), it may not be transferred to another quota area or back to the original quota area.

~~(e)~~*(g)* A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota area and the exterior boundaries of the Montana Indian reservation for which it was originally issued.

(2) (a) Any all-beverages licensee is, upon the approval and in the discretion of the department, entitled to a catering endorsement to the licensee's all-beverages license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages for on-premises consumption. The alcoholic beverages must be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of $250 must be submitted to the department for its approval.

(c) An all-beverages licensee who holds an endorsement granted under this subsection (2) may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(d) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises where the catered event is to be held. A fee of $35 must accompany the notice.

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

(g) A catering endorsement issued for the purpose of selling and serving beer at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

(h) A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the catered event unless the sponsor is the state of Montana, a political subdivision of the state, or a qualified entity under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended."

Section 2. Section 23-5-119, MCA, is amended to read:

"23-5-119. Appropriate alcoholic beverage license for certain gambling activities. (1) Except as provided in subsection (3), to be eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6, an applicant shall own in the applicant's name:

(a) a retail all-beverages license issued under 16-4-201*, but a license transferred after July 1, 2007, to a quota area pursuant to a department-conducted lottery under 16-4-204(1)(a) is not eligible to offer gambling*;

(b) except as provided in subsection (1)(c), a license issued prior to October 1, 1997, under 16-4-105, authorizing the sale of beer and wine for consumption on the licensed premises;

(c) a beer and wine license issued in an area outside of an incorporated city or town as provided in 16-4-105(1)(e). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6;

(d) a retail beer and wine license issued under 16-4-109;

(e) a retail all-beverages license issued under 16-4-202; or

(f) a retail all-beverages license issued under 16-4-208.

(2) For purposes of subsection (1)(b), a license issued under 16-4-105 prior to October 1, 1997, may be transferred to a new owner or to a new location or transferred to a new owner and location by the department of revenue pursuant to the applicable provisions of Title 16. The owner of the license that has been transferred may offer gambling if the owner and the premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(3) Lessees of retail all-beverages licenses issued under 16-4-208 or beer and wine licenses issued under 16-4-109 who have applied for and been granted a gambling operator's license under 23-5-177 are eligible to offer and may be granted permits for gambling authorized under Title 23, chapter 5, part 3, 5, or 6.

(4) A license transferee or a qualified purchaser operating pending final approval under 16-4-404(6) who has been granted a gambling operator's license under 23-5-177 may be granted permits for gambling under Title 23, chapter 5, part 3, 5, or 6."

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved April 26, 2007

CHAPTER NO. 278

[HB 634]

AN ACT INCREASING THE AMOUNT OF BONDS AND NOTES THAT THE FACILITY FINANCE AUTHORITY MAY ISSUE; AMENDING SECTION 90-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-7-302, MCA, is amended to read:

"90-7-302. Bonds and notes of authority. (1) The authority may in each biennium borrow money and issue bonds and notes in an aggregate principal amount not to exceed ~~$250~~ *$500* million, exclusive of bonds or notes issued to refund outstanding bonds or notes.

(2) Bonds must be authorized. The authority may specify that the bonds must be dated and must mature, except that a bond may not mature more than 40 years from the date of its issue. Bonds must~~:~~

~~(a)~~ bear interest at a rate or rates~~;~~,

~~(b)~~ be in denominations~~;~~,

~~(c)~~ be in the proper registered or bearer form~~;~~,

~~(d)~~ be executed in a manner~~;~~,

~~(e)~~ be payable in a medium of payment and at a place or places~~;~~, and

~~(f)~~ be subject to terms of redemption that the authority may provide.

(3) All bonds, regardless of form or character, are negotiable instruments for all purposes of the Uniform Commercial Code, subject to requirements as to registration.

(4) All bonds may be sold at public or private sale in the manner, for the price or prices, and at the time or times that the authority may determine.

(5) Before the issuance of any bonds, the authority shall make provisions, by lease or other agreement, regarding the eligible facility or facilities being financed by the issue of the bonds, for rentals or other considerations sufficient, in the judgment of the authority, to:

(a) pay the principal of and interest on the bonds as they become due;

(b) create and maintain the reserves for payment of the principal and interest;

(c) meet all obligations in connection with the lease or other agreement; and

(d) meet all costs necessary to service the bonds unless the lease or agreement provides that the obligations are to be met or costs are to be paid by a party other than the authority.

(6) The authority, before issuing any bonds, shall certify that an applicant has submitted a statement that indicates that any contract let for a public project costing more than $25,000 and financed from the proceeds of bonds issued under this part will contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(7) The authority may combine, for the purposes of a single offering, bonds financing more than one eligible facility under this chapter."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2007

CHAPTER NO. 279

[HB 672]

AN ACT REVISING SCHOOL DISTRICT DEBT LIMITATIONS; CLARIFYING ANB CALCULATIONS FOR FACILITY-GUARANTEED MILL VALUE PURPOSES; AMENDING SECTIONS 20-9-406 AND 20-9-407, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-406, MCA, is amended to read:

"20-9-406. Limitations on amount of bond issue — definition of federal impact aid basic support payment. (1) (a) Except as provided in subsection (1)(d), the maximum amount for which an elementary district or a high school district may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding

obligations under 20-9-471 and 20-9-502, and any other loans or notes payable that are held as general obligations of the district, is ~~45%~~ *50%* of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(b) Except as provided in subsection (1)(d), the maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471 and 20-9-502, and any other loans or notes payable that are held as general obligations of the district, is up to ~~90%~~ *100%* of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(c) The total indebtedness of the high school district with an attached elementary district is limited to the sum of ~~45%~~ *50%* of the taxable value of the property for elementary school program purposes and ~~45%~~ *50%* of the taxable value of the property for high school program purposes.

(d) (i) The maximum amount for which an elementary district or a high school district with a district mill value per elementary ANB or per high school ANB that is less than the facility guaranteed mill value per elementary ANB or high school ANB under 20-9-366 may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471 and 20-9-502, and any other loans or notes payable that are held as general obligations of the district, is ~~45%~~ *50%* of the corresponding facility guaranteed mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, the maximum amount for which the district may become indebted is ~~45%~~ *50%* of the sum of the facility guaranteed mill value per elementary ANB times 1,000 times the elementary ANB of the district and the facility guaranteed mill value per high school ANB times 1,000 times the high school ANB of the district. *For the purpose of calculating ANB under this subsection, a district may use the greater of the current year ANB or the 3-year ANB calculated under 20-9-311.*

(ii) If mutually agreed upon by the affected districts, for the purpose of calculating its maximum bonded indebtedness under this subsection (1)(d), a district may include the ANB of the district plus the number of students residing within the district for which the district or county pays tuition for attendance at a school in an adjacent district. The receiving district may not use out-of-district ANB for the purpose of calculating its maximum indebtedness if the out-of-district ANB has been included in the ANB of the sending district pursuant to the mutual agreement. *For the purpose of calculating ANB under this subsection, a district may use the greater of the current year ANB or the 3-year ANB calculated under 20-9-311.*

(2) The maximum amounts determined in subsection (1) do not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to general obligation bonds issued for the repayment of tax protests lost by the district. All general obligation bonds issued in excess of the amount are void, except as provided in this section.

(3) The maximum amount of impact aid revenue bonds that an elementary district, high school district, or K-12 school district may issue may not exceed a total aggregate amount equal to three times the average of the school district's

annual federal impact aid basic support payments for the 5 years immediately preceding the issuance of the bonds. However, at the time of issuance of the bonds, the average annual payment of principal and interest on the impact aid bonds each year may not exceed 35% of the total federal impact aid basic support payments of the school district for the current year.

(4) When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(5) Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly.

(6) As used in this part, "federal impact aid basic support payment" means the annual impact aid revenue received by a district under 20 U.S.C. 7703(b) but excludes revenue received for impact aid special education under 20 U.S.C. 7703(d) and impact aid construction under 20 U.S.C. 7707."

Section 2. Section 20-9-407, MCA, is amended to read:

"20-9-407. Industrial facility agreement for bond issue in excess of maximum. (1) In a school district within which a new major industrial facility ~~which~~ *that* seeks to qualify for taxation as class five property under 15-6-135 is being constructed or is about to be constructed, the school district may require, as a precondition of the new major industrial facility qualifying as class five property, that the owners of the proposed industrial facility enter into an agreement with the school district concerning the issuing of bonds in excess of the ~~45%~~ *50%* limitation prescribed in 20-9-406. Under ~~such~~ an agreement, the school district may, with the approval of the voters, issue bonds ~~which~~ *that* exceed the limitation prescribed in this section by a maximum of ~~45%~~ *50%* of the estimated taxable value of the property of the new major industrial facility subject to taxation when completed. The estimated taxable value of the property of the new major industrial facility subject to taxation ~~shall~~ *must* be computed by the department of revenue when requested to do so by a resolution of the board of trustees of the school district. A copy of the department's statement of estimated taxable value ~~shall~~ *must* be printed on each ballot used to vote on a bond issue proposed under this section.

(2) Pursuant to the agreement between the new major industrial facility and the school district and as a precondition to qualifying as class five property, the new major industrial facility and its owners shall pay, in addition to the taxes imposed by the school district on property owners generally, ~~so~~ *as* much of the principal and interest on the bonds provided for under this section as represents payment on an indebtedness in excess of the limitation prescribed in 20-9-406. After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in this section, the new major industrial facility ~~shall be~~ *is* entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of no more than 20 years. The credit ~~shall~~ *must* as a total amount be equal to the amount ~~which~~ *that* the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.

(3) A major industrial facility is a facility subject to the taxing power of the school district, whose construction or operation will increase the population of the district, imposing a significant burden upon the resources of the district and

requiring construction of new school facilities. A significant burden is an increase in ANB of at least 20% in a single year."

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved April 26, 2007

CHAPTER NO. 280

[HB 688]

AN ACT CREATING A COAL AND URANIUM MINE PERMITTING AND RECLAMATION PROGRAM ACCOUNT; ALLOCATING COAL SEVERANCE TAXES TO THE COAL AND URANIUM MINE PERMITTING AND RECLAMATION PROGRAM ACCOUNT; PROVIDING THAT THE MONEY IN THE ACCOUNT BE USED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR THE ADMINISTRATION AND ENFORCEMENT OF COAL AND URANIUM MINE PERMITTING AND RECLAMATION; AMENDING SECTION 15-35-108, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108, MCA, is amended to read:

"15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and

losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the oil, gas, and coal natural resource account established in 90-6-1001.

(8) After the allocations are made under subsections (2) through (7), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in [section 2].

~~(8)~~*(9)* (a) Subject to subsection ~~(8)(b)~~ *(9)(b)*, all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) $3.65 million to the research and commercialization state special revenue account created in 90-3-1002;

(iv) to the department of commerce:

(A) $125,000 for a small business development center;

(B) $50,000 for a small business innovative research program;

(C) $425,000 for certified regional development corporations;

(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) $300,000 for export trade enhancement. (Terminates June 30, 2010—sec. 6, Ch. 481, L. 2003.)

15-35-108. (Effective July 1, 2010) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for

the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the oil, gas, and coal natural resource account established in 90-6-1001.

(8) After the allocations are made under subsections (2) through (7), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in [section 2].

~~(8)~~*(9)* All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

Section 2. Coal and uranium mine permitting and reclamation program account. (1) There is a coal and uranium mine permitting and reclamation program account within the special revenue fund established in 17-2-102.

(2) Each fiscal year, there must be deposited in the account the proceeds from the coal severance tax, as provided in 15-35-108, to be appropriated by the legislature to the department for the administration and enforcement of this part.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 82, chapter 4, part 2, and the provisions of Title 82, chapter 4, part 2, apply to [section 2].

Section 4. Effective date. [This act] is effective July 1, 2007.

Section 5. Applicability. [This act] applies to severance tax collections from coal produced after June 30, 2007.

Approved April 26, 2007

CHAPTER NO. 281

[HB 690]

AN ACT REVISING THE SUSPENSION PROCEDURE FOR MUNICIPAL FIREFIGHTERS TO PROVIDE FOR AN OPTIONAL HEARING BEFORE A CITY COUNCIL OR CITY COMMISSION; AND AMENDING SECTION 7-33-4124, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-4124, MCA, is amended to read:

"7-33-4124. Suspension procedure. (1) In ~~all cases of suspension~~ *any case in which a member of the municipal fire department is suspended from duty,* the person suspended must be furnished with a copy of the charge ~~against him~~, in writing, setting forth *the* reasons for the suspension. ~~Such~~ *Subject to subsection (2), the suspended member of the fire department may request in writing that the* charges ~~must~~ be presented to the ~~next meeting of the~~ council or commission ~~and~~

for a hearing ~~had thereon, when~~. *The hearing must be held within 30 days of the request. The suspended member may invoke the right of privacy to request a closed hearing. At the hearing,* the suspended member of the fire department may appear in person or by counsel and ~~make his~~ *provide a* defense ~~to said~~ *against the* charges.

(2) If the suspended member of the fire department does not request a hearing by the council or commission within 5 business days of receiving the suspension charge, the suspended member forfeits the option of requesting a hearing by the council or commission.

~~(2)~~*(3)* ~~Should~~ *If* the charges *are* not ~~be~~ presented ~~to the next meeting of~~ *before* the council or commission ~~after the suspension or should~~ *within 30 days of the request for a hearing or if* ~~the charges be found not proven by~~ the council or commission *determines the charges to be unfounded*, the suspended person ~~shall~~ *must* be reinstated and ~~be~~ *is* entitled to ~~his~~ *the person's* usual compensation for the time ~~so suspended~~ *of the suspension*.

~~(3)~~*(4)* If ~~such~~ *the* charges are found proven by the council or commission, the council or commission, by a vote of a majority of the whole council or commission, may impose ~~such~~ *a* penalty ~~as it shall determine~~ *commensurate to its determination of what* the offense warrants, *including* either ~~in~~ the continuation of the suspension for a limited time or ~~in~~ the removal of the suspended person from the fire department."

Approved April 26, 2007

CHAPTER NO. 282

[HB 742]

AN ACT PROVIDING FOR THE ADMISSIBILITY OF HEARSAY STATEMENTS TO PROVE THE OCCURRENCE OF, OR THE IDENTITY OF THE ABUSER, IN CASES OF PHYSICAL OR SEXUAL ABUSE OF AN INDIVIDUAL WITH A DEVELOPMENTAL DISABILITY; AND PROVIDING AN APPLICABILITY DATE.

WHEREAS, physical or sexual abuse of an individual with a developmental disability is an abhorrent phenomenon that should not be tolerated in any society; and

WHEREAS, physical or sexual abuse of an individual with a developmental disability is sometimes hard to prove because no one except the abuser and the individual are present and the individual is sometimes incapable of expressing in language the circumstances of the abuse sufficiently to allow for criminal prosecution of the abuser and because testimony of another individual on behalf of the developmentally delayed individual could be excluded by various provisions of the Montana Rules of Evidence, especially the rule governing exceptions to the rule against the admissibility of hearsay evidence, contained in Rule 804 of the Montana Rules of Evidence, adopted by the Montana Supreme Court in 1976; and

WHEREAS, Rule 802 of the Montana Rules of Evidence adopted by the Montana Supreme Court allows the Legislature to provide exceptions to the rule against admission of hearsay statements into evidence because Rule 802 provides that hearsay is inadmissible except as provided by statute; and

WHEREAS, the Legislature therefore believes that it is appropriate for the Legislature to adopt, using as a guide the guidelines on child hearsay adopted by the Montana Supreme Court in State v. J.C.E., 235 Mont. 264, 767 P.2d 309 (1988), and applied in such opinions as State v. Osborne, 1999 MT 149, 295 Mont. 54, 982 P.2d 1045 (1999), a statute allowing the admission into evidence of testimony of third persons under circumstances in which there are sufficient guarantees of trustworthiness to render the testimony of the third person probative and valuable to the trial court or jury.

Be it enacted by the Legislature of the State of Montana:

Section 1. Testimony of third person in cases of abuse of individual with developmental disability. (1) Otherwise inadmissible hearsay may be admitted into evidence in a criminal proceeding, as provided in subsections (2) and (3), if:

(a) the declarant of the out-of-court statement is an individual with a developmental disability who is:

(i) an alleged victim of a sexual offense or other crime of violence, including partner or family member assault, that is the subject of the criminal proceeding; or

(ii) a witness to an alleged sexual offense or other crime of violence, including partner or family member assault, that is the subject of the criminal proceeding;

(b) the court finds that the time, content, and circumstances of the statement provide circumstantial guarantees of trustworthiness;

(c) the individual with a developmental disability is unavailable as a witness;

(d) the hearsay testimony is offered as evidence of a material fact and is more probative on the point for which it is offered than any other evidence available through reasonable efforts; and

(e) the party intending to offer the hearsay testimony gives sufficient notice to provide the adverse party with a fair opportunity to prepare. The notice must include the content of the statement, the approximate time, date, and location of the statement, the person to whom the statement was made, and the circumstances surrounding the statement that the offering party believes support the statement's reliability.

(2) The court shall issue findings of fact and conclusions of law setting forth the court's reasoning on the admissibility of the testimony.

(3) When deciding the admissibility of offered hearsay testimony under subsections (1) and (2), a court shall consider the following:

(a) the attributes of the hearsay declarant, including:

(i) the individual's age;

(ii) the individual's ability to communicate verbally;

(iii) the individual's ability to comprehend the statements or questions of others;

(iv) the individual's ability to tell the difference between truth and falsehood;

(v) the individual's motivation to tell the truth, including whether the individual understands the general obligation to speak truthfully and not fabricate stories;

(vi) whether the individual possessed sufficient mental capacity at the time of the alleged incident to create an accurate memory of the incident; and

(vii) whether the individual possesses sufficient memory to retain an independent recollection of the events at issue;

(b) information regarding the witness who is relating the individual's hearsay statement, including:

(i) the witness's relationship to the individual;

(ii) whether the relationship between the witness and the individual has an impact on the trustworthiness of the individual's hearsay statement;

(iii) whether the witness has a motive to fabricate or distort the individual's statement; and

(iv) the circumstances under which the witness heard the individual's statement, including the timing of the statement in relation to the incident at issue and the availability of another person in whom the individual could confide;

(c) information regarding the individual's statement, including:

(i) whether the statement contains knowledge not normally attributed to an individual of the declarant's age;

(ii) whether the statement was spontaneous;

(iii) the suggestiveness of statements by other persons to the individual at the time that the individual made the statement;

(iv) if statements were made by the individual to more than one person, whether those statements were consistent;

(v) the nearness in time of the statement to the incident at issue; and

(vi) whether the statement is testimonial or nontestimonial in character; and

(d) other considerations that in the judge's opinion may bear on the admissibility of the individual's hearsay testimony.

(4) As used in this section, "developmental disability" has the meaning provided in 53-20-102.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 16, part 2, and the provisions of Title 46, chapter 16, part 2, apply to [section 1].

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Applicability. [This act] applies to criminal proceedings begun on or after October 1, 2007.

Approved April 26, 2007

CHAPTER NO. 283

[HB 743]

AN ACT ADDING CHRONIC DISEASE PROGRAMS TO THE DEFINITION OF "PROGRAMS FOR TOBACCO DISEASE PREVENTION"; AMENDING SECTIONS 17-6-602 AND 17-6-606, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-602, MCA, is amended to read:

"17-6-602. Definitions. As used in this part, the following definitions apply:

(1) "Benefits, services, or coverage of health care needs" means the provision of health care to persons by the state through any program of benefits, services, or coverage, including income tax incentives.

(2) "Health care" has the meaning provided in 50-16-504.

(3) (a) "Programs for tobacco disease prevention" means programs of services administered by the state for the purposes of informing individuals of the health risks of tobacco use and exposure to secondhand tobacco smoke, assisting persons in the avoidance of tobacco products use, and assisting individuals in cessation of tobacco use.

(b) Programs for tobacco disease prevention include:

(i) community-based education programs;

(ii) American Indian community tobacco education programs;

(iii) general public awareness and education programs;

(iv) tobacco cessation services;

(v) chronic disease programs;

~~(v)~~*(vi)* a tobacco use resource center;

~~(vi)~~*(vii)* special education and cessation programs to reach youth and women of childbearing age;

~~(vii)~~*(viii)* smokeless tobacco user programs; and

~~(viii)~~*(ix)* advertising issue programs.

(4) "Tobacco products" means a substance intended for human use that contains tobacco and includes but is not limited to cigarettes, cigars, smoking tobacco, and tobacco intended for use in an oral or nasal cavity.

(5) "Trust fund" means the Montana tobacco settlement trust fund authorized by Article XII, section 4, of the Montana constitution and implemented through this part."

Section 2. Section 17-6-606, MCA, is amended to read:

"17-6-606. Tobacco settlement accounts — purpose — uses. (1) The purpose of this section is to dedicate a portion of the tobacco settlement proceeds to fund ~~a~~ statewide ~~comprehensive~~ *programs for* tobacco disease prevention ~~program~~ designed to:

(a) discourage children from starting use of tobacco;

(b) assist adults in quitting use of tobacco;

(c) provide funds for the children's health insurance program; and

(d) provide funds for the comprehensive health association programs.

(2) An amount equal to 32% of the total yearly tobacco settlement proceeds received after June 30, 2003, must be deposited in a state special revenue account. Subject to subsection (5), the funds referred to in this subsection may be used only for funding ~~a~~ statewide *programs for* tobacco *disease* prevention ~~program~~ designed to prevent children from starting tobacco use and to help adults who want to quit tobacco use. The department of public health and human services shall manage the tobacco *disease* prevention ~~program~~ *programs* and shall adopt rules to implement the ~~program~~ *programs*. In adopting rules, the department shall consider the standards contained in Best Practices for Comprehensive Tobacco Control Programs—August 1999 or its successor document, published by the U.S. department of health and human services, centers for disease control and prevention.

(3) An amount equal to 17% of the total yearly tobacco settlement proceeds received after June 30, 2003, must be deposited in a state special revenue account. Subject to subsection (5), the funds referred to in this subsection may be used only for:

(a) matching funds to secure the maximum amount of federal funds for the Children's Health Insurance Program Act provided for in Title 53, chapter 4, part 10; and

(b) programs of the comprehensive health association provided for in Title 33, chapter 22, part 15, with funding use subject to 33-22-1513.

(4) Funds deposited in a state special revenue account, as provided in subsection (2) or (3), that are not appropriated within 2 years after the date of deposit must be transferred to the trust fund.

(5) The legislature shall appropriate money from the state special revenue accounts provided for in this section for *programs for* tobacco disease prevention, for the programs referred to in the subsection establishing the account, and for funding the tobacco prevention advisory board.

(6) Programs funded under this section that are private in nature may be funded through contracted services."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2007

CHAPTER NO. 284

[HB 744]

AN ACT REVISING CERTAIN SCHOOL LAWS; REVISING TERRITORY TRANSFER LAWS RELATED TO K-12 DISTRICTS; AMENDING SECTION 20-6-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-6-105, MCA, is amended to read:

"20-6-105. Transfer of territory from one district to another — hearing on effects of proposed transfer — burden of proof — standard of proof — appeal to district court. (1) *(a)* Except as provided in 20-6-214, 20-6-215, 20-6-308, ~~and~~ 20-6-322, *and subsection (1)(b) of this section,* a petition

to transfer territory from one school district to another may be presented to the county superintendent if:

~~(a)~~*(i)* the petition is signed by 60% of the registered electors qualified to vote at general elections in the territory proposed for transfer;

~~(b)~~*(ii)* the territory to be transferred is contiguous to the district to which it is to be attached, includes taxable property, and has school-age children living in it;

~~(c)~~*(iii)* the territory to be transferred is not located within 3 miles, over the shortest practicable route, of an operating school in the district from which it is to be transferred; and

~~(d)~~*(iv)* the board of trustees of the school district that would receive the territory has approved the proposed transfer by a resolution adopted by a majority of the members of the board of trustees at a meeting for which proper notice was given.

(b) A petition to transfer territory to or from a K-12 district may not be presented to a county superintendent unless both school boards and the county superintendents have agreed in writing.

(2) ~~On or after March 27, 2003, once~~ *Once* a petition to transfer territory has been filed, an additional petition to transfer that territory may not be filed for 4 years.

(3) The petition for a transfer of territory must be delivered to the county superintendent and must:

(a) provide a legal description of the territory that is requested to be transferred and a description of the district to which the territory is to be transferred;

(b) state the reasons why the transfer is requested; and

(c) state the number of school-age children residing in the territory.

(4) If both the trustees of the receiving and transferring school districts have approved the proposed territory transfer in writing, the county superintendent shall grant the transfer.

(5) For any petition that meets the criteria specified in subsection (1) and contains the information required by subsection (3) but that has not been approved in writing by the board of trustees of the school district that would transfer the territory, the county superintendent shall:

(a) not more than 40 days after receipt of the petition, set a place, date, and time for a hearing to consider the petition; and

(b) give notice of the place, date, and time of the hearing. The notice must be posted in the districts affected by the petition for the transfer of territory in the manner prescribed in this title for notices for school elections, with at least one notice posted in the territory to be transferred. Notice must also be delivered to the board of trustees of the school district from which the territory is to be transferred.

(6) The county superintendent shall conduct a hearing as scheduled, and any resident, taxpayer, or representative of the receiving or transferring district must, upon request, be heard. At the hearing, the petitioners have the initial burden of presenting evidence on the proposed transfer's effect on:

(a) the educational opportunity for the students in the receiving and transferring districts, including but not limited to:

(i) class size;

(ii) ability to maintain demographic diversity;

(iii) local control;

(iv) parental involvement; and

(v) the capability of the receiving district to provide educational services;

(b) student transportation, including but not limited to:

(i) safety;

(ii) cost; and

(iii) travel time of students;

(c) the economic viability of the proposed new districts, including but not limited to:

(i) the existence of a significant burden on the taxpayers of the district from which the territory will be transferred;

(ii) the significance of any loss in state funding for the students in both the receiving and transferring districts;

(iii) the viability of the future bonding capacity of the receiving and transferring districts, including but not limited to the ability of the receiving district and the transferring district to meet minimum bonding requirements;

(iv) the ability of the receiving district and the transferring district to maintain sufficient reserves; and

(v) the cumulative effect of other transfers of territory out of the district in the previous 8 years on the taxable value of the district from which the territory is to be transferred. In cases where the cumulative effect of other transfers of territory out of the district in the previous 8 years is equal to or greater than 25% of the district's taxable value, the following additional factors must be considered and weighed in the decision:

(A) the district's rate of passage of discretional levies placed before the voters over the previous 8 years;

(B) the district's reduction or elimination of instructional staff or programs over the previous 8 years; and

(C) any increase in district taxes over the previous 8 years and the likely increase in district taxes if the transfer is granted.

(7) After receiving evidence from both the proponents and opponents of the proposed territory transfer on the effects described in subsection (6), the county superintendent shall, within 30 days after the hearing, issue findings of fact, conclusions of law, and an order.

(8) If, based on a preponderance of the evidence, the county superintendent determines that the evidence on the effects described in subsection (6) supports a conclusion that a transfer of the territory is in the best and collective interest of students in the receiving and transferring districts and does not negatively impact the ability of the districts to serve those students, the county superintendent shall grant the transfer. If the county superintendent determines that, based on a preponderance of the evidence presented at the hearing, a transfer of the territory is not in the best and collective interest of

students in the receiving and transferring districts and will negatively impact the ability of the districts to serve those students, the county superintendent shall deny the territory transfer.

(9) The decision of the county superintendent is final 30 days after the date of the decision unless it is appealed to the district court by a resident, taxpayer, or representative of either district affected by the petitioned territory transfer. The county superintendent's decision must be upheld unless the court finds that the county superintendent's decision constituted an abuse of discretion under this section.

(10) Whenever a petition to transfer territory from one district to another district creates a joint district or affects the boundary of an existing joint district, the petition to transfer territory must be delivered to the county superintendent of the county in which the territory proposed to be transferred is located. The county superintendent shall notify any other county superintendents of counties with districts affected by the petition, and the duties prescribed in this section for the county superintendent must be performed jointly. If the number of county superintendents involved is an even number, the county superintendents shall jointly appoint an additional county superintendent from an unaffected county to join them in conducting the hearing required in subsection (6) and in issuing the decision required in subsection (8). The decision issued under subsection (8) must be made by a majority of the county superintendents.

(11) A petition seeking to transfer territory out of or into a K-12 district must propose the transfer of territory for both elementary and high school purposes. In the case of a proposed transfer out of or into a K-12 district, a petition that fails to propose the transfer of territory for both elementary and high school purposes is invalid for the purposes of this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2007

CHAPTER NO. 285

[HB 771]

AN ACT GENERALLY REVISING ACTUARIAL VALUATION AND REPORTING REQUIREMENTS RELATED TO THE INVESTMENTS AND BENEFITS OF THE STATEWIDE PUBLIC EMPLOYEES' RETIREMENT SYSTEMS; AMENDING SECTIONS 5-11-210, 19-2-405, 19-2-407, 19-2-408, 19-20-201, AND 19-20-719, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Reports on retirement system trust fund investments and benefits. (1) As soon as practical after the end of each calendar year, the board of investments shall publish a report on each retirement system trust fund invested by the board. The report may be part of an annual report required pursuant to Article VIII, section 13, of the Montana constitution or 17-5-1650 but must summarize the following with respect to each retirement system trust fund:

(a) asset allocation;

(b) past and expected investment performance;

(c) investment goals and strategies; and

(d) Montana public employees' retirement system investments and performance compared with the public employees' retirement system investments and performance in other states.

(2) The board of investments shall annually at a public meeting present the report described in subsection (1) to the public employees' retirement board provided for in 2-15-1009 and the teachers' retirement board provided for in 2-15-1010. The board shall also provide the report to the legislature pursuant to 5-11-210.

Section 2. Presentation to board of investments. The board shall annually at a public meeting present to the board of investments established in 2-15-1808 a financial and actuarial report of the retirement systems administered by the board and brief the board of investments on any benefit changes being considered by the board that may affect trust fund obligations.

Section 3. Presentation to board of investments. The retirement board shall annually at a public meeting present to the board of investments established in 2-15-1808 a financial and actuarial report of the retirement system and brief the board of investments on any benefit changes being considered by the retirement board that may affect trust fund obligations.

Section 4. Section 5-11-210, MCA, is amended to read:

"5-11-210. Clearinghouse for reports to legislature. (1) For the purposes of this section, "report" means a report required by law to be given to or filed with the legislature.

(2) On or before September 1 of each year preceding the convening of a regular session of the legislature, an entity required to report to the legislature shall provide, in writing, to the appropriate interim or statutory committee:

(a) the final title of the report;

(b) an abstract or description of the contents of the report, not to exceed 100 words;

(c) a recommendation on how many copies of the report should be provided to the legislature;

(d) the reasons why the number of copies recommended is, in the opinion of the reporting entity, the appropriate number of copies; and

(e) an estimated cost for each copy of the report.

(3) After considering all of the information available about the report, including the number of legislators requesting copies of the report pursuant to subsection (7), the appropriate interim or statutory committee shall, in writing, direct the reporting entity to provide a specific number of copies. The number of copies required is at the sole discretion of the appropriate interim or statutory committee. The appropriate interim or statutory committee may require the reporting entity to mail the copies of the report.

(4) The appropriate interim or statutory committee may require that the report be submitted in an electronic format usable on the legislature's current computer hardware, in a microform, such as microfilm or microfiche, or in a CD-ROM format, meaning compact disc read-only memory.

(5) Costs of preparing and distributing a report to the legislature, including writing, printing, postage, distribution, and all other costs, accrue to the

reporting agency. Costs incurred in meeting the requirements of this section may not accrue to the legislative services division.

(6) The executive director of the legislative services division shall cause to be prepared a list of all reports required to be presented to the legislature from the list of titles received under subsection (2).

(7) The executive director shall, as soon as possible following a general election, mail to each holdover senator, senator-elect, and representative-elect a list of the titles of the reports, along with the abstracts prepared pursuant to subsection (2)(b). The list must include a form on which each member or member-elect receiving the list may indicate the report or reports that the member or member-elect would like to receive.

(8) The executive director of the legislative services division shall make copies of reports requested pursuant to subsection (7) available to those members or members-elect by either requiring that copies be mailed pursuant to subsection (3) or by delivering copies of the reports during the first week of the legislative session.

(9) The executive director of the legislative services division may keep as many copies of a report as are necessary and discard the rest.

(10) The procedure outlined in this section may also be used for a report required to be made to the legislature under the Multistate Tax Compact contained in 15-1-601, the Vehicle Equipment Safety Compact contained in 61-2-201, the Multistate Highway Transportation Agreement contained in 61-10-1101, or the Western Interstate Nuclear Compact contained in 90-5-201.

(11) Each report to the legislature required under [section 1], 19-2-405, 19-2-407, and 19-20-201 must be provided to the legislative services division as soon as the report is published. The legislative services division shall ensure that legislators are notified pursuant to this section of the report's availability. During the interim, the legislative services division shall ensure that members of the state administration and veterans' affairs interim committee and the legislative finance committee receive copies of the reports."

Section 5. Section 19-2-405, MCA, is amended to read:

"19-2-405. Employment of actuary — ~~biennial~~ *annual* investigation and valuation. (1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public systems of pensions. The actuary is the technical advisor of the board on matters regarding the operation of the retirement systems.

(2) The board shall require the actuary to make ~~a biennial~~ *an annual* actuarial investigation into the suitability of the actuarial tables used by the retirement systems and an actuarial valuation of the assets and liabilities of each defined benefit plan that is a part of the retirement systems.

(3) The normal cost contribution rate, which is funded by required employee contributions and a portion of the required employer contributions to each defined benefit retirement plan, must be calculated as the level percentage of members' salaries that will actuarially fund benefits payable under a retirement plan as those benefits accrue in the future.

(4) (a) The unfunded liability contribution rate, which is entirely funded by a portion of the required employer contributions to the retirement plan, must be calculated as the level percentage of current and future defined benefit plan members' salaries that will amortize the unfunded actuarial liabilities of the

retirement plan over a reasonable period of time, not to exceed 30 years, as determined by the board.

(b) In determining the amortization period under subsection (4)(a) for the public employees' retirement system's defined benefit plan, the actuary shall take into account the plan choice rate contributions to be made to the defined benefit plan pursuant to 19-3-2117 and 19-21-203.

(5) The board shall require the actuary to conduct a periodic actuarial investigation into the actuarial experience of the retirement systems and plans. *Copies of the report must be provided to the legislature pursuant to 5-11-210.*

(6) The board may require the actuary to conduct any valuation necessary to administer the retirement systems and the plans subject to this chapter."

Section 6. Section 19-2-407, MCA, is amended to read:

"19-2-407. ~~Report by board to governor~~ *Reports.* *(1)* As soon as practical after the close of each fiscal year, the board shall file with the governor *and with the legislature pursuant to 5-11-210* a report of its work for that fiscal year. The report must include *but is not limited to:*

(a) a statement as to the accumulated cash and securities in the pension trust funds as certified by the state treasurer and the board of investments. ~~The report must include~~*;*

(b) a summary of the most recent ~~unpublished report of~~ *information available from* the actuary ~~of~~ *concerning* the actuarial valuation of the assets and liabilities of each system or plan*; and*

(c) an analysis of how market performance is affecting actuarial funding of each of the retirement systems or plans.

(2) The report *required under subsection (1)* must also provide information concerning the defined contribution plan, including a description of the plan, the number of members in the plan, plan contribution rates, the total amount of money invested by members, investment performance, administrative costs and fees, determinations on the plan choice rate made pursuant to 19-3-2121, and other information required under applicable governmental accounting standards and as determined by the board."

Section 7. Section 19-2-408, MCA, is amended to read:

"19-2-408. Administrative expenses. (1) The legislature finds that proper administration of the pension trust funds benefits both employers and members and continues to benefit members after retirement.

(2) (a) The administrative expenses of the retirement systems administered by the board must be paid from the investment earnings on the pension trust fund of the public employees' retirement system's defined benefit plan, except as otherwise provided in this section. The board shall compute the administrative expenses attributable to each retirement system or plan administered by the board and transfer that amount from each retirement system's or plan's pension trust fund to the pension trust fund of the public employees' retirement system's defined benefit plan in a manner that ensures that the public employees' retirement system's defined benefit plan trust fund is fully compensated for expenditures made on behalf of other systems or plans so that there is no actuarial impact on the fund.

(b) The total administrative expenses of the board, including the administration of the volunteer firefighters' pension plan, may not exceed 1.5% of the total defined benefit plan retirement benefits paid.

(3) For purposes of calculating the percentage specified in subsection (2)(b), administrative expenses do not include:

(a) expenditures to purchase intangible assets for plan administration;

(b) expenses of the defined contribution plan; ~~or~~

(c) expenditures of funds allocated under 19-3-112(1)(b) to the education fund established in 19-3-112(1)(a)*; or*

(d) expenses for an actuarial valuation under 19-2-405(2) performed during the first year of a biennium.

(4) The administrative expenses of the defined contribution plan must be paid, as provided in 19-3-2105, from assets of the defined contribution plan."

Section 8. Section 19-20-201, MCA, is amended to read:

"19-20-201. Administration by retirement board. (1) The retirement board shall administer and operate the retirement system within the limitations prescribed by this chapter, and it is the duty of the retirement board to:

(a) establish rules necessary for the proper administration and operation of the retirement system;

(b) approve or disapprove all expenditures necessary for the proper operation of the retirement system;

(c) keep a record of all its proceedings, which must be open to public inspection;

(d) submit a report to the office of budget and program planning detailing the fiscal transactions for the 2 fiscal years immediately preceding the report due date, the amount of the accumulated cash and securities of the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of the retirement system;

(e) keep in convenient form the data that is necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the retirement system;

(f) prepare an annual valuation of the assets and liabilities of the retirement system *that includes an analysis of how market performance is affecting the actuarial funding of the retirement system*;

(g) prescribe a form for membership application that will provide adequate and necessary information for the proper operation of the retirement system;

(h) annually determine the rate of regular interest as prescribed in 19-20-501;

(i) establish and maintain the funds of the retirement system in accordance with the provisions of part 6 of this chapter; and

(j) perform other duties and functions as are required to properly administer and operate the retirement system.

(2) In discharging its duties, the board, or an authorized representative of the board, may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel

the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104.

(3) The board may send retirement-related material to employers and the campuses of the Montana university system for delivery to employees. To facilitate distribution, employers and those campuses shall each provide the board with a point of contact who is responsible for distribution of the material provided by the board.

(4) The board shall make available to the legislature pursuant to 5-11-210 copies of the annual actuarial valuation and report required pursuant to subsections (1)(d) and (1)(f)."

Section 9. Section 19-20-719, MCA, is amended to read:

"19-20-719. Guaranteed annual benefit adjustment — rulemaking. (1) Subject to subsection (3), on January 1 of each year, the retirement allowance payable to each recipient who is eligible under subsection (2) must be increased by 1.5%.

(2) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if the retiree has received at least 36 monthly retirement benefit payments prior to January 1 of the year in which the adjustment is to be made.

(3) On ~~January 1, 2002, and~~ January 1 of each year following the system's ~~biennial~~ valuation, the board may increase the annual benefit adjustment provided in subsection (1) until a maximum of 3% is guaranteed if:

(a) the period required to amortize the system's actuarial unfunded liability, as determined by the most recent ~~biennial~~ valuation, adjusted for any benefit enhancement enacted by the legislature since the most recent ~~biennial~~ valuation, is less than 25 years;

(b) sufficient funds are available to increase the guaranteed annual benefit adjustment by at least 0.1%; and

(c) the increase granted by the board would not cause the amortization period, as of the most recent valuation, to exceed 25 years.

(4) The board shall adopt rules to administer the provisions of this section."

Section 10. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 17, chapter 6, part 2, and the provisions of Title 17, chapter 6, part 2, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 19, chapter 2, part 4, and the provisions of Title 19, chapter 2, part 4, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 19, chapter 20, part 2, and the provisions of Title 19, chapter 20, part 2, apply to [section 3].

Section 11. Effective date. [This act] is effective June 1, 2007.

Approved April 26, 2007

CHAPTER NO. 286

[HB 778]

AN ACT PROVIDING AN EXEMPTION FROM TAXATION FOR OIL AND GAS WELLS, WORKING INTERESTS, AND NONWORKING INTERESTS OWNED BY THE STATE OR A LOCAL GOVERNMENT; AMENDING SECTION 15-36-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-304, MCA, is amended to read:

"15-36-304. Production tax rates imposed on oil and natural gas — *exemption*. (1) The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in 15-36-331 and 15-36-332.

(2) Natural gas is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) (i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months:		
(A) pre-1999 wells	14.8%	14.8%
(B) post-1999 wells	9%	14.8%
(b) stripper natural gas pre-1999 wells	11%	14.8%
(c) horizontally completed well production:		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months	9%	14.8%

(3) The reduced tax rates under subsection (2)(a)(i) on production for the first 12 months of natural gas production from a well begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(4) The reduced tax rate under subsection (2)(c)(i) on production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(5) Oil is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) primary recovery production:		
(i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months:		
(A) pre-1999 wells	12.5%	14.8%

(B) post-1999 wells	9%	14.8%
(b) stripper oil production:		
(i) first 1 through 10 barrels a day production	5.5%	14.8%
(ii) more than 10 barrels a day production	9.0%	14.8%
(c) (i) stripper well exemption production	0.5%	14.8%
(ii) stripper well bonus production	6.0%	14.8%
(d) horizontally completed well production:		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%
(e) incremental production:		
(i) new or expanded secondary recovery production	8.5%	14.8%
(ii) new or expanded tertiary production	5.8%	14.8%
(f) horizontally recompleted well:		
(i) first 18 months	5.5%	14.8%
(ii) after 18 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%

(6) (a) The reduced tax rates under subsection (5)(a)(i) for the first 12 months of oil production from a well begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that notification has been given to the department.

(b) (i) The reduced tax rates under subsection (5)(d)(i) on oil production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows if the well has been certified as a horizontally completed well to the department by the board.

(ii) The reduced tax rate under subsection (5)(f)(i) on oil production from a horizontally recompleted well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows if the well has been certified as a horizontally recompleted well to the department by the board.

(c) Incremental production is taxed as provided in subsection (5)(e) only if the average price for each barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter as determined in subsection (6)(d), then incremental production from pre-1999 wells and from post-1999 wells is taxed at the rate imposed on primary recovery production under subsections (5)(a)(ii)(A) and (5)(a)(ii)(B), respectively, for production occurring in that quarter, other than exempt stripper well production.

(d) (i) Stripper well exemption production is taxed as provided in subsection (5)(c)(i) only if the average price for a barrel of oil as reported in the Wall Street

Journal for west Texas intermediate crude oil during a calendar quarter is less than $38 a barrel. If the price of oil is equal to or greater than $38 a barrel, there is no stripper well exemption tax rate and oil produced from a well that produces 3 barrels a day or less is taxed as stripper well bonus production.

(ii) Stripper well bonus production is subject to taxation as provided in subsection (5)(c)(ii) only if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is equal to or greater than $38 a barrel.

(e) For the purposes of subsections (6)(c) and (6)(d), the average price for each barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(7) (a) The tax rates imposed under subsections (2) and (5) on working interest owners and nonworking interest owners must be adjusted to include the total of the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131 and the derived rate for the oil, gas, and coal natural resource account as determined under subsection (7)(b).

(b) The total of the privilege and license tax and the tax for the oil, gas, and coal natural resource account may not exceed 0.3%. The base rate for the tax for oil, gas, and coal natural resource account funding is 0.08%, but when the rate adopted pursuant to 82-11-131 by the board of oil and gas conservation for the privilege and license tax:

(i) exceeds 0.22%, the rate for the tax to fund the oil, gas, and coal natural resource account is equal to the difference between the rate adopted by the board of oil and gas conservation and 0.3%; or

(ii) is less than 0.18%, the rate for the tax to fund the oil, gas, and coal natural resource account is equal to the difference between the rate adopted by the board of oil and gas conservation and 0.26%.

(c) The board of oil and gas conservation shall give the department at least 90 days' notice of any change in the rate adopted by the board. Any rate change of the tax to fund the oil, gas, and coal natural resource account is effective at the same time that the board of oil and gas conservation rate is effective.

(8) Any interest in production owned by the state or a local government is exempt from taxation under this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to production on or after December 31, 1995.

Approved April 26, 2007

CHAPTER NO. 287

[HB 781]

AN ACT REQUIRING EACH LAW ENFORCEMENT AGENCY TO ADOPT A POLICY ON RACE-BASED TRAFFIC STOPS, INCLUDING THE COLLECTION OF DATA ON RACIAL PROFILING IN TRAFFIC STOPS; AMENDING SECTION 44-2-117, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-2-117, MCA, is amended to read:

"44-2-117. Racial profiling prohibited — definitions — policies — complaints — training. (1) A peace officer may not engage in racial profiling.

(2) The race or ethnicity of an individual may not be the sole factor in:

(a) determining the existence of probable cause to take into custody or arrest an individual; or

(b) constituting a particularized suspicion that an offense has been or is being committed in order to justify the detention of an individual or the investigatory stop of a motor vehicle.

(3) Each law enforcement agency shall adopt a policy on race-based traffic stops that:

(a) prohibits the practice of routinely stopping members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law;

(b) provides for periodic reviews by the law enforcement agency and collection of data that determine whether any peace officers of the law enforcement agency have a pattern of stopping members of minority groups for violations of vehicle laws in a number disproportionate to the population of minority groups residing or traveling within the jurisdiction of the law enforcement agency;

(c) if the review under subsection (3)(b) reveals a pattern, requires an investigation to determine whether any peace officers of the law enforcement agency routinely stop members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law.

~~(3)~~*(4)* (a) Each municipal, county, consolidated local government, and state law enforcement agency shall adopt a detailed written policy that clearly defines the elements constituting racial profiling. Each agency's policy must prohibit racial profiling, require that all stops are lawful under 46-5-401, and require that all stops are documented according to ~~the agency's standard policies and procedures~~ *subsection (3) of this section*.

(b) The policy must include a procedure that the law enforcement agency will use to address written complaints concerning racial profiling. The complaint procedure must require that:

(i) all written complaints concerning racial profiling be promptly reviewed;

(ii) a person is designated who shall review all written complaints of racial profiling;

(iii) the designated person shall, within 10 days of receipt of a written complaint, acknowledge receipt of the complaint in writing; and

(iv) after a review is completed, the designated person shall, in writing, inform the person who submitted the written complaint and the head of the agency of the results of the review.

(c) The policy must be available for public inspection during normal business hours.

~~(4)~~*(5)* Each municipal, county, consolidated local government, and state law enforcement agency shall require for all of its peace officers cultural awareness

training and training in racial profiling. The training program must be certified by the peace officers' standards and training advisory council.

(6) Each law enforcement agency may provide for appropriate counseling and training of any peace officer found to have engaged in race-based traffic stops within 90 days of the review. The course or courses of instruction and the guidelines must stress understanding and respect for racial and cultural differences and development of effective, noncombative methods of carrying out law enforcement duties in a racially and culturally diverse environment.

~~(5)~~*(7)* If an investigation of a complaint of racial profiling reveals that a peace officer was in direct violation of the law enforcement agency's written policy prohibiting racial profiling, the law enforcement agency shall take appropriate action against the peace officer consistent with applicable laws, rules, ordinances, or policies.

~~(6)~~*(8)* For the purposes of this section, the following definitions apply:

(a) "Minority group" means individuals of African American, Hispanic, Native American, Asian, or Middle Eastern descent.

~~(a)~~*(b)* "Peace officer" has the meaning provided in 46-1-202.

~~(b)~~*(c)* "Racial profiling" means the detention, official restraint, or other disparate treatment of an individual solely on the basis of the racial or ethnic status of the individual.

~~(7)~~*(9)* The department of justice shall make periodic reports to the law and justice interim committee regarding the degree of compliance by municipal, county, consolidated local government, and state law enforcement agencies with the requirements of this section.

(10) Each law enforcement agency in this state may use federal funds from community-oriented policing services grants or any other federal sources to equip each vehicle used for traffic stops with a video camera and voice-activated microphone."

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved April 26, 2007

CHAPTER NO. 288

[HB 785]

AN ACT EXEMPTING FROM THE WORKERS' COMPENSATION ACT AN ATHLETE EMPLOYED BY OR ON A TEAM OR A SPORTS CLUB ENGAGED IN CONTACT SPORTS; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers and to all employees. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation

Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household or domestic employment;

(b) casual employment;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;

(f) employment as a direct seller as defined by 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;

(k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection (2)(k):

(i) "freelance correspondent" means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier":

(A) means a person who provides a newspaper with the service of delivering newspapers singly or in bundles; and

(B) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as referred to in 39-51-204(1)(e);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior

to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

(p) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(q) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(r) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(r)(iii)(A) or (2)(r)(iii)(B);

(s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are

unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(v) employment of a person who is not an employee or worker in this state as defined in 39-71-118(10);

(w) employment of a person who is working under an independent contractor exemption certificate*;*

(x) employment of an athlete by or on a team or sports club engaged in a contact sport. As used in this subsection, "contact sport" means a sport that includes significant physical contact between the athletes involved. Contact sports include but are not limited to football, hockey, roller derby, rugby, lacrosse, wrestling, and boxing.

(3) (a) (i) A person who regularly and customarily performs services at locations other than the person's own fixed business location shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 unless the person has waived the rights and benefits of the Workers' Compensation Act by obtaining an independent contractor exemption certificate from the department pursuant to 39-71-417.

(ii) Application fees or renewal fees for independent contractor exemption certificates must be deposited in the state special revenue account established in 39-9-206 and must be used to offset the certification administration costs.

(b) A person who holds an independent contractor exemption certificate may purchase a workers' compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.

(c) For the purposes of this subsection (3), "person" means a sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of

exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2007

CHAPTER NO. 289

[HB 811]

AN ACT ESTABLISHING A TRADITIONAL ARTS AND CRAFTS ACCOUNT IN THE STATE SPECIAL REVENUE FUND; ALLOWING THE MONTANA ARTS COUNCIL TO PURCHASE AND SELL TRADITIONAL AMERICAN INDIAN ARTS AND CRAFTS; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO TRANSFER REVENUE GENERATED BY PAST SALES AND TO TRANSFER ACQUISITIONS TO THE MONTANA ARTS COUNCIL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Traditional arts and crafts account — funding — use. (1) There is an account in the state special revenue fund established in 17-2-102 for the purchase and sale of traditional arts and crafts by American Indian master artists. Money may be deposited in the account through an allocation of money to the account or as provided in this section.

(2) Money in the account may be used only by the Montana arts council to purchase traditional arts and crafts by American Indian master artists and to make the arts and crafts available for resale. Money generated through the sale of traditional arts and crafts must be deposited into the account.

(3) The department of fish, wildlife, and parks shall transfer $1,015 to the account and transfer any inventory purchased through the American master Indian artists state parks partnership pilot program to the Montana arts council by June 30, 2007.

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 22, chapter 2, and the provisions of Title 22, chapter 2, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2007

CHAPTER NO. 290

[SB 89]

AN ACT REQUIRING BREAK TIME AND PRIVACY FOR NEEDS OF BREASTFEEDING MOTHERS IN STATE AND COUNTY GOVERNMENTS, MUNICIPALITIES, SCHOOL DISTRICTS, AND THE UNIVERSITY SYSTEM; AND PROVIDING THAT IT IS DISCRIMINATION TO REFUSE TO HIRE OR EMPLOY, BAR, OR DISCHARGE FROM EMPLOYMENT AN EMPLOYEE WHO EXPRESSES BREAST MILK OR TO DISCRIMINATE IN TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Public employer policy on support of women and breastfeeding — unlawful discrimination. (1) All state and county governments, municipalities, and school districts and the university system must have a written policy supporting women who want to continue breastfeeding after returning from maternity leave. The policy must state that employers shall support and encourage the practice of breastfeeding, accommodate the breastfeeding-related needs of employees, and ensure that employees are provided with adequate facilities for breastfeeding or the expression of milk for their children. At a minimum, the policy must identify the means by which an employer will make available a space suitable for breastfeeding and breast pumping for a lactating employee, including the provision of basic necessities of privacy, lighting, and electricity for the pump apparatus. The space does not need to be fully enclosed or permanent, but must be readily available during the term that the employee needs the space.

(2) It is an unlawful discriminatory practice for any public employer:

(a) to refuse to hire or employ or to bar or to discharge from employment an employee who expresses milk in the workplace; or

(b) to discriminate against an employee who expresses milk in the workplace in compensation or in terms, conditions, or privileges of employment, unless based upon a bona fide occupational qualification.

Section 2. Private place for nursing mothers. (1) All state and county governments, municipalities, and school districts and the university system shall make reasonable efforts to provide a room or other location, in close proximity to the work area, other than a toilet stall, where an employee can express the employee's breast milk as provided in [section 1].

(2) All public employers are encouraged to establish policies to allow mothers who wish to continue to breastfeed after returning to work to have privacy in order to express milk and to provide facilities for milk storage.

Section 3. Break time for working mothers. All state and county governments, municipalities, and school districts and the university system shall provide reasonable unpaid break time each day to an employee who needs to express breast milk for the employee's child, as provided in [sections 1 and 2], if breaks are currently allowed. If breaks are not currently allowed, the public employer shall consider each case and make accommodations as possible. The

break time must, if possible, run concurrently with any break time already provided to the employee. A public employer is not required to provide break time under this section if to do so would unduly disrupt the public employer's operations.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 39, chapter 2, part 2, and the provisions of Title 39, chapter 2, part 2, apply to [sections 1 through 3].

Approved April 26, 2007

CHAPTER NO. 291

[SB 95]

AN ACT REMOVING THE REQUIREMENT FOR A PHYSICIAN DIRECTOR OF AN AUTOMATED EXTERNAL DEFIBRILLATOR PROGRAM; AMENDING SECTIONS 50-6-502, 50-6-503, AND 50-6-505, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-6-502, MCA, is amended to read:

"50-6-502. AED program — requirements for AED use. In order for an entity to use or allow the use of an automated external defibrillator, the entity shall:

(1) establish a program for the use of an AED that includes a written plan that complies with this part and rules adopted by the department pursuant to 50-6-503. The plan must specify:

(a) where the AED will be placed;

(b) the individuals who are authorized to operate the AED;

(c) how AED use will be coordinated with an emergency medical service providing services in the area where the AED is located;

(d) the medical ~~supervision~~ *oversight* that will be provided;

(e) the maintenance that will be performed on the AED;

(f) records that will be kept by the program;

(g) reports that will be made of AED use; *and*

~~(h) the name, location, and telephone number of a physician, or other individual designated by the physician, designated to provide medical supervision of the AED program; and~~

~~(i)~~*(h)* other matters as specified by the department;

(2) adhere to the written plan required by subsection (1);

(3) ensure that before using the AED, an individual authorized to operate the AED receives appropriate training approved by the department in cardiopulmonary resuscitation and the proper use of an AED;

(4) maintain, test, and operate the AED according to the manufacturer's guidelines and maintain written records of all maintenance and testing performed on the AED;

~~(5) ensure that the physician or other individual designated by the physician to supervise the AED program supervises the AED program to ensure~~

~~compliance with the written plan, this part, and rules adopted by the department pursuant to 50-6-503 and reviews each case in which the AED is used;~~

~~(6)~~*(5)* each time an AED is used for an individual in cardiac arrest, require that an emergency medical service is summoned to provide assistance as soon as possible and that the AED use is reported to the ~~supervising physician or the person designated by the physician and to the~~ department as required by the written plan;

~~(7)~~*(6)* before allowing any use of an AED, provide the following to all licensed emergency medical services and any public safety answering point or emergency dispatch center providing services to the area where the AED is located:

(a) a copy of the plan prepared pursuant to this section; and

(b) written notice, in a format prescribed by department rules, stating:

(i) that an AED program is established by the entity;

(ii) where the AED is located; and

(iii) how the use of the AED is to be coordinated with the local emergency medical service system; and

~~(8)~~*(7)* comply with this part and rules adopted by the department pursuant to 50-6-503."

Section 2. Section 50-6-503, MCA, is amended to read:

"50-6-503. Rulemaking. (1) The department shall adopt rules specifying the following:

(a) the contents of the written notice required by 50-6-502(7);

(b) reporting requirements for each use of an AED;

(c) the contents of a plan prepared in accordance with 50-6-502 and requirements applicable to the subject matter of the plan;

(d) training requirements in cardiopulmonary resuscitation and AED use for any individual authorized by an AED program plan to use an AED;

(e) ~~requirements~~ *guidelines* for medical ~~supervision~~ *oversight* of an AED program;

(f) minimum requirements for a medical protocol for use of an AED;

(g) performance requirements for an AED in order for the AED to be used in an AED program; and

(h) a list of the AED training programs approved by the department.

(2) The department may not adopt rules for any purpose other than those in subsection (1)."

Section 3. Section 50-6-505, MCA, is amended to read:

"50-6-505. Liability limitations. (1) An individual who provides emergency care or treatment by using an AED in compliance with this part and rules adopted by the department pursuant to 50-6-503 and an individual providing cardiopulmonary resuscitation to an individual upon whom an AED is or may be used are immune from civil liability for a personal injury that results from that care or treatment or from civil liability as a result of any act or failure to act in providing or arranging further medical treatment for the individual upon whom the AED was used unless the individual using the AED or the

person providing cardiopulmonary resuscitation, as applicable, acts with gross negligence or with willful or with wanton disregard for the care of the person upon whom the AED is or may be used.

(2) The following individuals or entities are immune from civil liability for any personal injury that results from an act or omission that does not amount to willful or wanton misconduct or gross negligence if applicable provisions of this part and rules adopted by the department pursuant to 50-6-503 have been met by the individual or entity:

(a) ~~the physician supervising~~ *a person providing medical oversight of* the AED program ~~or the person designated by a physician to supervise the program, either of whom are~~, *as* designated in the plan prepared pursuant to 50-6-502;

(b) the entity responsible for the AED program, as designated in the plan prepared pursuant to 50-6-502;

(c) an individual providing training to others on the use of an AED."

Section 4. Effective date. [This act] is effective July 1, 2007.

Approved April 26, 2007

CHAPTER NO. 292

[SB 102]

AN ACT REVISING LAWS GOVERNING MUTUAL AID AGREEMENTS FOR PROTECTION AGAINST DISASTERS, INCIDENTS, AND EMERGENCIES; INCLUDING GOVERNING BODIES OF FIRE PROTECTION SERVICES, EMERGENCY MEDICAL CARE PROVIDERS, AND LOCAL GOVERNMENT SUBDIVISIONS AS ENTITIES THAT MAY PARTICIPATE IN CERTAIN MUTUAL AID AGREEMENTS AND FROM WHICH ASSISTANCE MAY BE REQUESTED; AMENDING SECTIONS 7-33-2108, 7-33-2202, 7-33-2405, 7-33-4112, 10-3-202, 10-3-209, 10-3-1102, AND 10-3-1103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2108, MCA, is amended to read:

"7-33-2108. Mutual aid agreements — request if no agreement exists — definitions. (1) A mutual aid agreement is an agreement for protection against ~~natural~~ disasters, incidents, or emergencies ~~or disasters, incidents, or emergencies caused by persons~~.

(2) Fire district trustees may enter mutual aid agreements with the proper authority of:

(a) other fire districts;

(b) unincorporated municipalities;

(c) incorporated municipalities;

(d) state agencies;

(e) private fire prevention agencies;

(f) federal agencies;

(g) fire service areas; ~~and~~

(h) governing bodies of other political subdivisions *in Montana; and*

(i) governing bodies of fire protection services, emergency medical care providers, and local government subdivisions of any other state or the United States pursuant to Title 10, chapter 3, part 11.

(3) If the fire district trustees have not concluded a mutual aid agreement, then the trustees, a representative of the trustees, or an incident commander may request assistance pursuant to 10-3-209.

(4) As used in this section, "incidents", "disasters", ~~or~~ *and* "emergencies" ~~has the meaning ascribed to the term~~ *have the meanings provided* in 10-3-103."

Section 2. Section 7-33-2202, MCA, is amended to read:

"7-33-2202. Functions of county governing body. The county governing body, with respect to rural fire control, shall carry out the specific authorities and duties imposed in this section:

(1) The governing body shall:

(a) provide for the organization of volunteer rural fire control crews; and

(b) provide for the formation of county volunteer fire companies.

(2) The governing body shall appoint a county rural fire chief and ~~such~~ district rural fire chiefs, subject to the direction and supervision of the county rural fire chief, ~~as~~ *that* it considers necessary.

(3) The county governing body shall, within the limitations of 7-33-2205 through 7-33-2209, protect the range, farm, and forest lands within the county from fire.

(4) The county governing body may enter into mutual aid agreements for itself and for county volunteer fire companies with:

(a) other fire districts;

(b) unincorporated municipalities;

(c) incorporated municipalities;

(d) state agencies;

(e) private fire prevention agencies;

(f) federal agencies;

(g) fire service areas; ~~or~~

(h) governing bodies of other political subdivisions *in Montana; or*

(i) governing bodies of fire protection services, emergency medical care providers, and local government subdivisions of any other state or the United States pursuant to Title 10, chapter 3, part 11.

(5) If the county governing body has not concluded a mutual aid agreement, the county governing body, a representative of the county governing body, or an incident commander may request assistance pursuant to 10-3-209."

Section 3. Section 7-33-2405, MCA, is amended to read:

"7-33-2405. Mutual aid agreements — request if no agreement exists — definitions. (1) A mutual aid agreement is an agreement for protection against ~~natural~~ disasters, incidents, or emergencies ~~or disasters, incidents, or emergencies caused by persons~~.

(2) The governing body of a fire service area may enter mutual aid agreements with the proper authority of:

(a) other fire service areas;

(b) unincorporated municipalities;

(c) incorporated municipalities;

(d) state agencies;

(e) private fire prevention agencies;

(f) federal agencies;

(g) fire districts; ~~and~~

(h) governing bodies of other political subdivisions *in Montana; and*

(i) governing bodies of fire protection services, emergency medical care providers, and local government subdivisions of any other state or the United States pursuant to Title 10, chapter 3, part 11.

(3) If the governing body of a fire service area has not concluded a mutual aid agreement, the governing body, a representative of the governing body, or an incident commander may request assistance pursuant to 10-3-209.

(4) As used in this section, "incidents", "disasters", ~~or~~ *and* "emergencies" ~~has the meaning ascribed to the term~~ *have the meanings provided* in 10-3-103."

Section 4. Section 7-33-4112, MCA, is amended to read:

"7-33-4112. Mutual aid agreements — request if no agreement exists — definitions. (1) A mutual aid agreement is an agreement for protection against ~~natural~~ disasters, incidents, or emergencies ~~or disasters, incidents, or emergencies caused by persons~~.

(2) Councils or commissions of incorporated municipalities may enter mutual aid agreements with the proper authority of:

(a) other incorporated municipalities;

(b) fire districts;

(c) unincorporated municipalities;

(d) state agencies;

(e) private fire prevention agencies;

(f) federal agencies;

(g) fire service areas; ~~or~~

(h) the governing body of other political subdivisions*; or*

(i) governing bodies of fire protection services, emergency medical care providers, and local government subdivisions of any other state or the United States pursuant to Title 10, chapter 3, part 11.

(3) If the council or commission has not concluded a mutual aid agreement, the council or commission, a representative of the council or commission, or an incident commander may request assistance pursuant to 10-3-209.

(4) As used in this section, ~~"incidents",~~ *the terms* "disasters", ~~or~~ "emergencies" ~~has the meaning ascribed to the term~~*, or "incidents" have the meanings provided* in 10-3-103."

Section 5. Section 10-3-202, MCA, is amended to read:

"10-3-202. Mutual aid — cooperation. (1) Political subdivisions~~, fire districts, fire service areas, and fire companies in unincorporated places~~ *and governmental fire agencies organized under Title 7, chapter 33,* must be

encouraged and assisted by the division to conclude mutual aid arrangements with other public and private agencies within this state *or any other state or the United States pursuant to Title 10, chapter 3, part 11,* for reciprocal aid and assistance in coping with incidents, emergencies, and disasters.

(2) In reviewing disaster and emergency plans and programs of political subdivisions, the division shall consider whether they contain adequate provisions for the reciprocal mutual aid.

(3) Local and interjurisdictional disaster and emergency agencies may assist in negotiation of reciprocal mutual aid agreements between the governor and the adjoining states (including foreign states or provinces) or political subdivisions of adjoining states and shall carry out arrangements of any of the agreements relating to the local and political subdivision.

(4) In providing assistance under parts 1 through 4 of this chapter, state departments and agencies shall cooperate to the fullest extent possible with each other and with local governments and relief agencies such as the American ~~national~~ red cross. Parts 1 through 4 of this chapter do not list or in any way affect the responsibilities of the American ~~national~~ red cross under ~~the act approved January 5, 1905 (33 Stat. 559), as amended~~ *its congressional charter*."

Section 6. Section 10-3-209, MCA, is amended to read:

"10-3-209. Political subdivision requests for assistance — application to fire districts, fire service areas, and fire companies in unincorporated places — immunity. (1) If an incident, emergency, or disaster occurs in a political subdivision that has not concluded a mutual aid agreement pursuant to 10-3-202, the local or interjurisdictional agency, incident commander, or principal executive officer of the political subdivision may request assistance from another public or private agency.

(2) (a) The following individuals or entities may request assistance with an incident, emergency, or disaster if a mutual aid agreement has not been concluded for protection of the area within the jurisdiction of these individuals or entities:

(i) the trustees of a rural fire district created pursuant to Title 7, chapter 33, part 21, a representative of the trustees, or an incident commander for the district;

(ii) the chief of a rural fire company organized pursuant to 7-33-2311 or an incident commander for the chief;

(iii) the governing body of a fire service area created pursuant to Title 7, chapter 33, part 24, a representative of the governing body, or an incident commander for the area.

(b) A request for assistance by an individual or entity under subsection (2)(a) may be made to any of the following:

(i) a fire district;

(ii) an unincorporated municipality;

(iii) an incorporated municipality;

(iv) a state agency;

(v) a private fire prevention agency;

(vi) an agency of the federal government;

(vii) a fire service area; ~~or~~

(viii) the governing body of a political subdivision*; or*

(ix) the governing bodies of fire protection services, emergency medical care providers, and local government subdivisions of any other state or the United States pursuant to part 11 of this chapter.

(3) A public or private agency receiving a request pursuant to subsection (1) or (2) shall determine if it will provide the requested assistance~~,~~ or *if it* will provide other assistance~~,~~ and shall inform the requesting local or interjurisdictional agency, principal executive officer, incident commander, or other individual or entity making the request, as soon as possible, of that determination. The nature and extent of assistance provided by a public or private agency may be determined only by that public or private agency.

(4) The incident commander of the local or interjurisdictional agency making a request for assistance has overall responsibility for command of the resources provided by a public or private agency responding to a request. However, operational control of individual pieces of equipment and personnel furnished by the responding public or private agency remains with that agency.

(5) This section does not waive an immunity or limitation on liability applicable to any of the following entities or individuals requesting or receiving assistance pursuant to this section:

(a) a fire district;

(b) a fire service area;

(c) a fire company;

(d) an unincorporated municipality, town, or village;

(e) a political subdivision; or

(f) an agent, employee, representative, or volunteer of an entity listed in this subsection."

Section 7. Section 10-3-1102, MCA, is amended to read:

"10-3-1102. Purpose. It is the purpose of this part to permit one or more fire protection services, emergency medical care providers, or local government subdivisions of this state to enter into mutual aid agreements, on the basis of mutual advantage, with one or more fire protection services, emergency medical care providers, or local government subdivisions of any other state or the United States in order to facilitate and coordinate efficient, cooperative ~~firefighting~~ efforts directed toward protection of life and property in areas transcending state boundaries that, due to geographic remoteness, population sparsity, and economic or other factors, are in need of ~~such~~ *those* services."

Section 8. Section 10-3-1103, MCA, is amended to read:

"10-3-1103. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Emergency medical care provider" means a local government subdivision or other entity, whether public or private, licensed by the state to provide emergency medical services pursuant to Title 50, chapter 6.

(2) "Fire protection service" means a ~~paid or volunteer fire department, fire company,~~ *governmental fire agency organized under Title 7, chapter 33,* or ~~other~~ *another* fire suppression entity organized under the laws of this state, any ~~party~~ *other* state, or an agency of the government of the United States.

(3) "Local government subdivision" means the local governmental entity, other than state government, including but not limited to incorporated towns and cities, townships, and counties.

(4) "Mutual aid agreement" or "agreement" means an agreement, consistent with the purposes of this part, by one or more fire protection services, emergency medical care providers, or local government subdivisions of this state with one or more fire protection services, emergency medical care providers, or local government subdivisions of any other state or the United States.

(5) "Party emergency service" means a fire protection service, emergency medical care provider, local government subdivision, or agency of the United States that is a party to a mutual aid agreement as ~~set forth~~ *provided* in this part."

Section 9. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2007

CHAPTER NO. 293

[SB 114]

AN ACT REVISING CONSTRUCTION LIEN LAWS; DEFINING "ORIGINAL CONTRACTOR"; REVISING CONSTRUCTION LIEN NOTICE REQUIREMENTS; AND AMENDING SECTIONS 71-3-522 AND 71-3-531, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-522, MCA, is amended to read:

"71-3-522. Definitions. *As used in this part, the following definitions apply:*

(1) "Commencement of work" means the date of the first visible change in the physical condition of the real estate caused by the first person furnishing services or materials pursuant to a particular real estate improvement contract.

(2) "Construction lien" or "lien" means a lien against real estate arising under this part.

(3) (a) "Contract price" means the amount agreed upon by the contracting parties for performing services and furnishing materials covered by the contract, increased or diminished by:

(i) the price of change orders or extras;

(ii) any amounts attributable to altered specifications; or

(iii) a breach of contract, including but not limited to defects in workmanship or materials.

(b) If ~~no~~ *a* price is *not* agreed upon by the contracting parties, the contract price means the reasonable value of all services or materials covered by the contract.

(4) (a) "Contracting owner" means a person who owns an interest in real estate and who, personally or through an agent, enters into an express or implied contract for the improvement of the real estate.

(b) For the purpose of determining whether a person is a contracting owner, agency is presumed, in the absence of clear and convincing evidence to the contrary:

(i) between employer and employee;

(ii) between spouses;

(iii) between joint tenants; and

(iv) among tenants in common.

(5) "Original contractor" means a contractor who contracts directly with the contracting owner.

~~(5)~~*(6)* (a) "Real estate improvement contract" means an agreement to perform services, including labor, or to furnish materials for the purpose of producing a change in the physical condition of the real estate, including:

(i) alteration of the surface by excavation, fill, change in grade, or change in a shore, bank, or flood plain of a stream, swamp, or body of water;

(ii) construction or installation on, above, or below the surface of land;

(iii) demolition, repair, remodeling, or removal of a structure previously constructed or installed;

(iv) seeding, sodding, or other landscape operation;

(v) surface or subsurface testing, boring, or analysis; and

(vi) preparation of plans, surveys, or architectural or engineering plans or drawings for any change in the physical condition of the real estate, regardless of whether they are used to produce a change in the physical condition of the real estate.

(b) For the purpose of claiming a construction lien, a real estate improvement contract does not include:

(i) a contract for the mining or removal of timber, minerals, gravel, soil, sod, or things growing on the land or a similar contract in which the activity is primarily for the purpose of making the materials available for sale or use; or

(ii) a contract for the planting, cultivation, or harvesting of crops or for the preparation of the soil for *the* planting of crops."

Section 2. Section 71-3-531, MCA, is amended to read:

"71-3-531. Notice of right to claim lien required — exceptions. (1) The following are not required to give notice of a right to claim a lien as required by this section:

(a) ~~a person~~ *an original contractor* who furnishes services or materials directly to the owner at the owner's request;

(b) a wage earner or laborer who performs personal labor services for a person furnishing any service or material pursuant to a real estate improvement contract;

(c) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to a dwelling for five or more families; and

(d) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to an improvement that is partly or wholly commercial in character.

(2) A person who may claim a construction lien pursuant to this part shall give notice of the right to claim a lien to the contracting owner in order to claim a lien.

(3) Except as provided in subsection (4), ~~this~~ *the* notice may not be given later than 20 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 20-day period before the date on which notice is given.

(4) When payment for services or materials furnished pursuant to a real estate improvement contract, excluding a contract on an owner-occupied residence, is made by or on behalf of the contracting ~~party~~ *owner* from funds provided by a regulated lender and secured by an interest, lien, mortgage, or encumbrance for the purpose of paying the particular real estate improvement being liened, the notice required by this section may not be given later than 45 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 45-day period before the date on which notice is given.

(5) The notice of the right to claim a lien must be sent to the contracting owner by certified mail or delivered personally to the owner. Notice by certified mail is effective on the date on which the notice is mailed. If the notice is delivered *personally to the contracting owner*, written acknowledgment of receipt must be obtained from the *contracting* owner. A person may not claim a construction lien unless the person has complied with this subsection.

(6) (a) A person who may claim a lien shall also file with the clerk and recorder of the county in which the improved real estate is located a copy of the notice of the right to claim a lien, in the form required by 71-3-532. This copy may not be filed later than 5 business days after the date on which the notice of the right to claim a lien is given to the contracting owner.

(b) The county clerk and recorder may allow the notice of the right to claim a lien to be electronically filed.

(c) The notice filed with the clerk and recorder for the purpose of public notice is effective for 1 year from the date of filing. The notice lapses upon the expiration of the 1-year period unless the person who may claim a lien files with the clerk and recorder a 1-year continuation of the notice prior to the date on which the notice lapses. The clerk and recorder may remove the notice from the public record when it lapses.

(d) The continuation statement must include:

(i) the clerk and recorder's file number of the notice;

(ii) the date on which the notice originally was filed; and

(iii) the name of the person to whom the original notice was given.

(e) If a notice of a right to claim a lien is required under this section, a person may not claim a construction lien pursuant to this part unless there is an unexpired notice of right to claim a construction lien or an unexpired continuation notice filed with the clerk and recorder at the time that the person files the lien.

(7) A contracting owner shall provide in the construction contract with the original contractor:

(a) a street address or legal description that is sufficient to identify the real estate being improved; and

(b) the name and address of the contracting owner.

~~(7)~~*(8)* At the request of any subcontractor or material supplier who may claim a lien through ~~a person~~ *an original contractor* providing services or materials to a contracting owner, the ~~person~~ *original contractor* shall furnish to the requestor within 5 business days:

(a) a *street address or legal* description sufficient to identify the real estate being improved; and

(b) the name and address of the contracting owner."

Approved April 26, 2007

CHAPTER NO. 294

[SB 132]

AN ACT PROVIDING FOR INFORMED CONSENT AND A WAIVER OF THE REQUIREMENT FOR A RUBELLA BLOOD TEST AS A CONDITION OF OBTAINING A MARRIAGE LICENSE; AND AMENDING SECTIONS 40-1-202, 40-1-203, 40-1-205, 40-1-206, AND 40-1-208, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-1-202, MCA, is amended to read:

"40-1-202. License issuance. When a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the clerk of the district court and paid the marriage license fee of $53, the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of 18 years at the time the marriage license is effective or will have attained the age of 16 years and has obtained judicial approval as provided in 40-1-213;

(2) satisfactory proof that the marriage is not prohibited; and

(3) a certificate of the results of any medical examination required by the laws of this state~~.~~ *or a waiver of the medical certificate requirement as provided in 40-1-203*."

Section 2. Section 40-1-203, MCA, is amended to read:

"40-1-203. Proof of age and medical certificate ~~required~~ — *waiver of medical certificate requirement.* (1) Before a person authorized by law to issue marriage licenses may issue a marriage license, each applicant for a license shall provide a birth certificate or other satisfactory evidence of age and, if the applicant is a minor, the approval required by 40-1-213. Each female applicant, unless exempted on medical grounds by rule of the department of public health and human services *or as provided in subsection (2)*, shall file with the license issuer a medical certificate from a physician who is licensed to practice medicine and surgery in any state or United States territory or from any other person authorized by rule of the department to issue a medical certificate. The certificate must state that the applicant has been given a ~~standard serological~~ *blood* test *for rubella immunity*, that the report of the *test* results ~~of the serological test~~ has been shown to the applicant tested, and that

the other party to the proposed marriage contract has examined the report ~~of the serological test~~.

(2) In lieu of a medical certificate, applicants for a marriage license may file an informed consent form acknowledging receipt and understanding of written rubella immunity information and declining rubella immunity testing. Filing of an informed consent form will effect a waiver of the requirement for a blood test for rubella immunity. Informed consent must be recorded on a form provided by the department and must be signed by both applicants. The informed consent form must include:

(a) the reasons for undergoing a blood test for rubella immunity;

(b) the information that the results would provide about the woman's rubella antibody status;

(c) the risks associated with remaining uninformed of the rubella antibody status, including the potential risks posed to a fetus, particularly in the first trimester of pregnancy; and

(d) contact information indicating where applicants may obtain additional information regarding rubella and rubella immunity testing.

~~(2)~~*(3)* A person who by law is able to obtain a marriage license in this state is also able to give consent to any examinations*,* ~~and~~ tests*, or waivers* required *or allowed* by this section. In submitting the blood specimen to the laboratory, the physician or other person authorized to issue a medical certificate shall designate that it is a premarital test."

Section 3. Section 40-1-205, MCA, is amended to read:

"40-1-205. Certificates from other states or for military personnel — when acceptable. Certificate forms provided by other states having comparable laws will be accepted for persons who have received a ~~standard serological~~ *rubella blood* test outside of Montana. Certificates provided by the United States armed forces will be accepted for military personnel if ~~such~~ *the* certificates are signed by a medical officer commissioned in the United States armed forces or United States public health service and the certificates state the examinations are ~~standard serological~~ *rubella blood* tests."

Section 4. Section 40-1-206, MCA, is amended to read:

"40-1-206. Premarital test — approved laboratories — rules. ~~(1) For the purpose of 40-1-203 through 40-1-209, a standard serological test is a test for rubella immunity that is approved by the department of public health and human services.~~

~~(2)~~*(1)* The ~~standard serological~~ *rubella blood* test is acceptable for the purposes of 40-1-203 through 40-1-209 only if it is *approved by the department of public health and human services and* performed by one of the following:

(a) the laboratory of the department of public health and human services;

(b) a laboratory approved by the department of public health and human services;

(c) a laboratory operated by any other state; or

(d) a laboratory operated by the United States public health service or the United States armed forces.

~~(3)~~*(2)* The ~~standard serological~~ test may be made on request at the laboratory of the department of public health and human services.

~~(4)~~*(3)* The department of public health and human services shall adopt reasonable rules for:

(a) reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the certifying physician and the state; and

(b) exemptions, on medical grounds, from the premarital ~~serological~~ *rubella blood* test."

Section 5. Section 40-1-208, MCA, is amended to read:

"40-1-208. Penalties. (1) An applicant for a marriage license, a physician or other person authorized by rule of the department of public health and human services to issue a medical certificate, or a person in charge of or authorized to make reports or statements for a laboratory who misrepresents the person's identity or any of the facts called for by the certificate form prescribed by 40-1-203 through 40-1-205~~,~~*;* a licensing officer who issues a marriage license without having received the certificate form, if required, or who has reason to believe that any of the facts on the certificate form have been misrepresented and nevertheless issues a marriage license~~,~~*;* or any person who otherwise fails to comply with the provisions of 40-1-203 through 40-1-209 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100.

(2) Medical certificates, laboratory statements or reports, ~~and~~ applications*, and waivers* referred to in 40-1-203 through 40-1-209 are confidential and may not be divulged to or open to inspection by any person other than state or local health officers or their representatives. A person who divulges the information or opens to inspection the certificates, statements, reports, ~~or~~ applications, *or waivers,* without authority, to any person not entitled to the material by law is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100."

Approved April 26, 2007

CHAPTER NO. 295

[SB 246]

AN ACT ADDING AMBULANCE SERVICES TO THOSE HEALTH CARE PROVIDERS ABLE TO ESTABLISH A LIEN FOR SERVICES RENDERED IN THE DIAGNOSIS OR TREATMENT OF A MEDICAL CONDITION; AND AMENDING SECTION 71-3-1114, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-1114, MCA, is amended to read:

"71-3-1114. Liens of ~~physicians, nurses, physical therapists, occupational therapists, chiropractors, dentists, hospitals, and ambulatory surgical facilities and liens of psychologists, licensed social workers, and licensed professional counselors~~ *certain health care providers and health care facilities.* (1) (a) Upon the required notice of a lien being given, there is a lien as provided in subsection (1)(b) whenever:

(i) a physician, nurse, physical therapist, occupational therapist, chiropractor, dentist, hospital, ~~or~~ ambulatory surgical facility*, or ambulance service* renders services or provides products for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor renders services or provides products; and

(iii) the services rendered or products provided under subsection (1)(a)(i) or (1)(a)(ii) are rendered or provided to a person injured through the fault or neglect of another.

(b) The physician, nurse, physical therapist, occupational therapist, chiropractor, dentist, hospital, ambulatory surgical facility, *ambulance service,* psychologist, licensed social worker, or licensed professional counselor has a lien for the value of services rendered or products provided on:

(i) any claim or cause of action that the injured person or the injured person's estate or successors may have for injury, disease, or death;

(ii) any judgment that the injured person or the estate or successors may obtain for injury, disease, or death; and

(iii) all money paid in satisfaction of the judgment or in settlement of the claim or cause of action.

(2) (a) If a person is an insured or a beneficiary under insurance that provides coverage in the event of injury or disease, there is a lien as provided in subsection (2)(b) upon required notice of a lien being given by:

(i) a physician, nurse, physical therapist, occupational therapist, chiropractor, dentist, hospital, ~~or~~ ambulatory surgical facility*, or ambulance service* for the value of services rendered or products provided for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor for services rendered or products provided.

(b) The lien is on all proceeds or payments, except payments for property damage, payable by the insurer.

(3) A physician, nurse, physical therapist, occupational therapist, chiropractor, dentist, hospital, ambulatory surgical facility, *ambulance service,* psychologist, licensed social worker, or licensed professional counselor claiming a lien under this part is not liable for attorney fees and costs incurred by the injured person, the injured person's estate or successors, or a beneficiary in connection with obtaining payments or benefits subject to a lien under this part. The lien of an attorney provided for in 37-61-420 has priority over a lien created by this part."

Approved April 26, 2007

CHAPTER NO. 296

[SB 339]

AN ACT REVISING ANNEXATION AND ZONING LAWS; PROHIBITING A MUNICIPALITY FROM ANNEXING TERRITORY LOCATED IN A COUNTY DIFFERENT FROM THE COUNTY IN WHICH THE MUNICIPALITY IS LOCATED UNLESS CERTAIN CONDITIONS ARE MET; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Annexation across county boundaries. (1) Except as provided in subsection (2), in all instances of annexation allowed under parts 42

through 47 of this chapter, a municipal governing body may not annex territory in a county that is different from the county in which the municipality is located.

(2) Annexation by a municipality of territory in a county that is different from the county in which the municipality is located may occur only if the municipality and the county execute an interlocal agreement that provides for a joint city-county planning board and jurisdictional equality.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 2, part 42, and the provisions of Title 7, chapter 2, part 42, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2007

CHAPTER NO. 297

[SB 406]

AN ACT CLARIFYING THE PROCESS OF PETITIONING FOR ESTABLISHMENT OF A COUNTY BOUNTY PROGRAM AND COUNTY PREDATORY ANIMAL CONTROL PROGRAMS BY PROVIDING THAT A SIGNATURE ON A PETITION MAY NOT BE WITHDRAWN BY THE SIGNER AFTER THE HOUR SET FOR HEARING THE PETITION; AMENDING SECTIONS 81-7-202, 81-7-305, AND 81-7-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-7-202, MCA, is amended to read:

"81-7-202. Signers of petition — time for presenting — limitation on bounties — bounty inspectors. (1) The petition provided for in 81-7-201 must be signed by the owners or agents of the owners of not less than 51% of the livestock of the county and must recommend to the board of county commissioners the bounties to be paid on predatory animals, which may not exceed the following:

(a) on each wolf or mountain lion, $100;

(b) on each wolf pup or mountain lion kitten, $20;

(c) on one coyote, $5; and

(d) on each coyote pup, $2.50.

(2) A petition must be presented not later than August 1 of each year, and the board ~~of county commissioners~~ on determining the sufficiency of the petition shall make an order granting the petition. *A signature on a petition may not be withdrawn by the signer after the hour set for hearing the petition.* The order must fix the fee for that year and the amount of the bounties to be paid for the killing of each predatory animal, which may not exceed the amounts recommended in the petition. The order may also appoint not less than 10 or more than 20 stockowners of the county to be bounty inspectors under this part, without compensation, who shall hold their offices for 1 year."

Section 2. Section 81-7-305, MCA, is amended to read:

"81-7-305. Duty of county commissioners — petition of sheep owners — license fees. (1) In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for

~~such~~ *a* program ~~and its incidents as~~ made by organized associations of sheep growers in the county. Upon petition of the resident owners of at least 51% of the sheep in the county, as shown by the assessment rolls of the last preceding assessment, ~~which petition shall be filed with the board of county commissioners on or before the first Monday in December in any year, such~~ *the* board shall establish the predatory animal control program and ~~cause said~~ *issue* licenses ~~to be secured and issued~~ and ~~the~~ *collect* fees ~~collected~~ for the following year in ~~such~~ *an* amount ~~as~~ *that* will defray the cost of administering the program ~~so established~~. *The petition must be filed with the board on or before the first Monday in December in any year, and a signature on a petition may not be withdrawn by the signer after the hour set for hearing the petition.* The license fee determined and set by the board ~~shall~~ *must* remain in ~~full force and~~ effect from year to year without change, unless there is filed with the board a petition subscribed by the resident owners of at least 51% of the sheep in the county, as shown by the assessment rolls of the last assessment preceding the filing of the petition, for termination of the program and repeal of the license fee.~~, in which event the program shall by order of~~ *Upon the filing of the petition,* the board ~~of county commissioners be disestablished and the license fee shall not be further levied~~ *shall terminate the program and cease levying the license fee.*

(2) If the resident owners of at least 51% of the sheep in the county either petition for an increase in the license fee or petition for a decrease in the license fee then in ~~force~~ *effect*, the board ~~of county commissioners~~ shall ~~upon receipt of any such petition fix~~ *set* a new license fee to continue from year to year ~~and the program shall thereupon continue within the limits of the aggregate amount of the license fee as collected from year to year~~."

Section 3. Section 81-7-605, MCA, is amended to read:

"81-7-605. Duty of county commissioners — petition of cattle owners — license fees. (1) In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for a program made by an organized association of cattle producers in the county. Upon petition of the resident owners of at least 51% of the cattle in the county, as shown by the property tax record of the last preceding assessment, ~~which petition must be filed with the board of county commissioners on or before the first Monday in December in any year,~~ the board shall establish the predatory animal control program and issue licenses and collect fees for the following year in an amount that will defray the cost of administering the program. *The petition must be filed with the board on or before the first Monday in December in any year, and a signature on a petition may not be withdrawn by the signer after the hour set for hearing the petition.* The license fee set by the board must remain in effect from year to year without change unless there is filed with the board a petition signed by the resident owners of at least 51% of the cattle in the county, as shown by the property tax record of the last assessment preceding the filing of the petition, for termination of the program and elimination of the license fee. Upon the filing of the petition, the board ~~of county commissioners~~ shall terminate the program and cease levying the license fee.

(2) If the resident owners of at least 51% of the cattle in the county file a petition with the board ~~of county commissioners~~ either for an increase in the license fee or for a decrease in the license fee then in ~~force~~ *effect*, the board ~~of county commissioners~~ shall set a new license fee to continue from year to year."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2007

CHAPTER NO. 298

[SB 422]

AN ACT ELIMINATING THE REQUIREMENT THAT POLE TRAILERS ENGAGED IN TRANSPORTING LOGS BE EQUIPPED WITH WRAPPERS MADE OF STEEL CHAIN, STEEL CABLE, OR A COMBINATION OF STEEL CHAIN AND STEEL CABLE; AMENDING SECTION 61-9-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-9-414, MCA, is amended to read:

"61-9-414. Logging trucks. (1) A truck or truck trailer combination, except pole trailers, actively engaged in transporting logs must be equipped with chains, cables, steel straps, or fiber webbing with working load limits that meet or exceed the manufacturer's marked value. The number of tie-down assemblies must be determined by the working load limits and the total weight of the load. The working load limits must equal or exceed 1 1/2 times the total weight of the load.

(2) A pole trailer actively engaged in transporting logs upon the highways of the state must be equipped as follows:

(a) At least three wrappers are required as standard equipment. The wrappers must:

~~(i) be made of steel chain, steel cable, or a combination of steel chain and steel cable;~~

~~(ii)~~*(i)* have a minimum working load limit of at least 3,000 pounds; and

~~(iii)~~*(ii)* be long enough to encompass any load when secured by a binder.

(b) (i) Wrappers used to secure loads of logs together must be fastened by means of a binder.

(ii) The complete wrapper and binder assembly must have a working load limit of at least 3,000 pounds.

(iii) The handle, or leverage portion of the binder, when in use in tightening and holding the wrapper, must be securely fastened to the wrapper or to the binder so that it cannot be accidentally loosened.

(c) At least two wrappers must be in use on all loads. The wrappers must be placed as close as reasonably possible to the front and rear bunks.

(d) If short logs are loaded on top of longer logs, sufficient wrappers must be used to secure both ends of the short logs to the main body of the load. A log may not extend laterally beyond the stakes that form the outer boundary of the load at the top of the stakes. Logs or poles loaded above the tops of the stakes must be loaded in a pyramidal fashion.

(3) For the purposes of this section:

(a) "binder" means a device attached to a wrapper that provides tension on and secures a wrapper; and

(b) "wrapper" means an indirect tie-down device, the tension of which is intended to secure a stack of logs."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2007

CHAPTER NO. 299

[SB 532]

AN ACT AUTHORIZING PARTICIPATION IN THE FIREFIGHTERS' UNITED RETIREMENT SYSTEM BY CERTAIN FIRE DEPARTMENTS; AUTHORIZING A RETURN TO SERVICE FOR A LIMITED NUMBER OF HOURS WITHOUT LOSS OF BENEFITS; AMENDING SECTIONS 19-13-210 AND 19-13-301, MCA; AND PROVIDING AN EFFECTIVE DATE .

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-13-210, MCA, is amended to read:

"19-13-210. Participation in retirement system. (1) Cities of the first and second class that employ full-paid firefighters shall participate in the retirement system. If a city of the first or second class is reduced to a city of the third class or a town under 7-1-4118, it shall continue to participate in the retirement system as long as it has retired firefighters or survivors eligible to receive retirement benefits.

(2) Firefighters hired by the Montana air national guard on or after October 1, 2001, or on or after the date of the execution of an agreement between the department of military affairs and the board, whichever is later, shall participate in the retirement system.

(3) (a) A city that is not covered under subsection (1) and that has full-paid firefighters covered by the public employees' retirement system and any rural fire district department with full-paid firefighters covered by the public employees' retirement system may elect to be covered under the retirement system as provided in 19-13-211.

(b) An election by a city fire department or a rural fire department to be covered by the retirement system must be made through adoption of a resolution stating that the governing body of the city or the fire district agrees to be bound by the provisions of the retirement system. The resolution must specify the effective date of the department's election. The provisions of the retirement system become applicable on the effective date specified in the adopted resolution. A certified copy of the resolution must be provided to the board.

(4) The following are the terms and conditions of an election by a fire department to join the retirement system pursuant to subsection (3):

(a) Each firefighter employed by the fire department before the effective date of the department's election must be given 180 days from the effective date of the department's election to make an individual, one-time, irrevocable election to remain in the public employees' retirement system or to join the retirement system. Failure to make an election under this subsection (4)(a) must be considered an election to remain in the public employees' retirement system.

(b) Each firefighter employed by the fire department who is hired on or after the effective date of the department's election must be covered by the retirement system.

(c) A firefighter electing to join the retirement system may retain prior service in the public employees' retirement system or qualify the prior service in the retirement system as provided for in 19-2-715."

Section 2. Section 19-13-301, MCA, is amended to read:

"19-13-301. Active membership — inactive vested member — inactive nonvested member. (1) Except as provided in subsection (7), a full-paid firefighter becomes an active member of the retirement system:

(a) on the first day of the firefighter's service with an employer;

(b) on July 1, 1981, if the firefighter is employed by an employer on that date; or

(c) in the case of an employer who elects to join the retirement system, as provided in 19-13-211, on the effective date of the election if the firefighter is employed by the employer on that date.

(2) Upon becoming eligible for membership, the firefighter shall complete the forms and furnish any proof required by the board.

(3) A part-paid firefighter may elect to become a member of the retirement system by filing a membership application with the board within 6 months of becoming a part-paid firefighter ~~or March 21, 2001, whichever is later~~.

(4) An active member becomes an inactive member upon the occurrence of the earliest of the following:

(a) the date on which the member ceases service with an employer;

(b) the 31st day of an approved absence from active duty with an employer; or

(c) the date on which the member ceases to be employed because of a reduction of the number of firefighters in the fire department as provided in 7-33-4125.

(5) (a) An inactive member with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(6) (a) An inactive member with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

(7) (a) A firefighter previously employed in a position covered under the public employees' retirement system and who is first hired into a position covered under the firefighters' unified retirement system after attaining 45 years of age may elect to remain in the public employees' retirement system.

(b) A firefighter making an election to remain in the public employees' retirement system shall make the election in a manner prescribed by the board within 30 days of being hired into the position otherwise covered under the firefighters' unified retirement system.

(8) A retired member who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 480 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit."

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved April 26, 2007

CHAPTER NO. 300

[SB 544]

AN ACT CREATING A MONTANA-CERTIFIED NATURAL BEEF CATTLE MARKETING PROGRAM TO BE ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE AND THE DEPARTMENT OF LIVESTOCK; PROVIDING QUALIFICATIONS FOR THE CERTIFICATION OF MONTANA NATURAL BEEF CATTLE AND MONTANA-CERTIFIED NATURAL GRASS-FED BEEF CATTLE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Montana-certified natural beef cattle marketing program. (1) The department and the department of livestock shall administer a program to qualify and market beef cattle from Montana that have been certified as natural.

(2) To qualify as Montana-certified natural beef cattle, the beef cattle must have been born and raised in Montana and finished following naturally raised protocols. The beef cattle must be:

(a) raised in an environmentally prudent manner that is consistent with Montana's best grazing standards;

(b) raised pursuant to beef quality assurance standards or similar guidelines;

(c) raised without subtherapeutic antibiotics, synthetic hormones, synthetic growth promotants, and ionophores; and

(d) fed only natural feeds that contain no drugs, chemicals, or animal byproducts.

(3) To qualify as Montana-certified natural grass-fed beef cattle, the beef cattle must meet the requirements of subsection (2) and must also have been finished on grass.

(4) A producer who desires natural beef cattle certification shall maintain records of the birth of the beef cattle by month and keep health records for the beef cattle, including vaccine lot numbers, the vaccine manufacturer, and dates of vaccination.

(5) To ensure compliance, the department and the department of livestock shall jointly adopt rules requiring at least one inspection of the ranch of origin of the beef cattle as well as development of the necessary protocols for recordkeeping and verification for the certification of natural and natural grass-fed beef cattle.

(6) The department shall include the promotion of Montana-certified natural beef cattle in its agricultural product marketing programs.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 80, chapter 11, and the provisions of Title 80, chapter 11, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2007

CHAPTER NO. 301

[HB 3]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Time limits. The appropriations contained in [section 2] are intended to provide only necessary and ordinary expenditures for the fiscal year ending June 30, 2007. The unspent balance of any appropriation must revert to the appropriate fund.

Section 2. Appropriations — authorization to expend money. The following money is appropriated, subject to the terms and conditions of [section 1]:

Agency and Program	Amount	Fund
Department of Public Health and Human Services	$11,000,000	General Fund
Department of Corrections		
Secure Care	$23,379,726	General Fund
Administrative Services	$2,666,599	General Fund
Community Corrections	$1,112,839	General Fund
Montana Correctional Enterprises	$65,000	General Fund
Youth Services Division	$1,051,383	General Fund
Canteen Purchases	$375,000	State Special Revenue
Department of Natural Resources and Conservation		
Wildfire Suppression	$25,000,000	General Fund
Department of Justice		
Legal Services Major Litigation	$400,000	General Fund
ACLU Lawsuit	$375,000	General Fund
School Lawsuit	$499,732	General Fund
Department of Livestock		
Meat Inspection	$97,534	General Fund
Department of Transportation		
Motor Pool	$1,330,000	General Fund
Judicial Branch		
District Court Reimbursement	$2,500,000	General Fund
Office of the Public Defender		
District Court Reimbursement	$5,363,042	General Fund
Office of Public Instruction		
Tuition for State-Placed Students	$200,000	General Fund
Transportation Aid	$380,000	General Fund

Department of Revenue

Business Equipment Rate Reduction Reimbursement	$2,802,315	General Fund

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 27, 2007

CHAPTER NO. 302

[HB 4]

AN ACT APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2007; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEARS 2008 AND 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Time limits. The appropriations contained in [section 2] are intended to provide necessary expenditures for the years for which the appropriations are made. The unspent balance of an appropriation reverts to the fund from which it was appropriated upon conclusion of the final fiscal year for which its expenditures are authorized by [sections 1 and 2].

Section 2. Appropriations. The following money is appropriated, subject to the terms and conditions of [sections 1 and 2]:

Agency and Program	FY	Amount	Fund
Judicial Branch			
Supreme Court Operations			

All remaining fiscal year 2007 budget amendment authority for court improvement training and court improvement data share is authorized to continue into federal fiscal year 2008.

District Court Operations			
Lewistown family treatment court/parental substance abuse grant	2008	$73,560	federal

All remaining fiscal year 2007 and fiscal year 2008 federal budget amendment authority for the Lewistown family treatment court/parental substance abuse grant is authorized to continue into federal fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the Montana drug courts grant is authorized to continue into state fiscal year 2008.

Secretary of State			
Business and Government Services			
Voting access for individuals with disabilities grant	2007	$100,000	federal

All remaining fiscal year 2007 federal budget amendment authority for help America vote and the voting access for individuals with disabilities grant is authorized to continue into federal fiscal year 2009.

Office of Public Instruction

State Level Activities

All remaining fiscal year 2007 federal budget amendment authority for the jobs and growth tax relief funds for technical assistance for the No Child Left Behind Act and recognizing American Indian cultural heritage is authorized to continue into federal fiscal year 2009.

Local Education Activities

All remaining fiscal year 2007 federal budget amendment authority for the jobs and growth tax relief funds for technology programs, reading first, and vocational education is authorized to continue into federal fiscal year 2009.

Crime Control Division

Justice System Support Services

Montana adult methamphetamine treatment coalition	2008	$500,000	federal

All remaining fiscal year 2007 and fiscal year 2008 federal budget amendment authority for the Montana adult methamphetamine treatment coalition grant is authorized to continue into federal fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the anti-gang initiative and the project safe neighborhood grant is authorized to continue to state fiscal year 2009.

Department of Justice

Legal Services Division

All remaining fiscal year 2007 federal budget amendment authority for the faith and community technical support grant and for the Montana statewide rural delivery of interventions and extend services to victims of domestic violence and child abuse grant is authorized to continue into federal fiscal year 2008.

Highway Patrol Division

Federal forfeiture	2007	$257,660	federal

All remaining fiscal year 2007 federal budget amendment authority for the federal forfeiture funds is authorized to continue into state fiscal year 2008.

Division of Criminal Investigation

Federal forfeiture	2007	$223,750	federal

Information Technology Services

All remaining fiscal year 2007 federal budget amendment authority for the statewide automated victims information and notification service grant is authorized to continue into state fiscal year 2008.

Public Service Commission

Public Service Regulation Program

One-call grant	2007	$7,080	federal

All remaining fiscal year 2007 federal budget amendment authority for the one-call grant is authorized to continue into state fiscal year 2008.

Library Commission

Statewide Library Resources

All remaining fiscal year 2007 federal budget amendment authority for recruiting and educating librarians for the 21st century, for archiving, distribution, and development of natural resources geographic information for the natural resources conservation service, and for librarians for the 21st century for transfer to counties is authorized to continue into state fiscal year 2008.

Historical Society

Administration Program

All remaining fiscal year 2007 federal budget amendment authority for the preserve America grant is authorized to continue into state fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the golden triangle thinking through American history—early career indirect costs is authorized to continue into federal fiscal year 2008.

Library Program

Map conservation assessment	2007	$4,905	federal
Administrative expenses, scholarships, Montana state historical records advisory board	2007	$9,275	federal

All remaining fiscal year 2007 federal budget amendment authority for the map conservation assessment grant and the Montana state historical records advisory board grant is authorized to continue into state fiscal year 2008.

Museum Program

Montana American Indian heritage public education program	2007	$30,000	federal

All remaining fiscal year 2007 federal budget amendment authority for the Montana American Indian heritage public education program is authorized to continue into federal fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the golden triangle thinking through American history—early career employee costs and the Lewis and Clark exhibit of "Neither Empty Nor Unknown" are authorized to continue into federal fiscal year 2008.

Publications Program

All remaining fiscal year 2007 federal budget amendment authority for the preserve America grant for publishing books is authorized to continue into state fiscal year 2008.

Historic Preservation Program

Access of the cultural resource database	2007	$10,000	federal

All remaining fiscal year 2007 federal budget amendment authority for the access of the cultural resource database is authorized to continue into state fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the preserve America grant for grant administration plus grants to local communities is authorized to continue into state fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for improving access to bureau of land management to the state historic preservation database is authorized to continue into federal fiscal year 2009.

Fish, Wildlife, and Parks

Fisheries Division			
Trail Creek fish screen	2008	balance	federal
Big Hole grayling recovery	2008	balance	federal
Grayling candidate conservation	2008	balance	federal
Coal bed methane fish toxicity study	2008	balance	federal
Aquatic nuisance species	2008	balance	federal
Westslope cutthroat trout restoration program	2008	balance	federal
Hedge canal fish screens	2008	balance	federal
Republican canal fish screen	2008	balance	federal
Pallid sturgeon flow	2008	balance	federal
Biological data on pallid sturgeon	2008	$11,380	federal
Big Hole focus area	2008	$34,812	federal

All remaining fiscal year 2007 federal legislative contract authority appropriated in House Bill No. 2 to the department of fish, wildlife, and parks, fisheries division, in the 2005 legislative session for the statewide landowner outreach and assistance program and the aquatic nuisance species grant is reappropriated as federal budget amendment authority and is authorized to continue into state fiscal year 2009.

All remaining fiscal year 2007 federal legislative contract authority appropriated in House Bill No. 2 to the department of fish, wildlife, and parks, fisheries division, in the 2005 legislative session for the Big Hole grayling recovery grant, the westslope cutthroat trout restoration program, the Hedge canal fish screens grant, the Republican canal fish screens grant, and the pallid sturgeon flow modification study is reappropriated as federal budget amendment authority and is authorized to continue into federal fiscal year 2009.

All remaining fiscal year 2007 federal budget amendment authority for the grant to monitor bull trout habitat use in the Wedge Canyon fire area is authorized to continue into state fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the fish screening and fish passage enhancement projects in the Bitterroot River drainage; for the seasonal movement patterns and habitat use of various fish, turtles, and birds project; and for the Yellowstone cutthroat trout landowner outreach and technical assistance project is authorized to continue into state fiscal year 2009.

All remaining fiscal year 2007 and fiscal year 2008 federal budget amendment authority for biological data collection on pallid sturgeon in the Missouri River below Fort Peck Dam is authorized to continue into federal fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the fish conservation geneticist grant is authorized to continue into federal fiscal year 2009.

All remaining fiscal year 2008 federal budget amendment authority for the Big Hole focus area grant is authorized to continue into state fiscal year 2009.

Wildlife Division			
Grizzly bear recovery	2007	$30,000	federal
Swift fox census	2007	$10,000	federal
Forest legacy-06	2007	$43,500	federal
Bear shrub field survey	2008	balance	federal
Chronic wasting disease	2008	balance	federal
Avian influenza monitor-1	2008	balance	federal
Wolf research	2008	balance	federal
Wetland legacy coordinate	2008	balance	federal
Forest legacy-05	2008	balance	federal
Prairie pothole venture	2008	balance	federal
Avian influenza monitor-2	2008	balance	federal
Grizzly bear recovery	2008	balance	federal
Grizzly bear management	2008	balance	federal
Grizzly bear conservation	2008	balance	federal
Sagebrush grassland focus	2008	$145,188	federal

All remaining fiscal year 2007 federal legislative contract authority appropriated in House Bill No. 2 to the department of fish, wildlife, and parks, wildlife division, in the 2005 legislative session for the grizzly bear recovery grant, the grizzly bear management grant, and the grizzly bear conservation grant is reappropriated as federal budget amendment authority and is authorized to continue into federal fiscal year 2009.

All remaining fiscal year 2007 federal budget amendment authority for the small manual survey grant, the sage grouse wintering area grant, the bear conflict specialist grant, the in-lieu-fee water resource mitigation program grant, and the development of regional prairie dog abundance and distribution goals grant is authorized to continue into state fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the mule deer chronic wasting disease study and the forest legacy fiscal year 06-grant is authorized to continue into federal fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the loon ecology project is authorized to continue into state fiscal year 2009.

All remaining fiscal year 2007 federal budget amendment authority for the swift fox census, for the Montana landowners technical assistance for habitat conservation programs, for the Montana wolf conservation and management purposes grant, and for the wildlife research for long-term integrity of the northern Yellowstone winter range contract is authorized to continue in federal fiscal year 2009.

All remaining fiscal year 2008 federal budget amendment authority for the sagebrush grassland focus grant is authorized to continue into state fiscal year 2009.

Parks Division

All remaining fiscal year 2007 federal budget amendment authority for the Lewis and Clark historical trail grant is authorized to continue into federal fiscal year 2007.

All remaining fiscal year 2007 federal budget amendment authority for the further development, operation, maintenance, interpretation and protection of the Lewis and Clark national historic trail is authorized to continue into federal fiscal year 2008.

Capital Outlay Program

All remaining fiscal year 2007 federal budget amendment authority for the North Swan River valley forest legacy project phase III grant is authorized to continue into state fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the Nevada Creek forest legacy grant is authorized to continue into federal fiscal year 2008.

Department Management

Assistance for fish and wildlife management	2007	$211,044	federal

All remaining fiscal year 2007 federal budget amendment authority for the assistance for fish and wildlife management grant is authorized to continue into federal fiscal year 2009.

All remaining fiscal year 2007 federal budget amendment authority for the Montana habitat conservation plan for management of aquatic and wildlife habitat owned by the department of natural resources and conservation is authorized to continue into state fiscal year 2008.

Department of Environmental Quality

Remediation Division

Libby asbestos grant	2007	$1,300,000	federal

All remaining fiscal year 2007 federal budget amendment authority for the leaking underground storage tank grant to document and finalize release closure sites and the Libby asbestos grant is authorized to continue into federal fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the leaking underground storage tank grant to clean up the Ronan, Montana, contaminated site and other Montana sites is authorized to continue into state fiscal year 2008.

Department of Livestock

Disease Control Program

Voluntary premises registration	2007	$251,100	federal
Foreign animal disease work in Montana	2007	$12,300	federal
Swine health program	2007	$6,100	federal

All remaining fiscal year 2007 federal budget amendment authority for the voluntary premises registration grant, the foreign animal disease work in Montana grant, and the swine health program grant is authorized to continue into state fiscal year 2008.

Department of Natural Resources and Conservation

Water Resources Division

Community participation in national flood insurance program	2007	$67,000	federal
Fish and wildlife service grant	2007	$35,632	federal
Big Hole grant	2007	$25,000	federal

All remaining fiscal year 2007 federal budget amendment authority for the community participation in the national flood insurance program and the Big Hole grant is authorized to continue into federal fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for streamflow gauging stations at Benton Lake national wildlife refuge, the United States fish and wildlife service grant, and the grant to convert Yellowstone County into a digital flood insurance rate map is authorized to continue into federal fiscal year 2009.

Forestry/Trust Lands

McKay Creek road and trailhead improvements	2007	$28,980	federal
Incident command system training	2007	$16,706	federal
Natural resources conservation service grant	2007	$20,000	federal
Northwest region conservation development	2007	$6,000	federal
Bitterroot technical service	2007	$6,000	federal
Headwaters technical service	2007	$6,000	federal

All remaining fiscal year 2007 federal budget amendment authority for the rural fire assistance program, the McKay Creek road and trailhead improvements grant, the incident command system training grant, and the natural resources conservation service grant is authorized to continue into state fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the state fire assistance and general forest health assistance grant and the forest land enhancement program that provides education, technical assistance, and financial incentives to forest and private landowners is authorized to continue into federal fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the hazardous fuel reduction work on nonfederal lands adjacent to national forest lands, for the rural fire assistance pass-through grant to rural fire departments, and for the grant for the department of natural resources and conservation habitat conservation plan is authorized to continue into federal fiscal year 2009.

Department of Administration

Information Technology Services Division

All remaining fiscal year 2007 federal budget amendment authority for the grant to expand and enhance the Montana spatial data infrastructure is authorized to continue into federal fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the purchase of technology equipment to enhance tribal and urban public safety answering points through the new 9-1-1 system is authorized to continue into state fiscal year 2009.

Department of Agriculture

Central Management Division

National potato cyst nematode survey indirect costs	2007	$19,659	federal

All remaining fiscal year 2007 federal budget amendment authority for the national potato cyst nematode survey indirect costs is authorized to continue into state fiscal year 2008.

Agricultural Sciences Division

National potato cyst nematode survey	2007	$218,487	federal

All remaining fiscal year 2007 federal budget amendment authority for the national potato cyst nematode survey is authorized to continue into state fiscal year 2008.

Department of Corrections

Administration and Support Services

All remaining fiscal year 2007 federal budget amendment authority for the Prison Rape Elimination Act grant is authorized to continue into state fiscal year 2008.

Department of Commerce

Housing Division

All remaining fiscal year 2007 federal budget amendment authority for the grant to address chronic homelessness in Cascade, Flathead, and Yellowstone Counties is authorized to continue into federal fiscal year 2009.

Department of Labor and Industry

Workforce Services Division

All remaining fiscal year 2007 federal budget amendment authority for the evolution of Montana's workforce by creation of innovative biolubricant and bioproduct manufacturing embryonic clusters grant is authorized to continue into state fiscal year 2009.

Unemployment Insurance Division

All remaining fiscal year 2007 federal budget amendment authority for the implementation and purchase of software for the dumping program grant, for the new businesses to electronically register and establish an account number over the internet grant, and for the additional federal authority grant to perform the following functions: data validation, national directory of new hire updates, identity theft deterrence, internal security, document information technology for the unemployment system, buy and install software for the automation of the O'Net code system for occupations of claimants, reduce postage costs, database cross-match with workers' compensation clients, and benefit payment control enhancements is authorized to continue into state fiscal year 2008.

Department of Military Affairs

Centralized Services

Star base grant	2007	$300,000	federal

All remaining fiscal year 2007 federal budget amendment authority for the star base grant is authorized to continue into state fiscal year 2008.

Army National Guard Program

All remaining fiscal year 2007 federal budget amendment authority for the grant to create redundant backup communications systems through a wireless wide-area network is authorized to continue into federal fiscal year 2008.

Disaster and Emergency Services

2005 predisaster mitigation competitive grant	2007	$3,000,000	federal

All remaining fiscal year 2007 federal budget amendment authority for state multihazard mitigation and assessment plan, for the fiscal year 2005 homeland security preparedness grant, and for the fiscal year 2006 homeland security preparedness grant is authorized to continue into state fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the homeland security buffer zone protection program is authorized to continue into federal fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the 2005 predisaster mitigation competitive grant is authorized to continue into federal fiscal year 2009.

Department of Public Health and Human Services

Human and Community Services

Food stamp bonus grant	2007	$294,840	federal

All remaining fiscal year 2007 federal budget amendment authority for the residential energy assistance challenge grant, for the food stamp program performance bonus grant, and for the temporary assistance for needy families (TANF) high-performance grant is authorized to continue into federal fiscal year 2009.

Child and Family Services

All remaining fiscal year 2007 federal budget amendment authority for the monthly caseworker visit grant is authorized to continue into federal fiscal year 2009.

Director's Office

Clinical decisionmaking	2007	$853,122	federal

All remaining fiscal year 2007 federal budget amendment authority for the clinical decisionmaking grant is authorized to continue into federal fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the Montana medicaid infrastructure grant is authorized to continue into state fiscal year 2008.

Public Health and Safety Division

All remaining fiscal year 2007 federal budget amendment authority for youth and young adult suicide prevention is authorized to continue into federal fiscal year 2008.

Integrate clinical laboratories into public health testing	2008	$199,542	federal
	2009	$199,542	federal

All remaining fiscal year 2007, fiscal year 2008, and fiscal year 2009 federal budget amendment authority for integrate clinical laboratories into public health testing is authorized to continue into federal fiscal year 2009.

Disability Services Division

All remaining fiscal year 2007 federal budget amendment authority for the general supervision enhancement grant is authorized to continue into federal fiscal year 2007.

Senior and Long-Term Care Services

Alzheimer's demonstration grant	2008	$290,000	federal
Traumatic brain injury grant	2007	$118,597	federal

All remaining fiscal year 2007 federal budget amendment authority for the Alzheimer's demonstration grant and the traumatic brain injury grant is authorized to continue into state fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the one-stop aging and disability resource center initiative grant is authorized to continue into federal fiscal year 2008.

Addictive and Mental Disorders

All remaining fiscal year 2007 federal budget amendment authority for the strategic prevention framework state incentive grant is authorized to continue into federal fiscal year 2009.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 27, 2007

CHAPTER NO. 303

[HB 9]

AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECTS GRANT AWARDS; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE CULTURAL AND AESTHETIC PROJECTS TRUST FUND ACCOUNT; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation of cultural and aesthetic grant funds — priority of disbursement. (1) The Montana arts council shall award grants for projects authorized by and limited to the amounts appropriated by [section 3] and this section. Money must be disbursed in priority order, first to projects covered under subsection (3) and second to projects listed in [section 3].

(2) The Montana arts council shall disburse money to projects authorized by [section 3] through grant contracts between the Montana arts council and the grant recipient. The award contract must bind the parties to conditions, if any, listed with the appropriation in [section 3].

(3) There is appropriated from the cultural and aesthetic projects trust fund account to the Montana historical society $30,000 for the biennium ending July 1, 2009, for care and conservation of capitol complex artwork.

Section 2. Fund transfer. At the beginning of fiscal year 2008, the amount of $1.5 million is transferred from the state general fund to the cultural and aesthetic projects trust fund account established in 15-35-108 for the purpose of protection of the works of art in the capitol and for other cultural and aesthetic projects. The intent of this fund transfer is to increase the corpus of the trust for purposes of generating interest earnings that provide funding to support programs and projects funded by the Montana arts council, and it is further the intent of the legislature that the money transferred in this section remain in the trust and not be appropriated for other purposes.

Section 3. Appropriation of cultural and aesthetic grant funds. The following projects are approved and $698,770 is appropriated to the Montana arts council for the biennium ending June 30, 2009, from the cultural and aesthetic projects trust fund account:

Grant #	Grantee	Grant Amount
A.	Special Projects $4,500 or Less	
1207	Signatures From the Big Sky	$4,500
1202	Flathead Valley Community College	$2,000
1205	Miles City Speakers Bureau	$4,000
1208	Valley County Historical Museum	$4,000
1200	Council for the Arts, Lincoln	$2,500
1204	Metropolitan Opera National Council	$1,000
B.	Special Projects	
1228	Montana Committee for the Humanities	$22,000
1224	Helena Symphony Orchestra and Chorale	$10,000
1236	Pondera History Association	$10,000
1239	Western Heritage Center	$10,000
1225	KUFM-TV, Montana PBS	$10,000
1213	Butte Citizens for Preservation and Revitalization	$10,000
1229	Montana Historical Society	$7,000
1240	Yellowstone Chamber Players	$6,000
1217	CoMotion Dance	$10,000
1222	Glacier Symphony and Chorale	$7,000
1232	Montana Performing Arts Consortium	$15,000
1231	Montana Museum of Art and Culture	$5,000
1234	Montana Shakespeare Company - Artists Group	$6,000
1219	Emerson Cultural Center	$7,000

1227	Montana Alliance for Arts Education	$5,000
1220	Equinox Theatre Company	$8,000
1216	Children's Museum of Bozeman	$5,000
1226	Missoula Art Museum	$5,000
1210	Alpine Artisans	$6,000
1223	Headwaters Dance Company	$5,000
1241	Yellowstone Historic Center	$8,000
C.	Operational Support	
1267	Montana Art Gallery Directors' Association	$15,000
1276	Museums Association of Montana	$10,000
1270	Montana Association of Symphony Orchestras	$5,000
1269	Montana Arts	$10,000
1272	Montana Dance Arts Association	$5,000
1253	Custer County Art and Heritage Center	$15,000
1285	Schoolhouse History and Art Center	$14,000
1242	Alberta Bair Theater	$14,000
1248	Bozeman Symphony Society	$11,000
1244	Art Mobile of Montana	$14,000
1286	Shakespeare in the Parks	$15,000
1259	Hockaday Museum of Art	$14,000
1257	Great Falls Symphony Association, Inc.	$9,000
1273	Montana Preservation Alliance	$13,000
1293	Yellowstone Art Museum	$9,000
1280	Paris Gibson Square Museum of Art	$13,000
1278	Myrna Loy Center	$9,000
1249	Butte Center for the Performing Arts	$12,000
1264	Missoula Children's Theatre	$10,000
1260	Holter Museum of Art	$12,000
1252	Carbon County Historical Society	$11,000
1256	Grandstreet Theatre/Broadwater Productions	$12,000
1274	Montana Repertory Theatre	$10,000
1287	Southwest Montana Arts Council	$8,000
1243	Archie Bray Foundation	$10,000
1266	Montana Agricultural Center and Museum	$8,000
1290	Whitefish Theatre Company	$10,000
1255	Pioneer Museum - Gallatin Historical Museu	$5,000
1288	Vigilante Theatre Company	$8,000
1292	Writer's Voice (Billings YMCA)	$12,000
1251	Carbon County Arts Guild	$7,000

1281	Pondera Arts Council	$5,000
1282	Rimrock Opera Company	$10,000
1247	Billings Symphony Society	$8,000
1283	Rocky Mountain Ballet Theater	$7,000
1250	Butte Symphony Association	$8,000
1246	Big Horn Arts and Crafts Association	$7,000
1289	VSA Arts of Montana	$6,000
1271	Montana Ballet Company	$5,000
1291	World Museum of Mining	$8,000
1279	NW Montana Historical Society - Museum at Central School	$5,000
1263	Mission Valley Friends of the Arts	$4,000
1294	Young Audiences of Western MT	$6,000
1245	Artisan Dance	$4,000
1258	Hamilton Players, Inc.	$6,000
1275	Museum of the Rockies	$6,000
1284	CM Russell Museum	$9,000
1261	Intermountain Opera	$8,000
1254	District 7 HRDC Growth Thru Art	$8,000
1262	Miles City Preservation Commission	$2,270
D.	Capital Expenditure	
1295	Butte-Silver Bow Public Archives	$15,000
1300	Mai Wah Society - Museum	$17,500
1297	City of Shelby	$8,000
1303	Yellowstone Ballet Company	$3,000
1302	TVIA - Board of Arts	$8,000

Section 4. Reversion of grant money. On July 1, 2009, the unencumbered balance of the 2009 biennium grants revert to the cultural and aesthetic projects trust fund account provided for in 15-35-108.

Section 5. Reduction of grants on pro rata basis. Except as provided in [section 1(3)], if money in the cultural and aesthetic projects trust fund account is insufficient to fund projects at the appropriation levels contained in [section 3], reductions to projects with funding greater than $4,500 will be made on a pro rata basis.

Section 6. Effective date. [This act] is effective July 1, 2007.

Approved April 27, 2007

CHAPTER NO. 304

[HB 27]

AN ACT AUTHORIZING A WIRELESS ENHANCED 9-1-1 EMERGENCY TELEPHONE SYSTEM AND PROVIDING FOR ITS ADMINISTRATION;

PROVIDING FOR FUNDING OF THE SYSTEM BY LEVYING A WIRELESS ENHANCED 9-1-1 FEE; ESTABLISHING ACCOUNTS FOR THE DEPOSIT OF FEES COLLECTED; PROVIDING FOR DISTRIBUTION OF THE FEES COLLECTED; DEFINING ELIGIBILITY CRITERIA FOR WIRELESS COST RECOVERY; AMENDING SECTIONS 10-4-101, 10-4-102, 10-4-114, 10-4-201, AND 10-4-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-4-101, MCA, is amended to read:

"10-4-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Allowable costs" means the actual costs associated with upgrading, purchasing, programming, installing, testing, operating, and maintaining data, hardware, and software necessary to comply with federal communications commission orders.

~~(1)~~*(2)* "Basic 9-1-1 account" means the 9-1-1 emergency telecommunications account established in 10-4-301(1)(a).

~~(2)~~*(3)* "Basic 9-1-1 service" means a telephone service meeting the standards established in 10-4-102 that automatically connects a person dialing the digits 9-1-1 to an established public safety answering point.

~~(3)~~*(4)* "Basic 9-1-1 system" includes equipment for connecting and outswitching 9-1-1 calls within a telephone central office, trunking facilities from the central office to a public safety answering point, and equipment, as appropriate, that is used for transferring the call to another point, when appropriate, and that is capable of providing basic 9-1-1 service.

(5) "Commercial mobile radio service" means:

(a) a mobile service that is:

(i) provided for profit with the intent of receiving compensation or monetary gain;

(ii) an interconnected service; and

(iii) available to the public or to classes of eligible users so as to be effectively available to a substantial portion of the public; or

(b) a mobile service that is the functional equivalent of a mobile service described in subsection (5)(a).

~~(4)~~*(6)* "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

~~(5)~~*(7)* "Direct dispatch" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, provides for a decision as to the proper action to be taken and for dispatch of appropriate emergency service units.

~~(6)~~*(8)* "Emergency" means an event that requires dispatch of a public or private safety agency.

~~(7)~~*(9)* "Emergency services" means services provided by a public or private safety agency, including law enforcement, firefighting, ambulance or medical services, and civil defense services.

~~(8)~~*(10)* "Enhanced 9-1-1 account" means the 9-1-1 emergency telecommunications account established in 10-4-301(1)(b).

~~(9)~~*(11)* "Enhanced 9-1-1 service" means telephone service that meets the requirements for basic 9-1-1 service and that consists of selective routing with the capability of automatic number identification and automatic location identification at a public safety answering point enabling users of the public telecommunications system to request emergency services by dialing the digits 9-1-1.

~~(10)~~*(12)* "Enhanced 9-1-1 system" includes customer premises equipment that is directly related to the operation of an enhanced 9-1-1 system, including but not limited to automatic number identification or automatic location identification controllers and display units, printers, and software associated with call detail recording, and that is capable of providing enhanced 9-1-1 service.

~~(11)~~*(13)* "Exchange access services" means:

(a) telephone exchange access lines or channels that provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) unless a separate tariff rate is charged for the exchange access lines or channels, any facility or service provided in connection with the services described in subsection ~~(11)(a)~~ *(13)(a)*.

(14) "Federal communications commission order" means a federal communications commission enhanced 9-1-1 first report and order addressing 47 CFR 20.18.

~~(12)~~*(15)* A "9-1-1 jurisdiction" means a group of public or private safety agencies who operate within or are affected by one or more common central office boundaries and who have agreed in writing to jointly plan a 9-1-1 emergency telephone system.

(16) "Phase I wireless enhanced 9-1-1" means a 9-1-1 system that automatically delivers number information to the public safety answering point for wireless calls.

(17) "Phase II wireless enhanced 9-1-1" means a 9-1-1 system that automatically delivers number information and location information to the public safety answering point for wireless calls.

(18) "Place of primary use" means the primary business or residential street address location at which an end-use customer's use of the commercial mobile radio service primarily occurs.

~~(13)~~*(19)* "Private safety agency" means any entity, except a public safety agency, providing emergency fire, ambulance, or medical services.

~~(14)~~*(20)* "Provider" means a public utility, cooperative telephone company, or any other entity that provides telephone exchange access services.

~~(15)~~*(21)* "Public safety agency" means the state and any city, county, city-county consolidated government, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state that provides or has authority to provide emergency services.

~~(16)~~*(22)* "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives 9-1-1 calls from persons in a 9-1-1 service area and that may, as appropriate, directly dispatch public or private safety services or transfer or relay 9-1-1 calls to appropriate public safety agencies.

~~(17)~~*(23)* "Relay" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays the information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

~~(18)~~*(24)* "Subscriber" means an end user who receives telephone exchange access services *or who contracts with a wireless provider for commercial mobile radio services*.

~~(19)~~*(25)* "Transfer" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers the request to an appropriate public safety answering agency or other provider of emergency services.

(26) "Wireless enhanced 9-1-1" means either phase I wireless enhanced 9-1-1 or phase II wireless enhanced 9-1-1.

(27) "Wireless enhanced 9-1-1 account" means the wireless enhanced 9-1-1 account established in 10-4-301.

(28) "Wireless provider" means an entity, as defined in 35-1-113, that is authorized by the federal communications commission to provide facilities-based commercial mobile radio service within this state."

Section 2. Section 10-4-102, MCA, is amended to read:

"10-4-102. Department of administration duties and powers. (1) The department shall assist in the development of basic and enhanced 9-1-1 systems in the state. The department shall:

(a) establish procedures for determining and evaluating requests for variations from basic or enhanced 9-1-1 service;

(b) upon request of a 9-1-1 jurisdiction, assist in planning a basic or enhanced 9-1-1 system;

(c) establish criteria for evaluating basic and enhanced 9-1-1 system plans;

(d) monitor implementation of approved basic and enhanced 9-1-1 system plans for compliance with the plan and use of funding; and

(e) as it finds necessary, report to the legislature the progress made in implementing statewide basic and enhanced 9-1-1 systems *and in implementing wireless enhanced 9-1-1 services*.

(2) The department shall obtain input from all 9-1-1 jurisdictions by creating an advisory council to participate in development and implementation of the 9-1-1 program in the state. The council must be established pursuant to 2-15-122. The highway patrol, emergency medical services organizations, telephone companies, the associated public safety communicators, the department of emergency services, police departments, sheriff's offices, local citizens, organizations, and other public safety organizations may submit recommendations for membership on the advisory council."

Section 3. Section 10-4-114, MCA, is amended to read:

"10-4-114. Rulemaking authority. The department may adopt rules to implement the provisions of this chapter. The rules may include but are not limited to:

(1) establishing procedures to evaluate and make determinations on requests for a variation of the basic or enhanced 9-1-1 service;

(2) establishing evaluation criteria for basic and enhanced 9-1-1 systems plans;

(3) establishing requirements for program participation by public and private safety agencies;

(4) establishing guidelines for the distribution of funds; and

(5) ~~specifying reporting requirements~~ *establishing requirements regarding applications for reimbursement for allowable costs to wireless providers for enabling wireless enhanced 9-1-1 services*."

Section 4. Submission of phase I and phase II wireless notification by wireless provider. (1) A wireless provider must meet the following requirements to be eligible for wireless cost recovery:

(a) Within 30 days of receipt of a formal phase I and phase II request from a public safety answering point, the wireless provider shall submit to the department a notification stating the anticipated date of deployment and the number of subscribers, based on billing addresses, for the 9-1-1 jurisdiction.

(b) The department shall first determine that the wireless provider is providing phase I and phase II functionality to the public safety answering point. The wireless provider is responsible for notifying the department of the date of deployment and proof of acceptance tests.

(2) A 9-1-1 jurisdiction must be ready to provide phase I and phase II wireless service and have submitted a phase I and phase II wireless request to the wireless providers providing service in the jurisdiction's area.

Section 5. Section 10-4-201, MCA, is amended to read:

"10-4-201. Fees imposed for ~~telephone exchange access services~~ *9-1-1 services*. (1) Except as provided in 10-4-202:

(a) for basic 9-1-1 services, a fee of 25 cents a month per access line on each service subscriber in the state is imposed on the amount charged for telephone exchange access services, wireless telephone service, or other 9-1-1 accessible services; ~~and~~

(b) for enhanced 9-1-1 services, a fee of 25 cents a month per access line on each service subscriber in the state is imposed on the amount charged for telephone exchange access services, wireless telephone service, or other 9-1-1 accessible services*; and*

(c) for wireless enhanced 9-1-1 services, a fee of 50 cents a month per access line or subscriber in the state is imposed on the amount charged for telephone exchange access services, wireless telephone service, or other 9-1-1 accessible services.

(2) The subscriber paying for exchange access line services is liable for the fees imposed by this section.

(3) The provider shall collect the fees. The amount of the fees collected by the provider is considered payment by the subscriber for that amount of fees.

(4) Any return made by the provider collecting the fees is prima facie evidence of payments by the subscribers of the amount of fees indicated on the return."

Section 6. Section 10-4-301, MCA, is amended to read:

"10-4-301. Establishment of emergency telecommunications accounts. (1) There are established in the state special revenue fund in the state treasury:

(a) an account for all fees collected for basic 9-1-1 services pursuant to 10-4-201(1)(a); ~~and~~

(b) an account for all fees collected for enhanced 9-1-1 services pursuant to 10-4-201(1)(b)*; and*

(c) an account for all fees collected for wireless enhanced 9-1-1 services pursuant to 10-4-201(1)(c). The money is allocated as follows:

(i) 50% of the account must be deposited in an account for distribution to the 9-1-1 jurisdictions; and

(ii) 50% of the account must be deposited in an account for distribution to wireless providers.

(2) All money received by the department of revenue pursuant to 10-4-201 must be paid to the state treasurer for deposit in the appropriate account. An amount equal to 3.74% of the money received pursuant to 10-4-201 must be deposited in the state general fund.

(3) The accounts established in subsection (1) retain interest earned from the investment of money in the accounts.

(4) After payment of refunds pursuant to 10-4-205, the balance of the respective accounts must be used for the purposes described in part 1 of this chapter.

(5) The distribution of funds in the 9-1-1 emergency telecommunications accounts described in subsection (1), as required by 10-4-302*,* ~~and~~ 10-4-311*, and [section 7]*, is statutorily appropriated, as provided in 17-7-502, to the department.

(6) Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from appropriations made for that purpose."

Section 7. Distribution of wireless enhanced 9-1-1 account by department. (1) The department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account for allowable costs described in 10-4-301(1)(c)(ii) incurred by each wireless provider in each 9-1-1 jurisdiction as follows:

(a) For each fiscal year through the fiscal year ending June 30, 2011:

(i) 84% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. The wireless provider in each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the balance of the account must be distributed evenly to the wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state.

(b) For fiscal years beginning after June 30, 2011, 100% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. Each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(c) If the department is unable to fully reimburse a wireless provider under subsection (1)(a) in any quarter, the department shall in the subsequent quarter pay from the allocation under subsection (1)(a) to wireless providers any unpaid balances from the previous quarter. If the amount available is insufficient to pay all previous unpaid balances, the department shall repeat the process of paying unpaid balances that remain unpaid for as many quarters as necessary until all unpaid balances are fully paid. The department shall review all invoices for appropriateness of costs claimed by the wireless provider. If the wireless provider contests the review, payment may not be made until the amount owed to the wireless provider is determined.

(d) A wireless provider shall submit an invoice for cost recovery according to the allowable costs.

(e) The department shall determine the percentage of overall subscribers, based on billing addresses, within the 9-1-1 jurisdiction for each wireless provider seeking cost recovery by dividing the wireless provider's subscribers by the total number of subscribers in that 9-1-1 jurisdiction. The percentage must be applied to the total wireless provider funds for that 9-1-1 jurisdiction, and each wireless provider shall receive distribution based on the provider's percentage. To receive cost recovery, wireless providers shall submit subscriber counts to the department on a quarterly basis. The subscriber count must be provided for each 9-1-1 jurisdiction in which the wireless provider receives cost recovery within 30 calendar days following the end of each quarter. The department shall recalculate distribution percentages on a quarterly basis.

(f) If the department determines that a wireless provider has submitted costs that exceed allowable costs or are not submitted in the manner prescribed in [section 4], the department may, after giving notice to the wireless provider, suspend or withhold payment from the wireless enhanced 9-1-1 account.

(2) The department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account described in 10-4-301(1)(c)(i) to each 9-1-1 jurisdiction in accordance with 10-4-311(3) as follows:

(a) for each fiscal year through the fiscal year ending June 30, 2011:

(i) 84% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the balance of the account must be distributed evenly to the counties with 1% or less than 1% of the total population of the state; and

(b) for fiscal years beginning after June 30, 2011, 100% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

Section 8. Codification instruction. [Sections 4 and 7] are intended to be codified as an integral part of Title 10, chapter 4, and the provisions of Title 10, chapter 4, apply to [sections 4 and 7].

Section 9. Effective date. [This act] is effective July 1, 2007.

Approved April 30, 2007

CHAPTER NO. 305

[HB 63]

AN ACT PROVIDING FOR THE ACTUARIAL FUNDING OF THE TEACHERS' RETIREMENT SYSTEM; PROVIDING A SUPPLEMENTAL CONTRIBUTION, PAYABLE BY THE STATE, TO THE TEACHERS' RETIREMENT SYSTEM FOR EMPLOYEES OF SCHOOL DISTRICTS AND COMMUNITY COLLEGES; PROVIDING FOR A STATUTORY APPROPRIATION; REVISING DEFINITIONS; ESTABLISHING STATE POLICY REGARDING TEACHERS' RETIREMENT; REVISING THE REQUIREMENTS FOR THE TEACHERS' RETIREMENT BOARD TO SET THE TEACHERS' RETIREMENT SYSTEM'S REGULAR INTEREST RATE; INCREASING THE EMPLOYER CONTRIBUTION RATE FOR TEACHERS' RETIREMENT; INCREASING THE SUPPLEMENTAL CONTRIBUTION TO THE OPTIONAL RETIREMENT PROGRAM; ELIMINATING THE AUTHORITY OF THE TEACHERS' RETIREMENT BOARD TO INCREASE THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT; REVISING AND CLARIFYING THE MAXIMUM AMOUNT OF COMPENSATION A RETIRED MEMBER OF THE TEACHERS' RETIREMENT SYSTEM MAY EARN UNDER CERTAIN CIRCUMSTANCES; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 17-7-502, 19-20-101, 19-20-102, 19-20-501, 19-20-605, 19-20-621, 19-20-716, 19-20-719, AND 19-20-731, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Supplemental state contribution. (1) Each month, the state shall contribute, as a supplemental contribution to the teachers' retirement system, from the general fund to the pension trust fund an amount equal to:

(a) beginning July 1, 2007, through June 30, 2009, 2% of the total earned compensation of school district and community college active members participating in the system; and

(b) beginning July 1, 2009, 2.38% of the total earned compensation of school district and community college active members participating in the system.

(2) The contributions are statutorily appropriated, as provided in 17-7-502, to the pension trust fund. The board shall determine and shall certify to the state treasurer amounts due under this section on a monthly basis. The state treasurer shall transfer the certified amounts to the pension trust fund within 1 week following receipt of the certification from the board.

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; *[section 1];* 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 3. Section 19-20-101, MCA, is amended to read:

"19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings fund, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) "Average final compensation" means the average of a member's earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of average final compensation. If amounts

defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under 19-20-716(1)(b).

(4) "Beneficiary" means one or more persons formally designated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.

(5) "Creditable service" is that service defined by 19-20-401.

(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation.

(b) Earned compensation does not mean:

(i) direct employer premium payments on behalf of members for health or dependent care expense accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for:

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

(E) automobile, travel, lodging, or entertaining expenses; or

(F) any similar payment for any form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or

(iv) any noncash benefit provided by an employer to or on behalf of an employee.

(c) Unless included pursuant to 19-20-716, earned compensation does not include termination pay.

(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(e) Earned compensation does not include:

(i) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);

(ii) payment for sick, annual, or other types of leave that is allowed to a member and that is accrued in excess of that normally allowed; or

(iii) incentive or bonus payments paid to a member that are not part of a series of annual payments.

(7) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state that employs a person who is designated a member of the retirement system.

(8) "Full-time service" means service that is ~~full-time and that extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, full-time service means service that is full-time and that totals at least 9 months in any year~~ *at least 180 days in a fiscal year or at least 140 hours a month during 9 months in a fiscal year*.

(9) "Internal Revenue Code" has the meaning provided in 15-30-101.

(10) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

(11) "Normal retirement age" means an age no earlier than the age at which the member is eligible to retire:

(a) by virtue of age, length of service, or both;

(b) without disability; and

(c) with the right to receive immediate retirement benefits without an actuarial reduction in the benefits.

(12) "Part-time service" means service that is less than full-time ~~or that totals less than 180 days in a normal academic year~~. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

(13) "Prior service" means employment of the same nature as service but rendered before September 1, 1937.

(14) "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).

(15) "Retired member" means a person who has terminated employment that qualified the person for membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant to this chapter.

(16) "Retirement allowance" means a monthly payment due to a person who has qualified for service or disability retirement or due to a beneficiary as provided in 19-20-1001.

(17) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

(18) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

(19) "Service" means the performance of instructional duties or related activities that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(20) "Termination" or "terminate" means that the member has severed the employment relationship with the member's employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

(21) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating

employment and on which employee and employer contributions have been paid as required by 19-20-716.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

(22) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, as required by 19-20-602, ~~and~~ 19-20-605, *and [section 1],* and who has a right to a future retirement benefit.

(23) "Written application" or "written election" means a written instrument, required by statute or the rules of the board, properly signed, and filed with the board, that contains all the required information, including documentation that the board considers necessary."

Section 4. Section 19-20-102, MCA, is amended to read:

"19-20-102. Retirement system — *policy.* *(1)* The state teachers' retirement system created under the provisions of Chapter 87, Laws of 1937, is ~~hereby recognized as~~ the state teachers' retirement system of the state of Montana, and ~~no~~ *the* provisions of this chapter ~~shall~~ *do not* affect or impair the validity of any action taken by its governing board or the rights of any person arising under the provisions of Chapter 87, Laws of 1937, or any subsequent amendment ~~thereto~~ *to this chapter*. ~~Such~~ *The* state teachers' retirement system ~~shall be~~ *is* known as "The Teachers' Retirement System of the State of Montana" and in that name shall transact all business of the retirement system, hold its assets in trust, and have ~~such~~ *the* powers and privileges of a corporation that may be necessary to ~~carry into effect~~ *administer* the provisions of this chapter.

(2) It is the policy of the state to:

(a) provide equitable retirement benefits to members of the teachers' retirement system based on each member's normal service retirement and salary;

(b) limit the effect on the retirement system of isolated salary increases received by a member, including but not limited to end-of-career promotions or one-time salary enhancements during the member's last years of employment; and

(c) limit the compensation that a retired member may earn after retirement while working in a position that would normally be covered under the teachers' retirement system to the amount determined under 19-20-731."

Section 5. Section 19-20-501, MCA, is amended to read:

"19-20-501. Financial administration of money. The members of the retirement board are the trustees of all money collected for the retirement system, and as trustees, they shall provide for the financial administration of the money as provided in Article VIII, section 15, of the Montana constitution in the following manner:

(1) The money must be invested and reinvested by the state board of investments.

(2) The retirement board shall annually establish the rate of regular interest. ~~The rate established by the board may not be less than 4%.~~

(3) The retirement board shall annually divide among the several reserves of the retirement system an amount equal to the average balance of the reserves during the preceding fiscal year multiplied by the rate of regular interest. In accordance with the provisions of 19-20-605~~(5)~~*(7)*, the amount to be credited to each reserve must be allocated from the interest and other earnings on the money of the retirement system actually realized during the preceding fiscal year, less the amount allocated to administrative expenses. The administrative expenses of the retirement system, less amortization of intangible assets, may not exceed 1.5% of retirement benefits paid.

(4) The state treasurer is the custodian of the collected retirement system money and of the securities in which the money is invested.

(5) For purposes of Article VIII, section 12, of the Montana constitution, all the reserves established by part 6 of this chapter must be accounts in the pension trust fund type of the treasury fund structure of the state.

(6) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination."

Section 6. Section 19-20-605, MCA, is amended to read:

"19-20-605. Pension accumulation fund — employer's contribution. *(1)* The pension accumulation fund is the fund in which the reserves for payment of retirement allowances and benefits must be accumulated and from which retirement allowances and benefits must be paid to retirees or their beneficiaries. Contributions to and payments from the pension accumulation fund must be made as ~~follows:~~ *provided in this section.*

~~(1) Each~~ *(2) Except as provided in subsection (3), for each member employed during the whole or part of the preceding payroll period, the* employer shall pay into the pension accumulation fund an amount equal to*:* ~~7.47% of the earned compensation of each member employed during the whole or part of the preceding payroll period~~

(a) beginning July 1, 2007, through June 30, 2009, 9.47% of total earned compensation; and

(b) beginning July 1, 2009, 9.85% of total earned compensation.

(3) For each member employed by a school district or a community college during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation fund an amount equal to 7.47% of total earned compensation.

~~(2)~~*(4)* If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

~~(3)~~*(5)* If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

~~(4)~~*(6)* If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

~~(5)~~*(7)* All interest and other earnings realized on the money of the retirement system must be credited to the pension accumulation fund, and the amount required to allow regular interest on the annuity savings fund must be transferred to that fund from the pension accumulation fund.

~~(6)~~*(8)* The ~~retirement~~ board may transfer from the pension accumulation fund to the expense fund an amount necessary to cover expenses of administration."

Section 7. Section 19-20-621, MCA, is amended to read:

"19-20-621. Montana university system optional retirement program supplemental contributions. (1) Each employer within the university system with employees participating in the optional retirement program under Title 19, chapter 21, shall contribute to the teachers' retirement system a supplemental employer contribution sufficient to amortize, by July 1, 2033, the past service liability of the teachers' retirement system for the university system members.

(2) The optional retirement program supplemental employer contribution as a percentage of the total compensation of all employees participating in the program ~~must increase to~~ *is*:

~~(a) 2.81% beginning July 1, 1997;~~

~~(b) 3.12% beginning July 1, 1998;~~

~~(c) 3.42% beginning July 1, 1999;~~

~~(d) 3.73% beginning July 1, 2000; and~~

~~(e)~~*(a)* 4.04% beginning July 1, 2001*, through June 30, 2007; and*

(b) 4.72% beginning July 1, 2007.

(3) The board shall periodically review the supplemental employer contribution rate and recommend adjustments to the legislature as needed to maintain the amortization of the university system's past service liability by July 1, 2033."

Section 8. Section 19-20-716, MCA, is amended to read:

"19-20-716. Termination pay. (1) If a member terminates and receives termination pay at the time of retirement, the member shall select, subject to subsections (4) and (5), by signing a binding, irrevocable written election at least 90 days before the member's termination date, one of the following options:

(a) Option 1—The member may use the total termination pay in the calculation of the member's average final compensation. The member and the employer shall pay contributions to the retirement system as determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time of termination.

(b) Option 2—The member may use a yearly amount of the total termination pay added to each of the 3 consecutive years' salary used in the calculation of the member's average final compensation. To determine the amount of termination pay used in the calculation of average final compensation, termination pay must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602 and 19-20-605(1). *For the purposes of this subsection (1)(b), the employer shall also pay as a contribution an amount equal to the termination pay multiplied by the rate established in [section 1] that would have been payable by the state as a*

supplemental contribution. The contributions must be made at the time of termination.

(c) Option 3—The member may exclude the termination pay from the average final compensation. A contribution is not required of either the member or the employer.

(2) A binding, irrevocable written election required by this section must be signed by both the member and the employer at least 90 days prior to the member's termination date and must contain statements with regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:

(a) the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the system in lieu of contributions by the member and that the picked up contributions are paid from the same source as compensation is paid;

(b) the member may not choose to directly receive the amounts deducted from the member's termination pay instead of having them paid by the employer to the system;

(c) the member may not prepay any portion of the contributions; and

(d) the effective date of the pickup is the date that the irrevocable written election is signed by both the member and employer. The effective date must be at least 90 days prior to the date of the member's termination. The pickup does not apply to a contribution made before the effective date of the pickup.

(3) Pursuant to subsection (2), contributions required under subsection (1)(a) or (1)(b) must be:

(a) deducted from the portion of termination pay that:

(i) constitutes wages for the purposes of section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) can be included in the member's gross income for federal tax purposes; and

(b) picked up by the employer, except as provided in subsections (4) and (5).

(4) A member's contributions greater than the total amount of the member's termination pay may not be picked up by the employer and are subject to the limitations of section 415 of the Internal Revenue Code.

(5) If a member and the member's employer fail to sign the written election within the time period required in subsection (1), the member may contribute for the purposes specified in subsections (1)(a) and (1)(b) on all or any part of the termination pay received. A contribution made pursuant to this subsection may not be picked up by the employer and is subject to the limitations of section 415 of the Internal Revenue Code."

Section 9. Section 19-20-719, MCA, is amended to read:

"19-20-719. Guaranteed annual benefit adjustment — rulemaking. (1) ~~Subject to subsection (3), on~~ *On* January 1 of each year, the retirement allowance payable to each recipient who is eligible under subsection (2) must be increased by 1.5%.

(2) A benefit recipient is eligible for and must receive the ~~minimum~~ annual benefit adjustment provided for in this section if the retiree has received at least

36 monthly retirement benefit payments prior to January 1 of the year in which the adjustment is to be made.

~~(3) On January 1, 2002, and January 1 of each year following the system's biennial valuation, the board may increase the annual benefit adjustment provided in subsection (1) until a maximum of 3% is guaranteed if:~~

~~(a) the period required to amortize the system's actuarial unfunded liability, as determined by the most recent biennial valuation, adjusted for any benefit enhancement enacted by the legislature since the most recent biennial valuation, is less than 25 years;~~

~~(b) sufficient funds are available to increase the guaranteed annual benefit adjustment by at least 0.1%; and~~

~~(c) the increase granted by the board would not cause the amortization period, as of the most recent valuation, to exceed 25 years.~~

~~(4) The board shall adopt rules to administer the provisions of this section.~~"

Section 10. Section 19-20-731, MCA, is amended to read:

"19-20-731. Postretirement employment limitations — cancellation and recalculation of benefits. (1) *(a)* Except as otherwise provided in this section, a retired member may be employed part-time by a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

~~(a)~~*(i)* one-third of the sum of the member's average final compensation; or

~~(b)~~*(ii)* one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) For the purposes of this subsection (1), the maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all remuneration paid to the retired member, excluding:

(i) the amount of health insurance premiums paid by the employer on the retired member's behalf;

(ii) the value of housing provided by the employer to the retired member;

(iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;

(iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and

(v) payroll taxes paid by the employer on behalf of the retired member.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in subsection (5), the retirement benefit of a retired member:

(a) employed in a part-time position or earning more than allowed by subsections (1) and (2) must be temporarily reduced by $1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as

soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be canceled if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in a full-time position must be canceled beginning in the month in which the retired member returns to full-time employment.

(4) Upon termination and retirement subsequent to a cancellation of benefits pursuant to subsection (3), the retirement benefit of a member:

(a) who was reemployed and earned less than 1 year of creditable service must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later. The reinstated retirement benefit is the amount and option that the retired member would have been entitled to receive had the retired member not returned to employment.

(b) who was reemployed and earned at least 1 year of creditable service must be recalculated under 19-20-804 if the member has attained normal retirement age or under 19-20-802 if the member has not attained normal retirement age but is eligible for early retirement. The recalculated benefit is based on the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated normal form benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were canceled.

(5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled."

Section 11. Appropriations. (1) There is appropriated $50 million from the general fund to the teachers' retirement system.

(2) The following money is appropriated to implement the supplemental state contribution and employer contribution rate increases provided for in [this act]:

	Fiscal Year 2008		Fiscal Year 2009	
	General Funds	Other Funds	General Funds	Other Funds
State Agencies	$89,298	$35,607	$92,788	$36,785
University System	$1,045,800		$1,023,853	

Section 12. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 19, chapter 20, part 6, and the provisions of Title 19, chapter 20, part 6, apply to [section 1].

Section 13. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2007.

(2) [Sections 3, 4, 11(1), and this section] are effective on passage and approval.

Approved April 27, 2007

CHAPTER NO. 306

[HB 95]

AN ACT PROVIDING A STATUTORY APPROPRIATION TO FUND A STATE CONTRIBUTION TO ACCOUNTS OF CERTAIN EMPLOYEES PARTICIPATING IN THE OPTIONAL RETIREMENT PROGRAM; REQUIRING A STATE CONTRIBUTION TO ACCOUNTS OF CERTAIN EMPLOYEES PARTICIPATING IN THE OPTIONAL RETIREMENT PROGRAM; AMENDING SECTIONS 17-7-502 AND 19-21-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; *19-21-203;* 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec.

10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 2. Section 19-21-203, MCA, is amended to read:

"19-21-203. Contributions — supplemental and plan choice rate contributions. The following provisions apply to program participants not otherwise covered under 19-21-214:

(1) *(a)* Each program participant shall contribute an amount equal to the member's contribution required under 19-20-602.

(b) (i) Each month, the board of regents shall calculate an amount equal to 1% of each participant's earned compensation, total the amounts calculated, and certify to the state treasurer the total amount for all participants combined.

(ii) Within 1 week of receiving notice of the certified amount, the state treasurer shall transfer the certified amount from the general fund to the board of regents. Upon receipt of the amount transferred, the board shall allocate and deposit to the account of each participant the amount calculated for that participant under subsection (1)(b)(i). The amounts transferred under this subsection (1)(b)(ii) are statutorily appropriated, as provided in 17-7-502.

(c) The board of regents shall contribute an amount that, when added to *the sum of* the participant's contribution *plus the contribution made under subsection (1)(b)(ii)*, is equal to ~~12%~~ *13%* of the participant's earned compensation.

(2) (a) The board of regents may:

(i) reduce the participant's contribution rate established in subsection (1) to an amount not less than 6% of the participant's earned compensation; and

(ii) increase the employer's contribution rate to an amount not greater than 6% of the participant's earned compensation.

(b) ~~The~~ *Notwithstanding the supplemental contributions required under 19-20-604 and subsection (5) of this section, the* sum of the participant's *contributions made under subsection (1)(a), the state's contributions made under subsection (1)(b),* and *the* employer's contributions made under subsection ~~(2)(a)~~ *(1)(c)* must remain at ~~12%~~ *13%* of the participant's earned compensation.

(3) The board of regents shall determine whether the participant's contribution is to be made by salary reduction under section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b), as amended, or by employer pickup under section 414(h)(2) of that code, 26 U.S.C. 414(h)(2), as amended.

(4) The disbursing officer of the employer or other official designated by the board of regents shall pay both the participant's contribution and the appropriate portion of the board of regents' contribution to the designated company or companies for the benefit of the participant.

(5) The board of regents shall make the supplemental contributions to the teachers' retirement system, as provided in 19-20-621, to discharge the obligation incurred by the Montana university system for the past service liability incurred by active, inactive, and retired members of the teachers' retirement system."

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved April 28, 2007

CHAPTER NO. 307

[HB 125]

AN ACT APPROPRIATING FUNDS TO REPAY IN FULL THE LOAN FOR THE STARTUP COSTS OF THE DEFINED CONTRIBUTION RETIREMENT PLAN IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation to repay startup loan for defined contribution plan. There is appropriated from the general fund to the public employees' retirement board $1.4 million to be used exclusively for repaying the loan for startup costs of the defined contribution retirement plan as provided for in section 74, Chapter 471, Laws of 1999. The loan must be repaid as soon as practicable. If funds from the appropriation exceed the amount necessary to repay the loan in full, all excess funds appropriated revert to the general fund.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2007

CHAPTER NO. 308

[HB 136]

AN ACT PROVIDING FOR PAYMENT OF A STATE DEATH BENEFIT TO BENEFICIARIES OF MEMBERS OF THE MONTANA NATIONAL GUARD WHO DIE IN THE LINE OF DUTY WHILE ON STATE ACTIVE DUTY; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 15-30-116 AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Death while on state duty — death benefit payment — certification — rules. (1) The department of administration shall, upon certification by the department as provided in subsection (2), make a death benefit payment by state warrant in the amount of $50,000 to the beneficiary, as provided in subsection (3), of a member of the national guard who dies in the line of duty performed pursuant to state active duty orders.

(2) Upon the death of the member, the department shall certify to the department of administration:

(a) the name and other identifying information of the member;

(b) that the member died in the line of duty performed pursuant to Article VI, section 13, of the Montana constitution;

(c) that, at the time of the death of the member, the member was being paid or was to be paid for the member's military service from state and not federal military funds; and

(d) the name and address of the beneficiary, as provided in subsection (3), to whom payment must be made.

(3) The department of administration shall pay the death benefit to the member's surviving spouse. If there is no surviving spouse, the department of administration shall pay the death benefit to the member's surviving children in equal shares. If there are no surviving children, the department of administration shall pay the death benefit to the member's survivors pursuant to Title 72 as if the member had died intestate.

(4) The department and the department of administration may adopt rules to implement this section.

Section 2. Section 15-30-116, MCA, is amended to read:

"15-30-116. (Temporary) Veterans' bonus, ~~or~~ military salary, *or death benefit* — exemptions. (1) All payments made under the World War I bonus law, the Korean bonus law, and the veterans' bonus law are exempt from taxation under this chapter. Any income tax that has been or may be paid on income received from the World War I bonus law, the Korean bonus law, and the veterans' bonus law is considered an overpayment and must be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

(2) The salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana is exempt from state income tax.

(3) The amount received pursuant to 10-1-1104 or from the federal government by a service member, as defined in 10-1-1102, as reimbursement for group life insurance premiums paid is considered to be a bonus and is exempt from taxation under this chapter.

(4) The amount received by a beneficiary pursuant to [section 1] is exempt from taxation under this chapter. (Terminates on occurrence of contingency—sec. 9, Ch. 604, L. 2005.)

15-30-116. (Effective on occurrence of contingency) Veterans' bonus, ~~or~~ military salary, *or death benefit* — exemptions. (1) All payments made under the World War I bonus law, the Korean bonus law, and the veterans' bonus law are hereby exempt from taxation under the income tax laws of the state of Montana, and any income tax which has been or may hereafter be paid on income received from this source shall be considered an overpayment and shall be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

(2) The salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana is exempt from state income tax.

(3) The amount received by a beneficiary pursuant to [section 1] is exempt from taxation under this chapter."

Section 3. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; *[section 4];* 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 4. Statutory appropriation. The payment to a beneficiary certified pursuant to [section 1] is statutorily appropriated, as provided in 17-7-502, from the general fund to the department of administration.

Section 5. Codification instruction. [Sections 1 and 4] are intended to be codified as an integral part of Title 10, chapter 1, and the provisions of Title 10, chapter 1, apply to [sections 1 and 4].

Section 6. Effective date. [This act] is effective July 1, 2007.

Approved April 27, 2007

CHAPTER NO. 309

[HB 139]

AN ACT CREATING A LEGISLATIVE BRANCH RETIREMENT TERMINATION RESERVE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION AND A FUND TRANSFER; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative branch retirement termination reserve account. (1) There is a legislative branch retirement termination reserve account in the state special revenue fund. Money may be deposited in the account through an allocation of money to the account or as provided in 17-7-304.

(2) (a) The money in the account is statutorily appropriated, as provided in 17-7-502, to the legislative services division to be used only for staff retirement termination pay in the legislative branch.

(b) The money in the account may be expended only with the approval of the appropriate branch division director for eligible termination pay expenditures for division staff.

(3) The account is limited to an amount to be calculated at the beginning of each biennium based on an analysis by branch division directors of the staff eligible for retirement within the biennium. For the 2009 biennium, the limit is set at $400,000.

(4) The money in the account must be invested pursuant to Title 17, chapter 6. The income and earnings on the account must be deposited in the account.

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; *[section 1];* 5-13-403; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415;

69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 3. Fund transfer. There is transferred $400,000 from the general fund in fiscal year 2008 to the legislative branch retirement termination reserve account provided for in [section 1].

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 5, chapter 11, and the provisions of Title 5, chapter 11, apply to [section 1].

Section 5. Effective date. [This act] is effective July 1, 2007.

Approved April 28, 2007

CHAPTER NO. 310

[HB 148]

AN ACT EXPANDING THE DEFINITION OF "PUBLIC SWIMMING POOL"; DEFINING TERMS; IMPOSING FEES FOR THE REVIEW OF PLANS RELATING TO THE CONSTRUCTION OR ALTERATION OF PUBLIC SWIMMING POOLS OR PUBLIC BATHING PLACES; CLARIFYING THE TERM "SEPARATE" WITH REGARD TO PUBLIC SWIMMING POOLS; INCREASING FEES FOR LICENSURE OF PUBLIC SWIMMING POOLS, PUBLIC BATHING PLACES, AND SPAS OR WADING POOLS; AUTHORIZING LOCAL BOARDS OF HEALTH TO ESTABLISH INSPECTION AND ENFORCEMENT ACTIVITIES OF PUBLIC SWIMMING POOLS AND PUBLIC BATHING PLACES; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO DEPOSIT ALL FEES COLLECTED BY LOCAL BOARDS OF HEALTH IN A STATE SPECIAL REVENUE FUND; CLARIFYING LICENSE VALIDATION REQUIREMENTS; AND AMENDING SECTIONS 50-53-102, 50-53-103, 50-53-201, 50-53-202, 50-53-203, AND 50-53-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-53-102, MCA, is amended to read:

"50-53-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Lazy river" means a constructed watercourse through which people travel by use of flotation devices.

~~(2)~~*(3)* "Local board of health" or "board" means a local board as defined in 50-2-101.

~~(3)~~*(4)* "Local health officer" or "officer" means a local health officer as defined in 50-2-101.

~~(4)~~*(5)* "Person" means a person, firm, partnership, corporation, *or* organization~~,~~ *or* the state~~,~~ or any political subdivision of the state.

~~(5)~~*(6)* "Public bathing place" means a body of water with bathhouses and related appurtenances operated for the public.

~~(6)~~*(7) (a)* "Public swimming pool" means an artificial pool ~~and bathhouses~~ and related appurtenances for swimming, bathing, ~~or~~ wading, *or other aquatic therapy or recreation,* including *but not limited to* natural hot water pools*,* ~~and~~ spas*, splash decks, water slides, lazy rivers, and wave pools*.

(b) The term does not include:

~~(a)~~*(i)* swimming pools located on private property*, including the private common area property of owner-occupied condominium developments,* used for swimming or bathing only by the owner, members of the owner's family, or their invited guests; or

~~(b)~~*(ii)* medicinal hot water baths for individual use.

~~(7)~~*(8)* "Spa" means an artificial pool *that is* designed for recreational bathing ~~or therapeutic use~~ *or therapeutic use* and that is not drained, cleaned, or refilled for individual use. A spa includes but is not limited to a ~~therapeutic pool, hydrotherapy pool, whirlpool,~~ *therapeutic pool, hydrotherapy pool, whirlpool,* hot tub~~,~~ or Jacuzzi-type whirlpool bath.

(9) "Splash deck" means a constructed area over which water is sprayed but is not allowed to pool.

~~(8)~~*(10)* "Tourist home" means a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis.

(11) "Wading pool" means a pool in which the water depth does not exceed 2 feet.

(12) "Wave pool" means a swimming pool designed for the purpose of producing wave action in the water."

Section 2. Section 50-53-103, MCA, is amended to read:

"50-53-103. Department rules. (1) The department shall adopt rules relating to the operation of public swimming pools and public bathing places, including rules:

(a) setting standards to ensure sanitation and safety in public swimming pools and public bathing places to protect public health and safety;

(b) imposing reasonable fees for review of plans relating to the design, construction, reconstruction, alteration, conversion, repair, and installation of equipment and for plan review when plan review is conducted by the department;

~~(b)~~*(c)* relating to the licensing of operators of public swimming pools and public bathing places;

~~(c)~~*(d)* providing procedures for the enforcement of the laws and rules relating to public swimming pools and public bathing places;

~~(d)~~*(e)* relating to cooperative agreements between the department and local boards of health; and

~~(e)~~*(f)* setting performance standards for local boards of health, local health officers, and sanitarians to meet as a condition to receipt of funds provided by the department pursuant to 50-53-218.

(2) Any rule relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings or installation of equipment in buildings is effective only when it has been adopted by the department of labor and industry as part of the state building code and filed with the secretary of state pursuant to 50-60-204."

Section 3. Section 50-53-201, MCA, is amended to read:

"50-53-201. License required — validation. (1) A person may not operate a public swimming pool or public bathing place without annually obtaining a license from the department.

(2) A ~~separate~~ license is required for each *separate* public swimming pool or public bathing place. ~~unless more than one public swimming pool is operated on the same premises by the same person, in which case a single license is required for all public swimming pools on the premises~~ *A public swimming pool is separate if:*

(a) its water does not commingle with water from any other public swimming pool; or

(b) it is serviced by a separate water filtration system.

(3) A license issued by the department is not valid unless signed in accordance with 50-53-206*, if applicable,* or in accordance with 50-53-207, in the case of an appeal."

Section 4. Section 50-53-202, MCA, is amended to read:

"50-53-202. Application for and right to license. (1) An application for both an original and renewal license to operate a public swimming pool or public bathing place must be made to the department, must contain the information required by the department, and must be accompanied by the fee provided for in 50-53-203.

(2) A license must be issued to an applicant who has satisfied the requirements for a license provided in part 1, this part, and department rules.

(3) Upon issuing a license, the department shall forward the license to the appropriate local health officer for validation as provided in 50-53-206*, if applicable*."

Section 5. Section 50-53-203, MCA, is amended to read:

"50-53-203. License fee and late fee — disposition. (1) (a) Except as provided in subsection (1)(b), each application for an original or renewal license must be accompanied by a license fee of ~~$75~~ *$200*.

(b) ~~The fee for an original or renewal license for a public swimming pool or public bathing place operated in conjunction with a campground, trailer court, work camp, youth camp, hotel, motel, roominghouse, boardinghouse, retirement home, or tourist home is $50~~ *Each application for an original or renewal license for a spa or wading pool with a total water capacity not exceeding 4,000 gallons must be accompanied by a license fee of $75.*

(2) An operator of a public swimming pool or public bathing place who fails to renew a license by the expiration date provided in 50-53-204 and who operates the public swimming pool or public bathing place in the license year for which a renewal fee was not paid shall, upon renewal, pay to the department a late renewal fee of $25 *for each calendar month after the renewal due date* in addition to the renewal fee required by subsection (1). Payment of the late renewal fee does not relieve the operator of responsibility for any operation without a license.

(3) If the local board of health conducts its own inspections and enforcement activities for the public swimming pools and public bathing places within its jurisdiction:

~~(3)~~*(a)* ~~The~~ *the* department shall deposit 85% of the fees collected under subsection (1) in the state special revenue fund to the credit of the local board inspection fund account created by 50-2-108. Money deposited in the local board inspection fund account is subject to appropriation by the legislature for the purposes of 50-53-218.

~~(4)~~*(b)* ~~The~~ *the* department shall deposit 15% of the fees collected under subsection (1) and all the fees collected under subsection (2) in an account in the state special revenue fund to be appropriated by the legislature to the department for the enforcement of part 1 and this part.

(4) If the local board of health has delegated its inspection and enforcement activities for public swimming pools and public bathing places to the department, the department shall deposit all of the fees collected under subsections (1) and (2) in an account in the state special revenue fund to be appropriated by the legislature to the department for the enforcement of part 1 and this part."

Section 6. Section 50-53-206, MCA, is amended to read:

"50-53-206. Validation of license required ~~— validation by local officer~~. (1) *(a) If the local board of health conducts its own inspections and enforcement activities for the public swimming pools and public bathing places within its jurisdiction, a* ~~A~~ license issued by the department under part 1 and this part is not valid until it is signed by the local health officer of the jurisdiction in which the public swimming pool or public bathing place is located.

~~(2)~~*(b)* The local health officer shall, within 15 days of receipt of the license, validate or refuse to validate the license. Failure of the officer to validate a license is a refusal for the purposes of 50-53-207.

(2) Validation is not required if the local board of health has delegated its inspection and enforcement activities for public swimming pools and public bathing places to the department."

Approved April 28, 2007

CHAPTER NO. 311

[HB 179]

AN ACT ESTABLISHING THE MONTANA MILITARY FAMILY RELIEF FUND; CREATING AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND FOR USE BY THE FUND; AUTHORIZING THE AWARD OF STATUS-BASED, NEEDS-BASED, AND CASUALTY-BASED GRANTS; ESTABLISHING INELIGIBILITY CRITERIA FOR GRANTS; REQUIRING THE DEPARTMENT OF MILITARY AFFAIRS TO ADOPT RULES TO IMPLEMENT AND ADMINISTER THE FUND; PROVIDING FOR A VOLUNTARY INCOME TAX CHECKOFF FOR THE FUND; PROVIDING A STATUTORY APPROPRIATION; PROVIDING A TRANSFER OF FUNDS TO THE FUND; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 10] may be cited as the "Montana Military Family Relief Fund".

Section 2. Montana military family relief fund — purpose — administration. (1) There is a Montana military family relief fund.

(2) The purpose of the fund is to aid members of the Montana national guard or reserve component who have been activated for federal service in a contingency operation and the families of members.

(3) The department shall administer the fund as provided in [sections 1 through 10].

Section 3. Fund account — statutory appropriation. (1) There is a Montana military family relief fund account in the state special revenue fund provided for in 17-2-102. All money transferred to the fund by the legislature, all monetary contributions, gifts, and grants donated to the fund, all contributions made to the fund pursuant to [section 11], and all interest and income earned on money in the account must be deposited into the account.

(2) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department for the purposes of [sections 1 through 10].

Section 4. Definitions. As used in [sections 1 through 10] the following definitions apply:

(1) "Account" means the Montana military family relief fund account established in [section 3].

(2) "Contingency operation" means an assignment within the provisions of 10 U.S.C. 101(a)(13).

(3) "Family member" means a person who has been approved as a dependent of a member and is enrolled as a dependent of the member in the defense enrollment eligibility reporting system of the United States department of defense.

(4) "Fund" means the Montana military family relief fund established in [section 2].

(5) "Member" means a Montana resident who is a member of the Montana national guard or reserve component, as defined in 38 U.S.C. 101, and who on or after [the effective date of this act] is in active duty for federal service in a contingency operation.

Section 5. Allowable uses of account. Subject to the availability of money in the account and [section 6], the department shall use the money in the account to make the following grants to members and to family members:

(1) a status-based grant of $250 to each family member of a member who is activated for federal service in a contingency operation for a period of more than 30 days;

(2) a needs-based grant of not more than $2,000 to a member or to a family member of a member who is activated for federal service in a contingency operation for a period of more than 30 days and:

(a) the member's monthly military pay and allowances, combined, are at least 30% less than the member's monthly civilian wages or salary; or

(b) the member or a family member is experiencing a significant emergency that warrants financial assistance; and

(3) a casualty-based grant of $2,000 to a member who at any time after activation for federal service in a contingency operation sustained a nonfatal injury in the course of or related to combat as a direct result of hostile action. A member may receive only one casualty-based grant for injuries sustained during or arising out of the same contingency operation.

Section 6. Ineligibility for grants. (1) (a) A member who, at any time prior to the disbursement of grant money, receives a punitive discharge pursuant to the federal Manual for Courts-Martial or an administrative discharge with service characterized as other than honorable conditions is ineligible for any grant under [section 5].

(b) A family member of a member described in subsection (1)(a) is ineligible for any grant under [section 5].

(2) (a) A member and a family member of the member are ineligible for status-based and needs-based grants under [section 5] if the member holds a rank or pay grade, as those terms are used in Titles 10 and 37 of the United States Code, of:

(i) 0-4 (major or lieutenant commander) or higher, if a commissioned officer; or

(ii) W-4 (chief warrant officer, W-4) or higher, if a warrant officer.

(b) The determination of the member's pay grade must be made at the time of application for the grant.

(3) A member is ineligible for a casualty-based grant under [section 5] if:

(a) the member's injury is the result of a self-inflicted wound, willful negligence by the member, or other misconduct by the member; or

(b) the injury occurs when the member is not in an authorized duty status.

Section 7. Rules. The department shall adopt rules pursuant to 10-1-105 to implement and administer the provisions of [sections 1 through 10]. The rules must ensure that all similarly situated members and family members are treated equitably and must include but are not limited to provisions regarding:

(1) applications;

(2) timelines;

(3) eligibility, including proof of eligibility of members and family members;

(4) the procedure for establishing priority of grant awards if the amount of money available in the account is insufficient to support an award of grants to the maximum authority allowed under [section 5];

(5) the appeal process for grant applications that are denied; and

(6) disbursement of grant money to members and family members.

Section 8. Grant application — review — approval or denial. (1) A member or a family member may apply for a grant authorized under [section 5] on forms provided by and in the manner prescribed by the department.

(2) (a) A committee of three members shall review all applications for needs-based grants and shall recommend to the adjutant general approval or denial of each application.

(b) The committee is composed of the director of the department of public health and human services provided for in 2-15-2201 or the director's designee, the commissioner of labor and industry provided for in 2-15-1701 or the commissioner's designee, and the budget director provided for in 17-7-103 or the budget director's designee.

(3) The adjutant general shall review all grant applications and the recommendations of the committee made under subsection (2) and shall either approve or deny each application pursuant to the rules adopted under [section 7].

(4) The department shall notify the applicant in writing whether the applicant's application for a grant is approved or denied.

Section 9. Review if application denied. (1) If the adjutant general denies an application for a grant, the adjutant general shall explain the basis for the denial to the applicant in writing.

(2) An applicant whose application is denied may appeal the decision in writing to the adjutant general in the manner prescribed by rule. After considering the applicant's appeal, the adjutant general shall affirm or deny the appeal in writing.

(3) There is no further appeal if the adjutant general denies the appeal.

Section 10. Contributions to the fund. The department may accept monetary contributions, gifts, or grants to the fund. Upon receipt, monetary contributions, gifts, and grants must be deposited into the account.

Section 11. Voluntary checkoff for Montana military relief fund. (1) Each individual taxpayer who is required to file an income tax return under Title 15, chapter 30, may contribute to the Montana military family relief fund established in [section 2] by marking the appropriate box on the state income tax return.

(2) The department shall include on each Montana state individual income tax return form a clear and conspicuous provision by which the taxpayer may indicate a contribution to the Montana military family relief fund. The contribution may be made from the amount to be refunded to the taxpayer or, if no refund is due, must be in addition to the amount of tax required to be paid. The provision must be in substantially the following form:

Montana military family relief fund. Check the appropriate blank if you wish to contribute, in addition to your existing tax liability, ___$5, ___$10, or ___(specify an amount) to support the Montana military family relief fund. If a joint return, check the appropriate blank if your spouse wishes to contribute, in

addition to your existing tax liability, ___$5, ___$10, or ___(specify an amount) for the same purpose.

(3) Money received under this section must be deposited into the account established in [section 3], after the department has deducted the administrative charge provided for in 15-30-153.

Section 12. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; *[section 3];* 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 13. Fund transfer. On July 1, 2007, there is transferred $1 million from the general fund to the Montana military family relief fund account established in [section 3].

Section 14. Codification instruction. (1) [Sections 1 through 10] are intended to be codified as an integral part of Title 10, chapter 1, and the provisions of Title 10, chapter 1, apply to [sections 1 through 10].

(2) [Section 11] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [section 11].

Section 15. Effective date. [This act] is effective July 1, 2007.

Section 16. Applicability. [Section 11] applies to tax years beginning after December 31, 2007.

Approved April 28, 2007

CHAPTER NO. 312

[HB 259]

AN ACT DEFINING TERMS; RESTRICTING THE USE AND LOCATION OF GRAY WATER REUSE SYSTEMS; DIRECTING THE BOARD OF ENVIRONMENTAL REVIEW TO CREATE RULES REGULATING RESIDENTIAL GRAY WATER REUSE SYSTEMS; AMENDING SECTION 75-5-305, MCA; AND PROVIDING AN APPLICABILITY CLAUSE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Gray water" means wastewater that is collected separately from a sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets.

(2) "Gray water reuse system" means a plumbing system for a private, single-family residence that collects gray water.

Section 2. Residential gray water reuse — restrictions. (1) Gray water may not be used to irrigate plants to be consumed by humans.

(2) Gray water reuse systems may not be located within a flood plain, as defined in 76-5-103.

Section 3. Section 75-5-305, MCA, is amended to read:

"75-5-305. Adoption of requirements for treatment of wastes — variance procedure — appeals. (1) The board may establish minimum requirements for the treatment of wastes. For cases in which the federal government has adopted technology-based treatment requirements for a particular industry or activity in 40 CFR, chapter I, subchapter N, the board shall adopt those requirements by reference. To the extent that the federal government has not adopted minimum treatment requirements for a particular industry or activity, the board may do so, through rulemaking, for parameters likely to affect beneficial uses, ensuring that the requirements are cost-effective and economically, environmentally, and technologically feasible. Except for the technology-based treatment requirements set forth in 40 CFR, chapter I, subchapter N, minimum treatment may not be required to address the

discharge of a parameter when the discharge is considered nonsignificant under rules adopted pursuant to 75-5-301.

(2) *(a)* The board shall establish minimum requirements for the control and disposal of sewage from private and public buildings, including standards and procedures for variances from the requirements.

(b) For gray water reuse systems in private, single-family residences, the board shall establish rules that:

(i) allow the diversion of gray water from wastewater treatment systems and limit the amount of gray water flow allowed by permit;

(ii) address the uses of gray water, including when and how gray water may be applied to land; and

(iii) include any other provisions that the board considers necessary to ensure that gray water reuse systems comply with laws and regulations and protect public health and the environment.

(3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant to 50-2-116(1)(i) may appeal the local board of health's final decision to the department by submitting a written request for a hearing within 30 days after the decision. The written request must describe the activity for which the variance is requested, include copies of all documents submitted to the local board of health in support of the variance, and specify the reasons for the appeal of the local board of health's final decision.

(4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department shall base its decision on the board's standards for a variance.

(5) A decision of the department pursuant to subsection (4) is appealable to district court under the provisions of Title 2, chapter 4, part 7."

Section 4. Local gray water regulations. The requirements of 75-5-305 and [section 2] are minimum requirements and do not restrict a local governing body from adopting stricter or additional regulations for gray water reuse systems.

Section 5. Codification instruction. [Sections 1, 2, and 4] are intended to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [sections 1, 2, and 4].

Section 6. Applicability. (1) [This act] applies to gray water systems that are installed after [the effective date of this act].

(2) [This act] and any rules or requirements adopted as a result of [this act] may not be imposed on a gray water system that was installed on or before [the effective date of this act].

Approved April 27, 2007

CHAPTER NO. 313

[HB 269]

AN ACT REVISING LAWS RELATING TO WEEDS; REMOVING THE REQUIREMENT THAT AN OWNER SELLING PROPERTY PROVIDE NOTICE THAT THERE IS THE POTENTIAL EXISTENCE OF NOXIOUS

WEEDS; PROVIDING THAT A COUNTY WEED BOARD MAY ESTABLISH EMBARGOES; CLARIFYING STATUTES REGARDING THE CREATION OF A NOXIOUS WEED FUND IN EACH COUNTY; REMOVING THE REQUIREMENT THAT AN INTEGRATED NOXIOUS WEED MANAGEMENT PLAN WITH STATE AGENCIES BE FOR 6 YEARS; REMOVING THE REDUNDANT STATUTE REGARDING RESPONSIBILITY FOR ASSESSMENTS AND TAXES FOR THE WEED DISTRICT; PROVIDING A TRANSFER OF FUNDS; AMENDING SECTIONS 7-22-2116, 7-22-2126, 7-22-2142, AND 7-22-2151, MCA; REPEALING SECTIONS 7-22-2149 AND 77-6-114, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-22-2116, MCA, is amended to read:

"7-22-2116. Unlawful to permit noxious weeds to propagate — notice required in sale. (1) It is unlawful for any person to permit any noxious weed to propagate or go to seed on the person's land, except that any person who adheres to the noxious weed management program of the person's weed management district or who has entered into and is in compliance with a noxious weed management agreement is considered to be in compliance with this section.

(2) When property is offered for sale, the person who owns the property shall notify the owner's agent and the purchaser of the existence ~~or potential existence~~ of noxious weeds on the property offered for sale."

Section 2. Section 7-22-2126, MCA, is amended to read:

"7-22-2126. Embargo. (1) The board may establish ~~voluntary~~ embargo programs to reduce the spread of noxious weeds within the district or the introduction of noxious weeds into the district.

(2) The board shall establish a special embargo program for the movement of forage, as defined in 80-7-903, into or out of the county. The board may implement an embargo upon confirmation of a violation, based upon complaint investigations, requests for investigation by the department, or through county investigations, if the forage has not been certified by the state and is being sold as noxious weed seed free, as defined in 80-7-903.

(3) A person in possession of the forage that is not in compliance with Title 80, chapter 7, part 9, may not move or dispose of the forage as noxious weed seed free that is subject to embargo until written permission is obtained from the board. If the forage that is subject to embargo is found to have met all of the requirements of the state certification program and the department verifies compliance with the program, the board shall release the embargo. The board may also release the forage under the following conditions:

(a) verification of guaranteed delivery back to the original producer, as defined in 80-7-903;

(b) burning or disposal of the forage in a manner acceptable to the board; or

(c) other alternatives approved by the board.

(4) The board shall report all embargoes issued and the final resolution of an embargo imposed pursuant to a violation of Title 80, chapter 7, part 9, to the department within 48 hours.

(5) The person in possession of forage subject to embargo shall comply with the conditions approved by the board within 30 days. If resolution is not

accomplished, the board may condemn the forage and implement through its employees any of the conditions set forth in this section. If the board proceeds with correction of these conditions after 30 days, all actual expenses incurred and documented by the board are payable by the producer unless the person in possession of the forage also has an interest in the forage."

Section 3. Section 7-22-2142, MCA, is amended to read:

"7-22-2142. Sources of money for noxious weed fund. ~~(1) The commissioners may create a noxious weed fund to enable the board to fulfill its duties as specified in 7-22-2109.~~

~~(2)~~*(1)* The commissioners may provide sufficient money in the noxious weed fund for the board to fulfill its duties, as specified in 7-22-2109, by:

(a) appropriating money from the general fund of the county; and

(b) subject to 15-10-420 and at any time fixed by law for levy and assessment of taxes, levying a tax of not less than 1.6 mills on the taxable value of all taxable property in the county or by contributing an equivalent amount from another source of not less than the amount received from all county sources in fiscal year 2000 or, for first-class counties, as defined in 7-1-2111, the greater of the amount received from all county sources in fiscal year 2000 or $100,000. The tax levied under this subsection must be identified on the assessment as the tax that will be used for noxious weed control.

~~(3)~~*(2)* The proceeds of the noxious weed control tax or other contribution must be used solely for the purpose of managing noxious weeds in the county and must be deposited in the noxious weed fund.

~~(4)~~*(3)* Any proceeds from work or chemical sales must revert to the noxious weed fund and must be available for reuse within that fiscal year or any subsequent year.

~~(5)~~*(4)* The commissioners may accept any private, state, or federal gifts, grants, contracts, or other funds to aid in the management of noxious weeds within the district. These funds must be placed in the noxious weed fund.

~~(6)~~*(5)* The commissioners may impose a tax for weed control within a special management zone as provided in 7-22-2121(4). For the purposes of imposing the tax, the special management zone boundaries must be established by the board and approved by a majority of the voters within the special management zone. The amount of the tax must be approved by a majority of the voters within the special management zone, and approval of the zone and the tax may occur simultaneously. Revenue received from a special management zone tax must be spent on weed management projects within the boundaries of the special management zone."

Section 4. Section 7-22-2151, MCA, is amended to read:

"7-22-2151. Cooperative agreements. (1) A state agency that controls land within a district, including the department of transportation; the department of fish, wildlife, and parks; the department of corrections; the department of natural resources and conservation; and the university system, shall enter into a written agreement with the board. The agreement must specify mutual responsibilities for integrated noxious weed management on state-owned or state-controlled land within the district. The agreement must include the following:

(a) ~~a 6-year~~ *an* integrated noxious weed management plan, which must be updated biennially;

(b) a noxious weed management goals statement;

(c) a specific plan of operations for the biennium, including a budget to implement the plan; and

(d) a provision requiring a biennial performance report by the board to the state weed coordinator in the department of agriculture, on a form to be provided by the state weed coordinator, regarding the success of the plan.

(2) The board and the governing body of each incorporated municipality within the district shall enter into a written agreement and shall cooperatively plan for the management of noxious weeds within the boundaries of the municipality ~~by January 1, 2002~~. The board may implement management procedures described in the plan within the boundaries of the municipality for noxious weeds only. Control of nuisance weeds within the municipality remains the responsibility of the governing body of the municipality, as specified in 7-22-4101.

(3) A board may develop and carry out its noxious weed management program in cooperation with boards of other districts, with state and federal governments and their agencies, or with any person within the district. The board may enter into cooperative agreements with any of these parties.

(4) Each agency or entity listed in subsection (1) shall submit a statement or summary of all noxious weed actions that are subject to the agreement required under subsection (1) to the state weed coordinator and shall post a copy of the statement or summary on a state electronic access system."

Section 5. Repealer. Sections 7-22-2149 and 77-6-114, MCA, are repealed.

Section 6. Transfer of funds. There is transferred $5 million from the general fund to the noxious weed management trust fund established in 80-7-811. The transfer is a one-time transfer of funds.

Section 7. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2007.

(2) [Section 6 and this section] are effective July 1, 2007.

Approved April 27, 2007

CHAPTER NO. 314

[HB 298]

AN ACT EXTENDING THE 2003 APPROPRIATION OF MONEY FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE DEPARTMENT OF JUSTICE FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA NATURAL RESOURCE DAMAGE ASSESSMENT AND LITIGATION; REQUIRING REPAYMENT OF THE EXPENDED AMOUNTS FROM ANY RECOVERY IN THE LITIGATION; AND PROVIDING EFFECTIVE DATES.

WHEREAS, in House Bill No. 160 (Chapter 283, Laws of 2003), the Legislature appropriated to the Department of Justice from the coal severance tax permanent fund a loan, in the form of a line of credit, of up to $650,000 as needed for the biennium ending June 30, 2005; and

WHEREAS, less than $200,000 of this $650,000 loan had been expended through January 1, 2005; and

WHEREAS, in House Bill No. 201 (Chapter 160, Laws of 2005), the Legislature reappropriated the remainder of the $650,000 loan to the Department for the biennium ending June 30, 2007; and

WHEREAS, less than $250,000 of the original $650,000 loan has been expended through January 1, 2007.

Be it enacted by the Legislature of the State of Montana:

Section 1. Extension of natural resource damage program appropriation. The remainder of the $650,000 loan originally appropriated to the department of justice for the biennium ending June 30, 2005, in section 1, Chapter 283, Laws of 2003, is reappropriated to the department for the biennium ending June 30, 2009, for the purpose of conducting natural resource damage assessments and litigation and pursuing the state of Montana's natural resource damage claims and any appeals through the natural resource damage program.

Section 2. Loan agreement. The board of investments and the department of justice shall amend the existing contract pledging the amount recovered in any natural resource damage litigation to the repayment of the loan, which is to be deposited in the coal severance tax permanent fund. This amendment of the contract must incorporate the provisions of [section 1] and must also incorporate the other terms of the existing contract relating to the loan repayment requirements of Chapter 283, Laws of 2003. The continuing loan authorized in [section 1] may not be made for expenditures incurred after June 30, 2007, until the amendment of the contract required by this section has become effective.

Section 3. Three-fourths vote required. Because [section 1] appropriates money from the coal severance tax permanent fund for 2 additional years, Article IX, section 5, of the Montana constitution requires a vote of three-fourths of the members of each house of the legislature for passage.

Section 4. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 1] is effective July 1, 2007.

Approved April 28, 2007

CHAPTER NO. 315

[HB 299]

AN ACT REVISING PROVISIONS RELATED TO SKI AREAS AND PASSENGER ROPEWAYS; PROVIDING DEFINITIONS; REVISING THE DEFINITIONS OF "PASSENGER ROPEWAY" AND "SKIER"; REQUIRING THE MARKING OF DESIGNATED FREESTYLE TERRAIN; AND AMENDING SECTIONS 23-2-702, 23-2-703, 23-2-704, 23-2-731, 23-2-733, 23-2-734, 23-2-735, AND 23-2-736, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-702, MCA, is amended to read:

"23-2-702. Definitions. As used in this part, the following definitions apply:

(1) "Freestyle terrain" means terrain parks and terrain features, including but not limited to jumps, rails, fun boxes, half-pipes, quarter-pipes, and freestyle bump terrain, and any other constructed features.

(2) "Inherent dangers and risks of skiing" means those dangers or conditions that are part of the sport of skiing, including:

(a) changing weather conditions;

(b) snow conditions as they exist or as they may change, including ice, hardpack, powder, packed powder, wind pack, corn snow, crust, slush, cut-up snow, and machine-made snow;

(c) avalanches, except on open, designated ski trails;

(d) collisions with natural surface or subsurface conditions, such as bare spots, forest growth, rocks, stumps, streambeds, cliffs, trees, and other natural objects;

(e) collisions with lift towers, signs, posts, fences, enclosures, hydrants, water pipes, or other artificial structures and their components;

(f) variations in steepness or terrain, whether natural or the result of slope design, snowmaking, or snow grooming operations, including but not limited to roads, freestyle terrain, ski jumps, catwalks, and other terrain modifications;

(g) collisions with clearly visible or plainly marked equipment, including but not limited to lift equipment, snowmaking equipment, snow grooming equipment, trail maintenance equipment, and snowmobiles, whether or not the equipment is moving;

(h) collisions with other skiers;

(i) the failure of a skier to ski within that skier's ability;

(j) skiing in a closed area or skiing outside the ski area boundary as designated on the ski area trail map; and

(k) restricted visibility caused by snow, wind, fog, sun, or darkness.

(3) "Passenger" means any person who is being transported or conveyed by a passenger ropeway.

~~(1)~~*(4)* "Passenger ~~tramway~~ *ropeway*" means a device used to transport passengers by means of ~~any of the following:~~ *an aerial tramway or lift, surface lift, surface conveyor, or surface tow.*

~~(a) two-car aerial passenger tramway, a device used to transport passengers in two open or enclosed cars attached to and suspended from a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar devices;~~

~~(b) multicar aerial passenger tramway, a device used to transport passengers in several open or enclosed cars or carrying device attached to and suspended from a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar devices;~~

~~(c) skimobile, a device in which a passenger car running on steel or wooden tracks is attached to and pulled by a steel cable or similar devices;~~

~~(d) chairlift, a type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain, or link belt supported by trestles or towers with one or more spans or similar devices;~~

~~(c) a J-bar, T-bar, or platterpull, so-called, and similar types of devices or means of transportation that pull skiers riding on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans;~~

~~(f) rope tow, a type of transportation that pulls the skier, riding on skis as the skier grasps the rope or wire rope manually, or similar devices.~~

~~(2)~~*(5)* "Ski area operator" or "operator" means a person, firm, or corporation and its agents and employees having operational and administrative responsibility for ski *slopes and* trails and improvements.

~~(3)~~*(6)* "Ski *slopes and* trails" means those areas designated by the ski area operator to be used by skiers for ~~the purpose of participating in the sport of~~ skiing.

~~(4)~~*(7)* "Skier" means a person ~~admitted to~~ *who is using* ~~a~~ *any* ski area *facility* ~~or using the ski trails, areas, and other improvements within the ski area. The term does not include a person using an aerial passenger tramway.~~ *for the purpose of skiing, including but not limited to ski slopes and trails.*

(8) "Skiing" means any activity, including an organized event, that involves sliding or jumping on snow or ice while using skis, a snowboard, or any other sliding device."

Section 2. Section 23-2-703, MCA, is amended to read:

"23-2-703. ~~Tramways~~ *Ropeways* not common carriers or public utilities. Passenger ~~tramways shall~~ *ropeways may* not be construed to be common carriers or public utilities for the purposes of regulation within the meaning of the laws of the state of Montana."

Section 3. Section 23-2-704, MCA, is amended to read:

"23-2-704. Unlawful to endanger life or cause damage. (1) It ~~shall be~~ *is* unlawful for ~~any person~~ *a passenger* riding or using a passenger ~~tramway~~ *ropeway* to ~~do so in such manner as to~~ endanger the life and safety of other persons or cause damage to passenger ~~tramway~~ *ropeway* equipment.

(2) ~~Any~~ *A* person who *purposely or knowingly* violates this section ~~shall be~~ *is* guilty of a misdemeanor."

Section 4. Section 23-2-731, MCA, is amended to read:

"23-2-731. Purpose. The legislature finds that skiing is a major recreational sport and a major industry in the state and recognizes that among the attractions of the sport are *the inherent dangers and* risks~~, inherent and otherwise~~ *of skiing*. The state has a legitimate interest in maintaining the economic viability of the ski industry by discouraging claims based on damages resulting from *the inherent dangers and* risks ~~inherent in the sport~~ *of skiing*, defining *the* inherent *dangers and* risks *of skiing*, and establishing the duties of skiers and ski area operators."

Section 5. Section 23-2-733, MCA, is amended to read:

"23-2-733. Duties of operator regarding ski areas. *(1)* Consistent with the duty of reasonable care owed by a ski area operator to a skier, a ski area operator shall:

~~(1)~~*(a)* mark all trail grooming vehicles by furnishing the vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are in movement in the ski area;

~~(2)~~*(b)* mark with a visible sign or other warning implement the location of any hydrant or similar equipment used in snowmaking operations and located on ski *slopes and* trails;

~~(3)~~*(c)* maintain one or more trail boards at prominent locations at each ski area displaying *a map of* that area's network of ski *slopes and* trails*, the boundaries of the ski area,* and the relative degree of difficulty of the ski *slopes and* trails at that area;

~~(4)~~*(d)* post a notice requiring the use of ski-retention devices;

~~(5)~~*(e)* designate at the start of each day, by trail board or otherwise, which *ski slopes and* trails are open or closed and amend those designations as openings and closures occur during the day;

~~(6)~~*(f)* post in a conspicuous location the current skier responsibility code that is published by the national ski areas association; ~~and~~

~~(7)~~*(g)* post a copy of 23-2-736 in a conspicuous location*; and*

(h) mark designated freestyle terrain with a symbol recognized by the national ski areas association.

(2) Nothing in this part may be construed to impose any duty owed by a ski area operator to a trespasser or an unauthorized user of a ski area."

Section 6. Section 23-2-734, MCA, is amended to read:

"23-2-734. Duties of operator with respect to passenger ~~tramways~~ *ropeways.* A ski area operator shall construct, operate, maintain, and repair any passenger ~~tramway~~ *ropeway*. An operator has the duty of taking ~~whatever~~ *responsible* actions ~~are necessary~~ to properly construct, operate, maintain, and repair a passenger ~~tramway~~ *ropeway in accordance with current standards*."

Section 7. Section 23-2-735, MCA, is amended to read:

"23-2-735. Duties of passenger. ~~No~~ *A* passenger may *not*:

(1) board or disembark from a passenger ~~tramway~~ *ropeway* except at an area designated for ~~such~~ *those* purposes;

(2) throw or expel any object from a passenger ~~tramway~~ *ropeway*;

(3) ~~commit an act that interferes~~ *interfere* with the running or operation of a passenger ~~tramway~~ *ropeway*;

(4) use a passenger ~~tramway~~ *ropeway* unless the passenger has the ability to use it safely without any instruction on its use by the operator or requests and receives instruction before boarding;

(5) embark on a passenger ~~tramway~~ *ropeway* without the authority of the operator."

Section 8. Section 23-2-736, MCA, is amended to read:

"23-2-736. ~~Skier's conduct — inherent risks~~ *Duties of skier.* (1) A skier has the duty to ski at all times in a manner that avoids injury to the skier and others and to be aware of the inherent *dangers and* risks of ~~the sport~~ *skiing*.

(2) A skier:

(a) ~~must~~ *shall* know the range of the skier's ability and safely ski within the limits of that ability and the skier's equipment so as to negotiate any section of terrain or ski *slope and* trail safely and without injury or damage. A skier ~~must~~ *shall* know that the skier's ability may vary because of *ski slope and* trail changes caused by weather, grooming changes, or skier use.

(b) shall maintain control of speed and course so as to prevent injury to the skier or others;

(c) shall abide by the requirements of the skier responsibility code that is published by the national ski areas association and that is posted as provided in 23-2-733; ~~and~~

(d) shall obey all posted or other warnings and instructions of the ski area operator~~.~~*; and*

(e) shall read the ski area trail map and must be aware of its contents.

(3) A person may not:

(a) place an object in the ski area or on the uphill track of a passenger ~~tramway~~ *ropeway* that may cause a passenger or skier to fall;

(b) cross the track of a passenger ~~tramway~~ *ropeway* except at a designated and approved point; or

(c) if involved in a skiing accident, depart from the scene of the accident without:

(i) leaving personal identification; or

(ii) notifying the proper authorities and obtaining assistance when the person knows that a person involved in the accident is in need of medical or other assistance.

(4) A skier shall accept all legal responsibility for injury or damage of any kind to the extent that the injury or damage results from ~~risks~~ inherent *dangers and risks* ~~in the sport~~ of skiing. *Nothing in this part may be construed to limit a skier's right to hold another skier legally accountable for damages caused by the other skier.* ~~Risks inherent in the sport of skiing are:~~

~~(a) variations in skiing terrain, including surface and subsurface snow or ice conditions naturally occurring or resulting from weather changes, skier use, or grooming or snowmaking operations;~~

~~(b) bare spots and thin snow cover caused by limited snowfall, melting, wind erosion, skier action, grooming, or unconsolidated base;~~

~~(c) forest growth on designated trails;~~

~~(d) skiing in an area not designated as a ski trail;~~

~~(e) clearly visible or plainly marked improvements or equipment;~~

~~(f) clearly visible or plainly marked mobile equipment and attachments, whether moving or stationary, used by the ski area operator; and~~

~~(g) avalanches, except on open, designated ski trails.~~"

Approved April 27, 2007

CHAPTER NO. 316

[HB 362]

AN ACT ALLOWING A BOARD OF COUNTY COMMISSIONERS TO CANCEL CERTAIN DELINQUENT REAL PROPERTY TAXES; AMENDING SECTIONS 15-16-701 AND 15-16-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-701, MCA, is amended to read:

"15-16-701. Personal property taxes five years delinquent — *real property taxes ten years delinquent* — list. (1) *(a)* ~~It is the duty of each~~ *The* county treasurer ~~to~~ *shall* prepare in triplicate and submit to the board of county commissioners of the county, on or before the first Monday ~~of~~ *in* June ~~in~~ *of* each year, a list of personal property taxes that are not a lien on real estate and that have been delinquent for 5 years or more. The list must show the following:

~~(a)~~*(i)* the name and address of the delinquent taxpayer;

~~(b)~~*(ii)* the amount of the delinquent taxes, plus interest, penalties, and costs, if any; and

~~(c)~~*(iii)* the date the taxes became delinquent.

~~(2)~~*(b)* The list prepared ~~pursuant to~~ *under* subsection (1)*(a)* may not include personal property taxes that remain uncollected because of bankruptcy or other litigation.

(2) (a) At the time the list is prepared as provided in subsection (1)(a), the county treasurer may prepare in triplicate and submit to the board of county commissioners of the county a list of the real property taxes that have been delinquent for 10 years or more. To be included on the list, the tax lien for each property must have been sold at a tax lien sale under chapter 17, which includes the county as purchaser of the tax lien under 15-17-214, at least 3 years before preparation of the list. If prepared, the list must show the following:

(i) the name and address of the delinquent taxpayer;

(ii) the amount of the delinquent taxes, plus interest, penalties, and costs, if any;

(iii) the real property identification number;

(iv) the legal description of the property;

(v) the date the taxes became delinquent; and

(vi) the date of the last tax lien sale on the property.

(b) The list prepared under subsection (2)(a) may not include real property taxes that remain uncollected because of bankruptcy or litigation.

(3) The board of county commissioners may enter an order that permanently and prospectively cancels real property taxes on parcels identified by the county treasurer or the board as being solely used for road purposes and that otherwise meet the requirements of this section.

~~(3)~~*(4)* ~~Every~~ *At the time the list is prepared as provided in subsection (1)(a), the* county treasurer shall~~, within the same time,~~ prepare in triplicate and submit to the board of county commissioners of the county a list of all contractual obligations owed to or held by the county for seed grain, feed, or other relief, the collection of which is barred by the statute of limitations provided in 27-2-202(1). The list must show the following:

(a) the name and address of the person or persons who entered into the contractual obligation;

(b) the name of the contractual obligation, as "seed loan", "feed loan", *or* "promissory note", as applicable; and

(c) the date of obligation, *the* date when the last payment became due, *the* date of the last payment on the obligation, and the date when the collection of

the obligation became barred by the statute of limitations provided in 27-2-202(1)."

Section 2. Section 15-16-702, MCA, is amended to read:

"15-16-702. Cancellation of taxes and obligations — filing of lists. *(1)* ~~Upon receipt of such list or lists and within~~ *Within* 30 days ~~thereafter~~ *of receiving any list prepared under 15-16-701*, the board of county commissioners shall examine the ~~same~~ *list* and make any necessary corrections. ~~Thereupon~~ *After examining the list*, the board ~~of county commissioners~~ shall make its order canceling all ~~such~~ personal property taxes and contractual obligations contained in the list or lists, as corrected, *that are* required by this part to be canceled *and, subject to subsection (2), canceling real property taxes.*

(2) The board may cancel any or all delinquent real property taxes contained in the list prepared under 15-16-701 as corrected under subsection (1) of this section. If the board cancels any real property taxes under this subsection, the cancellation must be included in the order provided for in subsection (1).

(3) The ~~and spread such~~ order ~~upon its~~ *made under subsection (1) must be included in the board's* minutes. The order and minutes ~~need not set forth in full the contents of the list or lists,~~ *may include only* a ~~proper~~ reference ~~therein for their~~ *for the proper* identification ~~being sufficient~~ *of any list included in the order*. When the order is made, the original or *a* copy of the list or lists, as corrected, must be filed with ~~and as a part of~~ the records of the board. One legible copy ~~thereof~~ *of any list included in the order* must be filed with the county clerk and recorder as a public record, and one legible copy ~~thereof~~ *of any list included in the order* must be filed with the county treasurer as a permanent record of ~~his~~ *the treasurer's* office."

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2007

CHAPTER NO. 317

[HB 425]

AN ACT REVISING REQUIRED CONTENTS OF SUBDIVISION REGULATIONS; REQUIRING SUBDIVISION REGULATIONS TO REQUIRE A SUBDIVIDER TO MEET WITH AN AGENT OF THE GOVERNING BODY PRIOR TO SUBMITTAL OF A SUBDIVISION APPLICATION; AMENDING SECTION 76-3-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations — contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in 76-3-210, 76-3-509, or 76-3-609, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of

landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions

provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) ~~allows~~ *requires* a subdivider to meet with the agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

(3) The governing body may establish deadlines for submittal of subdivision applications."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 27, 2007

CHAPTER NO. 318

[HB 461]

AN ACT ESTABLISHING REQUIREMENTS FOR CIGARETTES SOLD IN THE STATE; ESTABLISHING REDUCED IGNITION PROPENSITY STANDARDS AND TESTING AND CERTIFICATION REQUIREMENTS; PROVIDING DEFINITIONS; REQUIRING THAT RECORDS OF TESTING BE MAINTAINED AND MADE AVAILABLE UPON REQUEST; REQUIRING THE DEPARTMENT OF JUSTICE TO REPORT TO THE LEGISLATURE EVERY 4 YEARS; REQUIRING CERTAIN INFORMATION FOR CERTIFICATION OF CIGARETTES; REQUIRING A CIGARETTE MANUFACTURER TO PAY A FEE FOR CERTIFICATION AND REQUIRING REVENUE FROM THE FEE TO BE USED FOR CERTAIN PURPOSES; REQUIRING SPECIFIC MARKING ON CIGARETTE PACKAGING; PROVIDING PENALTIES FOR NONCOMPLIANCE; ALLOWING RULEMAKING BY THE DEPARTMENT OF JUSTICE AND THE

DEPARTMENT OF REVENUE; ALLOWING INSPECTION OF CIGARETTES AND OF RECORDS KEPT BY SELLERS OF CIGARETTES; CREATING A FIRE PREVENTION AND PUBLIC SAFETY FUND; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 10], the following definitions apply:

(1) "Agent" means a person authorized by the department of revenue to purchase and affix stamps on packages of cigarettes.

(2) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper or any other substance or material except tobacco.

(3) "Manufacturer" means:

(a) an entity that manufactures or otherwise produces cigarettes or causes cigarettes that the manufacturer intends to be sold in this state to be manufactured or produced anywhere, including cigarettes intended to be sold in the United States through an importer;

(b) the first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or

(c) an entity that becomes a successor of an entity described in subsections (3)(a) and (3)(b).

(4) "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systemic and nonsystemic methodological errors, and equipment-related problems do not affect the results of testing. The program ensures that the testing repeatability remains within the required repeatability values provided in [section 2(2)(f)] for all test trials used to certify cigarettes in accordance with [sections 1 through 10].

(5) "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95% of the time.

(6) "Retail dealer" means a person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products.

(7) "Sale" means any transfer of title of cigarettes for consideration, exchange, barter, gift, offer for sale, or distribution, in any manner or by any means.

(8) "Wholesale dealer" means a person who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, and a person who owns, operates, or maintains one or more cigarette or tobacco product vending machines in, at, or upon premises owned or occupied by any other person.

Section 2. Cigarette test method and performance standard — conditions on sale — alternative test method and performance standard. (1) Except as provided in subsection (8), cigarettes may not be sold or offered for sale in this state or sold or offered for sale to persons located in this state unless:

(a) the cigarettes have been tested in accordance with the test method provided in this section;

(b) the cigarettes meet the performance standard specified in this section;

(c) the manufacturer has filed a written certification with the state fire marshal in accordance with [section 3]; and

(d) the cigarettes have been marked in accordance with [section 4].

(2) (a) Testing of cigarettes must be conducted in accordance with the American society for testing and materials standard E2187-04, the standard test method for measuring the ignition strength of cigarettes.

(b) Testing must be conducted on 10 layers of filter paper.

(c) No more than 25% of the cigarettes tested in a test trial in accordance with this section may exhibit full-length burns. Forty replicate tests compose a complete test trial for each cigarette used.

(d) The performance standards required in subsection (2)(c) may be applied only to a complete test trial.

(e) Written certifications must be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the international organization for standardization or another comparable accreditation standard required by the state fire marshal.

(f) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure for determining the repeatability of the testing results. The repeatability value may not be greater than 0.19.

(g) This section does not require additional testing if cigarettes are tested for any other purpose in a manner that is consistent with [sections 1 through 10].

(h) Testing performed or sponsored by the state fire marshal to determine a cigarette's compliance with the required performance standard must be conducted in accordance with this section.

(3) Each cigarette listed in a certification submitted pursuant to [section 3] that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard provided in this section must have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band must be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there must be at least two bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column or, for nonfiltered cigarettes, 10 millimeters from the labeled end of the tobacco column.

(4) (a) A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with the test method prescribed in subsection (2)(a) shall propose a test method and performance standard for the cigarette to the state fire marshal.

(b) Upon approval of the proposed test method and a determination by the state fire marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subsection (2)(c), the manufacturer may employ that test method and performance standard to certify a cigarette pursuant to [section 3].

(c) If the state fire marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in [section 2] and the state fire marshal determines that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under provisions comparable to this section, the state fire marshal shall authorize the manufacturer to employ the alternative test method and performance standard to certify the cigarette for sale in this state, unless the state fire marshal demonstrates a reasonable basis why the alternative test is unacceptable. All other applicable provisions of this section apply to the manufacturer even if the alternative test method and performance standard are authorized.

(5) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of 3 years and shall make copies of these reports available to the state fire marshal and the attorney general upon written request. A manufacturer who fails to make copies of the reports available within 60 days of receipt of a written request is subject to a civil penalty not to exceed $10,000 for each day after the 60th day that the manufacturer does not make the copies available.

(6) The state fire marshal may adopt a subsequent American society for testing and materials standard test method for measuring the ignition strength of cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with the standard provided in subsection (2)(a) and the performance standard in subsection (2)(c).

(7) The department of justice shall review the effectiveness of this section and report every 4 years to the legislature the state fire marshal's findings and, if appropriate, submit recommendations for legislation to improve the effectiveness of this section. The report and legislative recommendations may be submitted no later than January 1 of each 4-year period.

(8) The requirements of subsection (1) do not prohibit a wholesale dealer or retail dealer from selling the wholesale dealer's or retail dealer's existing inventory of cigarettes on or after [the effective date of this act] if the wholesale dealer or retail dealer can establish that state tax stamps were affixed to the cigarettes prior to [the effective date of this act] and if the wholesale dealer or retail dealer establishes that the inventory was purchased prior to [the effective date of this act] in comparable quantity to the inventory purchased during the same period of the prior year.

(9) Because [sections 1 through 10] are based on New York law, it is the intent of the legislature that [sections 1 through 10] be implemented in accordance with the implementation and substance of the New York executive law section 156-c, fire safety standards for cigarettes.

Section 3. Certification — fee for certification — product change. (1) Each manufacturer shall submit to the department of justice a written certification attesting that each cigarette listed in the certification:

(a) has been tested in accordance with [section 2]; and

(b) meets the performance standard provided in [section 2(2)(c)].

(2) Each cigarette listed in the certification must be described with the following information:

(a) brand or trade name on the package;

(b) style, such as light or ultralight;

(c) length in millimeters;

(d) circumference in millimeters;

(e) flavor, such as menthol or chocolate, if applicable;

(f) filter or nonfilter;

(g) package description, such as soft pack or box;

(h) marking approved in accordance with [section 4];

(i) the name, address, and telephone number of the laboratory, if different from the manufacturer, that conducted the test; and

(j) the date that the testing occurred.

(3) Certifications must be made available to the attorney general for purposes consistent with [sections 1 through 10] and to the department of revenue for the purposes of ensuring compliance with this section.

(4) Each cigarette certified under this section must be recertified every 3 years.

(5) (a) For each cigarette listed in a certification, a manufacturer shall pay a fee, not to exceed $250, to offset the actual costs of the processing, testing, enforcement, and oversight activities required in [sections 1 through 10].

(b) There is an account in the state special revenue fund in which fees collected under this subsection (5) must be deposited to the credit of the department of justice. Money collected may be used only by the department of justice for the purposes provided in subsection (5)(a).

(6) If a manufacturer has certified a cigarette pursuant to this section and later makes any change to the cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by [sections 1 through 10], the cigarette may not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards provided in [section 2] and maintains records of the retesting as required by [section 2]. Any altered cigarette that does not meet the performance standard provided in [section 2] may not be sold in this state.

Section 4. Marking on cigarette packaging. (1) Cigarettes that are certified by a manufacturer in accordance with [section 3] must be marked to indicate compliance with the requirements of [section 2]. The marking must be in 8-point type or larger and consist of:

(a) modification of the universal product code to include a visible mark printed at or around the area of the code. The mark may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed in conjunction with the code;

(b) any visible combination of alphanumeric or symbolic characters permanently stamped, engraved, or embossed upon the cigarette package or cellophane wrap; or

(c) stamped, engraved, embossed, or printed text that indicates that the cigarettes meet the standards required in [sections 1 through 10].

(2) A manufacturer may use only one marking and shall uniformly apply the marking to all packages, including but not limited to packs, cartons, and cases, and brands marketed by the manufacturer.

(3) The department of revenue must be notified of the marking that is selected.

(4) Prior to the certification of any cigarette, a manufacturer shall present its proposed marking to the department of revenue for approval. Upon receipt of the request, the department of revenue shall approve or disapprove the marking offered, except that the department of revenue shall approve any marking in use and approved for sale in New York pursuant to New York executive law section 156-c, the New York fire safety standards for cigarettes. Proposed markings must be considered to be approved if the department of revenue fails to act within 10 business days of receiving a request for approval.

(5) A manufacturer may not modify its approved marking unless the modification has been approved by the department of revenue in accordance with this section.

(6) Manufacturers certifying cigarettes in accordance with [section 3] shall provide a copy of the certification to all wholesale dealers and agents to whom they sell cigarettes and shall also provide sufficient copies of an illustration of the package marking used by the manufacturer pursuant to this section for each retail dealer to whom the wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide a copy of these package markings received from manufacturers to all retail dealers to whom they sell cigarettes.

Section 5. Penalties. (1) A manufacturer, wholesale dealer, agent, or any other person or entity that knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of [section 2], for a first offense, is subject to a civil penalty not to exceed $10,000 for each sale of the cigarettes and, for a subsequent offense, is subject to a civil penalty not to exceed $25,000 for each sale of the cigarettes. However, the penalty may not exceed $100,000 during any 30-day period.

(2) (a) A retail dealer who knowingly sells cigarettes in violation of [section 2]:

(i) for a first offense, is subject to a civil penalty not to exceed $100 and, for a subsequent offense, is subject to a civil penalty not to exceed $400 for each sale or offer for sale of the cigarettes, if the total number of cigarettes sold or offered for sale does not exceed 1,000 cigarettes; or

(ii) for a first offense, is subject to a civil penalty not to exceed $1,000 and, for a subsequent offense, is subject to a civil penalty not to exceed $5,000 for each sale or offer for sale of the cigarettes, if the total number of cigarettes sold or offered for sale exceeds 1,000 cigarettes.

(b) The total penalty against a retail dealer provided in this subsection (2) may not exceed $25,000 during a 30-day period.

(3) In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited liability company, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to [section 3] is, for a first offense, subject to a civil penalty of at least $75,000 and, for a subsequent offense, a civil penalty not to exceed $250,000 for each false certification.

(4) A person violating any other provision in [sections 1 through 10] is subject to a civil penalty for a first offense not to exceed $1,000 and, for a subsequent offense, a civil penalty not to exceed $5,000 for each violation.

(5) Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by [section 2] are subject to forfeiture under 16-11-159 if prior to the destruction of any cigarette seized pursuant to these provisions, the true holder of the trademark rights in the cigarette brand is permitted to inspect the cigarette.

(6) In addition to any other remedy provided by law, the department of justice may file an action in the appropriate district court for a violation of [sections 1 through 10], including petitioning for injunctive relief or to recover any costs or damages suffered by the state because of a violation of [sections 1 through 10], including enforcement costs related to the specific violation and attorney fees. Each violation of [sections 1 through 10] or of rules adopted under [sections 1 through 10] constitutes a separate civil violation for which the department of justice may obtain relief.

Section 6. Implementation — rulemaking authority — inspection for proper markings. (1) The department of justice and the department of revenue may adopt rules, pursuant to Title 2, chapter 4, necessary to effectuate the purposes of [sections 1 through 10].

(2) The department of revenue in the regular course of conducting inspections of wholesale dealers, agents, and retail dealers, as authorized under Title 16, chapter 11, may inspect cigarettes to determine if the cigarettes are marked as required by [section 4]. If the cigarettes are not marked as required, the department of revenue shall notify the department of justice.

Section 7. Inspection. To enforce the provisions of [sections 1 through 10], the department of revenue may examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises. Each person in the possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale shall give the department of revenue the means, facilities, and opportunity for the examinations authorized by this section.

Section 8. Sale outside Montana. [Sections 1 through 10] may not be construed to prohibit a person or entity from manufacturing or selling cigarettes that do not meet the requirements of [section 2] if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and if the person or entity has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale to a person located in this state.

Section 9. Preemption. [Sections 1 through 10] no longer apply if a federal reduced cigarette ignition propensity standard that preempts [sections 1 through 10] is adopted and becomes effective.

Section 10. Local consistency required. The provisions of 7-1-113 apply in the administration and application of [sections 1 through 10].

Section 11. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 12. Effective date. [This act] is effective May 1, 2008.

Section 13. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 10].

Approved April 28, 2007

CHAPTER NO. 319

[HB 473]

AN ACT REPEALING THE WATER ADJUDICATION FEE; CLARIFYING CLAIMS EXAMINATION PRIORITIES; PROVIDING FOR COMPLETION OF EXAMINATION ON A BASIN-BY-BASIN BASIS; TRANSFERRING MONEY FROM THE GENERAL FUND TO THE WATER ADJUDICATION ACCOUNT; PROVIDING THAT AN APPROPRIATION FOR WATER ADJUDICATION MAY NOT BE PART OF THE BASE BUDGET IF THE CLAIMS EXAMINATION BENCHMARKS ARE NOT MET; PROVIDING FOR THE COLLECTION OF OUTSTANDING WATER ADJUDICATION FEES; AMENDING SECTIONS 15-1-216, 17-7-102, 85-2-270, 85-2-271, 85-2-280, AND 85-2-281, MCA; REPEALING SECTIONS 85-2-272, 85-2-273, 85-2-276, 85-2-279, 85-2-283, MCA, AND SECTION 15, CHAPTER 288, LAWS OF 2005; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-216, MCA, is amended to read:

"15-1-216. Uniform penalty and interest assessments for violation of tax provisions — applicability — exceptions — uniform provision for interest on overpayments. (1) A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of $50 or the amount of the tax due, whichever is less.

(2) (a) Except as provided in subsection (2)(b), a person who fails to pay a tax when due must be assessed a late payment penalty of 1.2% a month or fraction of a month on the unpaid tax. The penalty may not exceed 12% of the tax due.

(b) A person who fails to pay a tax when due under chapter 30, part 2, chapter 53, chapter 65, or chapter 68 must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 15% of the tax due.

(c) The penalty imposed under subsection (2)(a) or (2)(b) accrues on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing a return.

(3) A person who purposely or knowingly, as those terms are defined in 45-2-101, fails to file a return when due or fails to file a return within 60 days after receiving written notice from the department that a return must be filed is liable for an additional penalty of not less than $1,000 or more than $10,000. The department may bring an action in the name of the state to recover the penalty and any delinquent taxes.

(4) (a) Interest on taxes not paid when due must be assessed by the department. The department shall determine the interest rates established under subsection (4)(a)(i) for each calendar year by rule subject to the conditions

of this subsection (4)(a). Interest rates on taxes not paid when due for a calendar year are as follows:

(i) For individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is equal to the underpayment rate for individual taxpayers established by the secretary of the United States department of the treasury pursuant to section 6621 of the Internal Revenue Code, 26 U.S.C. 6621, for the fourth quarter of the preceding year or 8%, whichever is greater.

(ii) For all taxes other than individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is 12%.

(b) Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid. Interest accrues daily on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing the return.

(5) (a) Except as provided in subsection (5)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16 [and *the former* 85-2-276].

(b) This section does not apply to:

(i) property taxes; or

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70.

(6) Any changes to interest rates apply to any current outstanding tax balance, regardless of the rate in effect at the time the tax accrued.

(7) Penalty and interest must be calculated and assessed commencing with the due date of the return.

(8) Deficiency assessments are due and payable 30 days from the date of the deficiency assessment.

(9) Interest allowed for the overpayment of taxes or fees is the same rate as is charged for unpaid or delinquent taxes. For the purposes of this subsection, interest charged for unpaid or delinquent taxes is the interest rate determined in subsection (4)(a)(i). (Bracketed language in subsection (5)(a) terminates June 30, 2020—sec. 18, Ch. 288, L. 2005.)"

Section 2. Section 17-7-102, MCA, is amended to read:

"17-7-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.

(3) "Approving authority" means:

(a) the governor or the governor's designated representative for executive branch agencies;

(b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agencies; or

(f) the board of regents of higher education or its designated representative for the university system.

(4) *(a)* "Base budget" means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special revenue funds may not exceed that level of funding authorized by the previous legislature.

(b) The term does not include funding for water adjudication if the accountability benchmarks contained in 85-2-271 are not met.

(5) "Budget amendment" means a temporary appropriation as provided in Title 17, chapter 7, part 4.

(6) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(7) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set forth in 17-8-101.

(8) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(9) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

(10) "Present law base" means that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

(a) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;

(b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;

(c) inflationary or deflationary adjustments; and

(d) elimination of nonrecurring appropriations.

(11) "Program" means a principal organizational or budgetary unit within an agency.

(12) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(13) "University system unit" means the board of regents of higher education; office of the commissioner of higher education; university of

Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell."

Section 3. Section 85-2-270, MCA, is amended to read:

"85-2-270. (Temporary) Findings — purpose. (1) The purpose of ~~85-2-270 through 85-2-273, 85-2-276, and 85-2-279~~ *85-2-271, 85-2-280* through ~~85-2-283~~ *85-2-282, and this section* is to*:* ~~generate revenue to adequately fund Montana's water adjudication program to:~~

(a) complete claims examination and the initial decree phase;

(b) reexamine claims in basins that were verified and were not subject to the supreme court examination rules when the water court has received a petition and issued an order pursuant to 85-2-282 or the water court has issued an order on its own initiative; and

(c) ensure that the product of the adjudication is enforceable decrees.

(2) With adequate funding, it is realistic and feasible for the department to complete claims examination and reexamination of verified basins for which the water court has received a petition and issued an order pursuant to 85-2-282 or the water court has issued an order on its own initiative by June 30, 2015. It is also realistic and feasible for the water court to issue a preliminary or temporary preliminary decree by June 30, 2020, for all basins in Montana.

~~(3) It is essential to preserve the trust that the water users of Montana have placed in the legislature by ensuring that the revenue generated by the water adjudication fee established in 85-2-276 is used only for the purpose of adjudicating Montana's water rights.~~ (Terminates June 30, 2020—sec. 18, Ch. 288, L. 2005.)"

Section 4. Section 85-2-271, MCA, is amended to read:

"85-2-271. (Temporary) Benchmarks — action taken if not met — *claims examination priority.* (1) *(a)* The completion of initial claims examination is of a higher priority than reexamination of claims that were subject to the verification process unless the chief water judge issues an order making reexamination a higher priority, as provided in subsection (3)(b).

(b) The department shall develop a list of basins to be examined that is prioritized by year and updated annually. In order to facilitate the efficient use of department and water court resources, the department shall adhere to the basin priorities unless directed otherwise by the water court or the legislature.

(2) There are approximately 57,000 water right claims that were filed pursuant to 85-2-212 that must be examined. There are approximately 98,000 claims that were verified that may be reexamined using the supreme court examination rules if the water court receives a petition and issues an order as provided in 85-2-282 or the water court issues an order on its own initiative.

(3) (a) The water court shall prioritize basins for the purpose of claims examination and reexamination by the department.

(b) The chief water judge has the authority to order that reexamination be completed for a certain basin in a higher priority than claims examination. If the chief water judge issues an order requiring the department to reexamine claims rather than examining claims, the number of claims that were reexamined must be counted against the amount of claims that the department is required to examine for that period.

(4) (a) The cumulative benchmarks that are provided in subsection (4)(b) must be met. If the benchmarks are not met, ~~the fee contained in 85-2-276 that is attached to a water right for the purpose of funding the adjudication may not be assessed the following even-numbered year~~ *money for water adjudication may not be included in the department's base budget*. All claims must be examined by June 30, 2015.

(b) The cumulative benchmarks are as follows:

Date	Total Number of Claims Examined
December 31, 2006	8,000
December 31, 2008	19,000
December 31, 2010	31,000
December 31, 2012	44,000
June 30, 2015	57,000

(Terminates June 30, 2020—sec. 18, Ch. 288, L. 2005.)"

Section 5. Section 85-2-280, MCA, is amended to read:

"85-2-280. (Temporary) Water adjudication account. (1) There is a water adjudication account within the state special revenue fund created in 17-2-102.

(2) (a) For the period beginning July 1, 2005, and ending June 30, 2015, there is allocated to the department and the water court up to $2.6 million, plus the approved inflation factor contained in the revenue estimating resolution, each fiscal year from the water adjudication account for the sole purpose of funding the water adjudication program. These funds may not be used for the purpose of updating or maintaining a computer database.

(b) For the period beginning July 1, 2015, and ending June 30, 2020, there is allocated to the department and the water court up to $1 million, plus the approved inflation factor contained in the revenue estimating resolution, each fiscal year from the account for the sole purpose of funding the water adjudication program.

(c) The allocations in subsections (2)(a) and (2)(b) are subject to appropriation by the legislature.

~~(3) (a) Subject to subsection (3)(b), the total amount of revenue deposited in the water adjudication account from the fee provided for in 85-2-276 may not exceed $31 million.~~

~~(b) If federal funds are appropriated for the purposes of 85-2-270 through 85-2-273, 85-2-276, and 85-2-279 through 85-2-283, the maximum amount that may be deposited in the account must be reduced by the amount of federal funds appropriated.~~

~~(c) Once revenue generated from the fees provided for in 85-2-276 and any federal revenue appropriations have reached $31 million, the fee may no longer be assessed.~~

~~(4)~~*(3)* Interest and income earnings on the water adjudication account must be deposited in the account.

~~(5)~~*(4)* ~~Revenue~~ *Money* remaining in the water adjudication account on June 30, 2020, must be transferred to the water right appropriation account provided for in 85-2-318.

(5) If the accountability benchmarks contained in 85-2-271 are not met, expenditures from the account in the previous biennium may not be included in the department's base budget, as defined in 17-7-102, for the current biennium. (Terminates June 30, 2020—sec. 18, Ch. 288, L. 2005.)"

Section 6. Funds transfer. There is transferred $25 million from the general fund to the water adjudication account provided for in 85-2-280 to be used for the sole purpose of completing the statewide water adjudication by 2020. The transfer must take place on July 15, 2007.

Section 7. Section 85-2-281, MCA, is amended to read:

"85-2-281. (Temporary) Reporting requirements. The department and the water court shall:

(1) provide reports to the environmental quality council at each meeting during a legislative interim on:

(a) the progress of the adjudication *on a basin-by-basin basis*; and

(b) ~~the total revenue generated by the fees established in 85-2-276 and deposited in the account provided for in 85-2-280~~ *the number of basins for which examination was completed during the reporting period*;

(2) include a status report on the adjudication in their presentation to the applicable appropriation subcommittees during each legislative session *including the number of basins for which examination was completed during the reporting period*; and

(3) provide a budget that outlines how each of the entities will be funded in the next biennium, including general fund money~~,~~ *and* state special revenue funds~~, and the allocated fee revenue~~. (Terminates June 30, 2020—sec. 18, Ch. 288, L. 2005.)"

Section 8. Collection of outstanding water adjudication fees — appeals. [This act] does not affect the department's ability to address appeals filed pursuant to former 85-2-276 or the collection of fees from a water right owner who did not pay the water adjudication fee provided for in former 85-2-276 as of [the effective date of this act]. The department of natural resources and conservation shall turn over any debt to the department of revenue for collection pursuant to Title 17, chapter 4. If efforts to collect the debt are not successful, the department of revenue may file a lien against the water right in the county where the water is put to beneficial use after notifying each entity enumerated on the water right.

Section 9. Repealer. Sections 85-2-272, 85-2-273, 85-2-276, 85-2-279, and 85-2-283, MCA, and section 15, Chapter 288, Laws of 2005, are repealed.

Section 10. Effective date. [This act] is effective July 1, 2007.

Section 11. Termination. [Sections 2 through 5 and 7] terminate June 30, 2020.

Approved April 28, 2007

CHAPTER NO. 320

[HB 490]

AN ACT ALLOWING AN INDIVIDUAL INCOME TAX CREDIT FOR THE ADOPTION OF AN ELIGIBLE CHILD; ESTABLISHING CERTAIN INFORMATION REQUIREMENTS TO CLAIM THE CREDIT; PROVIDING THAT THE CREDIT MAY BE CARRIED FORWARD; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Adoption tax credit — limitations. (1) There is allowed a tax credit against the tax imposed by 15-30-103 or 15-30-135 for the legal adoption of an eligible child for which the taxpayer qualifies for the credit for adoption expenses under section 23 of the Internal Revenue Code, 26 U.S.C. 23.

(2) The amount of the credit allowed under subsection (1) is equal to $1,000 in the tax year the adoption is final. Only one credit is allowed for each eligible child. However, married taxpayers filing separately on the same form may allocate the credit between spouses.

(3) To claim the credit under this section, the taxpayer shall:

(a) include the name, age, and federal tax identification number, if known, of the eligible child on the tax return; and

(b) provide other information as required by the department, including identification of an agent assisting with the adoption.

(4) The credit allowed by this section may not be refunded if the taxpayer has a tax liability less than the amount of the credit. If the sum of credit carryovers from the credit, if any, and the amount of credit allowed by this section for the tax year exceed the taxpayer's tax liability for the current tax year, the excess attributable to the current tax year's credit is a credit carryover to the 5 succeeding tax years. The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must be used first.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2006.

Approved April 28, 2007

CHAPTER NO. 321

[HB 514]

AN ACT REVISING THE SEXUAL ASSAULT AND SEXUAL INTERCOURSE WITHOUT CONSENT LAWS TO PROVIDE THAT CONSENT IS NOT EFFECTIVE IF THE VICTIM IS RECEIVING SERVICES FROM A YOUTH CARE FACILITY OR IS A PATIENT IN OR A RESIDENT OF A MENTAL HEALTH FACILITY, A RESIDENTIAL FACILITY, OR A

COMMUNITY-BASED FACILITY OR IS A RECIPIENT OF COMMUNITY-BASED SERVICES AND THE PERPETRATOR IS AN EMPLOYEE, CONTRACTOR, OR VOLUNTEER OF THE FACILITY OR COMMUNITY-BASED SERVICE; PROVIDING A LIMITED MARRIAGE EXCEPTION; AND AMENDING SECTIONS 45-5-501 AND 45-5-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-501, MCA, is amended to read:

"45-5-501. Definition. (1) As used in 45-5-503, the term "without consent" means:

(a) the victim is compelled to submit by force against the victim or another; or

(b) *subject to subsection (3),* the victim is incapable of consent because the victim is:

(i) mentally defective or incapacitated;

(ii) physically helpless;

(iii) overcome by deception, coercion, or surprise;

(iv) less than 16 years old; ~~or~~

(v) incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search*;*

(vi) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the youth care facility; or

(vii) admitted to a mental health facility, as defined in 53-21-102, admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the facility or community-based service.

(2) As used in subsection (1), the term "force" means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

(3) Subsections (1)(b)(vi) and (1)(b)(vii) do not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service."

Section 2. Section 45-5-502, MCA, is amended to read:

"45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years, or more than 100 years and may be fined not more than $50,000.

(4) An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight after the attempt or commission.

(5) *(a)* ~~Consent~~ *Subject to subsection (5)(b), consent* is ineffective under this section if *the victim is*:

~~(a)~~*(i)* ~~the victim is~~ incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search; ~~or~~

~~(b)~~*(ii)* ~~the victim is~~ less than 14 years old and the offender is 3 or more years older than the victim*;*

(iii) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the youth care facility; or

(iv) admitted to a mental health facility, as defined in 53-21-102, admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the facility or community-based service.

(b) Subsections (5)(a)(iii) and (5)(a)(iv) do not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service."

Approved April 27, 2007

CHAPTER NO. 322

[HB 556]

AN ACT ALLOWING A SPECIAL FUEL USER TO USE DYED SPECIAL FUEL FOR CERTAIN CONSTRUCTION PROJECTS; PROVIDING FOR THE

ISSUANCE OF A TEMPORARY PERMIT; PROVIDING FOR THE SUSPENSION OR REVOCATION OF A TEMPORARY PERMIT; ALLOWING THE DEPARTMENT OF TRANSPORTATION TO REFUSE, UNDER CERTAIN CONDITIONS, TO ISSUE A TEMPORARY PERMIT OR A SPECIAL FUEL USER PERMIT TO A SPECIAL FUEL USER; IMPOSING PENALTIES FOR VIOLATIONS; AMENDING SECTIONS 15-70-302 AND 15-70-372, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Use of dyed special fuel allowed for certain projects — temporary permit — tax and penalty imposed for unauthorized use — grounds for refusal — rules. (1) A special fuel user who obtains a special fuel user's permit under 15-70-302 may use dyed special fuel as provided in this section.

(2) (a) A special fuel user may use dyed special fuel when used in nonlicensed motorized equipment, off-highway vehicles, or internal combustion engines, including stationary engines, that are used in connection with any work performed under a contract or subcontract for a private, nonhighway construction project. The special fuel user may use dyed special fuel supplied by the owner or operator of the project or may purchase dyed special fuel.

(b) The special fuel user shall notify the department that:

(i) the special fuel user intends to use dyed special fuel in performance of a contract or subcontract specified in subsection (2)(a);

(ii) the special fuel user intends to use at least 75,000 gallons annually in the performance of the contract or subcontract as evidenced in the contract, subcontract, or other documentation;

(iii) dyed special fuel will not be used in motor vehicles, off-highway vehicles, equipment, or internal combustion engines that are not directly used in the performance of the contract or subcontract.

(3) (a) When the department certifies that the use of dyed special fuel will be used as provided in this section, the department may issue a temporary permit to use dyed special fuel in off-highway vehicles and internal combustion engines, including stationary engines, for the duration of the contract or subcontract. The department may extend the duration of the temporary permit upon request of the special fuel user and the extension of the project.

(b) A special fuel user that is issued a temporary permit under this section shall make the original or a reproduced copy of the permit available for inspection on request of any motor carrier services division employee, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The special fuel user is responsible for reproducing clear and legible copies of the permit.

(4) The special fuel user shall, within 30 days of the completion of the contract, report the following on a form provided by the department:

(a) the number of gallons of dyed special fuel used on the project;

(b) the amount of fuel, if any, provided by the owner or operator of the project to the special fuel user;

(c) the amount of dyed special fuel purchased, if any, by the special fuel user for use on the project; and

(d) all dyed special fuel reported in a return filed in accordance with the requirements of 15-70-325.

(5) If the department determines that the special fuel user purposely overstated the number of gallons to be used on the project, the department may revoke the permit issued under this section.

(6) (a) A special fuel user that uses dyed special fuel for purposes other than those allowed under this section shall pay the tax imposed under 15-70-321 on the unauthorized use of the special fuel and is subject to penalty and interest imposed under 15-70-330 and to the civil penalties imposed under 15-70-372.

(b) If a special fuel user uses dyed special fuel for an unauthorized purpose, the department may suspend the temporary permit for a period not exceeding 30 days for the first violation. For a second violation, the department shall revoke the temporary permit. During the period of suspension, the special fuel user is required to use special fuel on which the state special fuel tax has been paid.

(7) If the department revokes a temporary permit issued under this section to a special fuel user, the department may refuse to issue a temporary permit or a special fuel user permit to the special fuel user in the same manner as provided in 15-70-305.

(8) A special fuel user that is issued a temporary permit under subsection (1) shall keep the following records:

(a) all dyed special fuel receipts for the project;

(b) the location of the fixed or mobile facility where the dyed special fuel is stored and withdrawn for the project;

(c) the date of any fuel disbursement;

(d) the number of gallons withdrawn;

(e) the beginning and ending meter readings or other means of determining the quantity of dyed special fuel withdrawn;

(f) the identification number, hour meter, or unit number of the off-highway vehicle, equipment, or internal combustion engine that the dyed special fuel was used in; and

(g) the purpose of the withdrawal if the fuel is withdrawn by the special fuel user for any other purpose.

(9) The department may adopt rules for the administration and enforcement of this section.

Section 2. Section 15-70-302, MCA, is amended to read:

"15-70-302. Special fuel user's permits required — exceptions. (1) (a) A special fuel user shall obtain a special fuel user's permit annually from the department prior to the use of special fuel:

(i) by a special fuel user awarded a contract or subcontract in accordance with 15-70-321; or

(ii) in a vehicle permitted pursuant to an agreement adopted pursuant to 15-70-121.

(b) Except as provided in subsection (3), a special fuel user shall at all times display the original or a reproduced copy of the permit in each special fuel vehicle operated by the special fuel user upon the public roads and highways. The permit or copy must be exhibited for inspection on request of any motor

carrier services division employee, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The special fuel user is responsible for reproducing clear and legible copies of the permit.

(2) Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel user's courtesy vehicle permit. The permit is not transferable and is valid for 90 days. Permits must be issued at no cost to the user by the department motor carrier services enforcement officers and motor carrier services patrol officers. The department may require a user who has fuel capacity in excess of 30 gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

(3) A special fuel user need not display the original or reproduced copy of the special fuel user's permit, as required by subsection (1), if the special fuel user is registered and licensed pursuant to the International Fuel Tax Agreement, as authorized by 15-70-121, and the vehicle displays a license or decal issued pursuant to the agreement.

(4) A *Except as provided in [section 1], a* special fuel user who obtains a permit under subsection (1) may use only fuel on which state fuel tax has been paid."

Section 3. Section 15-70-372, MCA, is amended to read:

"15-70-372. Civil penalties. (1) Except as provided in subsection (2), the department may, after giving notice and holding a hearing, if requested, pursuant to Title 2, chapter 4, part 6, impose a civil penalty not to exceed $100 for any violation of this part. The civil penalty may be in addition to the criminal penalties imposed under 15-70-330, 15-70-336, and 15-70-366.

(2) The department shall, after giving notice and holding a hearing, if requested, impose a civil penalty not to exceed $1,000 for the first offense and $5,000 for the second offense for using dyed special fuel in violation of the provisions of *[section 1] and* 15-70-330(3)."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 70, part 3, and the provisions of Title 15, chapter 70, part 3, apply to [section 1].

Section 5. Effective date. [This act] is effective July 1, 2007.

Section 6. Applicability. [This act] applies to contracts entered into after June 30, 2007.

Approved April 28, 2007

CHAPTER NO. 323

[HB 574]

AN ACT APPROPRIATING $50,000 FROM THE GENERAL FUND TO THE DEPARTMENT OF COMMERCE TO BE USED FOR GRANTS TO ASSIST IN THE RESTORATION AND RENOVATION OF CULTURAL AND HISTORICAL ARTS CENTERS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation. There is appropriated $50,000 from the state general fund to the department of commerce for the biennium beginning July 1,

2007, for grants to assist in the restoration and renovation of historical and cultural arts centers impacted by a disaster, as defined in 10-3-103, in communities that are at least 25 miles from another center. The department shall use a competitive application process in awarding grants.

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved April 28, 2007

CHAPTER NO. 324

[HB 609]

AN ACT REQUIRING A SCHOOL DISTRICT TO USE SELF-INSURED HEALTH BENEFIT PLAN RESERVE FUNDS TO PAY EMPLOYEE CLAIMS AND LIABILITIES OR TO PAY EMPLOYEE BENEFIT COSTS IF A DISTRICT'S SELF-INSURED HEALTH BENEFIT PLAN IS DISSOLVED; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. District self-funded health benefit plan reserve funds — exception for dissolution of plan. (1) Except as provided in subsection (2), the trustees of a school district with a self-insured health benefit plan holding reserve funds shall use these funds to pay claims and other liabilities of the district's health benefit plan.

(2) Upon dissolution of a district's self-insured health benefit plan, all remaining reserves must be maintained by the district under the provisions of 20-3-331 and must be used to pay for employee benefit costs as determined by a collective bargaining agreement or an employer policy or as required by applicable state or federal law.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 3, part 3, and the provisions of Title 20, chapter 3, part 3, apply to [section 1].

Section 3. Effective date — applicability. [This act] is effective on passage and approval and applies to health benefit claims filed or self-insured health plans dissolved on or after [the effective date of this act].

Approved April 27, 2007

CHAPTER NO. 325

[HB 611]

AN ACT GENERALLY REVISING THE LAWS RELATING TO TELECOMMUNICATIONS ACCESS SERVICES FOR PERSONS WITH DISABILITIES; AUTHORIZING THE DEPARTMENT OF REVENUE TO COLLECT THE TELECOMMUNICATIONS ACCESS SERVICES AND SPECIALIZED TELECOMMUNICATIONS EQUIPMENT FEE, CONDUCT AUDITS, AND ENGAGE IN OTHER ENFORCEMENT ACTIVITIES; CLARIFYING THAT PROVIDERS OF PREPAID WIRELESS SERVICES ARE REQUIRED TO ASSESS AND COLLECT THE TELECOMMUNICATIONS ACCESS SERVICES AND SPECIALIZED TELECOMMUNICATIONS

EQUIPMENT FEE; AMENDING SECTIONS 2-15-2212, 53-19-302, 53-19-306, 53-19-307, 53-19-308, 53-19-310, 53-19-311, AND 69-3-1302, MCA; REPEALING SECTION 53-19-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-2212, MCA, is amended to read:

"2-15-2212. Committee on telecommunications access services for persons with disabilities — composition — allocation. (1) There is a committee on Montana telecommunications access services for persons with disabilities.

(2) The committee consists of 13 members appointed by the governor as follows:

(a) four members who are persons with disabilities, two of whom must be deaf or hard-of-hearing;

(b) two members who are not persons with disabilities, one of whom must be engaged in a business other than a business in the telecommunications industry and one of whom must be a senior citizen;

(c) one member from the department of public health and human services;

(d) one member from the largest ~~local exchange company~~ *service provider* in Montana;

(e) one member from an independent ~~local exchange company~~ *service provider*;

(f) one member from an interLATA interexchange carrier;

(g) one member from the public service commission;

(h) one member who is a licensed audiologist; and

(i) one member from the department of administration.

(3) The committee is allocated to the department of public health and human services for administrative purposes only as provided in 2-15-121."

Section 2. Section 53-19-302, MCA, is amended to read:

"53-19-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

~~(1)~~*(1)* "Committee" means the committee on telecommunications access services for persons with disabilities established in 2-15-2212.

~~(2) "Local exchange company" means a telecommunications company that provides telephone access lines or wireless service to members of the general public who are its customers.~~

(2) "Department" means the department of revenue.

(3) "End user connection" means a customer's connection to a service provider's network.

~~(3)~~*(4)* ~~"Mobility-impaired"~~ *"Mobility-disabled"* means the condition of a person with reduced function of the arms*, legs,* ~~and~~ *or* hands making activities related to moving, turning, or pressing objects difficult or impossible. The term includes difficulty in using a wide range of telecommunications equipment.

(5) "Net amount billed for the fee" means the gross amount billed for fees imposed by 53-19-311, less adjustments for uncollectible accounts, refunds, incorrect billings, and other appropriate adjustments.

~~(4)~~*(6)* "Person with a disability" means the condition of a person who is deaf and blind, deaf, hard-of-hearing, ~~speech-impaired~~ *speech-disabled*, or ~~mobility-impaired~~ *mobility-disabled*.

~~(5)~~*(7)* "Program" means the program established in 53-19-306.

(8) "Service provider" means an entity that offers services to subscribers in Montana to allow two or more persons in different locations to communicate orally, without regard to the technology or medium the entity uses to provide the telecommunications service, and access to telecommunications relay service. The term includes providers of telecommunications service including but not limited to providers of internet protocol-enabled voice communications service.

~~(6)~~*(9)* "Specialized telecommunications equipment" means any telecommunications device that enables or assists a person with a disability to communicate with others by means of the ~~conventional telephone network~~ *public switched telephone network or internet protocol-enabled voice communications service*. The term includes but is not limited to text telephones (TTY), amplifiers, signaling devices, puff-blow devices, electronic artificial larynx devices, telebraille, and equipment for the ~~mobility-impaired~~ *mobility-disabled*.

(10) "Subscriber" means an end user who receives telecommunications network access from a service provider.

(11) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing without a change in the form or content of the information upon receipt.

~~(7)~~*(12)* "Telecommunications relay service" means a service that permits full and simultaneous communication between those using specialized telecommunications equipment and those using conventional telephone equipment *or any other technology or equipment, including but not limited to personal computers and videophones*.

~~(8) "Telephone access line" means the telephone exchange access line or channel or wireless service that provides the customer of a local exchange company with access to the telecommunications network to effect the transfer of information.~~"

Section 3. Section 53-19-306, MCA, is amended to read:

"53-19-306. Program established — purpose. (1) The committee shall establish and administer a program to provide specialized telecommunications equipment and services to persons with disabilities.

(2) The purpose of the program is to:

(a) furnish specialized telecommunications equipment to meet the needs of persons with disabilities; and

(b) provide a telecommunications relay service system to connect persons with disabilities with all phases of public telecommunications service, including telecommunications service to emergency services and public safety agencies as defined in 10-4-101.

~~(3) The legislature may allocate funds from this program to the Montana school for the deaf and blind to be used to provide services to hearing-impaired students for the biennium ending June 30, 2005.~~"

Section 4. Section 53-19-307, MCA, is amended to read:

"53-19-307. Provision of services. (1) In administering the program established in 53-19-306 for individuals, the committee shall:

(a) develop an appropriate means test to determine eligibility for ~~participation in the program~~ *specialized telecommunications equipment* based on family income of less than 250% of the federal poverty level;

(b) require that ~~participants in the program~~ *the person with a disability* be ~~residents~~ *a resident* of Montana and that residency be maintained as a condition of eligibility for ~~continued participation in the program~~ *specialized telecommunications equipment*;

(c) require ~~that participants~~ *persons with a disability to* provide satisfactory evidence that they have disabilities and would benefit from the use of specialized telecommunications equipment;

(d) provide specialized telecommunications equipment to participants through loan, lease, cost-sharing, or other methods that are determined appropriate by the committee;

(e) determine the type of specialized telecommunications equipment that it considers necessary and economically feasible for use by Montana's persons with disabilities;

(f) purchase or lease all specialized telecommunications equipment through bid by wholesale manufacturers on a competitive basis;

(g) require, as a condition of each equipment purchase or lease, that the ~~original manufacturer~~ *equipment vendor* provide repair and maintenance service for new and returned equipment;

(h) maintain records for a minimum of 5 years of each item of equipment, including the location, serial number, and telephone number of each device;

~~(i) at the discretion of the committee, require an appropriate security deposit for equipment at the time of delivery that must be refunded without interest when the equipment is returned;~~

~~(j)~~*(i)* make reasonable efforts to recover equipment from those who become ineligible for continued participation in the program;

~~(k)~~*(j)* provide a telecommunications relay service system that would be available statewide for operation 7 days a week, 24 hours a day, including holidays; and

~~(l)~~*(k)* adopt rules necessary to administer the program.

(2) In adopting rules to implement subsections (1)(a) and (1)(d), the committee may, based upon available funds, provide the specialized telecommunications equipment, without charge, to individuals whose family income is less than 250% of the federal poverty level."

Section 5. Section 53-19-308, MCA, is amended to read:

"53-19-308. Telecommunications relay service system — requirements. The committee shall contract with ~~a~~ *one or more* qualified ~~provider~~ *providers* to design and implement a telecommunications relay service

system that fulfills the purpose described in 53-19-306. The committee shall require, under the terms of the contract, that:

(1) the system relay all messages promptly and accurately;

(2) the system maintain the privacy of persons using the system; and

(3) the provider preserve the confidentiality of all ~~telephone~~ communications, except in instances in which the confidentiality would further a violation of the law."

Section 6. Section 53-19-310, MCA, is amended to read:

"53-19-310. ~~Fund~~ *Account* for telecommunications services *and specialized telecommunications equipment* for persons with disabilities. (1) There is an account for telecommunications services *and specialized telecommunications equipment* for persons with disabilities in the state special revenue fund in the state treasury. The account consists of:

(a) all monetary contributions, gifts, and grants received by the committee as provided in 53-19-309; and

(b) all ~~charges~~ *fees* billed and collected pursuant to 53-19-311.

(2) ~~Unless allocated to the Montana school for the deaf and blind, the~~ *The* money in the account is allocated to the committee for purposes of implementing this part.

(3) All expenditures of the committee in administering this part must be paid from money deposited in the account."

Section 7. Section 53-19-311, MCA, is amended to read:

"53-19-311. Special assessment. (1) A ~~charge~~ *fee* of 10 cents a month must be assessed on each ~~telephone access line~~ *end user connection* provided and billed *or any prepaid options* by each ~~local exchange company~~ *service provider* and is imposed for the purposes of this part.

(2) Each ~~customer~~ *subscriber* of a ~~local exchange company~~ *service provider* is liable for payment to the ~~local exchange company~~ *service provider* of any ~~charge~~ *fee* properly imposed pursuant to this part. The ~~local exchange company~~ *service provider* is not liable for any uncollected ~~charge~~ *fee*, nor does the ~~company~~ *service provider* have an obligation to take legal action to enforce the collection of any ~~charge~~ *fee* that is unpaid by its ~~customers~~ *subscribers*.

(3) *(a)* Each ~~local exchange company~~ *service provider that periodically bills subscribers for its services* shall bill each ~~customer~~ *subscriber* for the ~~charge~~ *fee* provided for in subsection (1). *For subscribers who are not billed periodically, including but not limited to subscribers who purchase prepaid wireless telecommunication services for a flat fee, the service provider shall include in the price of the service a fee of 10 cents for each 30-day period during which the subscriber is authorized to use the service or a prepaid wireless telephone service provider shall remit an amount equal to the fees established in subsection (1) after collecting the amount using one of the following options:*

(i) on a monthly basis, the prepaid service provider shall collect an amount equal to the fees established in subsection (1) from each active prepaid subscriber whose account balance is equal to or greater than the fees established in subsection (1); or

(ii) the prepaid service provider shall divide the total intrastate monthly revenue by the average revenue for each prepaid subscriber of the wireless

industry to determine the number of prepaid subscribers. The fees established in subsection (1) are then applied to the number of prepaid subscribers.

(b) Each service provider shall file a return provided by the department reporting the amount of fees collected on access line services during the quarter. Except as provided in subsection (4), all ~~charges billed and~~ *fees* collected by a ~~local exchange company~~ *service provider* must be transmitted to the ~~state treasurer~~ *department* no later than the last day of the month following the end of each calendar quarter in which the ~~charge is billed~~ *fees are collected*. All ~~charges~~ *fees* received by the ~~state treasurer~~ *department* must be deposited in the ~~fund~~ *account* established in 53-19-310 to the credit of the committee.

(4) Each ~~local exchange company~~ *service provider* may deduct and retain 3/4 of 1% of the total ~~charges billed and~~ *fees* collected each month to cover its administrative expenses in complying with the requirements of subsection (3)."

Section 8. Section 69-3-1302, MCA, is amended to read:

"69-3-1302. Definitions. As used in this part, the following definitions apply:

(1) "Billing agent" means a telecommunications carrier that includes in a bill that it sends to a customer a charge for a product or service offered by a service provider.

(2) "Billing aggregator" means any entity, other than a service provider, that forwards the charge for a product or service offered by a service provider to a billing agent.

(3) "Customer" means a person who has purchased telecommunications services from a telecommunications carrier or who has been billed charges on a telephone bill for the services or products of another entity.

(4) "Electronic signature" has the meaning as provided in 30-18-102.

(5) "Local exchange company" ~~has the meaning as provided in 53-19-302.~~ *means a telecommunications company that provides telephone lines or wireless service to members of the general public who are its customers.*

(6) "Primary interexchange carrier" means the telecommunications carrier from which a customer chooses to purchase long-distance services.

(7) "Service provider" means any entity, other than the billing agent, that offers a product or service to a customer, the charge for which appears on the bill of a billing agent.

(8) (a) "Telecommunications carrier" or "carrier" means any provider of telecommunications services. An entity providing other products and services is considered a telecommunications carrier only to the extent that the entity is engaged in providing telecommunications services.

(b) The term does not mean aggregators of telecommunications services as defined in 47 U.S.C. 226."

Section 9. Records — audit. (1) Each service provider required to collect the fee provided for in 53-19-311 shall maintain and have available for inspection by the department books, ledgers, registers, or other documents showing the collection of the fee for telecommunications access services and specialized telecommunications equipment for persons with disabilities for the preceding 5 years or until any dispute or litigation concerning the fees is resolved, whichever is later.

(2) At the request of the committee or on its own initiative, the department or a third party designated by the department may audit the records of any service provider to ensure proper accounting of all fees billed and collected pursuant to 53-19-311. Any expenses of the audit must be paid by the program.

Section 10. Service provider required to hold fee in trust for state penalty and interest. (1) Each service provider required to collect the fee imposed by 53-19-311 holds the fee in trust for the state of Montana and for payment of the fee to the department as provided in 53-19-311.

(2) (a) A service provider that fails to file the return required in 53-19-311 must be assessed a penalty as provided in 15-1-216. The department may waive any penalty as provided in 15-1-206.

(b) A service provider that fails to make payment or fails to report and make payment as required by 53-19-311 must be assessed penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(c) Interest on fees not paid when due is assessed in the same manner as taxes not paid when due as provided in 15-1-216.

(3) (a) If a service provider fails to file the return required by 53-19-311 or if the department determines that the report understates the amount of fees due, the department may determine the amount of the fees due and assess that amount against the service provider. The provisions of 15-1-211 apply to any assessment by the department. The service provider may seek review of the assessment pursuant to 15-1-211.

(b) When a deficiency is determined and the amount due becomes final, the department shall mail a notice and demand for payment to the owner or operator. Penalty and interest must be added to any deficiency as provided in 15-1-216.

Section 11. Credit or refund for overpayment — interest on overpayment. (1) If the department determines that the amount of fees, penalty, or interest paid for any year is more than the amount due, the amount of the overpayments must be credited against any fees, penalty, or interest then due from the service provider and the balance refunded to the service provider or the service provider's successor through reorganization, merger, or consolidation, or to the service provider's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on deficiency assessments as provided in 15-1-216 from the due date of the return or from the date of overpayment, whichever date is later, to the date the department approved refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for a refund is delayed more than 30 days by reason of failure of the service provider to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed if:

(i) the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) the amount of interest is less than $1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual liability is considered an overpayment with respect to which interest is allowed.

Section 12. Statute of limitations. (1) Except as provided in subsection (3), a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of the additional fee proposed to be assessed is mailed within 5 years from the date the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the service provider, before the expiration of the period prescribed for assessment of the fee, consents in writing to an assessment after that time, the fee may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the service provider files a claim or the department determines the existence of the overpayment and approves the refund or credit. If the service provider has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund is allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the service provider fails to file the return, the fee may be assessed or an action to collect the fee may be brought at any time. If a return is required to be filed and the service provider files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

Section 13. Service provider considered taxpayer under provisions for fee. Unless the context requires otherwise, the provisions of Title 15, referring to the audit and examination of reports and returns, determination of deficiency assessments, claims for refunds, penalties and interest, jeopardy assessments, warrants, conferences, appeals to the department, appeals to the state tax appeal board, and procedures relating to the application of this part apply as if the fee imposed in this part were a tax imposed upon or measured by net income. The provisions apply to the subscriber liable for the fee and to the service provider required to collect the fee. Any amount collected and required to be remitted to the department is considered a tax upon the service provider required to collect it, and the service provider is considered a taxpayer.

Section 14. Repealer. Section 53-19-312, MCA, is repealed.

Section 15. Codification instruction. [Sections 9 through 13] are intended to be codified as an integral part of Title 53, chapter 19, part 3, and the provisions of Title 53, chapter 19, part 3, apply to [sections 9 through 13].

Section 16. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2007

CHAPTER NO. 326

[HB 677]

AN ACT PROVIDING AN APPROPRIATION TO THE BOARD OF CRIME CONTROL TO SUSTAIN FUNDING FOR EXISTING PREVENTION AND AFTER-SCHOOL PROGRAMS FOR AT-RISK YOUTH; AUTHORIZING GRANT FUNDS TO BE USED TO LEVERAGE MATCHING FUNDS; AUTHORIZING THE BOARD OF CRIME CONTROL TO USE UP TO 3 PERCENT OF THE FUNDING FOR ADMINISTRATION; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation — matching funds — administration. (1) There is appropriated from the general fund to the board of crime control $250,000 for the biennium ending June 30, 2009, to provide grants to sustain funding for existing prevention and after-school programs for at-risk youth.

(2) The board of crime control may:

(a) use grant funds received under this section to leverage federal or private funds; and

(b) use up to 3% of the funds appropriated under this section to administer the prevention and after-school programs.

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved April 28, 2007

CHAPTER NO. 327

[HB 680]

AN ACT AUTHORIZING THE DEPARTMENT OF REVENUE TO ENTER INTO CONTRACTS FOR OUT-OF-STATE COLLECTIONS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Out-of-state collections — authority to enter into contracts — statutory appropriation. The department may enter into contracts with out-of-state attorneys, other state tax agencies, and others located outside the state for out-of-state collections of taxes, fees, and other debt owed the state when the department determines that the amount collected under a contract will likely exceed the cost of collection. The department shall deposit the gross amount collected in the account or fund to which the tax, fee, or other debt was originally owed. The costs of collection are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for the purposes of this section.

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; *[section 1];* 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 1, and the provisions of Title 15, chapter 1, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2007.

Approved April 27, 2007

CHAPTER NO. 328

[HB 706]

AN ACT PROVIDING FOR THE PERIODIC INFLATION ADJUSTMENT OF CAMPAIGN CONTRIBUTION LIMITS; REQUIRING THE COMMISSIONER OF POLITICAL PRACTICES TO CALCULATE THE ADJUSTED LIMITS AND TO PUBLISH THE ADJUSTED LIMITS AS A RULE; AND AMENDING SECTION 13-37-216, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-216, MCA, is amended to read:

"13-37-216. Limitations on contributions — *adjustment.* (1) (a) ~~Aggregate~~ *Subject to adjustment as provided for in subsection (4), aggregate* contributions for each election in a campaign by a political committee or by an individual, other than the candidate, to a candidate are limited as follows:

(i) for candidates filed jointly for the office of governor and lieutenant governor, not to exceed $500;

(ii) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed $250;

(iii) for a candidate for any other public office, not to exceed $130.

(b) A contribution to a candidate includes contributions made to the candidate's committee and to any political committee organized on the candidate's behalf.

(2) (a) A political committee that is not independent of the candidate is considered to be organized on the candidate's behalf. For the purposes of this section, an independent committee means a committee that is not specifically organized on behalf of a particular candidate or that is not controlled either directly or indirectly by a candidate or candidate's committee and that does not act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions.

(b) A leadership political committee maintained by a political officeholder is considered to be organized on the political officeholder's behalf.

(3) All political committees except those of political party organizations are subject to the provisions of subsections (1) and (2). For purposes of this subsection, "political party organization" means any political organization that was represented on the official ballot at the most recent gubernatorial election. Political party organizations may form political committees that are subject to the following aggregate limitations*, adjusted as provided for in subsection (4),* from all political party committees:

(a) for candidates filed jointly for the offices of governor and lieutenant governor, not to exceed $18,000;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed $6,500;

(c) for a candidate for public service commissioner, not to exceed $2,600;

(d) for a candidate for the state senate, not to exceed $1,050;

(e) for a candidate for any other public office, not to exceed $650.

(4) (a) The commissioner shall adjust the limitations in subsections (1) and (3) by multiplying each limit by an inflation factor, which is determined by

dividing the consumer price index for January of the year in which an election is held by the consumer price index for January 2003.

(b) The resulting figure must be rounded up or down to the nearest:

(i) $10 increment for the limits established in subsection (1); and

(ii) $50 increment for the limits established in subsection (3).

(c) The commissioner shall publish the revised limitations as a rule.

~~(4)~~*(5)* A candidate may not accept any contributions*, including in-kind contributions,* in excess of the limits in this section.

~~(5)~~*(6)* For purposes of this section, "election" means the general election or a primary election that involves two or more candidates for the same nomination. If there is not a contested primary, there is only one election to which the contribution limits apply. If there is a contested primary, then there are two elections to which the contribution limits apply."

Approved April 27, 2007

CHAPTER NO. 329

[HB 737]

AN ACT GENERALLY REVISING MOTOR VEHICLE LAWS; GENERALLY REVISING LICENSING REQUIREMENTS FOR THE SALE OF MOTOR VEHICLES, TRAILERS, CAMPERS, MOTORBOATS, PERSONAL WATERCRAFT, SAILBOATS, SNOWMOBILES, AND OFF-HIGHWAY VEHICLES; CONSOLIDATING MOTORBOAT, PERSONAL WATERCRAFT, SNOWMOBILE, AND OFF-HIGHWAY DEALER LICENSING UNDER TITLE 61, MCA; AUTHORIZING A SEPARATE BROKER'S LICENSE FOR CERTAIN VEHICLE TRANSACTIONS; ESTABLISHING REQUIREMENTS FOR A BROKER'S LICENSE; REVISING REQUIREMENTS FOR LICENSING CERTAIN VEHICLE MANUFACTURERS; DEFINING CERTAIN TERMS AND REVISING OTHER DEFINITIONS; REVISING AND CLARIFYING THE TITLING AND REGISTRATION PROCESS FOR CERTAIN VEHICLES; CLARIFYING RESIDENCY REQUIREMENTS FOR VEHICLE REGISTRATION; REVISING THE LIMITATION FOR VEHICLE TRANSFERS FROM A SMALL ESTATE; CLARIFYING THE AUTHORITY TO ISSUE TEMPORARY REGISTRATION PERMITS; REVISING AND CLARIFYING CERTAIN PROVISIONS FOR THE ISSUANCE OF LICENSE PLATES; ELIMINATING LIENS FOR MOTOR VEHICLE REGISTRATION FEES; CLARIFYING FEES FOR PERMANENT REGISTRATION OF LIGHT VEHICLES; REVISING AND CLARIFYING PROCEDURES FOR SUSPENDING LICENSE PLATES AND REGISTRATION FOLLOWING CERTAIN CONVICTIONS; REVISING THE FEE FOR CERTAIN RECORD SEARCHES; PROHIBITING EXHAUST NOISE IN EXCESS OF A CERTAIN LEVEL; AMENDING SECTIONS 15-1-122, 23-2-502, 23-2-515, 23-2-601, 23-2-614, 23-2-631, 23-2-634, 23-2-641, 23-2-642, 23-2-644, 61-1-101, 61-3-101, 61-3-115, 61-3-116, 61-3-206, 61-3-216, 61-3-222, 61-3-224, 61-3-301, 61-3-303, 61-3-320, 61-3-321, 61-3-332, 61-3-448, 61-3-463, 61-3-468, 61-3-503, 61-3-562, 61-4-101, 61-4-102, 61-4-104, 61-4-105, 61-4-109, 61-4-111, 61-4-112, 61-4-120, 61-4-122, 61-4-123, 61-4-124, 61-4-125, 61-4-126, 61-4-129, 61-4-130, 61-4-131, 61-4-135, 61-4-136, 61-4-137, 61-4-202, 61-4-204, 61-5-112, 61-6-304, 61-8-102,

AND 61-11-105, MCA; REPEALING SECTIONS 23-2-513, 23-2-540, 23-2-619, AND 23-2-818, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Certificate of title — custom-built motorcycle. (1) When a person applies for a certificate of title for a custom-built motorcycle and a certificate of title or an electronic record of title is created pursuant to this chapter, the certificate of title or electronic record of title must include:

(a) the make, style, year of manufacture, serial number or identification number of the motorcycle's engine, and year of manufacture for the motorcycle, which is the year that the engine was manufactured or the year that the engine was manufactured to resemble; and

(b) the make and vehicle identification number for the frame of the motorcycle.

(2) If the application for a certificate of title is not accompanied by a previously issued certificate of title that includes the required information or a certificate from the manufacturer of the motorcycle's engine or frame, the department may require a vehicle inspection to confirm the make, year of manufacture, and serial or identification number of the motorcycle's engine, the frame, or both, and, if applicable, to assign a special identification number under 61-3-107.

Section 2. Registration of custom-built motorcycle — exemptions. (1) Upon original registration of a custom-built motorcycle, the owner of the custom-built motorcycle shall:

(a) pay the fees required in 61-3-321, plus an additional $10 fee, to be deposited in the state general fund;

(b) certify, in writing, that the motorcycle is:

(i) not used for general transportation purposes; and

(ii) is equipped as required by the state law in effect in the year of manufacture of the motorcycle, as determined under [section 1].

(2) A custom-built motorcycle registered under this section is exempt from vehicle equipment requirements under chapter 9 of this title unless the equipment was required under state law in the year of manufacture of the motorcycle, as listed on the registration receipt for the motorcycle and determined under [section 1].

Section 3. Broker requirements — restrictions — annual report — fees. (1) A broker may not display a motor vehicle, power sports vehicle, or trailer at the broker's established place of business.

(2) A broker shall install and maintain telephone service at the broker's established place of business. The telephone service must be listed in the directory assistance that applies to the area in which the business is located, or if a cellular service is used, the broker's cell phone number must be posted at the broker's established place of business.

(3) (a) A broker shall maintain a record of every purchase, sale, or exchange of a motor vehicle, power sports vehicle, or trailer negotiated by the broker for compensation upon behalf of a client. The record must include the name, address, and customer identification number of:

(i) the broker's client;

(ii) the dealer or person from whom the client purchased, sold, or exchanged a motor vehicle, power sports vehicle, or trailer; and

(iii) the financial institution, if any, that financed the client's purchase, sale, or exchange of a motor vehicle, power sports vehicle, or trailer.

(b) The broker shall also maintain a record of each motor vehicle, power sports vehicle, or trailer for which a deal was brokered, including a description of the vehicle, power sports vehicle, or trailer, its identification number, and the source or sources of compensation received by the broker for each deal.

(c) All records must be physically located and maintained within the building referred to in 61-4-101. Records must be preserved for at least 5 years after the date of the purchase, sale, or exchange negotiated by the broker. An authorized representative of the department, upon presentation of the representative's credentials, may inspect and have access to and copy any records required under this chapter.

(4) On or before December 31 of each year, a broker shall submit an annual report, in a form or manner prescribed by the department, to the department pertaining to any changes concerning owner identity, other ownership interests, felony conduct, or surety bond filings, as originally required under 61-4-101, that may have occurred that calendar year and to provide any other relevant information required by the department.

(5) The annual report must be accompanied by a $30 filing fee. The annual report must include the number of purchases, sales, or exchanges negotiated by the broker during the calendar year for which the annual report is filed.

Section 4. Common standards — dealer plates — demonstrator plates — identification cards — fees. (1) (a) Dealer, demonstrator, and courtesy license plates authorized under this part must be designed by the department in a manner that is similar to standard license plates furnished under 61-3-332, but the word "dealer", "demonstrator", or "courtesy" must be included in the plate design.

(b) Dealer, demonstrator, and courtesy license plates must be numbered in a manner that is readily distinguishable from other plate styles issued by the department. The numbering system for dealer plates must contain the distinctive license number assigned by the department to a dealer and a number or alphanumeric that relates to the assignment of sets of dealer plates to a dealer. The numbering system for demonstrator plates may be sequential and unrelated to the number of demonstrator plates or the distinctive license number assigned to a dealer, wholesaler, or auto auction.

(c) Dealer, demonstrator, and courtesy plates issued under this part must be replaced on the same cycle that is required for standard license plates under 61-3-332.

(d) Except as provided in 61-4-124, dealer, demonstrator, and courtesy plates must display a registration decal, affixed as prescribed by the department, for the calendar year for which use of the plate or plates is authorized under this part.

(2) (a) Identification cards must be designed by the department and furnished to dealers to authorize the demonstration of a motorboat or personal watercraft, a snowmobile, or an off-highway vehicle by a dealer licensed under this part or a customer of a dealer licensed under this part. Each identification card must include the dealer's name and address and the license number assigned by the department to the dealer and must designate the type of power

sports vehicle for which its use is authorized, such as a motorboat or personal watercraft, snowmobile, or off-highway vehicle.

(b) The department may use the same numbering system for identification cards as it uses for demonstrator plates.

(3) (a) Upon issuance of a license to a dealer whose business includes the sale of motorboats or personal watercraft, snowmobiles, or off-highway vehicles, the department shall furnish identification cards to a dealer as follows:

(i) for a dealer who sells motorboats or personal watercraft, one identification card;

(ii) for a dealer who sells snowmobiles, two identification cards; and

(iii) for a dealer who sells off-highway vehicles, two identification cards.

(b) The dealer may obtain additional identification cards for $2, as needed, and upon submitting justification for the need to the department.

(4) (a) An identification card issued to a dealer who sells motorboats or personal watercraft may be displayed on a dealer's motorboat or personal watercraft while the motorboat or personal watercraft is operating for a purpose related to the buying, selling, exchanging, or performance testing of the motorboat or personal watercraft by the dealer, manufacturer, or potential buyer.

(b) An identification card issued to a dealer who sells snowmobiles must be carried by the dealer when demonstrating the dealer's snowmobiles or by the dealer's customer.

(c) An identification card issued to a dealer who sells off-highway vehicles must be carried by the dealer when the dealer's off-highway vehicles are being demonstrated for sale purposes or by the dealer's customer.

(5) (a) All dealer, demonstrator, and courtesy plates and identification cards issued under this part expire on December 31 of the year of issue and must be renewed annually.

(b) A dealer, auto auction, or wholesaler who files the annual report required under 61-4-120, 61-4-124, or 61-4-125 on or before December 31 of the calendar year may display or use dealer or demonstrator plates and identification cards assigned for the prior calendar year through the last day of February of the following year.

Section 5. Exhaust noise limitation. (1) Except as provided in subsection (3), a person may not operate a motor vehicle with an exhaust system that emits a noise in excess of 95 decibels, as measured by the society of automotive engineers' standard j1169 (May 1998).

(2) A person charged with violating this section may not be convicted if the person had reasonable grounds to believe that the vehicle was not operated in violation of the standard in subsection (1).

(3) This section does not apply to a motorcycle or quadricycle that is subject to 61-9-418.

Section 6. Section 15-1-122, MCA, is amended to read:

"15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, *a base amount of* $36,764 ~~for fiscal year 2003. Beginning with fiscal year 2004~~, *and* the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account ~~the following amounts:~~

~~(a)~~ *a base amount of* $3,050,205 ~~in fiscal year 2006; and~~

~~(b) in each succeeding fiscal year, the amount in subsection (2)(a)~~, increased by 1.5% in each succeeding fiscal year.

(3) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5, ~~1.62% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and~~ 1.48% of the motor vehicle revenue deposited in the state general fund in ~~succeeding~~ *each* fiscal ~~years~~ *year*. The amount of ~~8.75% of the allocation in fiscal year 2006 and~~ 9.48% of the allocation in *each* fiscal year ~~2007 and succeeding years~~ must be used for the purpose of reimbursing the hired removal of abandoned vehicles. Any portion of the allocation not used for abandoned vehicle removal reimbursement must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816, ~~1.53% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and~~ 1.50% of the motor vehicle revenue deposited in the state general fund in ~~succeeding~~ *each* fiscal ~~years~~ *year*;

(c) to the department of fish, wildlife, and parks:

(i) ~~0.47% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and in succeeding fiscal years,~~ 0.46% of the motor vehicle revenue deposited in the state general fund, with the applicable percentage to be:

(A) used to:

(I) acquire and maintain pumpout equipment and other boat facilities, ~~5.2% in fiscal year 2006 and~~ 4.8% in *each* fiscal year ~~2007 and succeeding years~~;

(II) administer and enforce the provisions of Title 23, chapter 2, part 5, ~~20.8% in fiscal year 2006 and~~ 19.1% in *each* fiscal year ~~2007 and succeeding years~~;

(III) enforce the provisions of 23-2-804, ~~12.1% in fiscal year 2006 and~~ 11.1% in *each* fiscal year ~~2007 and succeeding fiscal years~~; and

(IV) develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use, ~~18.1% in fiscal year 2006 and~~ 16.7% in *each* fiscal year ~~2007 and succeeding fiscal years~~; and

(B) deposited in the state special revenue fund established in 23-1-105 in an amount equal to ~~43.8% in fiscal year 2006 and~~ 48.3% in *each* fiscal year ~~2007 and succeeding fiscal years~~;

(ii) ~~0.12% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and~~ 0.10% of the motor vehicle revenue deposited in the state general fund in each ~~subsequent~~ fiscal year, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ *23-2-618*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities; and

(iii) ~~0.5% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and~~ 0.16% of the motor vehicle revenue deposited in the state

general fund in each ~~succeeding~~ fiscal year to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) ~~0.75% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and~~ 0.64% of the motor vehicle revenue deposited in the state general fund in each ~~succeeding~~ fiscal year, with ~~21.30% in fiscal year 2006 and~~ 24.55% ~~in fiscal year 2007 and succeeding fiscal years~~ to be deposited in the state veterans' cemetery account provided for in 10-2-603 and with ~~78.70% in fiscal year 2006 and~~ 75.45% ~~in fiscal year 2007 and succeeding fiscal years~~ to be deposited in the veterans' services account provided for in 10-2-112(1);

(e) ~~0.59% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and~~ 0.30% of the motor vehicle revenue deposited in the state general fund in each ~~succeeding~~ fiscal year for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112; and

(f) to the search and rescue account provided for in 10-3-801, ~~0.20% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and~~ 0.04% of the motor vehicle revenue deposited in the state general fund in each ~~succeeding~~ fiscal year.

(4) For the purposes of this section, "motor vehicle revenue deposited in the state general fund" means revenue received from:

(a) fees for issuing a motor vehicle title paid pursuant to 61-3-203;

(b) fees, fees in lieu of taxes, and taxes for vehicles, vessels, and snowmobiles registered or reregistered pursuant to 61-3-321 and 61-3-562;

(c) GVW fees for vehicles registered for licensing pursuant to Title 61, chapter 3, part 3; and

(d) all money collected pursuant to 15-1-504(3).

(5) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

Section 7. Section 23-2-502, MCA, is amended to read:

"23-2-502. Definitions. As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Certificate of number" means the certificate issued by the *department of justice, an authorized agent, as defined in 61-1-101, or a* county treasurer to the owner of a motorboat or sailboat ~~or by the department of justice to dealers or manufacturers~~, assigning the motorboat or sailboat an identifying number and containing other information as required by the department of justice.

~~(2) "Dealer" means a person who engages in whole or in part in the business of buying, selling, or exchanging new and unused vessels or used vessels, or both, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.~~

~~(3)~~*(2)* "Department" means the department of fish, wildlife, and parks of the state of Montana.

~~(4)~~*(3)* "Documented vessel" means a vessel that has and is required to have a valid marine document as a vessel of the United States.

~~(5)~~*(4)* "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat or sailboat.

~~(6)~~*(5)* "Lienholder" means a person holding a security interest.

~~(7)~~*(6)* "Manufacturer" means a person engaged in the business of manufacturing or importing new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

~~(8)~~*(7)* (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

~~(9)~~*(8)* "Operate" means to navigate or otherwise use a motorboat or a vessel.

~~(10)~~*(9)* "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

~~(11)~~*(10)* (a) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation.

(b) The term does not include a lessee under a lease not intended as security.

~~(12)~~*(11)* "Passenger" means each person carried on board a vessel other than:

(a) the owner or the owner's representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have not contributed any consideration for their carriage and who are paid for their services; or

(d) a guest on board a vessel that is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for the guest's carriage.

~~(13)~~*(12)* "Person" means an individual, partnership, firm, corporation, association, or other entity.

~~(14)~~*(13)* "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

~~(15)~~*(14)* "Registration decal" means an adhesive sticker produced by the department of justice and issued by the department of justice, an authorized agent as defined in 61-1-101, or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft as proof of payment of fees in lieu of tax imposed on the motorboat, sailboat, or personal watercraft for the registration period indicated on the decal as recorded by the department of justice under 61-3-101.

~~(16)~~*(15)* (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

~~(17)~~*(16)* "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation and is valid against third parties generally.

~~(18)~~*(17)* "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

~~(19)~~*(18)* "Validation decal" means an adhesive sticker produced by the department and issued by the department or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft verifying the identifying number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner to meet requirements of the federal standard numbering system.

~~(20)~~*(19)* "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~(21)~~*(20)* "Waters of this state" means any waters within the territorial limits of this state."

Section 8. Section 23-2-515, MCA, is amended to read:

"23-2-515. Registration decal to be displayed. (1) A Montana motorboat, sailboat, or personal watercraft numbered in accordance with the provisions of 23-2-512 ~~or 23-2-513~~ must display a registration decal. For this purpose, the county treasurer, upon proof of payment of the registration fee as required by 61-3-321(10), shall issue a registration decal prepared and furnished by the department of justice with all new certificates of number and, if applicable, all renewals of the certificates of number.

(2) (a) The registration decal must be of a style and design prescribed by the department of justice.

(b) The registration decal must be serially numbered.

(c) The registration decals issued for a motorboat, sailboat, or personal watercraft do not expire while the motorboat, sailboat, or personal watercraft remains in the same ownership.

(3) A registration decal must be displayed on the left side of the forward half, 3 inches aft of the identifying numbers."

Section 9. Section 23-2-601, MCA, is amended to read:

"23-2-601. Definition of terms. As used in 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ *23-2-618*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644, unless the context requires otherwise, the following definitions apply:

(1) "Certificate of registration" means the owner's receipt evidencing payment of fees due in order for the snowmobile to be validly registered.

(2) "Certificate of title" means the document issued by the department of justice as prima facie evidence of ownership.

(3) "dbA" means sound pressure level measured on the "A" weight scale in decibels.

(4) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(5) "New snowmobile" means a snowmobile that has not been previously sold to an owner.

(6) "Operator" includes each person who operates or is in actual physical control of the operation of a snowmobile.

(7) "Owner" includes each person, other than a lienholder or person having a security interest in a snowmobile, that holds a certificate of title to a snowmobile and is entitled to the use or possession of the snowmobile.

(8) "Person" means an individual, partnership, association, corporation, and any other body or group of persons, regardless of the degree of formal organization.

(9) "Registration decal" means an adhesive sticker produced and issued by the department of justice, its authorized agent, or a county treasurer to the owner of a snowmobile as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department of justice under 61-3-101.

(10) "Roadway" means only those portions of a highway, road, or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

(11) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, designed primarily for travel on snow or ice, that may be steered by skis or runners and that is not otherwise registered or licensed under the laws of the state of Montana."

Section 10. Section 23-2-614, MCA, is amended to read:

"23-2-614. Exemptions. (1) (a) The provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ *23-2-618*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 with respect to registration, registration decals, certificates of title, and certificates of ownership do not apply to snowmobiles owned or used by the United States or another state or any agency or political subdivision of the United States or another state.

(b) Snowmobiles owned by the state of Montana or any agency or political subdivision of this state are exempt only from the payment of fees and must otherwise comply with all the requirements of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ *23-2-618*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644.

(2) The provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ *23-2-618*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 with respect to registration, registration decals, certificates of title, and certificates of ownership do not apply to unregistered snowmobiles owned by nonresidents of Montana who either:

(a) display visual proof that a nonresident temporary-use permit has been purchased; or

(b) use the snowmobile only in races and for not more than 30 days in the state. "Race" means an organized competition on a predetermined course that is run according to accepted rules."

Section 11. Section 23-2-631, MCA, is amended to read:

"23-2-631. Operation on public roads, streets, and highways. (1) A person may not operate a snowmobile upon a controlled-access highway or

facility at any time. Snowmobile operation is permitted on the roadway or shoulder of any public road or highway, state highway, county road, or city street located within the boundaries of any municipality only in the event that:

(a) the street, road, or highway is drifted or covered by snow to the extent that travel on the street, road, or highway by other motor vehicles is impractical or impossible;

(b) the operator has received permission or is otherwise authorized for that travel by the municipality in the case of town or city streets, the board of county commissioners for county roads, or the state highway patrol for all other highways; or

(c) operation has been authorized on municipal streets by a municipal ordinance.

(2) A snowmobile may make a direct crossing of a street or highway whenever the crossing is necessary to get to another authorized area of operation. The crossing must be made at an angle of approximately 90 degrees to the direction of traffic at a place where no obstruction prevents a quick and safe crossing. The snowmobile must make a complete stop before entering upon any part of the traffic way, and the operator shall yield the right-of-way to all oncoming traffic.

(3) A snowmobile may not be operated upon a public street or highway when permitted to do so by 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ *23-2-618*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 unless equipped with at least one headlamp and one taillamp, which must be lighted at all times during operation, and unless equipped with a suitable braking device operable by either hand or foot.

(4) (a) Unless operation is otherwise allowed under subsection (4)(b) or (4)(c), the operator of a snowmobile who operates the snowmobile upon a public roadway, street, or highway when allowed to do so under the provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ *23-2-618*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 must have in possession a license to drive a motor vehicle as required by the laws of the state of Montana.

(b) The operator of a snowmobile may operate the snowmobile upon a public roadway, street, or highway when allowed to do so under the provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ *23-2-618*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 if the operator:

(i) has in possession a certificate showing the successful completion of a Montana-approved snowmobile safety education course; and

(ii) is in the physical presence and under the supervision of a person who is 18 years of age or older.

(c) An operator who crosses a street, road, or highway, who operates a snowmobile upon a street, road, or highway that is drifted or covered with snow to the extent that travel on the street, road, or highway by other motor vehicles is impractical or impossible, or who operates a snowmobile in any other areas of the state where operation is lawfully permitted is not required to apply for or possess a driver's license under the laws of the state of Montana."

Section 12. Section 23-2-634, MCA, is amended to read:

"23-2-634. Regulation of snowmobile noise. (1) Except as provided in this section, each snowmobile must be equipped at all times with noise-suppression devices, including an exhaust muffler in good working order and in constant operation. A snowmobile may not be modified by any person in any manner that will amplify or otherwise increase total noise emissions to a level greater than that emitted by the snowmobile as originally constructed, regardless of date of manufacture.

(2) Each person who owns or operates a snowmobile manufactured after June 30, 1972, but prior to June 30, 1975, shall maintain the machine in such a manner that it will not exceed a sound level limitation of 82 dbA measured at 50 feet.

(3) A snowmobile manufactured after June 30, 1975, except snowmobiles designated for competition purposes only, may not be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than 78 dbA measured at 50 feet. Each person who owns or operates a snowmobile manufactured after June 30, 1975, shall maintain the machine in a manner so that it will not exceed a sound level limitation of 78 dbA measured at 50 feet.

(4) A manufacturer who certifies that a new snowmobile can comply with the noise limitation requirements of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ *23-2-618*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 shall affix a permanent notice of that certification to every snowmobile offered for sale in the state of Montana.

(5) In certifying that a new snowmobile can comply with the noise limitation requirements of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ *23-2-618*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644, a manufacturer shall make the certification based upon measurements made in accordance with SAE recommended practice J192, as amended. The department, in enforcing the provisions of this section, shall make measurements of snowmobile noise in accordance with applicable practices outlined in the "Procedure for Sound Level Measurements of Snowmobiles" (January, 1969), as amended, used by the international snowmobile industry association or with other standards for measurement of sound level that the department may adopt.

(6) This section does not apply to organized races or similar competitive events held on:

(a) private lands or waters, with the permission of the owner, lessee, or custodian of the land or waters; or

(b) public lands or waters, with the consent of the public agency having the authority to grant consent."

Section 13. Section 23-2-641, MCA, is amended to read:

"23-2-641. Enforcement. (1) With respect to the sale of any new snowmobile that is subject to the provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ *23-2-618*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644, the attorney general shall, upon the request of the department, sue for the recovery of the penalties provided in 23-2-642 and bring an action for a restraining order or temporary or permanent injunction against a person who sells or offers to sell a new snowmobile that does not satisfy the sound level limitations imposed by 23-2-601, 23-2-602, 23-2-611,

23-2-614 through ~~23-2-619~~ *23-2-618*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644.

(2) (a) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(i) of search, seizure, and arrest;

(ii) to investigate activities in this state regulated by this part and rules of the department and the fish, wildlife, and parks commission; and

(iii) to report violations to the county attorney of the county in which they occur.

(b) Sheriffs and their deputies of the various counties of the state, the Montana highway patrol, authorized officers of the department, and the police of each municipality shall enforce the provisions of this part."

Section 14. Section 23-2-642, MCA, is amended to read:

"23-2-642. Penalties. (1) The failure to display a current registration decal on a snowmobile is a misdemeanor, punishable by a fine in an amount equal to five times the applicable registration fee payable under 61-3-321.

(2) A person who violates any other provision of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ *23-2-618*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 or a rule adopted pursuant to those sections shall pay a civil penalty of not less than $15 or more than $500 for each separate violation. If the violation is willful, the person shall pay a civil penalty of not less than $50 or more than $1,000 for each separate violation.

(3) A manufacturer who certifies that a new snowmobile meets the sound level limitations imposed by 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ *23-2-618*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 is subject to the penalty provisions of subsection (2) if the machine so certified does not meet the appropriate sound level limitation. For the purposes of this section, each sale of a new snowmobile that does not meet the sound level limitations imposed by 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ *23-2-618*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 constitutes a separate violation."

Section 15. Section 23-2-644, MCA, is amended to read:

"23-2-644. Deposit of funds from fines and forfeitures. All fines and forfeitures collected under 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ *23-2-618*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 relating to snowmobiles, except those collected by a justice's court, must be transmitted to the state, as provided in 15-1-504, for deposit in the state general fund."

Section 16. Section 61-1-101, MCA, is amended to read:

"61-1-101. Definitions. As used in this title, unless the context indicates otherwise, the following definitions apply:

(1) (a) "Authorized agent" means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department's motor vehicle titling, registration, or driver records, using an approved automated interface, for specific functions or purposes upon behalf of a third party.

(b) For purposes of this subsection (1), "person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.

(2) "Authorized agent agreement" means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent must operate in performing specific motor vehicle or driver-related record functions.

(3) "Bus" means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(4) (a) "Business entity" means a corporation, association, partnership, limited liability partnership, limited liability company, or other legal entity recognized under state law.

(b) The term does not include an individual.

~~(4)~~*(5)* (a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(b) The term does not include a truck canopy cover or topper.

~~(5)~~*(6)* "Certificate of title" means the paper record issued by the department or by the appropriate agency of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons and the motor vehicle specifically described in the record and that provides notice of a perfected security interest in the motor vehicle.

~~(6)~~*(7)* "Commercial driver's license" means:

(a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; and

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.

~~(7)~~*(8)* (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(i) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(iii) is designed to transport at least 16 passengers, including the driver;

(iv) is a school bus; or

(v) is of any size and is used in the transportation of hazardous materials as defined in 61-8-801.

(b) The following vehicles are not commercial motor vehicles:

(i) an authorized emergency service vehicle:

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) entitled to the exemptions granted under 61-8-107;

(ii) a vehicle:

(A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;

(B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and

(C) not used to transport goods for compensation or for hire; or

(iii) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in part-time national guard training, and national guard military technicians, or active duty United States coast guard personnel.

(c) For purposes of this subsection ~~(7)~~ *(8)*:

(i) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;

(ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle;

(iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; and

(iv) "school bus" has the meaning provided in 49 CFR 383.5.

~~(8)~~*(9)* "Commission" means the state transportation commission.

~~(9) "County where a vehicle is domiciled" means the county in which the vehicle owner permanently resides or, if a vehicle is owned by a corporation or is leased or used for commercial purposes, the county in which the vehicle is permanently assigned or most frequently used, dispatched, or controlled.~~

(10) "Custom-built motorcycle" means a motorcycle that is equipped with:

(a) an engine manufactured 20 years prior to the current calendar year and that has been altered from the manufacturer's original design;

(b) an engine manufactured to resemble an engine 20 or more years old and that has been constructed in whole or in part from nonoriginal materials.

~~(10)~~*(11)* "Custom vehicle" means a motor vehicle other than a motorcycle that:

(a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or

(ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(12) "Customer identification number" means:

(a) a driver's license or identification card number when the customer is an individual who has been issued a driver's license or identification card by a state driver licensing authority;

(b) a federal employer or tax identification number when the customer is a business entity that has been issued a federal employer or tax identification number;

(c) the identification number assigned by the secretary of state to a business entity authorized to do business in this state under Title 35 if the customer is a business entity that does not have a federal employer or tax identification number other than a social security number; or

(d) if the customer has not been issued one of the numbers described in subsections (12)(a) through (12)(c), a number assigned to the customer by the department when a transaction is initiated under this title.

~~(11)~~*(13)* (a) "Dealer" means a person~~, firm, association, or corporation~~ that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, *or* accepting on consignment~~, or acting as a broker, as defined in 61-4-131, of~~ new or used motor vehicles, trailers, semitrailers, ~~or~~ pole trailers*, travel trailers, motorboats, sailboats, snowmobiles, off-highway vehicles, or special mobile equipment* that ~~are~~ *is* not registered in the name of the person~~, firm, association, or corporation and that are required to be licensed under chapter 4 of this title~~.

(b) The term does not include the following:

(i) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(ii) employees of the persons included in subsection ~~(11)(b)(i)~~ *(13)(b)(i)* when engaged in the specific performance of their duties as employees; or

(iii) public officers while performing or in the operation of their duties.

~~(12)~~*(14)* "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.

~~(13)~~*(15)* "Department" means the department of justice acting directly or through its duly authorized officers or agents.

~~(14)~~*(16)* "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.

(17) "Domiciled" means a place where:

(a) an individual establishes residence;

(b) a business entity maintains its principal place of business;

(c) the business entity's registered agent maintains an address; or

(d) a business entity most frequently uses, dispatches, or controls a motor vehicle, trailer, semitrailer, or pole trailer that it owns or leases.

~~(15)~~*(18)* "Driver" means a person who drives or is in actual physical control of a vehicle.

~~(16)~~*(19)* "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

(a) any temporary license or instruction permit;

(b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;

(c) any nonresident's driving privilege;

(d) a motorcycle endorsement; or

(e) a commercial driver's license.

~~(17)~~*(20)* "Electric personal assistive mobility device" means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour.

~~(18)~~*(21)* "For hire" means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

~~(19)~~*(22)* "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

~~(20)~~*(23)* "Highway" or "public highway" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

~~(21)~~*(24)* "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

~~(22)~~*(25)* "Implement of husbandry" means a vehicle that is designed for agricultural purposes and exclusively used by the owner of the vehicle in the conduct of the owner's agricultural operations.

~~(23)~~*(26)* "Kit vehicle" is a motor vehicle assembled from a manufactured kit either as:

(a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle; or

(b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain, commonly referred to as a donor vehicle.

~~(24)~~*(27)* "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

~~(25)~~*(28)* "Manufactured home" has the meaning provided in ~~15-1-101~~ *15-24-201*.

~~(26)~~*(29)* "Manufacturer" includes any person~~, firm, corporation, or association~~ engaged in the manufacture of motor vehicles, trailers, ~~or~~ semitrailers*, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, or off-highway vehicles* as a regular business.

~~(27)~~*(30)* "Manufacturer's certificate of origin" means the original paper record produced and issued by the manufacturer of a vehicle or, if in a medium authorized by the department, an electronic record created and transmitted by the manufacturer of a vehicle to the manufacturer's agent or a licensed dealer. The record must establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of ownership of the vehicle to the person or persons named in the certificate.

~~(28)~~*(31)* "Mobile home" or "housetrailer" has the meaning provided in ~~15-1-101~~ *15-24-201*.

(32) "Montana resident" means:

(a) an individual who resides in Montana as determined under 1-1-215;

(b) for the purposes of chapter 3, a business entity that maintains a principal place of business or a registered agent in this state.

~~(29)~~*(33)* (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

~~(30)~~*(34)* (a) "Motor carrier" means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles upon a public highway in this state for the transportation of property for hire on a commercial basis.

(b) The term does not include motor carriers regulated under Title 69, chapter 12.

~~(31)~~*(35)* (a) "Motorcycle" means a motor vehicle ~~having~~ *that has a seat or saddle for the use of the operator and that is designated to travel on* not more than three wheels in contact with the ground ~~and a saddle on which the operator sits or a platform on which the operator stands and a driving wheel in contact with the ground in addition to the wheels of the vehicle itself~~. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.

(b) The term does not include a tractor, a bicycle as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.

~~(32)~~*(36)* (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.

(b) The term does not include a bicycle, as defined in 61-8-102, or a motorized nonstandard vehicle.

~~(33)~~*(37)* "Motor home" means a motor vehicle:

(a) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

(b) containing permanently installed independent life support systems that meet the ANSIA/A119.2 standard; and

(c) providing at least four of the following types of facilities:

(i) cooking, refrigeration, or icebox;

(ii) self-contained toilet;

(iii) heating or air-conditioning, or both;

(iv) potable water supply, including a faucet and sink; or

(v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply; or both.

~~(34)~~*(38)* (a) "Motorized nonstandard vehicle" means a vehicle, upon or by which a person may be transported, that:

(i) is propelled by its own power, using an internal combustion engine or an electric motor;

(ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(c) The term does not include an electric personal assistive mobility device or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

~~(35)~~*(39)* (a) "Motor vehicle" means*:*

(i) a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state*; and*

(ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9.

(b) The term does not include a bicycle as defined in 61-8-102*, an electric personal assistive mobility device, a motorized nonstandard vehicle,* or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

~~(36)~~*(40)* "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.

~~(37)~~*(41)* "Nonresident" means a person who is not a *Montana* resident ~~of this state~~.

~~(38)~~*(42)* (a) "Not used for general transportation purposes" means the operation of a motor vehicle, registered as a collector's item, a custom vehicle, ~~or~~ a street rod, *or a custom-built motorcycle* to or from a car *or motorcycle* club activity or event or an exhibit, show, cruise night, or parade, or other occasional transportation activity.

(b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.

~~(39)~~*(43)* (a) "Off-highway vehicle" means a self-propelled vehicle ~~used~~ *designed* for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) The term does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) *motor* vehicles ~~otherwise issued a certificate of title and registered under the laws of the state~~ *designed to transport persons or property upon the highways*, unless the vehicle is used for off-road recreation on public lands.

~~(40)~~*(44)* "Operator" means a person who is in actual physical control of a motor vehicle.

~~(41)~~*(45)* "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested the right of possession or control.

~~(42)~~*(46)* "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

~~(43)~~*(47)* "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

~~(44)~~*(48)* "Pole trailer" means a vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

~~(45)~~*(49)* "Police officer" means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

~~(46)~~*(50)* (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor capable of producing not more than 50 horsepower.

(b) The term does not include golf carts.

~~(47)~~*(51)* "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

~~(48)~~*(52)* (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated upon rails.

(b) The term does not include streetcars.

~~(49)~~*(53)* "Recreational vehicle" includes ~~self-propelled vehicles originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use~~ *a motor home, travel trailer, or camper*.

~~(50)~~*(54)* "Registration" or "register" means the act or process of creating an electronic record, maintained by the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records.

~~(51)~~*(55)* "Registration decal" means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county

treasurer to the owner of a motor vehicle, trailer, semitrailer, ~~or~~ pole trailer*, motorboat, sailboat, personal watercraft, or snowmobile* as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department under 61-3-101.

~~(52)~~*(56)* "Registration receipt" means a paper record that is produced and issued or, if authorized by the department, an electronic record that is transmitted by the department, its authorized agent, or a county treasurer to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the vehicle for the registration period indicated in the receipt.

~~(53)~~*(57)* "Retail sale" means the sale of a ~~new motor vehicle or used~~ motor vehicle, ~~a recreational vehicle,~~ a trailer, *a semi-trailer, a pole trailer,* a travel trailer, *a motorboat, a snowmobile, an off-highway vehicle,* ~~a motorcycle, a quadricycle,~~ or special mobile equipment by a dealer to a person for purposes other than resale.

~~(54)~~*(58)* "Revocation" means that the driver's license and privilege to drive a motor vehicle on the public highways are terminated and may not be renewed or restored. An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.

~~(55)~~*(59)* "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways, the term refers to any roadway separately but not to all roadways collectively.

~~(56)~~*(60)* (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

~~(57)~~*(61)* "Semitrailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.

~~(58)~~*(62)* "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, that is designed primarily for travel on snow or ice, that may be steered by skis or runners, and that is not otherwise registered or licensed under the laws of the state of Montana.

~~(59)~~*(63)* "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this subsection is partial and does not exclude other vehicles that are within the general terms of this subsection.

~~(60)~~*(64)* (a) "Specially constructed vehicle" means a motor vehicle, including a motorcycle, that:

(i) was not originally constructed under a distinctive make, model, or type by a generally recognized manufacturer of motor vehicles;

(ii) has been structurally modified so that it does not have the same appearance as similar vehicles from a generally recognized manufacturer of motor vehicles;

(iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from other vehicles;

(iv) has been constructed or assembled by using major component parts from one or more manufactured vehicles and that cannot be identified as a specific make or model; or

(v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.

(b) The term does not include a motor vehicle that has been repaired or restored to its original design by replacing parts.

~~(61)~~*(65)* (a) "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use.

(b) The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.

~~(62)~~*(66)* (a) "Stop", when required, means complete cessation from movement.

(b) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrol officer, or traffic control sign or signal.

~~(63)~~*(67)* "Street" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

~~(64)~~*(68)* "Street rod" means a motor vehicle, other than a motorcycle, that:

(a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949, including a kit vehicle intended to resemble a vehicle manufactured before 1949; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

~~(65)~~*(69)* "Suspension" means that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn, but only during the period of suspension.

~~(66)~~*(70)* "Temporary registration permit" means a paper record:

(a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:

(i) required vehicle and owner information; and

(ii) the purpose for which the record was generated; and

(b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs.

~~(67)~~*(71)* "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

~~(68)~~*(72)* (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

~~(69)~~*(73)* "Transaction summary receipt" means an electronic record produced and issued by the department, its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain a unique transaction record number and summarize and verify the electronic filing of the transaction described in the receipt on the electronic record of title maintained under 61-3-101.

~~(70)~~*(74)* "Travel trailer" means a vehicle:

(a) that is 40 feet or less in length;

(b) that is of a size or weight that does not require special permits when towed by a motor vehicle;

(c) with gross trailer area of less than 320 square feet; and

(d) that is designed to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.

~~(71)~~*(75)* "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

~~(72)~~*(76)* "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

~~(73)~~*(77)* "Under the influence" has the meaning provided in 61-8-401.

~~(74)~~*(78)* "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, given away, or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as "secondhand" within the ordinary meaning of that term.

~~(75)~~*(79)* "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.

~~(76)~~*(80)* (a) "Vehicle" means a device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.

(b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

~~(77)~~*(81)* "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the

department, or in accordance with the laws of another state or country for the purpose of identifying the motor vehicle or a component part of the motor vehicle.

~~(78)~~*(82)* "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~(79)~~*(83)* "Wholesaler" means a person~~, firm, partnership, association, or corporation~~ that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, ~~recreational vehicle,~~ trailer, semitrailer, pole trailer, *travel trailer, motorboat, snowmobile, off-highway vehicle, or* special mobile equipment~~, motorcycle, or quadricycle~~ only to ~~vehicle~~ dealers and auto auctions licensed under chapter 4, part 1."

Section 17. Section 61-3-101, MCA, is amended to read:

"61-3-101. Duties of department — records. (1) (a) The department shall create and maintain a central registry of electronic files that includes an electronic record of title as specified in this section for motor vehicles, trailers, semitrailers, pole trailers, *travel trailers,* campers, motorboats, personal watercraft, sailboats, ~~and~~ snowmobiles*, and off-highway vehicle* for which:

(i) an application for a certificate of title has been received by the department, its authorized agent, or a county treasurer;

(ii) a certificate of title has been issued by the department; or

(iii) a registration, security interest, or lien transaction has been recorded by the department.

(b) The central registry of electronic files described in subsection (1) must include an electronic record of registration for each motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~and~~ snowmobile*, and off-highway vehicle* registered in this state:

(i) for which the certificate of title was issued by another jurisdiction and that was registered in another jurisdiction; or

(ii) for which a certificate of title has not been issued or is not required.

(2) The electronic record of title for a motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile*, or off-highway vehicle* must contain the following information:

(a) the *owner's* name, *Montana* residence~~,~~ and*, if different,* mailing address*,* ~~of the owner~~ and *customer identification number*~~:~~

~~(i) if the owner is the holder of a driver's license or identification card issued by the department or by a motor vehicle agency of another jurisdiction, the owner's driver's license or identification card number and the issuing jurisdiction; or~~

~~(ii) if the owner is a corporation, the registered agent's name and, if the agent is the holder of a driver's license or identification card, the agent's driver's license or identification card number and the issuing jurisdiction~~;

(b) a description of the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile, *or off-highway vehicle,* including, as pertinent to the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile*, or off-highway vehicle*:

(i) the manufacturer of the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile*, or off-highway vehicle*;

(ii) the manufacturer's designation of the style of the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile*, or off-highway vehicle*;

(iii) the identifying number;

(iv) the manufacturer's designated model year of manufacture and the odometer reading, if applicable, at the time of the transfer of ownership;

(v) the character of the motive power and the shipping weight of the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile*, or off-highway vehicle* as shown by the manufacturer;

(vi) the distinctive license number assigned to the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile, *or off-highway vehicle,* if any;

(vii) the gross vehicle weight and gross vehicle weight rating, as determined by the manufacturer, or, for a trailer operating interstate, the declared weight;

(viii) the unique transaction record number, when available and assigned by the department, for each transaction pertaining to the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile*, or off-highway vehicle* and the date of each transaction;

(ix) any brand required under state law or any brand carried forward from a certificate of title surrendered from another jurisdiction;

(x) if the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile*, or off-highway vehicle* has been or is currently registered in this state, the distinctive license plate number or certificate number assigned to the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile*, or off-highway vehicle* and a record of all fees and local option taxes, if applicable, paid for the current and preceding registration periods; and

(xi) other information that may be required for registration or may from time to time be found desirable.

(3) The electronic record of registration for a motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* motorboat, personal watercraft, sailboat, ~~or~~ snowmobile*, or off-highway vehicle* must contain, at a minimum, the following information:

(a) the *owner's* name, *Montana* residence~~,~~ and*, if different,* mailing address*,* ~~of the owner~~ and the ~~driver's license or~~ *customer* identification ~~card data required in subsections (2)(a)(i) and (2)(a)(ii)~~ *number*;

(b) the same data that is required under subsection (2)(b) for the electronic record of title; and

(c) any other data considered to be pertinent by the department.

(4) In order to prevent an accumulation of unneeded records and files, regardless of any other statutory requirements, the department may destroy all records and files that relate to motor vehicles, trailers, semitrailers, pole trailers, *travel trailers,* motorboats, personal watercraft, sailboats, ~~or~~

snowmobiles*, or off-highway vehicles* that have not been registered within the preceding 4 years and that do not have an active lien.

(5) Subject to the provisions of Title 61, chapter 11, part 5, motor vehicle records maintained by the department must be open to inspection during reasonable business hours, and the department shall furnish any information from the records, except personal information and highly restricted personal information, as defined in 61-11-503, upon payment by the applicant of the cost of the information requested. Prior to providing the information, the department shall require the applicant to provide identification. The department may not disclose personal information or highly restricted personal information except as permitted or required under 61-11-507, 61-11-508, or 61-11-509."

Section 18. Section 61-3-115, MCA, is amended to read:

"61-3-115. Customer service accounts — electronic updates or changes to motor vehicle, ~~or~~ driver*, or dealer licensing* records. (1) The department may provide secure electronic applications to permit a person, for specific purposes and as determined by the department, to access or update:

(a) an electronic record of title or registration for any vehicle registered to that person; ~~or~~

(b) an electronic individual Montana driving record for that person*; or*

(c) an electronic record pertaining to a license issued by the department under chapter 4 of this title.

(2) Purposes for which a person may access or update an electronic record of title or registration for a vehicle registered to or acquired by the person may include but are not limited to:

(a) issuing a temporary registration permit for a newly acquired vehicle;

(b) renewing vehicle registration on an annual or periodic basis;

(c) updating or changing personal information, including residence or mailing addresses; and

(d) changing the anniversary date and registration period for a vehicle registered to the person.

(3) Purposes for which a person may access or update an electronic individual Montana driving record for that person may include but are not limited to the following:

(a) updating or changing personal information, including residence or mailing addresses;

(b) obtaining a copy of the person's individual Montana driving record;

(c) paying a reinstatement fee owed to the department; and

(d) applying for a replacement driver's license."

Section 19. Section 61-3-116, MCA, is amended to read:

"61-3-116. Services that may be performed by authorized agent. (1) The department may authorize a person to perform, on the department's behalf, specific motor vehicle titling, registration, or driver licensing functions assigned to or administered by the department under ~~Title 23, chapter 2, parts 5, 6, and 8 or~~ this title. The authorization must be evidenced by an authorized agent agreement.

(2) An authorized agent must meet all of the requirements established by the department.

(3) An authorized agent shall submit to the department or its designee all statutorily prescribed fees, taxes, or penalties the authorized agent collects.

(4) (a) Except when specifically prohibited by statute or the authorized agent agreement, in addition to statutorily prescribed fees, taxes, and penalties, an authorized agent may collect and retain a reasonable convenience fee for services provided.

(b) If an authorized agent is a municipal or county officer, the convenience fee may be charged and collected as permitted under 7-5-2133 or 7-5-4125.

(5) The department may provide an automated mechanism to ensure that any statutorily prescribed fee, tax, or penalty collected by an authorized agent or a county treasurer in a county other than the county where *the owner of* a vehicle is domiciled is transferred to the county treasurer of the county where the *owner of a* vehicle is domiciled.

~~(6) As used in this section, "person" has the meaning provided in 61-1-101(1)(b).~~"

Section 20. Section 61-3-206, MCA, is amended to read:

"61-3-206. Odometer disclosure requirements on transfer of vehicle — dealer to preserve record. (1) Except as provided in subsection (3), before executing any transfer of ownership document relating to a motor vehicle, each seller of a motor vehicle shall record on the certificate of title the odometer reading at the time of transfer or, if the certificate of title does not provide for the recording of the odometer reading, furnish to the purchaser a written statement that is signed by the seller, who shall also print the seller's name on the written statement, and that contains the following information:

(a) the odometer reading at the time of transfer;

(b) the date of transfer;

(c) the seller's name and current address;

(d) the purchaser's name and current address;

(e) the motor vehicle year, make, model, body style, and identification number;

(f) one of the following statements or certification:

(i) a certification by the seller that, to the best of the seller's knowledge, the odometer reading reflects the actual miles or kilometers the vehicle has been driven;

(ii) if the seller knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit of 99,999 miles or kilometers, the seller shall include a statement to that effect; or

(iii) if the seller knows that the odometer reading differs from the number of miles or kilometers the motor vehicle has actually traveled and that the difference is greater than that caused by odometer calibration error, the seller shall include a statement that the odometer reading is not the actual mileage and should not be relied upon.

(2) The purchaser shall acknowledge receipt of the disclosure statement by signing it and printing the purchaser's name on the disclosure statement.

(3) The seller of the following types of motor vehicles need not disclose the odometer reading of the vehicle as required in subsection (1):

(a) a motor vehicle that is 10 years old or older;

(b) a vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, or sailboat that is not self-propelled;

(c) a new motor vehicle transferred between dealers or wholesalers prior to its first retail sale, unless the motor vehicle has been used as a demonstrator;

(d) a motor vehicle having a gross weight rating of more than 16,000 pounds; or

(e) a motor vehicle sold directly by the manufacturer to an agency of the United States.

(4) A dealer*, an auto auction,* or *a* wholesaler licensed under chapter 4 of this title shall create a record of the information required in subsection (1) and shall maintain and preserve that record for at least 5 years after the date of sale of the motor vehicle to which the information pertains."

Section 21. Section 61-3-216, MCA, is amended to read:

"61-3-216. Certificates of title — application — contents — issuance. (1) The owner of a motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile*, or off-highway vehicle* shall apply for a certificate of title on a form prescribed by the department or, if authorized by the department, in an electronic record provided by the department and made available to an authorized agent of the department or a county treasurer.

(2) The application for a certificate of title, upon completion, must include:

(a) the *owner's* name, *Montana* residence~~,~~ and*, if different,* mailing address*,* ~~of the owner~~ and *customer identification number*~~:~~

~~(i) if the owner is the holder of a driver's license or identification card issued by the department or a motor vehicle agency of another jurisdiction, the owner's driver's license number or identification card number and the name of the jurisdiction issuing the license or card; or~~

~~(ii) if the owner is a corporation, the name of the corporation's registered agent's and, if the agent is the holder of a driver's license or identification card, the agent's driver's license number or identification card number and the name of the jurisdiction issuing the license or card~~;

(b) a description of the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile, *or off-highway vehicle,* including, as available and pertinent to the vehicle:

(i) the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile*, or off-highway vehicle* make, model, manufacturer's designated model year of manufacture, vehicle identification number, and type of body and a description of motive power;

(ii) the odometer reading, if applicable, at the time of transfer of ownership;

(iii) the gross vehicle weight rating, gross vehicle weight, or shipping weight, if applicable, as determined by the manufacturer;

(iv) whether the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile*, or off-highway vehicle* was new or used at the time of transfer; and

(v) for a trailer operating intrastate, its declared weight;

(c) the date on which the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile*, or off-highway vehicle* was purchased by or was transferred to the applicant, the name and address of the person from whom the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile*, or off-highway vehicle* was acquired, and the names and addresses of any secured parties or lienholders for whom the applicant is acknowledging a voluntary security interest;

(d) any other information that the department requires to identify the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile*, or off-highway vehicle* and to enable the department to determine whether the owner is entitled to a certificate of title and to determine the existence of security interests in the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile*, or off-highway vehicle*;

(e) if applicable, an odometer statement containing the information required in 61-3-206 or, if the title does not contain a space for the information, a separate document approved by the department that provides the same information that is required in 61-3-206; and

(f) a section that gives the applicant the option to direct the department, upon examination and review of the records and completion of the application process, to:

(i) issue a certificate of title as soon as possible; or

(ii) update the electronic record of title for the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile*, or off-highway vehicle*, issue a transaction summary receipt, and postpone the issuance of a certificate of a title until the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile*, or off-highway vehicle* owner submits a separate request for issuance of the certificate of title.

(3) If the application is for a certificate of title to a new motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile*, or off-highway vehicle*, the application must be accompanied by a manufacturer's certificate of origin, properly assigned to the applicant.

(4) Except as provided in 61-3-208 or subsection (4)(b) of this section, if the application is for a certificate of title to a used motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile*, or off-highway vehicle*, the application must be:

(a) accompanied by a certificate of title that is properly assigned by the prior owner to the applicant; or

(b) acknowledged by the prior owner if the prior owner's interest in the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer,* camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile*, or off-highway vehicle* was assigned to the applicant by means of a transfer on the electronic record of title entered by an authorized agent of the department or a county treasurer.

(5) If the application is for a certificate of title to a camper and if a certificate of title properly assigned by the prior owner is not available, the application must be accompanied by a notarized bill of sale or a conditional sales contract.

(6) If the application is for a certificate of title to a motorboat, a personal watercraft, a sailboat that is 12 feet in length or longer, or a snowmobile and a certificate of title properly assigned by the prior owner is not available, the application must be accompanied by a notarized bill of sale, an invoice, the current registration receipt for the motorboat, personal watercraft, sailboat, or snowmobile, or a certificate of number showing the transfer of ownership, which may be used to show the transfer of ownership for a motorboat, personal watercraft, sailboat, or snowmobile from the immediate prior owner to the applicant."

Section 22. Section 61-3-222, MCA, is amended to read:

"61-3-222. Surviving spouse or heir — small estates. (1) Subject to the ~~limitations~~ *requirements* of Title 72, chapter 3, part 11, the surviving spouse or other heir may secure transfer of a decedent's ownership interests in one or more motor vehicles, trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, or snowmobiles for which a certificate of title was issued under this chapter if:

(a) the ~~combined~~ value of the ~~interests~~ *entire estate, including any vehicles, vessels, or snowmobiles for which transfer of ownership is sought, less liens and encumbrances,* does not exceed ~~$20,000~~ *the limit set forth in 72-3-1101*;

(b) the decedent did not leave other property that requires the procuring of letters of administration or letters testamentary; and

(c) the decedent did not by execution of a will otherwise bequeath the property.

(2) The person seeking transfer of the decedent's interests under this section shall file an affidavit with the department setting forth the fact of survivorship, the name and address of any other heirs, and any other facts determined necessary to entitle the person to the transfer.

(3) If the department determines that the transfer is regular and that all legal requirements have been met, the department shall issue a certificate of title, subject to any security interests shown by the department's records, to the surviving spouse or other heir."

Section 23. Section 61-3-224, MCA, is amended to read:

"61-3-224. Temporary registration permit — issuance — placement — fees. (1) *(a)* The department, an authorized agent, or a county treasurer may issue a temporary registration permit to:

~~(a)~~*(i)* a Montana resident who acquires a new or used motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for operation of the vehicle or vessel prior to titling and registration of the vehicle under this chapter;

~~(b)~~*(ii)* the owner of a salvage vehicle for moving the vehicle to and from a designated inspection site prior to applying for a new certificate of title under 61-3-212;

~~(c)~~*(iii)* the owner of a motor vehicle, trailer, semitrailer, or pole trailer registered in this state for operation of the vehicle while awaiting production

and receipt of special or duplicate license plates ordered for the vehicle under this chapter;

~~(d)~~*(iv)* a nonresident of this state who acquires a motor vehicle, trailer, semitrailer, or pole trailer in this state for operation of the vehicle prior to its titling and registration under the laws of the nonresident's jurisdiction of residence;

~~(e)~~*(v)* a dealer licensed in another state who brings a motor vehicle or trailer designed and used to apply fertilizer to agricultural lands into the state for special demonstration in this state; or

~~(f)~~*(vi)* a financial institution located in Montana for a prospective purchaser to demonstrate a motor vehicle that the financial institution has obtained following repossession.

(b) An authorized agent or a county treasurer may issue a temporary registration permit without use of the department-approved electronic interface only if authorized by the department.

(2) A person, using a department-approved electronic interface, may issue a temporary registration permit for the specified purposes if the person is:

(a) a Montana resident who acquires a new or used motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for operation of the vehicle or vessel prior to titling and registration of the vehicle under this chapter;

(b) the owner of a salvage vehicle for moving the vehicle to and from a designated inspection site prior to applying for a new certificate of title under 61-3-212;

(c) a nonresident of this state who acquires a motor vehicle, trailer, semitrailer, or pole trailer in this state for operation of the vehicle prior to its titling and registration under the laws of the nonresident's jurisdiction of residence; or

(d) a financial institution located in Montana that intends to allow a prospective purchaser to demonstrate a motor vehicle that the financial institution has obtained following repossession.

(3) A temporary registration permit issued under this section must contain the following information:

(a) a temporary plate number, registration receipt number, or transaction record number, as prescribed by the department;

(b) the expiration date of the temporary registration permit; and

(c) if required by the department, a description of the motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile, including year, make, model, and vehicle identification number, the name of the person from whom ownership of the motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile was transferred, the name, mailing address, and residence address of the person to whom ownership of the motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile has been transferred, and the date of issuance.

(4) A temporary registration permit for:

(a) a motor vehicle, trailer, semitrailer, or pole trailer must be plainly visible and firmly attached to the rear exterior of the vehicle where a license plate is required to be displayed; and

(b) a motorboat, a sailboat that is 12 feet in length or longer, a snowmobile, or an off-highway vehicle must be plainly visible and firmly attached to the vehicle or vessel.

(5) (a) Except as provided in 61-3-431 and subsection (5)(b) of this section, a $3 fee is imposed upon issuance of a temporary registration permit by the department, an authorized agent, or a county treasurer. The fee must be paid by the owner of the vehicle or vessel and collected by the department, the authorized agent, or a county treasurer when the vehicle is registered.

(b) Except as provided in 61-3-431, a fee of $8 is imposed and must be paid upon issuance of a temporary registration permit by:

(i) the department, an authorized agent, or a county treasurer to a nonresident of this state who acquires a vehicle or vessel in this state; or

(ii) a person who issued a temporary registration permit using a department-approved electronic interface.

(6) The fees imposed under this section, upon collection, must be forwarded to the state and deposited in the motor vehicle electronic commerce operating account provided for in 61-3-118.

(7) If a temporary registration permit is issued under this section to a person to whom ownership of a vehicle or vessel has been transferred, the permitholder shall title and register the vehicle or vessel in this or another jurisdiction before the ownership of the vehicle or vessel may be transferred to another person."

Section 24. Section 61-3-301, MCA, is amended to read:

"61-3-301. Registration — license plate required — display. (1) (a) Except as provided in 61-4-120, 61-4-129, and subsection (1)(b) of this section, a person may not operate a motor vehicle, trailer, semitrailer, or pole trailer upon the public highways of Montana unless the motor vehicle, trailer, semitrailer, or pole trailer is properly registered and has the proper license plates conspicuously displayed, one on the front and one on the rear of the motor vehicle, trailer, semitrailer, or pole trailer, each securely fastened to prevent it from swinging and unobstructed from plain view.

(b) A motorcycle, quadricycle, trailer, semitrailer, pole trailer, or travel trailer must display a single license plate on the rear of the vehicle. A custom vehicle or street rod registered under 61-3-320(1)(b) or (1)(c)(iii) may display a single license plate firmly attached to the rear exterior of the custom vehicle or street rod.

(c) A person may not display on a motor vehicle, trailer, semitrailer, or pole trailer at the same time a number assigned to it under any motor vehicle law except as provided in this chapter.

(2) A person may not purchase or display on a motor vehicle, trailer, semitrailer, or pole trailer a license plate bearing the number assigned to any county, as provided in 61-3-332, other than the county where the motor vehicle, trailer, semitrailer, or pole trailer is domiciled at the time of application for registration.

(3) It is unlawful to:

(a) display license plates issued to one motor vehicle, trailer, semitrailer, or pole trailer on any other motor vehicle, trailer, semitrailer, pole trailer, or travel trailer unless legally transferred as provided by statute;

(b) repaint old license plates to resemble current license plates; or

(c) display a prior design of standard license plates issued under 61-3-332(3)(a) or special license plates issued under 61-3-332(8) or 61-3-421 more than 18 months after a new design of standard license plates or special license plates has been issued, except as provided in ~~61-3-332(3)(c)~~ *61-3-332(3)(b)* and ~~(3)(d)~~ *(3)(c)*, 61-3-448, or 61-3-468.

(4) For the purposes of this section, "conspicuously displayed" means that the required license plates are obviously visible and firmly attached to:

(a) the front and the rear bumper of a motor vehicle, trailer, semitrailer, or pole trailer equipped with front and rear bumpers; or

(b) other clearly visible locations on the front and the rear exteriors of a motor vehicle, trailer, semitrailer, or pole trailer."

Section 25. Section 61-3-303, MCA, is amended to read:

"61-3-303. Original registration — process — fees. (1) Except as provided in 61-3-324, a Montana resident who owns a motor vehicle, trailer, semitrailer, or pole trailer operated or driven upon the public highways of this state shall register the motor vehicle, trailer, semitrailer, or pole trailer in the office of the county treasurer in the county where the owner ~~permanently resides or, if the motor vehicle, trailer, semitrailer, or pole trailer is owned by a corporation or used primarily for commercial purposes, in the county where the motor vehicle, trailer, semitrailer, or pole trailer~~ is domiciled.

(2) Except as provided in subsection (3), the county treasurer shall register any vehicle for which:

(a) as of the date that the motor vehicle, trailer, semitrailer, or pole trailer is to be registered, the owner delivers an application for a certificate of title to the department, its authorized agent, or a county treasurer; or

(b) the county treasurer confirms that the department has an electronic record of title for the motor vehicle, trailer, semitrailer, or pole trailer as provided under 61-3-101.

(3) (a) A county treasurer may register a motor vehicle, trailer, semitrailer, or pole trailer for which a certificate of title and registration were issued in another jurisdiction and for which registration is required under 61-3-701 after the county treasurer examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in 61-3-701. The county treasurer may ask the motor vehicle, trailer, semitrailer, or pole trailer owner to provide additional information, prescribed by the department, to ensure that the electronic record of registration maintained by the department is complete.

(b) A county treasurer may register a motor vehicle, trailer, semitrailer, or pole trailer for which the new owner cannot, due to circumstances beyond the new owner's control, surrender a previously assigned certificate of title. The new owner may submit an application for certificate of title, subject to the registration renewal limitations of 61-3-312.

(4) Upon registering a motor vehicle, trailer, semitrailer, or pole trailer for the first time in this state, the county treasurer shall:

(a) update the electronic record of title, if any, maintained for the vehicle by the department under 61-3-101;

(b) assign a registration period for the vehicle under 61-3-311;

(c) determine the vehicle's age, if required, under 61-3-501;

(d) determine the amount of fees, including local option taxes or fees, to be paid under subsection (5); and

(e) assign and issue license plates for the vehicle under 61-3-331.

(5) Unless otherwise provided by law, a person registering a motor vehicle shall pay to the county treasurer:

(a) the fees in lieu of tax or registration fees as required for:

(i) a light vehicle under ~~61-3-321(2)~~ *61-3-321* or 61-3-562, in addition to, if applicable, any local option tax or fee under 61-3-537 or 61-3-570;

(ii) a motor home under 61-3-321;

(iii) a travel trailer under 61-3-321;

(iv) a motorcycle or quadricycle under 61-3-321;

(v) a bus, a truck having a manufacturer's rated capacity of more than 1 ton, or a truck tractor under 61-3-321 and 61-3-529; or

(vi) a trailer under 61-3-321;

(b) a donation of $1 or more if the person indicates that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts; and

(c) a donation of $1 or more if the person indicates that the person wishes to donate to promote education on, support for, and awareness of traumatic brain injury.

(6) The county treasurer may not issue a registration receipt or license plates for the motor vehicle, trailer, semitrailer, or pole trailer to the owner unless the owner makes the payments required by subsection (5).

(7) The department may make full and complete investigation of the registration status of the motor vehicle, trailer, semitrailer, or pole trailer. A person seeking to register a motor vehicle, trailer, semitrailer, or pole trailer under this section shall provide additional information to support the registration to the department if requested.

(8) Revenue that accrues from the voluntary donation provided in subsection (5)(b) must be forwarded by the respective county treasurer to the department of revenue for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

(9) (a) Except as provided in subsection (9)(b), the fees in lieu of tax, taxes, and fees imposed on or collected from the registration of a travel trailer, motorcycle, or quadricycle or a trailer, semitrailer, or pole trailer that has a declared weight of less than 26,000 pounds are required to be paid only once during the time that the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is owned by the same person who registered the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer. Once registered, a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is registered permanently unless ownership is transferred.

(b) Whenever ownership of a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is transferred, the new owner is required to register the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer as if it were being registered for the first time, including paying all of the required fees in lieu of tax, taxes, and fees.

(10) Revenue that accrues from the voluntary donation provided in subsection (5)(c) must be forwarded by the respective county treasurer to the department of revenue for deposit in the state special revenue fund to the credit of the account established in 2-15-2218 to support activities related to education regarding prevention of traumatic brain injury."

Section 26. Section 61-3-320, MCA, is amended to read:

"61-3-320. Registration — custom vehicle, street rod, *originally equipped older vehicle,* kit vehicle, or specially constructed vehicle. (1) (a) A custom vehicle or street rod:

(i) that is more than 30 years old may be registered under 61-3-411 as a collector's item; or

(ii) may be registered, depending on the vehicle type, as a motor home, a bus, a truck having a manufacturer's rated capacity of more than 1 ton, a truck tractor, or a light vehicle upon payment of the registration fee required in 61-3-321, the applicable fee or fee in lieu of tax provided for in 61-3-529 or 61-3-562, and, if applicable, any local option tax or fee under 61-3-537 or 61-3-570.

(b) The owner of a custom vehicle or street rod that is originally registered under subsection (1)(a) or that was registered prior to January 1, 2006, may be authorized to operate the custom vehicle or street rod while displaying only one license plate on the rear exterior of the vehicle if the owner certifies that the custom vehicle or street rod is not used for general transportation purposes and pays an additional $10 fee, to be deposited in the state general fund.

(c) (i) Upon original registration of a custom vehicle or street rod under subsection (1)(a)(i), either a set of pioneer or vintage license plates, as described in 61-3-411(2), or a set of original Montana license plates, as allowed under 61-3-412(1), must be assigned and issued to the custom vehicle or street rod.

(ii) Upon original registration of a custom vehicle or street rod under subsection (1)(a)(ii) and unless the owner has applied for personalized license plates, special license plates for military personnel, veterans, or spouses, collegiate plates, or generic specialty license plates or has met the requirements of subsection (1)(b), a set of standard license plates must be assigned to the vehicle under 61-3-331.

(iii) Upon original registration of a custom vehicle or street rod under subsection (1)(a)(ii) and if the owner of a custom vehicle or street rod has met the requirements of subsection (1)(b), a single license plate, including a personalized standard license plate, special license plate for military personnel, veterans, or spouses, collegiate plate, or generic specialty license plate, if otherwise available to the vehicle owner or vehicle type, may be issued for the custom vehicle or street rod.

(d) The owner of an originally equipped motor vehicle, other than a motorcycle, that is more than 30 years old and that is not registered as a collector's item under 61-3-411 may be authorized to operate the motor vehicle while displaying only one license plate on the rear exterior of the vehicle, as if it were a custom vehicle or street rod, if the owner:

(i) certifies that the originally equipped motor vehicle is not used for general transportation purposes;

(ii) pays any fees required under 61-3-321, 61-3-529, or 61-3-562 and, if applicable, a local option tax or fee under 61-3-537 or 61-3-570, plus an additional $10 fee, to be deposited in the state general fund; and

(iii) is otherwise eligible, based on the owner's status and the vehicle type, for one of the single license plate options available to an owner of a custom vehicle or street rod under this subsection (1).

(2) (a) The owner of a kit vehicle shall pay the registration fees provided for in 61-3-321 and, if applicable, any local option tax or fee under 61-3-537 or 61-3-570.

(b) Upon original registration of a kit vehicle and unless the owner has applied for special license plates, collegiate plates, or generic specialty license plates, standard license plates must be assigned and issued to the kit vehicle under 61-3-331.

(3) (a) Depending on whether the specially constructed vehicle is a motor home, bus, truck having a manufacturer's rated capacity of more than 1 ton, truck tractor, or light vehicle, the owner of a specially constructed vehicle shall pay the registration fees provided for in 61-3-321, any registration fee or fee in lieu of tax provided for in 61-3-529, and, if applicable, any local option tax or fee under 61-3-537 or 61-3-570.

(b) Upon original registration of a specially constructed vehicle and unless the owner has applied for special license plates, collegiate plates, or generic specialty license plates, standard license plates must be assigned and issued to the specially constructed vehicle under 61-3-331."

Section 27. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles and vessels — certain vehicles exempt from registration fees — disposition of fees. (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, renewal of registration of motor vehicles, snowmobiles, watercraft, trailers, semitrailers, and pole trailers as provided in subsections (2) through (18):

(2) (a) Except as provided in subsection (2)(b), there is a registration fee imposed on light vehicles. The registration fee is in addition to other annual registration fees.

(b) The following vehicles are exempt from the registration fee imposed in this subsection (2):

(i) light vehicles that meet the description of property exempt from taxation under 15-6-201(1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j), (1)(l), or (1)(m), 15-6-203, or 15-6-215, except as provided in 61-3-520;

(ii) a light vehicle owned by a person eligible for a waiver of registration fees under 61-3-460;

(iii) a light vehicle registered under 61-3-456.

(c) The owner of a light vehicle subject to the provisions of 61-3-313 through 61-3-316 may register the light vehicle for a period not to exceed 24 months. The application for registration or reregistration must be accompanied by the registration fee and all other fees required in this chapter for each 12-month period of the 24-month period.

(d) The annual registration fee for light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton is as follows:

(i) if the vehicle is 4 or less years old, $217;

(ii) if the vehicle is 5 through 10 years old, $87; and

(iii) if the vehicle is 11 or more years old, $28;

(e) The owner of a light vehicle 11 years old or older may permanently register the light vehicle as provided in 61-3-562.

(3) (a) Except as provided in subsection (3)(c), the owner of a trailer, semitrailer, or pole trailer that has a declared weight of less than 6,000 pounds shall pay a one-time fee of $61.25.

(b) The owner of a trailer, semitrailer, or pole trailer with a declared weight of 6,000 pounds or more shall pay a one-time fee of $148.25.

(c) Except as provided in subsection (17), whenever a transfer of ownership of a trailer, semitrailer, or pole trailer described in subsection (3)(a) or (3)(b) occurs, the one-time fee required under subsection (3)(a) or (3)(b) must be paid by the new owner.

(4) The annual registration fee for motor vehicles owned and operated solely as collector's items pursuant to 61-3-411 that are for motor vehicles:

(a) 2,850 pounds and over, $10; and

(b) under 2,850 pounds, $5.

(5) (a) The registration fee for off-highway vehicles is $61.25. This fee is a one-time fee, except upon transfer of ownership of an off-highway vehicle. Except as provided in subsection (17), whenever a transfer of ownership of an off-highway vehicle occurs, the one-time fee required under this subsection must be paid by the new owner.

(b) The application for registration for an off-highway vehicle must be made to the county treasurer of the county in which the owner resides, on a form furnished by the department for that purpose. The application must contain:

(i) the name and home mailing address of the owner;

(ii) the certificate of title number;

(iii) the name of the manufacturer of the off-highway vehicle;

(iv) the model number or name;

(v) the year of manufacture;

(vi) a statement evidencing payment of the fee in lieu of property tax; and

(vii) other information that the department may require.

(c) If the off-highway vehicle was previously registered, the application must be accompanied by the registration certificate for the most recent year in which it was registered. Upon payment of the registration fee, the county treasurer shall sign the application and issue a registration receipt containing the information considered necessary by the department. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(6) The annual registration fee for heavy trucks, buses, and logging trucks in excess of 1 ton is $22.75.

(7) (a) The owner of a motor home shall pay an annual fee based on the age of the motor home according to the following schedule:

(i) less than 2 years old, $282.50;

(ii) 2 years old and less than 5 years old, $224.25;

(iii) 5 years old and less than 8 years old, $132.50; and

(iv) 8 years old and older, $97.50.

(b) (i) Except as provided in subsection (7)(b)(ii), the age of a motor home is determined by subtracting the manufacturer's designated model year from the current calendar year.

(ii) If the purchase year of a motor home precedes the designated model year of the motor home and the motor home is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.

(c) (i) The owner of a motor home 11 years old or older subject to the registration fee under subsection (7)(a) may permanently register the motor home upon payment of:

(A) a fee of $237.50; and

(B) if applicable, five times the personalized license plate fees under 61-3-406.

(ii) The following series of license plates may not be used for purposes of permanent registration of a motor home:

(A) Montana national guard license plates issued under 61-3-458(2)(b);

(B) reserve armed forces license plates issued under 61-3-458(2)(c);

(C) license plates bearing a wheelchair design as a symbol of a person with a disability issued under 61-3-332(9);

(D) amateur radio operator license plates issued under 61-3-422;

(E) collegiate license plates issued under 61-3-465; and

(F) generic specialty license plates issued under 61-3-479.

(iii) Except as provided in subsection (17), whenever a transfer of ownership of a permanently registered motor home occurs, the applicable fees required under this subsection (7) must be paid by the new owner.

(8) (a) The registration fee for motorcycles and quadricycles registered for use on public highways is $53.25, and the registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is $114.50.

(b) An additional fee of $5 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, an additional fee of $16 must be collected for the registration of each motorcycle or quadricycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(c) The registration fees in this subsection (8) are a one-time fee, except upon transfer of ownership of a motorcycle or quadricycle.

(9) (a) The registration fee for travel trailers under 16 feet in length is $72 and the registration fee for travel trailers 16 feet in length or longer is $152. This fee is a one-time fee, except upon transfer of ownership of a travel trailer.

(b) Except as provided in subsection (17), whenever a transfer of ownership of a travel trailer occurs, the one-time fee required under subsection (9)(a) must be paid by the new owner.

(10) (a) The owner of each motorboat, sailboat, personal watercraft, or motorized pontoon requiring numbering by this state shall file an application for number in the office of the county treasurer in the county where the motorboat, sailboat, personal watercraft, or motorized pontoon is owned, on forms prepared and furnished by the department. The application must be signed by the owner of the motorboat, sailboat, personal watercraft, or motorized pontoon and be accompanied by the appropriate registration fee. The owner of a motorboat, sailboat, personal watercraft, or motorized pontoon shall pay a one-time fee as follows:

(i) for a personal watercraft or a motorboat, sailboat, or motorized pontoon less than 16 feet in length, $65.50;

(ii) for a motorboat, sailboat, or motorized pontoon at least 16 feet in length but less than 19 feet in length, $125.50; and

(iii) for a motorboat, sailboat, or motorized pontoon 19 feet in length or longer, $295.50.

(b) This fee is a one-time fee, except upon transfer of ownership of the motorboat, sailboat, personal watercraft, or motorized pontoon.

(11) (a) Except as provided in subsection (11)(b), the one-time registration fee for a snowmobile is $60.50.

(b) If a snowmobile is licensed by a Montana business and is owned exclusively for the purpose of daily rental to customers, the business is assessed:

(i) a fee of $40.50 in the first year of registration; and

(ii) if the business reregisters the snowmobile for a second year, a fee of $20. If the business reregisters the snowmobile for a third year, the snowmobile must be permanently registered and the business is assessed the fee in lieu of tax imposed in subsection (11)(a).

(c) Except as provided in subsection (17), whenever a transfer of ownership of a snowmobile occurs, the applicable fee required under this subsection (11) must be paid by the new owner.

(12) A fee of $5 must be collected when a new set of standard license plates, ~~or~~ a new single standard license plate*, or a replacement set of special license plates required* ~~provided for~~ under 61-3-332 is issued.

(13) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, snowmobiles, watercraft, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.

(14) When the license plates for a registered motor vehicle are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335, the owner of the motor vehicle shall pay a registration fee as follows:

(a) heavy trucks, buses, and logging trucks in excess of 1 ton, 75 cents;

(b) light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton:

(i) if the vehicle is 4 years old or less, $195.75;

(ii) if the vehicle is 5 years old through 10 years old, $65.75; and

(iii) if the vehicle is 11 years old or older, $6.75;

(c) motor homes:

(i) less than 2 years old, $250.50;

(ii) 2 years old and less than 5 years old, $192.25;

(iii) 5 years old and less than 8 years old, $100.50; and

(iv) 8 years old and older, $65.50;

(d) motorcycles and quadricycles registered for use on the public highways, $42, and motorcycles and quadricycles registered for both off-road use and for use on the public highways, $103.25. This fee is a one-time fee, except upon transfer of ownership.

(e) travel trailers under 16 feet in length, $50.50, and travel trailers 16 feet in length or longer, $130.50. This fee is a one-time fee, except upon transfer of ownership.

(f) trailers, semitrailers, or pole trailers with a declared weight of less than 6,000 pounds, $52. This fee is a one-time fee, except upon transfer of ownership.

(g) trailers, semitrailers, or pole trailers with a declared weight of 6,000 pounds or more, $139. This fee is a one-time fee, except upon transfer of ownership.

(15) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

(16) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

(17) The fees imposed by subsections (2) through (11) are not required to be paid by a dealer for the enumerated vehicles or vessels that constitute inventory of the dealership.

(18) (a) Unless a person exercises the option in subsection (18)(b), an additional fee of $4 must be collected for each light vehicle registered for licensing pursuant to this part. This fee must be accounted for and transmitted separately from the registration fee. The fee must be deposited in an account in the state special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities. Of the $4 fee, the department shall use $3.50 for state parks, 25 cents for fishing access sites, and 25 cents for the operation of state-owned facilities at Virginia City and Nevada City.

(b) A person who registers a light vehicle may, at the time of annual registration, certify that the person does not intend to use the vehicle to visit state parks and fishing access sites and may make a written election not to pay the additional $4 fee provided for in subsection (18)(a). If a written election is made, the fee may not be collected.

(19) For each light vehicle, trailer, semitrailer, pole trailer, heavy truck, motor home, motorcycle, quadricycle, and travel trailer subject to a registration fee under this section, an additional fee of $5 must be collected and forwarded to the state for deposit in the account established in 44-1-504.

(20) This section does not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is governed by 61-3-721."

Section 28. Section 61-3-332, MCA, is amended to read:

"61-3-332. Standard license plates. (1) In addition to special license plates, collegiate license plates, generic specialty license plates, and fleet license plates authorized under this chapter, a separate series of standard license plates must be issued for motor vehicles, quadricycles, travel trailers, trailers, semitrailers, and pole trailers registered in this state or offered for sale by a vehicle dealer licensed in this state. Standard license plates issued to licensed vehicle dealers must be readily distinguishable from license plates issued to vehicles owned by other persons.

(2) (a) Except as provided in 61-3-479 and subsections (2)(b), ~~(3)(c)~~ *(3)(b)*, and ~~(3)(d)~~ *(3)(c)* of this section, all standard license plates for motor vehicles, trailers, semitrailers, or pole trailers must ~~be issued for a minimum period of 4 years,~~ bear a distinctive marking, as determined by the department, and be furnished by the department. In years when standard license plates are not issued, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-562 and motor vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the motor vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered motor vehicle.

(3) ~~(a) Subject to the provisions of this section, the department shall create a new design for standard license plates as provided in this section, and it shall manufacture the newly designed standard license plates for issuance after December 31, 2005, to replace at renewal, as required in 61-3-312, standard license plates that were displayed on motor vehicles before that date.~~

~~(b)~~*(a)* Beginning January 1, ~~2006~~ *2010, and every 4 years after that date,* the department shall manufacture and issue new standard license plates ~~after the existing plates have been used for a minimum period of 4 years~~ *to replace previously issued standard license plates upon renewal.*

~~(c)~~*(b)* A motor vehicle that is registered for a 13-month to a 24-month period, as provided in 61-3-311 ~~and 61-3-321(2)~~, may display the license plate and plate design in effect at the time of registration for the entire registration period.

~~(d)~~*(c)* A light vehicle described in subsection (2)(b) or a motor home that is permanently registered may display the license plate and plate design in effect at the time of registration for the entire period that the light vehicle or motor home is permanently registered.

(4) For passenger motor vehicles and trucks, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on all license plates, and the word "Montana" must be placed on each license plate. All license plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers for standard license plates must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, generic specialty license plates, and fleet license plates, the distinctive registration number or letter-number combination assigned to the motor vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same

horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles, trailers, semitrailers, or pole trailers and motor vehicles, trailers, semitrailers, or pole trailers that are exempt from the registration fee as provided in 61-3-321, in addition to the markings provided in this section, standard license plates must bear the following distinctive markings:

(a) For motor vehicles, trailers, semitrailers, or pole trailers owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For motor vehicles, trailers, semitrailers, or pole trailers that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for motor vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the standard license plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles, trailers, semitrailers, or pole trailers of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these standard license plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the license plates requires it and a year number may not be displayed on the plates.

(7) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(8) *(a)* Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a ~~nonremovable~~ design ~~or decal designating the group or organization to which the applicant belongs~~ *that distinguishes each separate*

plate series. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of ~~regular~~ *standard* license plates, must be placed or mounted on a motor vehicle, trailer, semitrailer, or pole trailer owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the motor vehicle, trailer, semitrailer, or pole trailer, and must be removed upon sale or other disposition of the motor vehicle, trailer, semitrailer, or pole trailer.

(b) Beginning January 1, 2008, and every succeeding 4 years, the department shall manufacture and issue a new set of special license plates, bearing the same design and, if requested by the owner, the same plate number to replace, upon renewal of the registration of a motor vehicle under 61-3-314 and payment of the new plate fee provided for in 61-3-321, any special license plates issued prior to the prescribed date. This requirement applies to collegiate license plates authorized under 61-3-461 through 61-3-468, generic specialty license plates authorized under 61-3-472 through 61-3-481, and commemorative centennial license plates authorized under 61-3-448.

(9) (a) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(b) If the motor vehicle to which the license plate is attached is permanently registered, the owner of the motor vehicle shall provide, upon request of a person authorized to enforce special parking laws or ordinances in this or any state, evidence of continued eligibility to use the license plate in the form of a valid special parking permit issued to or renewed by the vehicle owner under 49-4-304 and 49-4-305.

(c) A person with a permanent condition, as provided in 49-4-301(2)(b), who has been issued a special license plate upon written application, as provided in this subsection (9), is not required to reapply upon reregistration of the motor vehicle.

(10) The provisions of this section do not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 29. Section 61-3-448, MCA, is amended to read:

"61-3-448. Commemorative centennial license plates — continued use ~~and replacement~~ authorized. ~~(1) A~~ *Subject to the limitation set forth in 61-3-332, a* person who ~~owns and displays~~ *owned and displayed* commemorative centennial license plates on a motor vehicle on or before June 30, 1996, may continue to display the commemorative centennial plates on the motor vehicle ~~after that date as long as the plates remain legible or as long as replacement plates are available from the department, whichever is later~~ *as long as the motor vehicle is registered under this chapter*.

~~(2) The department shall authorize the continued display of commemorative centennial license plates after June 30, 1996, as provided for in subsection (1), and shall replace commemorative centennial license plates for persons who owned and displayed the plates on or before June 30, 1996, as long as replacement stock owned by the department on October 1, 1993, remains available and usable.~~"

Section 30. Section 61-3-463, MCA, is amended to read:

"61-3-463. Collegiate license plates. (1) Subject to the provisions of ~~61-3-332(3)~~ *61-3-332(8)* and the requirement that collegiate license plates must have a white reflectorized background, the department shall design, cause to be manufactured, and issue collegiate license plates as provided in 61-3-464 through 61-3-466.

(2) After consultation with each institution, the department shall prescribe the color and insignia to be displayed on the collegiate license plates for each institution.

(3) In addition to each institution's distinctive color and insignia provided in subsection (2), each collegiate license plate must:

(a) be imprinted consecutively with distinctive numerals from 1 through 99999, capital letters A through Z, or a combination of numerals and letters; and

(b) bear a registration decal as provided in 61-3-332.

(4) The department shall determine the minimum and maximum number of characters, including both numerals and letters, on the collegiate license plates.

(5) An issue of collegiate license plates may not be ordered or manufactured for any individual institution unless at least 400 sets of plates are ordered and prepaid."

Section 31. Section 61-3-468, MCA, is amended to read:

"61-3-468. Collegiate license plates — continued use with institution's former name authorized — replacement. ~~(1)~~ A *Subject to the limitation set forth in 61-3-332, a* person who owns and displays on the person's motor vehicle, collegiate license plates that bear the name of an institution that has been renamed by its governing body or as part of the Montana university system reorganization may continue to display on the vehicle the license plate bearing the former name of the institution as long as the ~~plates remain legible or as long as replacement plates are available from the department, whichever is later~~ *motor vehicle is registered under this chapter*.

~~(2) The department may issue or replace a collegiate license plate bearing the former name of an institution, as defined in 61-3-462, as long as replacement stock owned by the department of corrections is available.~~"

Section 32. Section 61-3-503, MCA, is amended to read:

"61-3-503. Assessment — definition. (1) (a) Except as provided in 61-3-520, light vehicles subject to a local option motor vehicle tax under 61-3-537 must be assessed the tax as of the first day of the registration period, using the depreciated value of the manufacturer's suggested retail price as determined in subsection (2).

(b) ~~A lien for taxes and fees due on the motor vehicle occurs on the anniversary date of the registration and continues until the fees and taxes have been paid.~~ If the depreciated value is less than $500, the department shall value the motor vehicle at $500.

(2) (a) Except as provided in subsections (2)(c) and (2)(d), the depreciated value for the taxation of light vehicles is computed by multiplying the manufacturer's suggested retail price by a percentage multiplier based on the type and age of the light vehicle determined from the following table:

Age of Vehicle (in years)	Type of Vehicle Automobile	Truck	Van	Sport Utility
-1	100%	100%	100%	100%
0	90	96	93	98
1	80	91	86	94
2	69	86	78	90
3	58	80	69	84
4	49	73	60	76
5	41	66	52	67
6	33	57	45	57
7	26	49	38	48
8	21	43	32	39
9	17	37	27	33
10	14	31	22	29
11	12	26	18	25
12	10	22	15	22
13	09	18	13	21
14	09	15	11	19
15	09	13	09	17
16	09	12	09	15

(b) The age for the light vehicle is determined under 61-3-501.

(c) If the value of the light vehicle determined under subsection (2)(a) is $500 or less, the value of the light vehicle is $500 and the value must remain at that amount as long as the light vehicle is registered.

(d) The depreciated value of a light vehicle that is 17 years old or older is computed by depreciating the value obtained for the vehicle at 16 years old, as determined under subsection (2)(a), by 10% a year until a minimum value of $500 is attained. The value must remain at that amount as long as the light vehicle is registered.

(3) (a) For the purposes of this section, "manufacturer's suggested retail price" means the price suggested by the manufacturer for each given type, style, or model of light vehicle produced and first made available for retail sale by the manufacturer.

(b) The manufacturer's suggested retail price is based on standard equipment of a light vehicle and does not contain price additions or deductions for optional accessories.

(c) When a manufacturer's suggested retail price is unavailable for a motor vehicle, the department shall determine an alternative valuation for the motor vehicle."

Section 33. Section 61-3-562, MCA, is amended to read:

"61-3-562. Permanent registration — transfer of light vehicle ownership — rules. (1) (a) Except as provided in subsection (1)(b), the owner of a light vehicle 11 years old or older subject to the registration fee, as provided in 61-3-321(2), may permanently register the light vehicle upon payment of a

$87.50 registration fee, the applicable registration and license fees under 61-3-412, and an amount equal to five times ~~the applicable fees imposed for each of the following:~~

~~(i)~~ the local option motor vehicle tax or flat fee on vehicles under 61-3-537~~;~~ and,

~~(ii)~~ if applicable, *when personalized plates under 61-3-406 are being issued or renewed, either:*

(i) the original fee and four times the renewal fee for personalized plates; or

(ii) five times the renewal fees for personalized plates ~~under 61-3-406~~.

(b) The following series of license plates may not be used for purposes of permanent registration of a light vehicle:

(i) Montana national guard license plates issued under 61-3-458(2)(b);

(ii) reserve armed forces license plates issued under 61-3-458(2)(c);

(iii) amateur radio operator license plates issued under 61-3-422;

(iv) collegiate license plates issued under 61-3-465; and

(v) generic specialty license plates issued under 61-3-479.

(2) In addition to the fees described in subsection (1), an owner of a truck with a manufacturer's rated capacity of 1 ton or less that is permanently registered shall pay five times the applicable fees imposed under 61-10-201.

(3) The owner of a motor vehicle that is permanently registered under this section is not subject to additional registration fees or to other motor vehicle registration fees described in this section for as long as the owner owns the vehicle.

(4) The county treasurer shall once each month remit to the state the amounts collected under this section, other than the local option motor vehicle tax or flat fee, for the purposes of 61-3-321(2) and 61-10-201. The county treasurer shall retain the local option motor vehicle tax or flat fee.

(5) (a) The permanent registration of a light vehicle allowed by this section may not be transferred to a new owner. If the light vehicle is transferred to a new owner, the department shall cancel the light vehicle's permanent registration.

(b) Upon transfer of a light vehicle registered under this section to a new owner, the new owner shall apply for a certificate of title under 61-3-201 and 61-3-216 and register the light vehicle under 61-3-303."

Section 34. Section 61-4-101, MCA, is amended to read:

"61-4-101. ~~Dealer's license — types~~ *Types* of licenses and terms — ~~plates~~ *common application* — bonds — zoning. (1) Except as provided in *61-4-120 and* 61-4-125, a person may not engage in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker of a ~~new~~ motor vehicle*,* ~~or used motor vehicle, new or used recreational vehicle, motor home,~~ trailer ~~(except a trailer having an unloaded weight of less than 500 pounds)~~, travel trailer, semitrailer, pole trailer, motorcycle, quadricycle, *motorboat, personal watercraft, snowmobile, off-highway vehicle,* or special mobile equipment that is not registered in the person's name unless the person is the holder of a ~~dealer's~~ license issued by the department under this part.

(2) (a) *(i)* The department ~~is authorized to~~ *may* issue a *new* dealer's license*, a used dealer's license, a broker's license, an auto auction license, or a wholesaler license* ~~for one or more specified vehicle types~~ to any person it determines is

qualified to hold ~~a~~ *the* license under the provisions of this section. ~~A dealer's license may be issued for and restricted to one or more of the following vehicle types:~~

~~(i) new motor vehicles, including new trucks, buses, and light vehicles covered under the franchise the dealer holds as franchisee and used trucks, buses, recreational vehicles, light vehicles, and trailers;~~

~~(ii) used motor vehicles, including used trucks, buses, and light vehicles;~~

~~(iii) new recreational vehicles, including new motor homes and travel trailers covered under the franchise the dealer holds as franchisee and used motor homes and travel trailers;~~

~~(iv) used recreational vehicles, including used motor homes and travel trailers;~~

~~(v) trailers, including semitrailers and pole trailers, but excluding travel trailers;~~

~~(vi) special mobile equipment; or~~

~~(vii) motorcycles or quadricycles, including new or used motorcycles or quadricycles, but excluding new off-highway vehicles unless the dealer is licensed under Title 23.~~

~~(b) The department shall design and issue dealer and demonstrator plates as provided in 61-4-102 and 61-4-129.~~

~~(c) A dealer licensed for a particular type of vehicle may sell, trade, or accept on consignment only vehicles of the type for which the license is authorized under subsection (2)(a).~~

(ii) A new dealer's license authorizes the holder to sell:

(A) any new motor vehicle, new power sports vehicle, or new trailer that is covered under a franchise agreement between the holder and the manufacturer, importer, or distributor of the line of vehicle or trailer offered for sale; and

(B) any used motor vehicle, used power sports vehicle, or used trailer.

(iii) A used dealer license authorizes the holder to sell any used motor vehicle, used power sports vehicle, or used trailer.

(iv) A broker's license authorizes the holder to negotiate the purchase, sale, or exchange of a motor vehicle, power sports vehicle, or trailer from a dealer or another person upon behalf of a client, when the broker does not store, display, or take ownership of the motor vehicle, power sports vehicle, or trailer being purchased, sold, or exchanged.

(v) Except as provided in 61-4-120, an auto auction license authorizes the holder to take possession of a used vehicle owned by another person through consignment, bailment, or any other arrangement and to sell to the highest bidder when all bidders are licensed vehicle dealers, wholesalers, or wrecking facilities.

(vi) A wholesaler license authorizes the holder to sell used vehicles to a new or used vehicle dealer, an auto auction, or another wholesaler.

~~(d)~~*(3)* Subject to the provisions of *61-4-120,* 61-4-124, *and 61-4-125,* a ~~dealer's~~ license issued by the department is valid until:

~~(i)~~*(a)* voluntarily returned to the department for surrender and cancellation upon the cessation of the ~~dealer's~~ *licensee's* business operations; or

~~(ii)~~*(b)* suspended or revoked for a violation of this chapter or any other laws relating to the sale of motor vehicles*, power sports vehicles, or trailers*.

~~(3)~~*(4)* (a) An applicant for a *new* dealer's license*, a used dealer's license, a broker's license, an auto auction license, or a wholesaler license* shall submit a written application ~~for a dealer's license~~ to the department~~, specifying the type or types of dealer's license sought~~. The application must be signed by the applicant and contain a verification by the applicant, under penalty of law, that the information contained in the application is true and correct. Any information provided in the license application process is subject to independent verification by the department or an authorized representative of the department.

(b) After examining a license application and conducting an investigation necessary to verify the information contained in the application and if the department is satisfied that the applicant qualifies for the issuance of a license under the provisions of this chapter, the department may issue the license. The department may refuse, after examination and investigation, to issue a license to an applicant who is not qualified for licensure or whose prior financial or other activities or criminal record, as determined by the department:

(i) poses a threat to the effective regulation of dealers, wholesalers, or auto auctions;

(ii) poses a threat to the public interest of the state; or

(iii) creates a danger of illegal or deceptive practices being used in the conduct of the proposed dealership, wholesaler, or auto auction.

~~(4)~~*(5)* To be qualified for licensure ~~as a dealer~~, an applicant shall provide to the department the following *information*:

(a) the name under which the applicant intends to conduct business and the *applicant's* name, *the street* address *and, if different, mailing address for the business*, ~~date of birth,~~ and *customer identification number;*

(b) the name, date of birth, and social security number of any person who*:*

(i) possesses or will possess an ownership interest in the business for which the license is sought*;*

(ii) is a corporate officer or the managing member of a business entity applying for the license; or

(iii) is or will be. ~~If the applicant is a corporation, the personal information required in this subsection (4)(a) must be provided for each corporate officer and the person~~ designated by the ~~corporation~~ *applicant* to manage or oversee the ~~dealership~~ *applicant's business.;*

~~(b)~~*(c)* for each person subject to the provisions of subsection ~~(4)(a)~~ *(5)(b)*, information concerning whether the person has:

(i) an ownership interest in a vehicle dealership*, auto auction,* or a wholesaler business in Montana or ~~another jurisdiction~~ *any other state* and, if so, the name and address of each dealership*, auto auction,* or wholesaler; and

(ii) been found guilty of, or pleaded guilty to, a felony in this or any other jurisdiction and, if so, shall provide a summary of the conduct resulting in the felony charge, including the dates of the conduct and any court proceedings pertaining to the conduct and the name and address of any court in which the matter was heard;

~~(c)~~*(d)* the name, address, and telephone number of the insurance carrier from whom the applicant has acquired general liability insurance, naming the department as a certificate holder of the policy, and the name, address, and telephone number of the local insurance agent for the carrier and the applicant's policy number. The insurance must cover any *motor* vehicle bearing dealer or demonstrator license plates *and any motorboat, snowmobile, or off-highway vehicle displaying a dealer's identification card* that is offered for demonstration or loan to a customer or otherwise operated by a customer in the regular course of the applicant's business and must be for a minimum of 1 year;

~~(d)~~*(e)* the geographic location of the physical lot or lots upon which vehicles will be displayed for sale*, if applicable,* and of a permanent nonresidential building that will be maintained to store the actual physical or electronic records resulting from the purchase, sale, trade, or consignment of vehicles for which licensure is sought. An applicant may use more than one location to display vehicles for sale if the maximum distance between each display lot does not exceed 200 feet and if the distance between a display lot and the building in which vehicle sales records are stored does not exceed 1,000 feet.

~~(e)~~*(f)* for each geographic location specified in the application, evidence of the applicant's compliance with applicable local land use planning, zoning, and business permitting requirements, if any. Evidence of compliance may be documented by means of a written verification of compliance signed by the authorized representative of the local land use planning or zoning board or the local business-permitting agency.

~~(f)~~*(g)* a diagram or plat showing the geographic location, lot dimensions*, if applicable*, and building and sign placement for the applicant's proposed established place of business, along with two or more photographs of the geographic location, building premises, and sign, as prescribed by the department;

~~(g) a certification by the applicant that the applicant is a bona fide dealer in new motor vehicles, used motor vehicles, new recreational vehicles, used recreational vehicles, motor homes, travel trailers, trailers, semitrailers, pole trailers, motorcycles, quadricycles, or special mobile equipment;~~

(h) if the applicant is seeking a new motor vehicle dealer's license:

(i) the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle*, power sports vehicle, or trailer* franchise or sales agreement*, the term of the agreement,* and the name and make of all motor vehicles*, power sports vehicles, or trailers* to be handled by the applicant;

(ii) the geographic location or locations, specified in writing, upon which the applicant will provide and maintain a permanent building to display and sell new motor vehicles*, power sports vehicles, or trailers* and offer and maintain a bona fide service department for the repair, service, and maintenance of the motor vehicles*, power sports vehicles, or trailers*; and

(iii) verification that the applicant otherwise meets the requirements of part 2 of this chapter~~; and~~

~~(i) if the applicant is applying for a new recreational vehicle dealer's license, new travel trailer dealer's license, or new motor home dealer's license, certification that the person is recognized by a manufacturer, importer, or distributor as a dealer in new recreational vehicles, new motor homes, or new travel trailers~~.

~~(5)~~*(6)* If an applicant ~~for a new motor vehicle or used motor vehicle, new or used recreational vehicle, new or used motor home, new or used travel trailer, or trailer dealer's license~~ wants to maintain more than one established place of business, the applicant shall file a separate license application for each proposed place of business and otherwise qualify for licensure at each place separately.

~~(6)~~*(7)* Each application under this section must be accompanied by ~~an application fee of $5 and one or more of~~ the following ~~license~~ fees ~~based on the type of dealer's license being sought~~:

(a) ~~$25~~ for a new *or used* ~~motor vehicle~~ dealer's license*, a broker's license, or a wholesaler's license, $30*; *and*

(b) ~~$25 for a used motor vehicle dealer's license;~~

~~(c) $25 for a new or used recreational vehicle, motor home, or travel trailer dealer's license; or~~

~~(d) $25 for a motorcycle or trailer, semitrailer, or pole trailer dealer's license~~ *for an auto auction license, the fee provided for in 61-4-120.*

~~(7)~~*(8) (a)* ~~The~~ *Except as provided in subsection (8)(b), an* applicant for a dealer's license*, broker's license, wholesaler's license, or auto auction license* shall also file with the application a bond of $50,000 ~~for a license as a new motor vehicle dealer, a used motor vehicle dealer, a new or used recreational vehicle, motor home, or travel trailer dealer, or a trailer dealer. Applicants for a motorcycle dealer's license shall file a bond in the sum of $15,000~~.

(b) An applicant whose business will be restricted to the sale of motorcycles or quadricycles shall file a bond of $15,000. An applicant whose business will be restricted to the sale of motorboats, personal watercraft, snowmobiles, or off-highway vehicles, other than motorcycles originally equipped for use on the highway, shall file a bond of $5,000.

(c) All bonds must be conditioned that the applicant shall conduct the business in accordance with the requirements of the law. ~~The bond may extend to any other type of dealer license issued to the applicant at the same geographic location if all types of licenses are indicated on the face of the bond.~~ All bonds must be approved by the department, must be filed in its office, and must be renewed annually."

Section 35. Section 61-4-102, MCA, is amended to read:

"61-4-102. ~~Dealer's license numbers — assignment, numbering, and limitation of dealer~~ *Dealer* plates — restriction of use — fees. (1) ~~Upon the licensing of a dealer~~ *Except as provided in subsection (2)*, the department shall ~~assign to the dealer a distinctive serial license number as a dealer and~~ furnish ~~the~~ *a* dealer *licensed under this part* with one or more sets of numbered dealer plates in accordance with the provisions of this section.

(2) ~~(a) Dealer plates designed by the department must be similar to the standard license plates furnished to owners of motor vehicles under 61-3-332, but they must bear:~~

~~(i) the license number assigned to the dealer;~~

~~(ii) an abbreviation for the vehicle type of the dealer's license issued, as follows:~~

~~(A) the letter "D" for a new motor vehicle dealer;~~

~~(B) the letters "UD" for a used motor vehicle dealer; or~~

~~(C) the letters "RV" for a new or used recreational vehicle, motor home, or travel trailer dealer; and~~

~~(iii) the actual number of sets of dealer plates issued to the dealer.~~

~~(b)~~ Dealer plates may not be issued to a ~~motorcycle or trailer dealer or a wholesaler~~ *new or used dealer whose business is restricted to the sale of motorcycles, power sports vehicles, or trailers*.

~~(3) Dealer plates must contain the prefix of the county in which the dealer's established place of business is located, followed by the dealer's license type abbreviation, the dealer's license number, and the number of sets of dealer plates issued to that dealer. For example, new motor vehicle dealer number 4 in Lewis and Clark County would be numbered 5D-4, and if the dealer were issued three sets of dealer plates, they would be numbered consecutively as follows, 5D-4-1, 5D-4-2, and 5D-4-3.~~

~~(4)~~*(3)* (a) In addition to the fees required under the provisions of 61-4-101 and 61-4-124, an applicant for a dealer's license shall pay an annual fee of $25 for each set of numbered dealer plates requested and issued.

(b) The number of dealer plates that may be issued to a dealer must be determined as follows:

(i) a dealer is entitled to one set of dealer plates upon the issuance of an original license or a renewed license;

(ii) an applicant qualified for a license renewal is entitled to additional sets of numbered plates based on the following formula:

(A) 5% of the first 100 motor vehicle sales for the previous year; plus

(B) 3% of the next 100 motor vehicle sales for the previous year; plus

(C) 2% of motor vehicle sales in excess of 200 for the previous year; and

(iii) a dealer is entitled to additional sets of dealer plates during a license term as the dealer's sales incrementally meet or exceed the requirements of the formula established in subsection ~~(4)(b)(ii)~~ *(3)(b)(ii)*. However, the aggregate number of sets of dealer plates issued to a dealer under this subsection ~~(4)(b)(iii)~~ *(3)(b)(iii)* may not exceed the combined number allowed under subsections ~~(4)(b)(i)~~ *(3)(b)(i)* and ~~(4)(b)(ii)~~ *(3)(b)(ii)*.

~~(5)~~*(4)* (a) A dealer is authorized to use and display dealer plates on a motor vehicle*, except a motorcycle,* held for bona fide sale by the dealer and that is operated by or under the control of the dealer, the dealer's spouse, officers, or employees.

(b) For purposes of this subsection ~~(5)~~ *(4)*:

(i) the term "officers" includes only the persons listed on the manufacturer's franchise agreement or the importer's distribution agreement and the term "employees" means persons upon whom the dealer has paid social security taxes as a full-time employee; and

(ii) the display of a Monroney label or a buyer's guide label, as required by 61-4-123(2), on a motor vehicle bearing dealer plates is prima facie evidence that the motor vehicle is offered for bona fide sale by the dealer.

~~(6)~~*(5)* Dealer plates may not be used or displayed on motor vehicles used for hire, lease, or rental.

~~(7)~~*(6)* (a) A dealer is accountable for each set of numbered dealer plates issued and, except as provided in subsection ~~(7)(b)~~ *(6)(b)*, shall file an annual

report with the department certifying the disposition of each set of dealer plates assigned to the dealer and specifying the name, address, and occupation of the person primarily using each set of plates.

(b) Upon reassignment of one or more sets of dealer plates to another person, within 15 days of the reassignment, the dealer shall notify the department, in a manner prescribed by the department, of the name, address, and occupation of the person to whom the plates were assigned.

~~(8) (a) All numbered dealer plates expire on December 31 of the year of issue and must be renewed annually.~~

~~(b) A dealer who files the annual report required under 61-4-124 on or before December 31 of the calendar year may display or use dealer plates assigned and registered for the prior calendar year through the last day of February of the following year, as provided in 61-4-124(5).~~"

Section 36. Section 61-4-104, MCA, is amended to read:

"61-4-104. Record of purchase or sale. (1) (a) A dealer*,* ~~or~~ wholesaler*, or auto auction* licensed under ~~61-4-101~~ *this part* shall keep a book or record of the purchases, sales or exchanges, or receipts for the purpose of sale of used vehicles and a description of the vehicles, together with the date of purchase, sale, or consignment and the name and address of:

(i) the person from whom the dealer or wholesaler acquired the vehicle's ownership or, if consigned, possessory interest in the vehicle;

(ii) the person to whom the dealer*,* ~~or~~ wholesaler*, or auto auction* assigned the vehicle; and

(iii) a secured party with a perfected security interest in the vehicle to which the ~~dealer~~ *dealer's,* ~~or~~ wholesaler's*, or auto auction's* interest is subordinate, if any.

(b) The vehicle description must also include the vehicle identification number and engine number, if any, and must include a statement that a number has been obliterated, defaced, or changed if that has occurred. In the case of a trailer, semitrailer, pole trailer, or special mobile equipment, the record must include the manufacturer's number and other numbers or identification marks that appear on the trailer, semitrailer, pole trailer, or special mobile equipment.

(2) The dealer*,* ~~or~~ wholesaler*, or auto auction* must also have an assigned certificate of ownership or certificate of title from the owner of the motor vehicle*, power sports vehicle, or trailer* to the dealer*,* ~~or~~ wholesaler*, or auto auction* from the time the motor vehicle is delivered to the dealer*,* ~~or~~ wholesaler*, or auto auction* until it has been disposed of by the dealer*,* ~~or~~ wholesaler*, or auto auction*. It is a violation of this part for a dealer*,* ~~or~~ wholesaler*, or auto auction* to fail to take assignment of all certificates of ownership, certificates of title, or manufacturer's certificates of origin for motor vehicles acquired by the licensee or to fail to assign the certificate of ownership, certificate of title, or manufacturer's certificate of origin for motor vehicles sold.

(3) All records required to be kept in accordance with this section, in addition to the required retention of odometer disclosure information under 61-3-206(4), must be physically located and maintained within the building referred to in 61-4-101. An authorized representative of the department, upon presentation of the representative's credentials, may inspect and have access to and copy any records required under this chapter."

Section 37. Section 61-4-105, MCA, is amended to read:

"61-4-105. Criminal penalty — civil penalty imposed by agency. (1) Except as provided in 61-4-143, a person violating the provisions of this part is guilty of a misdemeanor and subject to a fine in an amount of not less than $250 and not more than $500. For the purposes of this section, every sale of a ~~motor~~ vehicle in violation of the provisions of this part is a separate offense.

(2) In addition to all other penalties created by this part, the department is authorized to take appropriate enforcement action on its own initiative. Except as provided in 61-4-143, a person violating the provisions of this part may be subject to administrative action, in accordance with the contested case procedures of Title 2, chapter 4, as follows:

(a) a civil penalty not to exceed $1,000 for each violation;

(b) suspension of the ~~motor vehicle~~ dealer, *broker,* wholesaler, or auto auction license not to exceed 7 days;

(c) revocation of the ~~motor vehicle~~ dealer, *broker,* wholesaler, or auto auction license; or

(d) any combination of subsections (2)(a) through (2)(c)."

Section 38. Section 61-4-109, MCA, is amended to read:

"61-4-109. Privileges incident to license — withdrawal upon certain conditions. (1) The privileges of a dealer licensed under the provisions of this part to use and display a set of dealer plates or a demonstrator plate on a motor vehicle *or trailer* held for sale by the dealer*, to use and display an identification card on a power sports vehicle held for sale,* and to issue a ~~20-day~~ *temporary registration* permit, under the authority of 61-4-111 or 61-4-112, upon the sale of a motor vehicle*, a power sports vehicle, or a trailer* by the dealer are specifically conditioned on the dealer's satisfaction of the bond requirements of 61-4-101~~(7)~~ and the general liability insurance coverage requirements of 61-4-123, without interruption or lapse.

(2) If the department is notified or determines that a dealer's bond or general liability insurance has lapsed or been canceled, all dealer plates, demonstrator plates, and ~~20-day permits assigned or~~ *identification cards* issued to the dealer *are subject to immediate confiscation and the dealer's authority, as an authorized agent, to issue temporary registration permits* ~~are~~ *is* subject to immediate withdrawal ~~and confiscation~~, upon demand, by the department or by a compliance specialist on behalf of the department. *The dealer plates, demonstrator plates, and identification cards* ~~and~~ may not be returned to the dealer until the bond and general liability insurance requirements have been satisfied.

(3) A dealer whose privileges are withdrawn under this section may otherwise engage in the dealer's business operations during the period of withdrawal.

(4) If the lapse of bond or general liability insurance is not corrected with 30 days, the department may initiate administrative action to suspend or revoke the dealer's license under 61-4-105(2)."

Section 39. Section 61-4-111, MCA, is amended to read:

"61-4-111. Used ~~motor~~ vehicles — transfer to and from dealers. (1) Except as provided in 61-4-124(6), a ~~licensed~~ dealer~~, broker,~~ or wholesaler who intends to resell a used motor vehicle*, power sports vehicle, or trailer* and who operates the *motor* vehicle*, power sports vehicle, or trailer* only for demonstration purposes:

(a) is exempt from registration under *23-2-515, 23-2-616, 23-2-804, or* 61-3-302(3) when applying for a certificate of title; and

(b) may transfer or receive ownership of a motor vehicle*, power sports vehicle, or trailer* by use of a dealer reassignment section on a certificate of title. However, when the allotted number of dealer reassignment sections on a certificate of title has been completed, ownership of the *motor* vehicle*, power sports vehicle, or trailer* may not be transferred until an application for a certificate of title has been submitted by the dealer to the department and a new certificate of title has been issued.

(2) Upon the transfer of a used motor vehicle*, power sports vehicle,* or trailer to a person other than a ~~licensed~~ dealer~~, broker,~~ or wholesaler, a temporary registration permit may be issued under 61-3-224 to the person to whom the used motor vehicle*, power sports vehicle,* or trailer was transferred if the dealer is an authorized agent, as defined in 61-1-101. In addition, the following acts are required of the dealer on or before the times set forth in this subsection:

(a) Within 30 calendar days following the date of delivery of the motor vehicle*, power sports vehicle,* or trailer, the dealer shall forward to the county treasurer of the county where the *owner of the motor* vehicle*, power sports vehicle, or trailer* is domiciled:

(i) the assigned certificate of title or, if a certificate of title for the motor vehicle*, power sports vehicle,* or trailer has not been issued in this state, a copy of the then-current registration receipt or certificate in the dealer's possession; and

(ii) an application for a certificate of title executed by the new owner in accordance with the provisions of 61-3-216 and 61-3-220.

(b) Transmission of the documents by the dealer to the county treasurer may be accomplished either by personal delivery, by first-class mail, or by electronic means, as authorized by the department.

(c) If the dealer is unable to forward the certificate of title or, if applicable, registration receipt within the time set forth in subsection (2)(a) because the certificate of title is lost, is in the possession of third parties, or is in the process of reissuance in this state or elsewhere, the dealer shall comply in all other respects with the provisions of subsection (2)(a) and shall forward the missing document or documents to the county treasurer, either personally or by first-class mail, within 3 days after receipt.

(3) Upon compliance by the dealer with the requirements in this section, title to the motor vehicle*, power sports vehicle,* or trailer is considered to have passed to the purchaser as of the date of the delivery of the motor vehicle*, power sports vehicle,* or trailer to the purchaser by the dealer, and the dealer has no further liability or responsibility with respect to the processing of registration.

~~(4) Upon receipt from the county treasurer of the documents required under subsection (2), the department shall:~~

~~(a) update the electronic record of the title maintained by the department under 61-3-101; or~~

~~(b) issue a certificate of title if requested under 61-3-216(2)(f); and~~

~~(c) comply with the applicable provisions of Title 61, chapter 3, parts 1 through 3.~~"

Section 40. Section 61-4-112, MCA, is amended to read:

"61-4-112. New motor vehicles — transfers by dealers. (1) ~~(a)~~ When a ~~motor vehicle~~ dealer transfers a new motor vehicle*, power sports vehicle, or trailer* to a purchaser or other recipient, the dealer shall, within 30 calendar days following the date of delivery of the new motor vehicle, *power sports vehicle, or trailer* forward to the county treasurer of the county where the *owner of the* motor vehicle*, power sports vehicle, or trailer* is domiciled:

~~(i)~~*(a)* an application for a certificate of title with a notice of security interest, if any, executed by the purchaser or recipient; and

~~(ii)~~*(b)* a manufacturer's certificate of origin that shows that the motor vehicle*, power sports vehicle, or trailer* has not previously been registered or owned, except as otherwise provided in this section, by any person other than a ~~new motor vehicle~~ dealer holding a franchise or distribution agreement from ~~a new car~~ *the* manufacturer, distributor, or importer *of the new motor vehicle, power sports vehicle, or trailer*.

~~(b)~~*(2)* If the dealer is an authorized agent, as defined in 61-1-101, a temporary registration permit may be issued under 61-3-224 to the person to whom the new motor vehicle*, power sports vehicle, or trailer* was transferred.

~~(2) Upon receipt from the county treasurer of the documents required under subsection (1), the department shall issue a certificate of title if requested under 61-3-216(2)(f) and otherwise comply with the provisions of Title 61, chapter 3, parts 1 through 3, as applicable.~~"

Section 41. Section 61-4-120, MCA, is amended to read:

"61-4-120. ~~Application for auto~~ *Auto* auction ~~license — general regulations~~ *restrictions — annual report — issuance, use, and fees for demonstrator plates.* (1) *(a) An auto auction may not sell used motor vehicles by retail sale.* ~~A person that takes possession of a motor vehicle owned by another person through consignment, bailment, or any other arrangement for the purpose of selling the motor vehicle to the highest bidder when all buyers are licensed motor vehicle dealers, wholesalers, or wrecking facilities shall file by mail or otherwise in the office of the department a verified application for licensure as an auto auction. The application must be made in the following manner:~~

~~(a) Each application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose. The application must provide the following information:~~

~~(i) the name in which the business is to be conducted and the location of premises, including street address, city, county, and state, where records are kept, sales are made, and motor vehicle stock is displayed as an established place of business that displays a sign indicating the firm name and that motor vehicles are offered for sale. The letters on the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.~~

~~(ii) the name and address of all owners or persons having an interest in the business. In the case of a corporation, the names and addresses of the president and secretary are sufficient.~~

~~(iii) a statement that the applicant is authorized to auction used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, and quadricycles under one license.~~

(b) ~~A licensed~~ *An* auto auction *licensed under this part* may ~~not~~ auction a new motor vehicle ~~except when~~ *only if the auto auction is* authorized by a new motor vehicle manufacturer, importer, distributor, or representative, for the purpose of conducting a closed-factory fleet sale to dispose of new motor vehicles by the franchisor (manufacturer, distributor, or importer) to franchisee purchasers when the purchasers are licensed new motor vehicle dealers purchasing new motor vehicle line-makes authorized by their respective franchise, sales, or distributor agreements. An auto auction licensed under the provisions of this section shall notify and update the department with current fleet sale agreements between the auto auction and franchisor. An auto auction may not conduct a factory fleet sale unless authorized or appointed by a franchisor licensed under part 2 of this chapter.

~~(b) Each application must be accompanied by a bond of $50,000 and must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.~~

(2) ~~An auto auction's license must be renewed and paid for annually to the department, and an application for relicensure must be filed by January 1 of each year.~~ *On or before December 31 of each year, an auto auction shall submit an annual report, in a form or manner prescribed by the department, to the department to advise the department of any changes that may have occurred in that calendar year affecting the information originally filed under 61-4-101. The report must contain information concerning owner identity, other ownership interests, felony conduct, general liability insurance status, surety bond filings, and any other relevant information requested by the department.* The fee required for each first-time applicant is $500, and ~~for subsequent renewal applications is~~ *when the annual report is filed in subsequent years, it must be accompanied by a filing fee of* $100 ~~each year~~. ~~Upon receipt of a properly completed application, fee, and bond, the department shall issue the auto auction license and assign an auto auction license number for each applicant in a manner determined by the department. Auto auctions dealing in motor vehicles may sell only to licensed dealers and wholesalers.~~

(3) ~~Auto auctions that are licensed under this section and that hold a current license number~~ *An auto auction that is an authorized agent* may issue *a* ~~temporary registration permits, which may be displayed and used by a buyer to operate an unregistered motor vehicle purchased from the auto auction. The~~ temporary registration permit *to a person who buys a motor vehicle, power sports vehicle, or trailer at the auction, pursuant to 61-3-224. Within 30 days following the date of delivery of the motor vehicle, power sports vehicle, or trailer, the auto auction shall provide the purchaser with the assigned certificate of title or, if a certificate of title for the motor vehicle, power sports vehicle, or trailer has not been issued in this state, a copy of the then-current registration receipt or the certificate and any related documents for each motor vehicle, power sports vehicle, or trailer.* ~~is valid for a period of 72 hours from the time of purchase and may be used only for the purpose of driving or transporting a motor vehicle from the auction premises to the purchaser's established place of business or point of destination. Temporary registration permits must be on a form prescribed by the department and must contain the name, address, and license number of the purchaser, the date of sale, the name, address, license number, and authorized signature of the auto auction, and a description of the motor vehicle, including its serial number. The department shall collect a fee of $10 from the auto auction~~

~~for each temporary registration permit, and the auto auction may charge a motor vehicle purchaser no more than $10 for the issuance of each temporary registration permit to offset the cost of the temporary registration permit.~~ It is unlawful for the auto auction to issue more than one temporary registration permit for each motor vehicle*, power sports vehicle, or trailer* sale.

(4) *(a)* ~~A licensed auto auction may apply for and may be authorized by the department to purchase and use license plates of a type and amount approved by the department, upon payment of a fee to the department to offset the cost of production. Licensed auto auctions may use the license plates~~ *Upon the issuance of an auto auction license and payment of a $5 fee for each plate, the department shall furnish to the auto auction one or more demonstrator plates that may be used* to transport inventory motor vehicles to and from a point of storage or a point of delivery in this state and to and from the auto auction's place of business, for road testing authorized motor vehicles, or for moving motor vehicles for purposes of repairing, painting, upholstering, polishing, and related activities. One license plate is required to be conspicuously displayed on the rear of the motor vehicle.

(b) Auto auctions may appoint designated persons, service stations, or repair garages to use the license plate only when conducting work for the auto auction involving repairing, painting, upholstering, polishing, or performing similar types of work upon a motor vehicle.

(c) ~~Upon application for an auto auction license, the applicant, if requesting the~~ *When applying for* license plates, *an auto auction* shall submit a sworn affidavit on a form prescribed by the department, listing each authorized person designated by the auction to use the license plates. The auto auction is responsible for reporting any changes to the affidavit within 72 hours after the ~~amendment~~ *change* has occurred.

(d) An auto auction licensed under the provisions of this section is liable for the proper use of the license plates, which may not be used for private purposes. The department may revoke an auto auction's ~~72-hour~~ temporary registration permit and license plate privileges if an *auto* auction issues, authorizes the use of, or uses a temporary registration permit or ~~the~~ *an auto auction* license plate in violation of the provisions of this section.

(5) (a) ~~Each auto auction shall keep a book or record, in a form and manner subject to approval by the department, of the purchases, sales, or exchanges or the receipts for the purpose of sale of any motor vehicle, a properly completed copy of a temporary registration permit issued to a motor vehicle purchaser, the date of title transfer, and a description of the motor vehicle, together with the name and address of the seller, the purchaser, and the alleged owner or other person from whom the motor vehicle was purchased or received or to whom it was sold or delivered. The description in the case of a motor vehicle must include:~~

~~(i) the vehicle identification number and engine number, if any; and~~

~~(ii) a statement that a number has been obliterated, defaced, or changed, if it has.~~

~~(b)~~ An auto auction licensed under this section shall validate the sale of a motor vehicle*, a power sports vehicle, or a trailer* through its auction by stamping its name and license number upon the certificate of title at a location on the certificate of title, at the margin in the assignment section as executed between the transferor and transferee. An auto auction's stamp must be legible

and may not interfere with the information recorded on the certificate of title between the transferor and transferee. If the certificate of title lacks adequate space for the auto auction to place its stamp, the auction may provide the transferee a copy of the auction invoice bearing the:

(i) name and license number of the auction, along with an indication of the ~~motor vehicle~~ year, make, model, and identification number *of the motor vehicle, power sports vehicle, or trailer*;

(ii) name, address, and signature of the transferor;

(iii) name, license number, and signature of the transferee; and

(iv) date the motor vehicle was sold through the auction.

~~(c)~~*(b)* The invoice must be attached to the certificate of title and must be presented to the department with any application for title.

~~(d) An auto auction shall retain, for 5 years, odometer disclosure information, including the name of the owner on the date the auto auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number, and the odometer reading on the date the auto auction took possession of the motor vehicle. The odometer information may be retained in any way that is systematically retrievable and is not required to be maintained on any special disclosure form. The information may be part of the auction receipt or invoice or be maintained as a portion of a computer database or manual file. An auto auction that executes a transfer of ownership as an agent on behalf of a seller or buyer is liable for providing an odometer disclosure statement for the seller or an odometer disclosure acknowledgment for the buyer under the provisions of 61-3-206.~~"

Section 42. Section 61-4-122, MCA, is amended to read:

"61-4-122. Compliance specialists as peace officers. (1) The department may designate and train civilian employees as compliance specialists within the motor vehicle division. Each compliance specialist is a peace officer whose jurisdiction is limited to enforcement of violations of Title 61, chapter 3, parts 1, 2, 3, 4, and 6, and chapter 4.

(2) As a peace officer, a trained compliance specialist may:

(a) issue citations and make arrests;

(b) issue summonses;

(c) accept bail;

(d) serve warrants of arrest;

(e) make reasonable inspections of ~~a dealer's~~ *the* established place of business and*, if applicable,* ~~motor~~ vehicle inventory *of a dealer, a broker, a wholesaler, or an auto auction*; and

(f) require production of documents relating to the sale, purchase, exchange, or consignment of any motor vehicle*, power sports vehicle, or trailer* currently or previously in ~~a dealer's~~ *the* inventory *of,* or displayed for sale by*,* ~~the~~ *a* dealer*, a broker, a wholesaler, or an auto auction* or relating to any obligation imposed on a dealer*, broker, wholesaler, or auto auction* under this title.

~~(3) For purposes of this section, the term "dealer" includes a dealer of any motor vehicle type, a wholesaler, or an auto auction, any of which is subject to licensure by the department under this chapter.~~"

Section 43. Section 61-4-123, MCA, is amended to read:

"61-4-123. Dealer requirements and restrictions. (1) A *used* dealer may not ~~offer for sale, trade, or consignment any motor vehicle type not authorized by the license issued to the dealer by the department or use a dealer or demonstrator plate on a motor vehicle of a type for which the dealer is not licensed~~ *sell a new motor vehicle, a new power sports vehicle, or a new trailer*.

(2) A dealer may not display at the dealer's established place of business or any approved off-premises sale location a motor vehicle offered for sale, trade, or consignment unless the Monroney label required for new motor vehicles pursuant to 15 U.S.C. 1232 or the buyer's guide label required for used motor vehicles pursuant to 16 CFR, part 455, is affixed to the side window of the motor vehicle or is conspicuously displayed within the motor vehicle in a fashion that is readily readable by a customer.

(3) Except as provided in subsection (4), a dealer may not sell or display a motor vehicle*, power sports vehicle, or trailer* offered for sale at any geographic location other than that of the dealer's established place of business as listed on the dealer's license.

(4) (a) ~~A~~ *Upon prior notice to the department, a* dealer may conduct an off-premises display and sale at a geographic location other than that of the dealer's established place of business as listed on the dealer's license if the dealer ~~notifies the department 10 days in advance, on a form prescribed by the department, of the opening date and location of an off-premises display and sale and~~ obtains a permit from the department. The department may require proof from the dealer that the location proposed for the off-premises display and sale is in compliance with local zoning ordinances. ~~Except for recreational vehicle, motor home, or travel trailer dealers, an~~ *An* off-premises display and sale must be conducted within the county of the dealer's licensed location *unless the off-premises display and sale are restricted to recreational vehicles or power sports vehicles*. The display and sale may not exceed 10 consecutive days, and a licensed dealer may not conduct more than 10 off-premises displays and sales during any 1 calendar year.

(b) A dealer may display one or more motor vehicles*, power sports vehicles, or trailers* inside an airport terminal or shopping mall without obtaining an off-premises display and sale permit if no actual sales are made, or could be made, at the terminal or mall.

(c) Upon prior written notice to the department, a dealer may display one motor vehicle*, power sports vehicle, or trailer* at a geographic location other than that of the dealer's established place of business as listed on the dealer's license if no actual sales are made, or could be made, at the display location and the display:

(i) conspicuously promotes or supports an event or a program sponsored by a nonprofit corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes and the motor vehicle*, power sports vehicle, or trailer* is displayed at a location where the event is being held or the program is being promoted; or

(ii) conspicuously promotes a joint commercial endeavor between the dealer and another clearly identified business entity and the motor vehicle*, power sports vehicle, or trailer* is displayed on premises owned or leased by the other business entity and where the other entity regularly conducts its business. A display under this subsection (4)(c)(ii) may not exceed 90 days *in a calendar year*.

(5) If more than one dealer displays motor vehicles*, power sports vehicles, or trailers* ~~and maintains an established place of business~~ at the same geographic location *as another dealer's established place of business*, each dealer shall ensure that all ~~motor vehicle~~ records, office facilities, and inventory, if applicable, are physically segregated from those of the other dealer and clearly identified and attributed to the appropriate dealer.

(6) A dealer shall install and maintain telephone service at the dealer's established place of business. The telephone service must be listed in the directory assistance that applies to the area in which the business is located*, or if a cellular service is used, the dealer's cell phone number must be posted at the dealer's established place of business*.

(7) A dealer shall conspicuously post at the dealer's established place of business written notice indicating the regular and customary office hours maintained by the dealer.

(8) (a) A dealer shall carry and continuously maintain a general liability insurance policy that covers any motor vehicle bearing a set of dealer plates or a demonstrator plate *and any power sports vehicle displaying a dealer's identification card* that is offered for demonstration or loan to a customer or that otherwise may be operated by a customer in the regular course of the dealer's business operations.

(b) A dealer shall ensure that the department is named as a certificate holder on any general liability insurance policy held by the dealer, that the minimum term of the policy is 1 year, and that a lapse of insurance does not occur as a result of cancellation or termination of a previously certified policy.

(c) This subsection (8) does not relieve a dealer of the mandatory motor vehicle liability insurance obligation imposed under chapter 6 of this title.

(9) A dealer shall display at the dealer's established place of business at least one sign stating the name of the business and indicating that motor vehicles*, power sports vehicles, or trailers* are offered for sale, trade, or consignment. The letters of the sign must be at least 6 inches in height and clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet."

Section 44. Section 61-4-124, MCA, is amended to read:

"61-4-124. Annual report — filing ~~and registration~~ fees — grace period for dealer and demonstrator plates — restrictions imposed upon failure to file. (1) On or before December 31 of each year, a dealer shall submit an annual report, in a form or manner prescribed by the department, to the department to advise the department of any changes concerning owner identity, other ownership interests, felony conduct, general liability insurance status, and surety bond filings, as originally required under 61-4-101, that may have occurred in that calendar year and to provide any other relevant information requested by the department.

(2) (a) The department may require a dealer to submit one or more current photographs of the dealer's established place of business or the signage for the business with the dealer's annual report.

(b) If a dealer seeks to change the geographic location of the dealer's established place of business, the dealer shall also provide information concerning local land use planning, zoning, and business permitting compliance, if applicable, and a diagram or plat for the proposed location, consistent with the requirements of 61-4-101.

(3) Except as provided in subsection (4)(c), the annual report must be accompanied by a ~~$5~~ *$30* filing fee ~~and one or more of the following dealer registration fees, based on the type of license held by the dealer:~~

~~(a) $25 for a new motor vehicle, used motor vehicle, new recreational vehicle, or used recreational vehicle dealer's license; and~~

~~(b) $25 for a motorcycle or trailer dealer's license~~.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a used ~~motor vehicle~~ dealer shall also certify, under penalty of law, to the retail sale of 12 or more used motor vehicles*, power sport vehicles, or trailers* during the calendar year for which the annual report is filed. A used ~~motor vehicle~~ dealer licensed for less than a full calendar year in the year for which the report is filed shall certify, under penalty of law, to the retail sale of an average of at least one used motor vehicle*, power sport vehicle, or trailer* for each calendar month or portion of a calendar month that the license was in effect.

(b) ~~The minimum retail sales requirements of this subsection (4) do not apply to a dealer filing an annual report for a used motor vehicle dealer's license and either a new motor vehicle dealer's license or a new recreational vehicle dealer's license.~~

~~(c)~~ (i) A used ~~motor vehicle~~ dealer who cannot certify, under penalty of law, to the number of retail sales required under subsection (4)(a) in a calendar year for which the report is filed must pay a fee of $25 in addition to the filing ~~and registration fees~~ *fee* required in subsection (3).

(ii) A used ~~motor vehicle~~ dealer who is also a qualified tow truck operator, as defined in 61-8-903, and who, in the dealer's annual report, cannot certify, under penalty of law, to the retail sale of five or more used motor vehicles*, power sport vehicles, or trailers* during the calendar year for which the report is filed~~,~~ shall pay a fee of $25 in addition to the filing ~~and registration fees~~ *fee* required in subsection (3).

(iii) A dealer licensed as a motor vehicle wrecking facility under Title 75, chapter 10, part 5, is exempt from the minimum retail sales reporting requirements of ~~subsection (4)(a), as well as the lower minimum sales requirements of~~ this subsection (4).

(5) A dealer whose annual report is received by the department on or before December 31 of the calendar year may display or use dealer or demonstrator plates *or identification cards* assigned and registered for the prior calendar year through the last day of February of the following year.

(6) (a) On or after January 1 of the year following the calendar year for which an annual report and filing and registration fees are due under this section, the department may not renew dealer or demonstrator plates *or identification cards* for a dealer who has not filed the annual report and paid the fees due under this section.

(b) On or after March 1 of the year following the calendar year for which an annual report and filing and registration fees are due under this section, the department may not issue or transfer a title under the provisions of 61-4-111(1) to or from a dealer who has not filed the annual report and paid the fees, and the department shall initiate an administrative action under the provisions of 61-4-105(2) to revoke the dealer's license unless the dealer voluntarily surrenders the license, along with any previously assigned dealer and demonstrator plates *or identification cards*, to the department for cancellation."

Section 45. Section 61-4-125, MCA, is amended to read:

"61-4-125. ~~Wholesaler's license~~ *Wholesaler restrictions — demonstrator plates — annual report.* (1) ~~(a) The department is authorized to issue a wholesaler's license to any person it determines is qualified to hold a license under the provisions of this section~~ *The retail sale of used vehicles by a wholesaler is prohibited.*

~~(b) A wholesaler is authorized to sell used motor vehicles, used recreational vehicles, used motor homes, used travel trailers, trailers, motorcycles, quadricycles, or special mobile equipment. However, a wholesaler may sell a motor vehicle, recreational vehicle, trailer, motorcycle, quadricycle, or special mobile equipment only to a dealer, an auto auction, or another wholesaler. Retail sale of motor vehicles, recreational vehicles, motor homes, travel trailers, trailers, motorcycles, quadricycles, or special mobile equipment by a wholesaler is not allowed.~~

~~(c) A wholesaler's license issued by the department has a term of 1 calendar year, commencing on or after January 1 in the year of issue and expiring on December 31 of the same year.~~

~~(d) The department shall design and issue wholesaler demonstrator plates of a similar sequence to demonstrator plates issued to dealers but that conspicuously display the term "wholesaler" or the abbreviation "W".~~

~~(2) To qualify for a wholesaler's license, an applicant shall submit a completed application, in a form prescribed by the department, that provides the following:~~

~~(a) the name under which the applicant intends to conduct business and the name, address, date of birth, and social security number of any person who possesses or will possess an ownership interest in the business for which the license is sought. If the applicant is a corporation, the personal information required in this subsection (2)(a) must be provided for each corporate officer and the person designated by the corporation to manage or oversee the dealership.~~

~~(b) for each person subject to the provisions of subsection (2)(a), information concerning whether the person has:~~

~~(i) an ownership interest in a motor vehicle dealership or wholesaler business in Montana or another jurisdiction and, if so, the name and address of each dealership or wholesaler; and~~

~~(ii) been found guilty of or pleaded guilty to a felony in this or any other jurisdiction and, if so, the applicant shall provide a summary of the conduct resulting in the felony charge, including the dates of the conduct and any judicial proceeding pertaining to the conduct and the name and address of any court in which the matter was heard;~~

~~(c) the name, address, and telephone number of the insurance carrier from whom the applicant has acquired general liability insurance, naming the department as a certificate holder under the policy, and the name, address, and telephone number of the local insurance agent for the carrier and the applicant's policy number. The insurance must cover any motor vehicle bearing a wholesaler demonstrator plate that is offered for demonstration or loan to, or otherwise operated by, a customer in the regular course of the applicant's business and must be for a minimum of 1 year.~~

~~(d) the street address of the permanent nonresidential building or office where business records will be kept and will be made available for inspection by the department; and~~

~~(e) a bond of $50,000 filed with the department on behalf of the applicant. The bond must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. The bond must be approved by the department and subject to annual renewal.~~

~~(3) The application fee for a wholesaler's license is $5, and the license fee is $25. Both fees must accompany an original or renewal wholesaler's license application.~~

~~(4)~~*(2)* Wholesalers may not be issued or use dealer plates, as provided in 61-4-102. However, a wholesaler may be issued ~~and is authorized to display and use a wholesaler~~ demonstrator ~~plate~~ *plates, as provided in 61-4-129, for use* on any type of motor vehicle *or trailer* that a wholesaler is authorized to sell. ~~The fee for a wholesaler demonstrator plate is $5.~~ To the extent not inconsistent with this section, use of wholesaler demonstrator plates is otherwise governed by 61-4-129.

~~(5)~~*(3)* (a) ~~A wholesaler's license must be renewed annually, and application for renewal must be filed on or before December 31 of the expiring license term.~~

~~(b) To qualify for renewal of a wholesaler's license, a wholesaler shall submit a completed application, in a form prescribed by the department, updating prior submitted information, as originally supplied under subsection (2).~~ *On or before December 31 of each year, a wholesaler shall submit an annual report, in a form or manner prescribed by the department, to the department to advise the department of any changes that may have occurred in that calendar year affecting the information originally filed under 61-4-101. The report must contain information concerning owner identity, other ownership interests, felony conduct, general liability insurance status, surety bond filings, and any other relevant information requested by the department. A $30 filing fee must be submitted with the report.*

~~(c)~~*(b)* Additionally, the wholesaler shall certify, under penalty of law, that *the wholesaler sold* 12 or more motor vehicles*, power sports vehicles, or trailers* ~~of the type authorized under the license were sold by the wholesaler~~ to a dealer, auto auction, or another wholesaler during the ~~expiring license term~~ *calendar year for which the annual report is filed*. A wholesaler who was licensed for less than a full calendar year ~~in the expiring term~~ shall certify, under penalty of law, to the sale of an average of at least one motor vehicle*, power sports vehicle, or trailer* a calendar month or portion of a calendar month during which the ~~expiring~~ license was in effect.

~~(d)~~*(c)* A wholesaler who cannot, under penalty of law, certify the number of motor vehicle sales required under subsection ~~(5)(c)~~ *(3)(b)* shall pay a fee of $25 in addition to the ~~fees~~ *filing fee* required in subsection (3)*(a)*.

~~(6) A wholesaler whose completed renewal application has been received by the department on or before December 31 of the expiring license term may, if necessary, operate the business and display wholesaler demonstrator plates under the expired license through the last day of February of the following year.~~"

Section 46. Section 61-4-126, MCA, is amended to read:

"61-4-126. Claims against dealer, *broker,* wholesaler, or auto auction bonds. (1) A person who suffers loss or damage ~~due to~~ *because of* the

unlawful conduct of a dealer, *broker,* wholesaler, or auto auction licensed under this title shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond of the dealer, *broker,* wholesaler, or auto auction. The judgment must set out a specific loss or damage amount and establish that the licensee's unlawful conduct caused the loss or damage, before payment on the bond is required.

(2) If claim is made on a bond by two or more persons who have obtained a judgment against a dealer, *broker,* wholesaler, or auto auction based on the unlawful conduct of the dealer, *broker,* wholesaler, or auto auction and the judgments in the aggregate exceed the amount of the bond, the proceeds of the bond must be divided between or among the claimants on a pro rata basis."

Section 47. Section 61-4-129, MCA, is amended to read:

"61-4-129. Assignment of demonstrator plates. (1) *(a)* A dealer or wholesaler may purchase demonstrator plates at a fee of $5 a plate.

(b) Demonstrator plates ~~must~~ *may not* be issued ~~for each motor vehicle type for which a dealer's license is required under 61-4-102. Demonstrator plates must be designed by the department in a manner that distinguishes demonstrator plates from dealer plates~~ *to a new or used dealer whose business is restricted to the sale of power sports vehicles*.

(2) (a) Except as provided in subsection (2)(c), ~~new and used motor vehicle, recreational vehicle, motor home, or travel trailer~~ demonstrator plates may be used on a *motor* vehicle displaying a Monroney label or a buyer's guide label, as required by 61-4-123(2), *or a travel trailer* that is:

(i) being demonstrated and offered for sale, for not more than 72 hours when operated by an individual holding a valid operator's license;

(ii) owned by the dealership when operated by an officer or bona fide full-time employee of the dealer or wholesaler and used to transport the dealer's or wholesaler's own tools, parts, and equipment;

(iii) being tested for repair;

(iv) being moved to or from a dealer's place of business for sale;

(v) being moved to or from service and repair facilities before sale; and

(vi) being moved to or from exhibitions within the state, provided the exhibition does not exceed a period of 20 days.

(b) ~~Mobile home and trailer demonstrator~~ *Demonstrator* plates may be used:

(i) on ~~units~~ *trailers* being hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer;

(ii) ~~on mobile homes being hauled to a customer's location for setup after sale;~~

~~(iii)~~ on travel trailers held for sale to demonstrate the towing capability of the motor vehicle, ~~provided that a dated demonstration permit, valid~~ for not more than 72 hours~~, is carried with the motor vehicle at all times~~;

~~(iv)~~*(iii)* on any motor vehicle owned by the dealer that is used only to move ~~mobile homes and travel trailers legally bearing mobile home and~~ *a* travel trailer ~~dealer's license plates of the dealer owning the motor vehicle~~ *that is in the dealer's inventory*; and

~~(v)~~*(iv)* on ~~units~~ *trailers* being moved to or from exhibitions within the state~~, provided~~ *if* the exhibition does not exceed a period of 20 days.

(c) Extra demonstrator plates may be made available to dealers eligible for demonstrator plates under subsection (2)(a) to provide to one or more service repair facilities to be used when moving *a* motor ~~vehicles~~ *vehicle* in the dealer's inventory to and from the dealer's place of business and the service and repair facility prior to sale. A motor vehicle displaying demonstrator plates under this subsection is not required to have a Monroney label or a buyer's guide label as required by 61-4-123(2).

(d) A motor vehicle being operated in accordance with this subsection (2) need only display one demonstrator plate conspicuously on the rear of the motor vehicle.

~~(3) A dealer who files the annual report required under 61-4-124 on or before December 31 of the calendar year may display or use demonstrator plates assigned and registered for the calendar year through the last day of February of the following year, as provided in 61-4-124(5).~~"

Section 48. Section 61-4-130, MCA, is amended to read:

"61-4-130. Courtesy license plates — ~~design and~~ issuance — restrictions on use. ~~(1) The department may design courtesy license plates to be issued to a new or used motor vehicle dealer for use in accordance with this section. The plates must bear the license number assigned to the dealer, an abbreviation for the vehicle type of the dealer's license, and the word "COURTESY".~~

~~(2)~~*(1)* Upon application and payment of an annual fee of $150 a set, the department may issue up to two sets of courtesy plates to a dealer.

~~(3)~~*(2)* Courtesy license plates may be displayed only on a motor vehicle that the dealer loans, without charge or fee, exclusively for religious, charitable, scientific, or educational purposes. A loan of a vehicle displaying courtesy license plates may not exceed 30 days in a year.

~~(4)~~*(3)* A dealer shall maintain records detailing to whom a vehicle bearing courtesy plates has been loaned, the date of the loan, the date on which the vehicle bearing courtesy plates is to be returned, and the actual date of the vehicle's return. These records must include the name, address, and telephone number of the person or entity to whom the vehicle has been loaned and the name of a contact person who will oversee the actual operation and use of the vehicle. The records are subject to audit by the department.

~~(5)~~*(4)* It is the dealer's responsibility to ensure that courtesy plates are not used by an eligible person or entity for more than 30 days in a year.

~~(6)~~*(5)* It is the responsibility of the person or entity to whom the vehicle bearing courtesy plates was loaned to carry, while operating or in actual physical control of the vehicle, adequate proof of the status of the person or entity under this section.

~~(7)~~*(6)* If a dealer allows a person or entity to operate or retain actual physical control of a vehicle bearing courtesy plates in violation of this section, the department may suspend the right to use the courtesy plates for a period not to exceed 6 months."

Section 49. Section 61-4-131, MCA, is amended to read:

"61-4-131. Definitions. As used in this part, the following definitions apply:

(1) "Broker" means a person*:*

(a) ~~engaged~~ *who engages* in the business of offering to procure or procuring *a* motor ~~vehicles~~ *vehicle, a trailer, a semitrailer, a pole trailer, a travel trailer, a motorboat, a personal watercraft, a snowmobile, or an off-highway vehicle upon behalf of another;* or

(b) who represents to the public through solicitation, advertisement, or otherwise that the person is one who offers to procure or procures *a* motor ~~vehicles~~ *vehicle, a trailer, semitrailer, a pole trailer, a travel trailer, a motorboat, a personal watercraft, a snowmobile, or an off-highway vehicle* by negotiating purchases, contracts, sales, or exchanges *on behalf of another* and who does not store, display, or take ownership of ~~any vehicles for the purpose of selling vehicles~~ *a motor vehicle, a trailer, a semitrailer, a pole trailer, a travel trailer, a motorboat, a personal watercraft, a snowmobile, or an off-highway vehicle.*

(2) *(a)* "Dealer"*, except as provided in subsection (2)(b),* includes *a new dealer or a used dealer licensed under this part.*

(b) For purposes of 61-4-132 through 61-4-135, 61-4-137, 61-4-141, and 61-4-150, the term is limited to a new motor vehicle dealer as defined in 61-4-201.

(3) (a) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a *new motor vehicle* dealer*, as defined in 61-4-201,* who:

(i) in the case of a deceased dealer:

(A) is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will or under the laws of intestate succession of this state; or

(B) has otherwise been designated in writing by a deceased dealer to succeed the deceased in the motor vehicle dealership; or

(ii) in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property.

(b) The term includes the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

(4) (a) "Established place of business" means the geographic location upon which a permanent building is located that is actually occupied either continuously or at regular periods by a ~~dealer~~ *person licensed under this part.* A building is actually occupied ~~by a dealer~~ if the ~~dealer's~~ *licensee's* books and records are kept in the building and, except for approved off-premises sales, the ~~dealer's~~ *licensee's* business is transacted within the building.

(b) A ~~dealer's~~ *licensee's* established place of business may also include the geographic location of one or more physical lots upon which vehicles are displayed for sale, as long as the requirements of ~~61-4-101(4)(d)~~ *61-4-101(5)(e)* regulating the distance between display lots and the recordkeeping building are met.

(c) The geographic location of the permanent building actually occupied by the ~~dealer~~ *licensee* or the geographic location of the physical lots upon which vehicles are displayed for sale may be identified by street address, legal description, or other reasonably identifiable description, as prescribed by the department.

(5) "New", when describing a motor vehicle, power sports vehicle, or trailer, means that the motor vehicle, power sports vehicle, or trailer has not been the subject of a retail sale.

~~(5)~~*(6)* "Parking", when prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

(7) (a) "Power sports vehicle" includes a motorboat, a personal watercraft, a snowmobile, or an off-highway vehicle.

(b) A motorcycle or quadricycle must be treated as an off-highway vehicle if the motorcycle or quadricycle is not originally equipped for use on a highway.

(c) A sailboat that is 12 feet in length or longer is treated as a motorboat.

~~(6) "Trailer dealer" means any person, firm, or corporation engaged in whole or in part in the business of buying or selling trailers or semitrailers, with facilities for displaying one or more trailers or semitrailers.~~

(8) (a) "Trailer" has the meaning provided in 61-1-101, but does not include a trailer that has an unloaded weight of less than 500 pounds.

(b) A travel trailer, semitrailer, or pole trailer is treated as a trailer under this part.

(9) "Used", when describing a motor vehicle, power sports vehicle, or trailer, means that title to the motor vehicle, power sports vehicle, or trailer has been transferred because of a prior retail sale."

Section 50. Section 61-4-135, MCA, is amended to read:

"61-4-135. Written designation of succession unaffected. Sections ~~61-4-131~~ *61-4-132* through 61-4-137 do not preclude a *new* dealer from designating any person as ~~his~~ *the new dealer's* successor by written instrument filed with the manufacturer, factory branch, distributor, or importer."

Section 51. Section 61-4-136, MCA, is amended to read:

"61-4-136. Violation — penalty. Any person violating the provisions of ~~61-4-131~~ *61-4-132* through 61-4-137 shall upon conviction be fined no more than $5,000."

Section 52. Section 61-4-137, MCA, is amended to read:

"61-4-137. Civil damages. Any *new* dealer suffering pecuniary loss ~~due to~~ *because of* a violation of ~~61-4-131~~ *61-4-132* through ~~61-4-137~~ *61-4-136*, upon prevailing in a civil action ~~therefor~~ *for a violation*, is entitled to damages equal to three times the pecuniary loss, together with court costs and reasonable ~~attorneys'~~ *attorney* fees."

Section 53. Section 61-4-202, MCA, is amended to read:

"61-4-202. License requirements ~~— fee exemption~~. (1) A new motor vehicle dealer, manufacturer, distributor, factory branch, distributor branch, importer, or ~~franchiser~~ *franchisor* may not engage in business in Montana except in accordance with the requirements of this part. The provisions of this part do not apply to a public officer engaged in the discharge of official duties or to a trustee, receiver, or other officer acting under the jurisdiction of a court, to financial institutions disposing of repossessed vehicles, or to a person disposing of a personal motor vehicle. The provisions of this part regulating and licensing new motor vehicle dealers, manufacturers, distributors, factory branches, distributor branches, importers, and franchisors apply only to those new motor

vehicle dealers, manufacturers, distributors, factory branches, distributor branches, importers, and franchisors of motor vehicles as defined by this part.

(2) ~~(a)~~ A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor transacting business within Montana by offering, selling, trading, consigning, or otherwise transferring a new motor vehicle to a new motor vehicle dealer must be licensed by the state of Montana. The department shall issue licenses to qualified applicants upon receipt of a license fee in the amount of $15 accompanied by the information required in this section.

~~(b) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor of a personal watercraft, a snowmobile, or an off-highway vehicle is not required to pay the $15 fee required in subsection (2)(a).~~

(3) The following information, if applicable, must be submitted by an applicant upon forms supplied by the department:

(a) the name and address of the applicant;

(b) the make and model of each new motor vehicle to be franchised;

(c) the name and address of each of the applicant's franchisees within the state; and

(d) the name and address of each factory branch, distributor branch, agent, or representative within the state.

(4) ~~(a) Except as provided in subsection (4)(b), a~~ *A* license may be renewed each year if the applicant is in compliance with the provisions of this part, remits a renewal fee in the amount of $15, and notifies the department of any changes in the information previously supplied.

~~(b) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor of a personal watercraft, a snowmobile, or an off-highway vehicle is not required to pay the $15 fee required in subsection (4)(a) but is required to annually apply to renew its license on a form provided by the department.~~

(5) (a) A new motor vehicle may not be sold in this state unless either the manufacturer on direct dealership of domestic motor vehicles, the importer of foreign manufactured motor vehicles on direct dealership, or the distributor on indirect dealerships of either domestic or foreign motor vehicles is licensed as provided in this part.

(b) Notwithstanding any other licensing provision contained in Montana law, every new motor vehicle dealer shall obtain a license under part 1 of this chapter.

(c) The obtaining of a license under ~~this part or~~ Title 61, chapter 4, part 1*, or this part* conclusively establishes that a new motor vehicle dealer, manufacturer, distributor, or importer is subject to the laws of this state regulating new motor vehicle dealers, manufacturers, importers, and distributors.

~~(d) The provisions of subsection (5)(b) do not apply to dealers of personal watercraft, snowmobiles, or off-highway vehicles licensed under the provisions of Title 23.~~"

Section 54. Section 61-4-204, MCA, is amended to read:

"61-4-204. Filing agreement — product liability. (1) A franchisee shall, at the time of application for a new motor vehicle dealer license under the provisions of ~~Title 23 or~~ 61-4-101, file with the department a certified copy of the franchisee's written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic motor vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign-made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured motor vehicles or by an authorized agent of the manufacturer or importer of foreign-made motor vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that the franchisee has filed with the department one agreement together with a list of franchised dealers or distributors.

(3) A manufacturer, distributor, or importer shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer shall file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only. However, this section may not affect the obligations of new motor vehicle dealers to perform warranty repair and maintenance that may be required by law or contract. Except with regard to household appliances, including but not limited to ranges, refrigerators, and water heaters, in a recreational vehicle and except with regard to a truck rated at more than 10,000 pounds gross vehicle weight, the manufacturer shall compensate an authorized dealer for labor, parts, and other expenses incurred by a dealer who performs work to rectify the manufacturer's product or warranty defect or for delivery and preparation obligations at the same rate and time the dealer charges to its retail customers for nonwarranty work of a like kind, based upon a published, nationally recognized, retail flat rate labor time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail work.

(5) (a) All claims made by the dealer pursuant to this section for compensation for delivery, preparation, warranty, and recall service, including labor, parts, and other expenses, must be paid by the manufacturer within 30 days of receipt of the claim from the dealer, except that a manufacturer of a motor home shall pay any claim within 60 days of receipt from the dealer.

(b) If a claim is disapproved, the dealer must be notified in writing of the grounds for disapproval. A claim that has not been disapproved in writing within 30 days of having been received must be considered approved, and payment is due to the claimant immediately. However, the manufacturer retains the right to audit a claim for a period of 12 months following the payment of the claim.

(c) A claim that has been approved and paid may not be charged back to the dealer unless the manufacturer proves that:

(i) the claim was false or fraudulent;

(ii) the repairs were not properly made; or

(iii) the repairs were not necessary to correct the defective condition.

(d) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the dealer has provided reasonably sufficient documentation demonstrating that the dealer performed the services in compliance with the written policies and procedures of the manufacturer.

(e) A franchisor may reasonably and periodically audit a motor vehicle dealer to determine the validity of paid claims or chargebacks for customer or dealer incentives. An audit of incentive payments may apply only to the 18-month period immediately preceding the date on which the dealer was notified of an impending audit.

(6) The dealer shall furnish the purchaser of a new motor vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed."

Section 55. Section 61-5-112, MCA, is amended to read:

"61-5-112. Types and classes of commercial driver's licenses — classification — rulemaking — reciprocity agreements. (1) The department shall adopt rules that it considers necessary for the safety and welfare of the traveling public governing the classification of commercial driver's licenses and related endorsements and the examination of commercial driver's license applicants and renewal applicants. The rules must:

(a) subject to the exceptions provided in this section, comport with the licensing standards and requirements of 49 CFR, part 383, the medical qualifications of 49 CFR, part 391, and the security threat assessment provisions of 49 CFR, part 1572;

(b) allow for the issuance of a type 2 (intrastate only) commercial driver's license in accordance with medical qualification and visual acuity standards prescribed by the department;

(c) allow for the issuance of a type 2 commercial driver's license to a person who is 18 years of age or older;

(d) allow for issuance of a seasonal commercial driver's license based on standards established by the department for the waiver of the knowledge and road or skills test for a qualified person employed in farm-related service industries who has a good driving record and sufficient prior driving experience;

(e) prescribe the operational and seasonal restrictions for a seasonal commercial driver's license;

(f) prescribe the requirements for the medical statement that must be submitted in order for a person to be qualified for a type 2 commercial driver's license; and

(g) prescribe the minimum standards for certification of a third-party commercial driver testing program and any test waiver under 61-5-118.

(2) The department is authorized to enter into reciprocal agreements with adjacent states that would allow certain drivers of vehicles transporting farm products, farm machinery, or farm supplies within 150 miles of a farm to operate without a commercial driver's license because the vehicles are not considered commercial motor vehicles as provided in ~~61-1-101(7)(b)(ii)~~ *61-1-101(8)(b)(ii)*."

Section 56. Section 61-6-304, MCA, is amended to read:

"61-6-304. Penalties. (1) Conviction of a first offense under 61-6-301 or 61-6-302 is punishable by a fine of not less than $250 or more than $500 or by imprisonment in the county jail for not more than 10 days, or both. A second conviction is punishable by a fine of $350 or by imprisonment in the county jail for not more than 10 days, or both. A third or subsequent conviction is punishable by a fine of $500 or by imprisonment in the county jail for not more than 6 months, or both.

(2) Upon a second or subsequent conviction under 61-6-301 or 61-6-302, the sentencing court shall order the surrender of the vehicle registration receipt and license plates for the vehicle operated at the time of the offense if that vehicle was operated by the registered owner or a member of the registered owner's immediate family or by a person whose operation of that vehicle was authorized by the registered owner. The court shall ~~send the receipt and plates, along with a copy of the complaint and dispositional order,~~ *report the surrender of the registration receipt and license plates* to the department, which shall immediately suspend the ~~receipt and plates~~ *vehicle's registration*. The ~~receipt and plates~~ *vehicle's registration status* may not be reinstated until proof of compliance with 61-6-301 is furnished to the department, but if the vehicle is transferred to a new owner, the new owner is entitled to register the vehicle. *The surrendered license plates must be recycled or destroyed by the court unless the court decides to retain the license plates for the owner until the registration suspension has been completed or the requirements for a restricted registration receipt have been met.* Upon proof of compliance with 61-6-301 *and payment of fees required under 61-3-333 for replacement license plates and registration decal and under 61-3-341 for a replacement registration receipt*, during the period of 90 days from the date of a second conviction or 180 days from the date of a third or subsequent conviction, the department shall issue a restricted registration receipt ~~and return the license plates~~ to the offender. A restricted registration receipt limits the use of the motor vehicle operated at the time of the offense to use solely for employment purposes *until the date indicated on the restricted registration receipt*. ~~Upon the expiration of the appropriate time period, the department shall issue a regular registration receipt to the owner of the vehicle. The department may establish fees for the restricted registration receipts issued pursuant to this subsection.~~

(3) Upon a fourth or subsequent conviction under 61-6-301 or 61-6-302, the court shall order the surrender of the driver's license of the offender, if the vehicle operated at the time of the offense was registered to the offender or a member of the offender's immediate family. The court shall send the driver's license, along with a copy of the complaint and the dispositional order, to the department, which shall immediately suspend the driver's license. The department may not reinstate a driver's license suspended under this subsection until the registered owner provides the department proof of

compliance with 61-6-301 and the department determines that the registered owner is otherwise eligible for licensure.

(4) The court may suspend a required fine only upon a determination that the offender is or will be unable to pay the fine.

(5) A court may not defer imposition of penalties provided by this section.

(6) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction."

Section 57. Section 61-8-102, MCA, is amended to read:

"61-8-102. Uniformity of interpretation — definitions. (1) Interpretation of this chapter in this state must be as consistent as possible with the interpretation of similar laws in other states.

(2) As used in this chapter, unless the context requires otherwise, the following definitions apply:

(a) "Authorized emergency vehicle" means a vehicle of the fire department or fire patrol, an ambulance, and an emergency vehicle designated or authorized by the department.

(b) "Bicycle" means:

(i) a vehicle propelled solely by human power upon which any person may ride and that has two tandem wheels and a seat height of more than 25 inches from the ground when the seat is raised to its highest position, except scooters and similar devices; or

(ii) a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion, and an independent power source providing a maximum of 2 brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement may not exceed 3.05 cubic inches (50 centimeters) regardless of the number of chambers in the power source. The power source may not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour (48.28 kilometers an hour) on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged.

(c) "Business district" means the territory contiguous to and including a highway when within any 600 feet along a highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings that occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

(d) "Controlled-access highway" means a highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the highway, street, or roadway except at the points and in the manner as determined by the public authority having jurisdiction over the highway, street, or roadway.

(e) "Crosswalk" means:

(i) that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway;

(ii) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrians crossing by lines or other markings on the surface.

(f) "Flag person" means a person who directs, controls, or alters the normal flow of vehicular traffic upon a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person, except a uniformed traffic enforcement officer exercising the officer's duty as a result of a planned vehicular traffic hazard, must be equipped as required by the rules of the department of transportation.

(g) "Highway" has the meaning provided in 61-1-101, but includes ways that have been or are later dedicated to public use.

(h) "Ignition interlock device" means ignition equipment that:

(i) analyzes the breath to determine blood alcohol concentration;

(ii) is approved by the department pursuant to 61-8-441; and

(iii) is designed to prevent a motor vehicle from being operated by a person who has consumed a specific amount of an alcoholic beverage.

(i) (i) "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines or if there are no curb lines then the lateral boundary lines of the roadways of two highways that join one another at or approximately at right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(ii) When a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of the divided highway by an intersecting highway must be regarded as a separate intersection. If the intersecting highways also include two roadways 30 feet or more apart, then every crossing of two roadways of the highways must be regarded as a separate intersection.

(j) "Local authorities" means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

(k) "Noncommercial motor vehicle" or "noncommercial vehicle" means any motor vehicle or combination of motor vehicles that is not included in the definition of commercial motor vehicle in 61-1-101 and includes but is not limited to the vehicles listed in ~~61-1-101(7)(b)~~ *61-1-101(8)(b)*.

(l) "Official traffic control devices" means all signs, signals, markings, and devices not inconsistent with this title that are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(m) "Pedestrian" means any person on foot or any person in a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(n) "Police vehicle" means a vehicle used in the service of any law enforcement agency.

(o) "Private road" or "driveway" means a way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(p) "Residence district" means the territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of 300 feet or more is primarily improved with residences or residences and buildings in use for business.

(q) "Right-of-way" means the privilege of the immediate use of the roadway.

(r) "School bus" has the meaning provided in 20-10-101.

(s) "Sidewalk" means that portion of a street that is between the curb lines or the lateral lines of a roadway and the adjacent property lines and that is intended for use by pedestrians.

(t) "Traffic control signal" means a device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

(u) "Urban district" means the territory contiguous to and including any street that is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of one-fourth mile or more."

Section 58. Section 61-11-105, MCA, is amended to read:

"61-11-105. Release of information — fees. (1) Subject to the limitations of this section, the department shall, upon request, furnish a person the individual Montana driving record of a driver or licensee, containing the following data:

(a) the driver's or licensee's name, driver's license number, and date of birth;

(b) driver's license status, including the license type and any endorsements, the license issue date, license restrictions, any suspensions, revocations, or cancellations that have been imposed against the driver or licensee, and the license expiration date;

(c) convictions of the driver or licensee; and

(d) traffic accidents in which the driver or licensee was involved.

(2) The department may not enter into any agreement to disclose or sell, in bulk, any data contained in an individual Montana driving record unless the requester of the information provides the department with the names, driver's license numbers, and dates of birth of the drivers or licensees from whose records a change in license status or conviction activity is to be reported.

(3) The department may not disclose personal information or highly restricted personal information from an individual Montana driving record, except as permitted or required under 61-11-507, 61-11-508, or 61-11-509.

(4) Information relating to a traffic accident that did not involve a conviction, as defined in 61-11-203, may not be released by the department unless the release is requested or approved by a party involved in the accident or is required by court order or a duly executed subpoena.

(5) (a) Subject to the requirements of subsection (6) and except as provided in subsection (5)(b), a fee of $4 must be paid for each individual Montana driving record requested. A fee of $10 must be paid if a certified Montana record, as provided in 61-11-102(5), is requested. A fee of ~~8~~ *6* cents must be paid for each individual Montana driving record that is searched by the department to report to a requester a change in license status or conviction activity from one or more individual Montana driving records.

(b) An individual Montana driving record must be provided without charge to any criminal justice agency, as defined in 44-5-103, or other state or federal agency.

(6) In addition to the fees required in 61-11-510(3) and subsection (5) of this section, an individual Montana driving record or any report compiled from one or more individual Montana driving records that are electronically transmitted to a requester through a point of entry for electronic government services are subject to the convenience fee established under 2-17-1103.

(7) The department may require a requester, other than a federal, state, or local government agency, seeking one or more individual Montana driving records or any data otherwise contained in one or more individual Montana driving records in electronic format to use a point of entry for electronic government services to obtain the record or data."

Section 59. Repealer. Sections 23-2-513, 23-2-540, 23-2-619, and 23-2-818, MCA, are repealed.

Section 60. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, part 1, and the provisions of Title 61, chapter 3, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 61, chapter 3, part 2, and the provisions of Title 61, chapter 3, part 2, apply to [section 2].

(3) [Sections 3 and 4] are intended to be codified as an integral part of Title 61, chapter 4, part 1, and the provisions of Title 61, chapter 4, part 1, apply to [sections 3 and 4].

(4) [Section 5] is intended to be codified as an integral part of Title 61, chapter 9, part 4, and the provisions of Title 61, chapter 9, part 4, apply to [section 5].

Section 61. Effective date. [This act] is effective January 1, 2008.

Approved April 27, 2007

CHAPTER NO. 330

[HB 738]

AN ACT REVISING WORKERS' COMPENSATION LAWS; PROVIDING THAT THE DEPARTMENT OF LABOR AND INDUSTRY MAY NOT SET THE RATE FOR MEDICAL SERVICES AT A RATE GREATER THAN 10 PERCENT ABOVE THE AVERAGE OF THE CONVERSION FACTORS USED BY THE TOP FIVE INSURERS OR THIRD-PARTY ADMINISTRATORS PROVIDING DISABILITY INSURANCE WITHIN THIS STATE WHO USE THE RESOURCE-BASED RELATIVE VALUE SCALE TO DETERMINE FEES FOR COVERED SERVICES; MODIFYING DEPARTMENT PROCEDURES FOR ESTABLISHING FEE SCHEDULES FOR MEDICAL SERVICES AND PRESCRIPTION DRUGS; PROVIDING FOR UTILIZATION AND TREATMENT GUIDELINES TO BE ESTABLISHED BY RULE; AMENDING SECTIONS 39-71-704 AND 39-71-743, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-704, MCA, is amended to read:

"39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation. (1) In addition to the compensation provided under this chapter and as an additional benefit separate

and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.

(b) The insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) (i) The insurer shall reimburse a worker for reasonable travel, lodging, meals, and miscellaneous expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement for state employees.

(ii) Rules adopted under subsection (1)(d)(i) must provide for submission of claims, within 90 days from the date of travel, following notification to the claimant of reimbursement rules, must provide procedures for reimbursement receipts, and must require the use of the least costly form of travel unless the travel is not suitable for the worker's medical condition. The rules must exclude from reimbursement:

(A) 100 miles of automobile travel for each calendar month unless the travel is requested or required by the insurer pursuant to 39-71-605;

(B) travel to a medical provider within the community in which the worker resides;

(C) travel outside the community in which the worker resides if comparable medical treatment is available within the community in which the worker resides, unless the travel is requested by the insurer; and

(D) travel for unauthorized treatment or disallowed procedures.

(iii) An insurer is not liable for injuries or conditions that result from an accident that occurs during travel or treatment, except that the insurer retains liability for the compensable injuries and conditions for which the travel and treatment were required.

(e) Pursuant to rules adopted by the department, an insurer shall reimburse a catastrophically injured worker's family or, if a family member is unavailable, a person designated by the injured worker or approved by the insurer for travel assistance expenditures in an amount not to exceed $2,500 to be used as a match to those funds raised by community service organizations to help defray the costs of travel and lodging expenses incurred by the family member or designated person when traveling to be with the injured worker. These funds must be paid in addition to any travel expenses paid by an insurer for a travel companion when it is medically necessary for a travel companion to accompany the catastrophically injured worker.

(f) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury *or occupational disease*, the benefits provided for in this

section terminate ~~when they are not used for a period of 60 consecutive months~~ *as provided in 39-71-601(3).*

(g) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition;

(ii) when necessary to monitor the status of a prosthetic device; or

(iii) when the worker's treating physician believes that the care that would otherwise not be compensable under subsection (1)(g) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment. A dispute regarding the compensability of palliative or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers' compensation court has jurisdiction.

(h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) *(a)* The department shall annually establish a schedule of fees for medical services ~~not provided at a hospital~~ that are necessary for the treatment of injured workers. Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule. *Until the department adopts a fee schedule applicable to medical services provided by a hospital, insurers shall pay at the rate payable on June 30, 2007, for those services provided by the hospital. The rate must be adjusted by the annual percentage increase in the state's average weekly wage, as defined in 39-71-116, factoring in changes in the hospital's medical service charges.*

(b) The department may not set the rate for medical services at a rate greater than 10% above the average of the conversion factors used by the top five insurers or third-party administrators providing disability insurance within this state who use the resource-based relative value scale to determine fees for covered services. The top five insurers or third-party administrators shall provide their standard conversion rates to the department. The department may use the conversion rates only for the purpose of determining average conversion rates under this subsection (2), and the department shall maintain the confidentiality of the conversion rates.

(c) The fee schedule rates established in subsection (2)(b) apply to medical services covered by the American medical association current procedural terminology codes in effect at the time the services are provided regardless of where the services are provided.

(d) The department may establish coding standards to be utilized by providers when billing for medical services under this section.

(3) (a) The department may establish by rule evidence-based utilization and treatment guidelines for primary and secondary medical services. There is a rebuttable presumption that the utilization and treatment guidelines

established by the department are correct medical treatment for the injured worker.

(b) An insurer and an injured worker are not responsible for treatment or services that do not fall within the utilization and treatment guidelines adopted by the department unless the provider obtains prior authorization from the insurer.

(c) The department may establish by rule an independent medical review process for treatment or services denied by an insurer pursuant to this subsection (3) prior to mediation under 39-71-2401.

~~(3) (a) The department shall establish rates for hospital services necessary for the treatment of injured workers.~~

~~(b) Except as provided in subsection (3)(g), rates for services provided at a hospital must be the greater of:~~

~~(i) 69% of the hospital's January 1, 1997, usual and customary charges; or~~

~~(ii) the discount factor established by the department that was in effect on June 30, 1997, for the hospital. The discount factor for a hospital formed by the merger of two or more existing hospitals is computed by using the weighted average of the discount factors in effect at the time of the merger.~~

~~(c) Except as provided in subsection (3)(g), the department shall adjust hospital discount factors so that the rate of payment does not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.~~

~~(d) The department may establish a fee schedule for hospital outpatient services rendered. The fee schedule must, in the aggregate, provide for fees that are equal to the statewide average discount factors paid to hospitals to provide the same or equivalent procedure to workers' compensation hospital outpatients.~~

~~(e) The discount factors established by the department pursuant to this subsection (3) may not be less than medicaid reimbursement rates.~~

~~(f)~~*(4)* For services available in Montana, insurers are not required to pay facilities located outside Montana rates that are greater than those allowed for services delivered in Montana.

~~(g)~~*(5)* For a medical assistance facility or a critical access hospital licensed pursuant to Title 50, chapter 5, the rate for services is the usual and customary charge. ~~Fees paid to a licensed medical assistance facility or critical access hospital are not subject to the limitation provided in subsection (4).~~

~~(4) The percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.~~

~~(5)~~*(6)* Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

~~(6)~~*(7)* Disputes between an insurer and a medical service provider regarding the amount of a fee for medical services must be resolved by a hearing before the department upon written application of a party to the dispute.

~~(7)~~*(8)* (a) After the initial visit, the worker is responsible for $25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

(b) "Visit", as used in this subsection ~~(7)~~ *(8)*, means each time that the worker obtains services relating to a compensable injury or occupational disease from:

(i) a treating physician;

(ii) a physical therapist;

(iii) a psychologist; or

(iv) hospital outpatient services available in a nonhospital setting.

(c) A worker is not responsible for the cost of a subsequent visit pursuant to subsection ~~(7)(a)~~ *(8)(a)* if the visit is for treatment requested by an insurer."

Section 2. Section 39-71-743, MCA, is amended to read:

"39-71-743. Assignment or attachment of payments. (1) Payments under this chapter may not be assignable, subject to attachment or garnishment, or held liable in any way for debts, except:

(a) as provided in 71-3-1118;

(b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established by order of a court of competent jurisdiction or by order rendered in an administrative process authorized by state law;

(c) as provided in 53-2-612 or 53-2-613 for medical benefits paid pursuant to this chapter; or

(d) for workers' compensation benefits payable to an injured worker to pay restitution to an insurer whenever the injured worker is subject to court-ordered restitution for theft of workers' compensation benefits. The insurer shall notify the injured worker in writing of the withholding of any court-ordered restitution from the injured worker's benefits.

(2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support as follows:

(a) for any periodic payment, an amount up to the percentage amount established in the guidelines promulgated by the department of public health and human services pursuant to 40-5-209; or

(b) for any lump-sum award, an amount up to that portion of the award that is necessary to pay current child support and a past-due child support obligation.

(3) After determination that the claim is covered under the Workers' Compensation Act, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. Except as provided in ~~39-71-704(7)~~ *39-71-704(8)*, a fee or charge is not payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer."

Section 3. Coordination instruction. If Senate Bill No. 108 and [this act] are both passed and approved and if they contain a section that amends 39-71-704, then the sections amending 39-71-704 are void and 39-71-704 must be amended as follows:

"39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation. (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.

(b) The insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) (i) The insurer shall reimburse a worker for reasonable travel, lodging, meals, and miscellaneous expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement for state employees.

(ii) Rules adopted under subsection (1)(d)(i) must provide for submission of claims, within 90 days from the date of travel, following notification to the claimant of reimbursement rules, must provide procedures for reimbursement receipts, and must require the use of the least costly form of travel unless the travel is not suitable for the worker's medical condition. The rules must exclude from reimbursement:

(A) 100 miles of automobile travel for each calendar month unless the travel is requested or required by the insurer pursuant to 39-71-605;

(B) travel to a medical provider within the community in which the worker resides;

(C) travel outside the community in which the worker resides if comparable medical treatment is available within the community in which the worker resides, unless the travel is requested by the insurer; and

(D) travel for unauthorized treatment or disallowed procedures.

(iii) An insurer is not liable for injuries or conditions that result from an accident that occurs during travel or treatment, except that the insurer retains liability for the compensable injuries and conditions for which the travel and treatment were required.

(e) Pursuant to rules adopted by the department, an insurer shall reimburse a catastrophically injured worker's family or, if a family member is unavailable, a person designated by the injured worker or approved by the insurer for travel assistance expenditures in an amount not to exceed $2,500 to be used as a match to those funds raised by community service organizations to help defray the costs of travel and lodging expenses incurred by the family member or designated person when traveling to be with the injured worker. These funds must be paid in addition to any travel expenses paid by an insurer for a travel companion when it is medically necessary for a travel companion to accompany the catastrophically injured worker.

(f) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

(g) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition;

(ii) when necessary to monitor the status of a prosthetic device; or

(iii) when the worker's treating physician believes that the care that would otherwise not be compensable under subsection (1)(g) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment. A dispute regarding the compensability of palliative or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers' compensation court has jurisdiction.

(h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) *(a)* The department shall annually establish a schedule of fees for medical services ~~not provided at a hospital~~ that are necessary for the treatment of injured workers. Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule. *Until the department adopts a fee schedule applicable to medical services provided by a hospital, insurers shall pay at the rate payable on June 30, 2007, for those services provided by a hospital. The rate must be adjusted by the annual percentage increase in the state's average weekly wage, as defined in 39-71-116, factoring in changes in the hospital's medical service charges.*

(b) (i) The department may not set the rate for medical services at a rate greater than 10% above the average of the conversion factors used by the top five insurers or third-party administrators providing disability insurance within this state who use the resource-based relative value scale to determine fees for covered services.

(ii) The top five insurers or third-party administrators shall provide their standard conversion rates to the department.

(iii) The department may use the conversion rates only for the purpose of determining average conversion rates under this subsection (2).

(iv) The department shall maintain the confidentiality of the conversion rates.

(c) The fee schedule rates established in subsection (2)(b) apply to medical services covered by the American medical association current procedural terminology codes in effect at the time the services are provided regardless of where the services are provided.

(d) The department may establish coding standards to be utilized by providers when billing for medical services under this section.

(3) (a) The department may establish by rule evidence-based utilization and treatment guidelines for primary and secondary medical services. There is a

rebuttable presumption that the utilization and treatment guidelines established by the department are correct medical treatment for the injured worker.

(b) An insurer is not responsible for treatment or services that do not fall within the utilization and treatment guidelines adopted by the department unless the provider obtains prior authorization from the insurer. If prior authorization is not requested or obtained from the insurer, an injured worker is not responsible for payment of the medical treatment or services.

(c) The department may establish by rule an independent medical review process for treatment or services denied by an insurer pursuant to this subsection (3) prior to mediation under 39-71-2401.

~~(3) (a) The department shall establish rates for hospital services necessary for the treatment of injured workers.~~

~~(b) Except as provided in subsection (3)(g), rates for services provided at a hospital must be the greater of:~~

~~(i) 69% of the hospital's January 1, 1997, usual and customary charges; or~~

~~(ii) the discount factor established by the department that was in effect on June 30, 1997, for the hospital. The discount factor for a hospital formed by the merger of two or more existing hospitals is computed by using the weighted average of the discount factors in effect at the time of the merger.~~

~~(c) Except as provided in subsection (3)(g), the department shall adjust hospital discount factors so that the rate of payment does not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.~~

~~(d) The department may establish a fee schedule for hospital outpatient services rendered. The fee schedule must, in the aggregate, provide for fees that are equal to the statewide average discount factors paid to hospitals to provide the same or equivalent procedure to workers' compensation hospital outpatients.~~

~~(e) The discount factors established by the department pursuant to this subsection (3) may not be less than medicaid reimbursement rates.~~

~~(f)~~*(4)* For services available in Montana, insurers are not required to pay facilities located outside Montana rates that are greater than those allowed for services delivered in Montana.

~~(g)~~*(5)* For a medical assistance facility or a critical access hospital licensed pursuant to Title 50, chapter 5, the rate for services is the usual and customary charge. ~~Fees paid to a licensed medical assistance facility or critical access hospital are not subject to the limitation provided in subsection (4).~~

~~(4) The percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.~~

~~(5)~~*(6)* Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

~~(6)~~*(7)* ~~Disputes~~ *After mediation pursuant to department rules, disputes* between an insurer and a medical service provider regarding the amount of a fee for medical services must be resolved by a hearing before the department upon written application of a party to the dispute.

~~(7)~~*(8)* (a) After the initial visit, the worker is responsible for $25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

(b) "Visit", as used in this subsection (7), means each time that the worker obtains services relating to a compensable injury or occupational disease from:

(i) a treating physician;

(ii) a physical therapist;

(iii) a psychologist; or

(iv) hospital outpatient services available in a nonhospital setting.

(c) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if the visit is for treatment requested by an insurer."

Section 4. Effective date. [This act] is effective July 1, 2007.

Section 5. Applicability dates. (1) [Section 3(3)(a) through (3)(c)] applies to injuries or occupational diseases occurring on or after July 1, 2007.

(2) [Section 3(2)(b) through (2)(d)] applies to medical treatment or services furnished on or after January 1, 2008.

Approved April 27, 2007

CHAPTER NO. 331

[HB 755]

AN ACT PROVIDING THAT THE UNIFORM UNCLAIMED PROPERTY ACT DOES NOT APPLY TO CERTAIN GIFT CERTIFICATES; AMENDING SECTIONS 30-14-102, 70-9-802, AND 70-9-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-14-102, MCA, is amended to read:

"30-14-102. Definitions. As used in this part, the following definitions apply:

(1) "Consumer" means a person who purchases or leases goods, services, real property, or information primarily for personal, family, or household purposes.

(2) "Department" means the department of justice created in 2-15-2001.

(3) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording.

(4) "Examination" of documentary material includes the inspection, study, or copying of documentary material and the taking of testimony under oath or acknowledgment in respect to any documentary material or copy of documentary material.

(5) (a) "Gift certificate" means a record, including a gift card *or stored value card*, that is provided for paid consideration and that indicates a promise by the issuer or seller of the record that goods or services will be provided to the possessor of the record for the value that is shown on the record or contained within the record by means of a microprocessor chip, magnetic stripe, bar code, or other electronic information storage device. The consideration provided for

the gift certificate must be made in advance. The value of the gift certificate is reduced by the amount spent with each use. A gift certificate is considered trust property of the possessor if the issuer or seller of the gift certificate declares bankruptcy after issuing or selling the gift certificate. The value represented by the gift certificate belongs to the possessor, to the extent provided by law, and not to the issuer or seller.

(b) The term does not ~~mean~~ *include*:

(i) prepaid telecommunications and technology cards, including but not limited to prepaid telephone calling cards, prepaid technical support cards, and prepaid internet disks that have been distributed to or purchased by a consumer;

(ii) a coupon provided to a consumer pursuant to any award, loyalty, or promotion program without any money or consideration being given in exchange for the card; or

(iii) a gift certificate usable with multiple sellers of goods or services.

(6) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(7) "Possessor" means a natural person who has physical control over a gift certificate.

(8) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services, any property, tangible or intangible, real, personal, or mixed, or any other article, commodity, or thing of value, wherever located, and includes any trade or commerce directly or indirectly affecting the people of this state."

Section 2. Section 70-9-802, MCA, is amended to read:

"70-9-802. Definitions. In this part, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the department of revenue provided for in 2-15-1301.

(2) "Apparent owner" means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

(3) "Business association" means a corporation, joint-stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(4) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(5) "Financial organization" means a savings and loan association, bank, banking organization, or credit union.

(6) "Gift certificate" has the meaning provided in 30-14-102.

~~(6)~~*(7)* "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this part.

~~(7)~~*(8)* "Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability,

fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

~~(8)~~*(9)* "Mineral" means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this state.

~~(9)~~*(10)* "Mineral proceeds" means amounts payable for the extraction, production, or sale of minerals or, upon the abandonment of those payments, all payments that become payable after abandonment. The term includes amounts payable:

(a) for the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

(b) for the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

(c) under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farmout agreement.

~~(10)~~*(11)* (a) "Money order" includes an express money order and a personal money order, on which the remitter is the purchaser.

(b) The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee.

~~(11)~~*(12)* "Owner" means a person who has a legal or equitable interest in property subject to this part or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

~~(12)~~*(13)* "Person" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

~~(13)~~*(14)* (a) "Property" means tangible property described in 70-9-804 or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business or, except as provided in subsection ~~(13)(b)~~ *(14)(b)*, by a government, governmental subdivision, agency, or instrumentality and all income or increments from the property. The term includes property that is referred to as or evidenced by:

(i) money, check, draft, deposit, interest, or dividend;

(ii) credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

(iii) stock or other evidence of ownership of an interest in a business association or financial organization;

(iv) bond, debenture, note, or other evidence of indebtedness;

(v) money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;

(vi) an amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

(vii) an amount distributable from a trust or custodial fund that is established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(b) The term does not include property that is held, issued, or owed by a local government entity, as defined in 2-7-501.

~~(14)~~*(15)* "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in perceivable form.

~~(15)~~*(16)* "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession that is subject to the jurisdiction of the United States.

~~(16)~~*(17)* "Utility" means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas."

Section 3. Section 70-9-803, MCA, is amended to read:

"70-9-803. Presumptions of abandonment. (1) Except as provided in subsection (6), property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(a) traveler's check, 15 years after issuance;

(b) money order, 7 years after issuance;

(c) stock or other equity interest in a business association or financial organization, including a security entitlement under Title 30, chapter 8, 5 years after the earlier of:

(i) the date of the most recent dividend, stock split, or other distribution that was unclaimed by the apparent owner; or

(ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the apparent owner;

(d) debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, 5 years after the date of the most recent interest payment that was unclaimed by the apparent owner;

(e) demand, savings, or time deposit, including a deposit that is automatically renewable, 5 years after the earlier of maturity or the date of the last indication by the owner of interest in the property; however, a deposit that is automatically renewable is considered matured for purposes of this section upon its initial date of maturity unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;

(f) money or credits owed to a customer as a result of a retail business transaction, 3 years after the obligation accrued;

~~(g) gift certificate, 3 years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is considered to be 60% of the certificate's face value;~~

(g) gift certificate, 3 years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is considered to be 60% of the certificate's face value. A gift certificate is not presumed abandoned if the gift certificate was sold by a person who in the past fiscal year sold no more than $200,000 in gift certificates, which amount must be adjusted by November of each year by the inflation factor defined in 15-30-101. The amount considered abandoned for a person who sells more than the amount that triggers presumption of abandonment is the value of gift certificates greater than that trigger.

~~(h)~~*(h)* amount that is owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, 3 years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, 3 years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

~~(i)~~*(i)* property distributable by a business association or financial organization in a course of dissolution, 1 year after the property becomes distributable;

~~(j)~~*(j)* property received by a court as proceeds of a class action and not distributed pursuant to the judgment, 1 year after the distribution date;

~~(k)~~*(k)* property held by a court, government, governmental subdivision, agency, or instrumentality, 1 year after the property becomes distributable;

~~(l)~~*(l)* wages or other compensation for personal services, 1 year after the compensation becomes payable;

~~(m)~~*(m)* deposit or refund owed to a subscriber by a utility, 1 year after the deposit or refund becomes payable;

~~(n)~~*(n)* property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, 3 years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

~~(o)~~*(o)* a patronage refund owed to a member of a rural electric or telephone cooperative organized under Title 35, chapter 18, that is not used by the cooperative for educational purposes, 5 years after the distribution date;

~~(p)~~*(p)* an unclaimed share in a cooperative that is not used for charitable or civic purposes in the community in which the cooperative is located, 5 years after the distribution date; and

~~(q)~~*(q)* all other property, 5 years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(2) At the time that an interest is presumed abandoned under subsection (1), any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(3) Property is unclaimed if, for the applicable period set forth in subsection (1), the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder with the holder concerning the property or the account in which the property is held and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

(4) An indication of an owner's interest in property includes:

(a) the presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(b) owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(c) the making of a deposit to or withdrawal from an account in a financial organization; and

(d) the payment of a premium with respect to a property interest in an insurance policy; however, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(5) Property is payable or distributable for purposes of this part notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

(6) The presumption provided in subsection (1) does not apply to:

(a) unclaimed patronage refunds of a rural electric or telephone cooperative if the cooperative uses the refunds exclusively for educational purposes; or

(b) unclaimed shares in a nonutility cooperative if the cooperative uses the shares for charitable or civic purposes in the community in which the cooperative is located."

Section 4. Effective date — retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to gift certificates issued or sold after September 30, 2005.

Approved April 27, 2007

CHAPTER NO. 332

[HB 759]

AN ACT REVISING SEARCH AND RESCUE LAWS; PROVIDING THAT MONEY IN THE SPECIAL REVENUE ACCOUNT ADMINISTERED BY THE DISASTER AND EMERGENCY SERVICES DIVISION FOR SEARCH AND RESCUE OPERATIONS BE REIMBURSED TO LOCAL SEARCH AND RESCUE UNITS TO DEFRAY COSTS OF SEARCH AND RESCUE

MISSIONS; PROVIDING THAT MONEY IN THE FISH, WILDLIFE, AND PARKS SPECIAL REVENUE ACCOUNT FOR SEARCH AND RESCUE REMAIN AVAILABLE FOR REIMBURSEMENT OF SEARCH AND RESCUE MISSIONS AND TO PROVIDE MATCHING FUNDS TO REIMBURSE COUNTIES FOR SEARCH AND RESCUE TRAINING AND EQUIPMENT COSTS ON AN ONGOING BASIS; AMENDING SECTIONS 10-3-801 AND 87-1-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-801, MCA, is amended to read:

"10-3-801. Account created for funding search and rescue operations — rules. (1) There is an account in the state special revenue fund established in 17-2-102. The account must be administered by the disaster and emergency services division of the department exclusively for the purposes of search and rescue as provided in this section. The department may retain up to 5% of the money in the account to pay its costs of administering this section.

(2) There must be deposited in the account:

(a) fund transfers pursuant to 15-1-122(3)(f);

(b) fund transfers pursuant to 87-1-601(9). These funds may be used only as provided in 87-1-601(9).

(c) all money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for search and rescue operations.

~~(3) (a) Not less than 50% of the money in the account must be used by the department to defray costs of search and rescue missions conducted by a county sheriff's office at a maximum of $3,000 for each rescue mission, regardless of the number of counties or county search and rescue organizations involved.~~

(3) (a) Not less than 50% of the money in the account must be used by the department to defray costs of:

(i) local search and rescue units for search and rescue missions conducted through a county sheriff's office at a maximum of $3,000 for each rescue mission, regardless of the number of counties or county search and rescue organizations involved. To fulfill the purposes of this subsection (3)(a)(i), the department shall transmit reimbursement money to the county treasurer, who shall deposit the funds in a separate search and rescue fund accessible by the local search and rescue unit that requested the reimbursement. The county treasurer shall notify the reimbursed local search and rescue unit by mail when the deposit occurs.

(ii) a county sheriff's office at a maximum of $3,000 for each rescue mission, regardless of the number of counties or county search and rescue organizations involved.

(b) The remaining money in the account may be used by the department:

(i) to match local funds for the purchase of equipment for use by local search and rescue units at a maximum of $2,000 for each unit in a calendar year. The cost-sharing match must be 35% local funds to 65% from the account.

(ii) for reimbursement of expenses related to the training of search and rescue volunteers.

(4) The department may adopt rules to implement the proper administration of the account. The rules may include:

(a) a method of reimbursing ~~a county sheriff's office~~ *local search and rescue units or a county sheriff's office*, on a case-by-case basis, for authorized search and rescue operations conducted pursuant to subsection (3)(a), including verification of search missions, claims procedures, fiscal accountability, and the number and circumstances of search missions involving persons engaged in hunting, fishing, and trapping in a fiscal year;

(b) methods for processing requests for equipment matching funds and training funds made pursuant to subsection (3)(b), including any verification and accounting necessary to ensure that the provisions of subsection (3)(b) are met, and determining the percentage of all search missions involving persons engaged in hunting, fishing, or trapping in a fiscal year; ~~and~~

(c) a system involving input from representatives of county sheriff organizations and state and local search and rescue organizations for assistance in verifying and processing claims for reimbursement, equipment, and training.*; and*

(d) a method for compiling and keeping current a contact list of all search and rescue units in Montana and in neighboring states and provinces in order to ensure collaboration, communication, and cooperation between the various county search and rescue units and between the department and the county units and dedication of a page on the department's website for posting the contact list and other relevant search and rescue information."

Section 2. Section 87-1-601, MCA, is amended to read:

"87-1-601. Use of fish and game money. (1) (a) Except as provided in subsections (7) and (9), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in Title 87 means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a

justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Except as provided in section 2(3), Chapter 560, Laws of 2005, money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department, except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is not subject to the deposit requirements of 17-6-105. The department shall deposit license drawing application money within a reasonable time after receipt.

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(8) The department of revenue shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102.

(9) (a) The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in 10-3-801.

(b) Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

(c) Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.

(d) Any money deposited in the special revenue account ~~in a fiscal year~~ is available for reimbursement of search and rescue missions and to provide matching funds *to reimburse counties for search and rescue training and*

equipment costs. ~~during the fiscal year when the money is deposited and during the following fiscal year. After this period, any money remaining in the special revenue account after the transfers provided for in this section must be transferred to the general license account of the department.~~"

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 27, 2007

CHAPTER NO. 333

[HB 764]

AN ACT REQUIRING THE INSURANCE COMMISSIONER PURSUANT TO A DIRECTIVE FROM THE UNITED STATES CONGRESS TO WORK COLLECTIVELY WITH OTHER STATES TO DEVELOP AND IMPLEMENT APPROPRIATE STANDARDS TO PROTECT ACTIVE DUTY MEMBERS OF THE ARMED FORCES FROM DISHONEST AND PREDATORY INSURANCE SALES PRACTICES WHILE LOCATED IN THIS STATE; AUTHORIZING THE INSURANCE COMMISSIONER TO IMPLEMENT A SYSTEM FOR THE RECEIPT AND DISSEMINATION OF REPORTS FROM GOVERNMENTAL AGENCIES AND INSURERS OF DISCIPLINARY ACTIONS TAKEN BY FEDERAL OR STATE GOVERNMENT ENTITIES OR INSURERS AGAINST PERSONS THAT SELL OR SOLICIT THE SALE OF ANY LIFE INSURANCE PRODUCT TO ACTIVE DUTY MEMBERS OF THE ARMED FORCES; AUTHORIZING THE INSURANCE COMMISSIONER TO ADOPT RULES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Protection of active duty members of armed forces — rulemaking authority. (1) (a) As used in this section, "life insurance product" means any product, including individual and group life insurance, funding agreements, and annuities, that provides insurance for which the probabilities of the duration of human life or the rate of mortality are an element or condition of insurance.

(b) The term includes the granting of:

(i) endowment benefits;

(ii) additional benefits in the event of death by accident or accidental means;

(iii) disability income benefits;

(iv) additional disability benefits that operate to safeguard the contract from lapse or to provide a special surrender value or special benefit in the event of total and permanent disability;

(v) benefits that provide payment or reimbursement for long-term home health care or long-term care in a nursing home or other related facility;

(vi) burial insurance; and

(vii) optional modes of settlement or proceeds of life insurance.

(c) The term does not include workers' compensation insurance, health insurance, disability insurance, property and casualty insurance, or life insurance products specifically contracted by or through the federal government.

(2) As provided in Public Law 109-290, in cooperation with the national association of insurance commissioners, the commissioner shall:

(a) work collectively with other states to develop and implement appropriate standards to protect active duty members of the armed forces from dishonest and predatory insurance sales practices;

(b) identify this state's role in promoting standards developed pursuant to subsection (2)(a); and

(c) work collectively with other states to implement a system to receive and disseminate reports of disciplinary actions taken by federal or state government entities or insurers against persons that sell or solicit the sale of any life insurance product to active duty members of the armed forces.

(3) (a) The commissioner may adopt rules for:

(i) written disclosures to be used in the sale or solicitation of any life insurance product to active duty members of the armed forces and their dependents to protect the members or the members' dependents from dishonest and predatory insurance sales practices while located in this state;

(ii) requiring insurers to implement a system to report to the commissioner:

(A) disciplinary actions taken by a federal or state government entity with respect to sales or solicitations of life insurance products to active duty members of the armed forces that the insurer knows or in the exercise of due diligence should have known were taken; and

(B) significant disciplinary action taken by the insurer with respect to sales or solicitations of life insurance products to active duty members of the armed forces of this state.

(b) Rules adopted by the commissioner must be consistent with and may not go beyond the scope of:

(i) any model regulations that are adopted by the national association of insurance commissioners in response to a directive from the United States congress in Public Law 109-290, directing that the states ensure implementation of appropriate standards to protect active duty members of the armed forces from dishonest and predatory insurance sales practices;

(ii) rules or regulations adopted by the secretary of defense pursuant to Public Law 109-290; and

(iii) the requirements of Public Law 109-290.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 1, and the provisions of Title 33, chapter 18, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 27, 2007

CHAPTER NO. 334

[HB 765]

AN ACT ALLOWING A LEGISLATOR TO CONTINUE ACTIVE MEMBERSHIP IN THE PUBLIC RETIREMENT SYSTEM OF WHICH THE LEGISLATOR IS A MEMBER; AMENDING SECTIONS 5-2-304 AND

19-3-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-2-304, MCA, is amended to read:

"5-2-304. ~~Continued participation~~ *Participation* in public retirement systems. (1) The purpose of this section is to ~~provide a means whereby persons serving in~~ *allow a person who is elected or appointed to* the Montana legislature ~~may~~ *and who is also a member of a retirement system provided for in Title 19, chapter 3, 5, 6, 7, 8, 9, 13, 20, or 21, by virtue of the person's nonlegislative employment, to* continue ~~their~~ *the person's* participation in *the* public retirement ~~systems governed by state law~~ *system of which the person is a member*.

(2) This section is not intended to provide duplicate credit for the same service in two retirement systems supported wholly or in part by public funds. This section does not affect contribution rates or benefit payments specifically provided for in the laws governing the operation of individual retirement systems.

(3) (a) A person who is an inactive or retired member of a retirement system provided for in Title 19, chapter 5, 6, 7, 8, 9, 13, 20, or 21, and who is elected or appointed to be a legislator may:

(i) return to active membership in the system of which the person is an inactive or retired member under the requirements of that system; or

(ii) remain an inactive or retired member of the retirement system and become an active member of the public employees' retirement system pursuant to 19-3-412.

(b) A person who is an inactive or retired member of the public employees' retirement system provided for in Title 19, chapter 3, and who is elected or appointed to the legislature may return to active membership in the public employees' retirement system but cannot simultaneously be an inactive or retired member of the system as a result of prior covered terminated employment and an active member of the retirement system under 19-3-412 or this section.

~~(2)~~*(4) (a)* A person who is ~~engaged in official duties as a member of the Montana legislature and who is a~~ *an active* member of a public retirement system governed by state law *and who is elected or appointed to be a legislator* may, but is not required to, continue the person's participation in that public retirement system while engaged in official duties as a legislator.

(b) To continue participation *as an active member* in the public retirement system, a legislator shall, within 180 days of taking office and in a manner prescribed by the appropriate board, file an irrevocable written election with the teachers' retirement board or the public employees' retirement board.

~~(3)~~*(5)* A legislator who elects to continue participation *as an active member* as provided in subsection ~~(2)~~ *(4)* shall continue the payments into the fund of the retirement system at the rate currently in effect in the system based on the legislator's monthly salary as a member of that system.

~~(4)~~*(6)* The state contribution must be made by legislative appropriation. It must equal the appropriate employer contribution at the rate currently in effect in the system."

Section 2. Section 19-3-412, MCA, is amended to read:

"19-3-412. Optional membership. (1) Except as provided in *5-2-304 and* subsection (2) *of this section*, the following employees and elected officials in covered positions shall elect either to become active members of the retirement system or to decline this optional membership by filing an irrevocable, written application with the board in the manner prescribed in subsection (3):

(a) elected officials of the state or local governments who:

(i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or

(ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the defined contribution plan at the time of their election;

(b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes.

(2) (a) Except as provided in subsection (2)(b), employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.

(b) A legislator may also become a member as of the date prior to December 30, 2000, that the legislator filed an irrevocable written application with the board to become a member and paid the employee share of contributions determined by the board to be required to purchase the legislator's prior service credit. However, the legislator shall purchase at least 5 years of service credit or, if the legislator has less than 5 years of membership service, service credit equal to all of the legislator's membership service. The legislative branch is responsible for paying the amount determined by the board to be the employer's share of contributions required to purchase a legislator's service credit under this subsection (2)(b).

(c) A member who after April 17, 2003, is elected to a local government position in which the member works less than 960 hours in a calendar year may, within 180 days of being elected, decline optional membership with respect to the member's elected position.

(3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1) and provide written application forms to each employer.

(b) Each employee or elected official in a position covered under subsection (1) shall obtain the written application form from the employer and complete and return it to the board.

(c) The written application must be filed with the board within 180 days of the commencement of the employee's or elected official's employment.

(d) The employer shall retain a copy of the employee's or elected official's written application.

(4) If the employee or elected official fails to file the written application required under subsection (1) with the board within the time allowed in subsection (3), the employee or elected official waives membership.

(5) An employee or elected official who declines optional membership may not receive membership service or service credit for the employment for which membership was declined.

(6) An employee or elected official who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service credit pursuant to this subsection must comply with 19-3-505.

(7) Except as provided in subsection (2)(c), membership in the retirement system is not optional for an employee or elected official who is already a member. Upon employment in a position for which membership is optional:

(a) a member who was an active member before the employment remains an active member;

(b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(8) (a) An employee or elected official who declines membership for a position for which membership is optional may not later become a member while still employed in that position.

(b) If, after a break in service of 30 days or more, an employee who was employed in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership.

(c) If the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(9) An employee accepting a position that requires membership shall become a member even if the employee previously declined membership and did not have a 30-day break in service."

Section 3. Transition. (1) A person who is subject to the provisions of 5-2-304 who made an irrevocable election under 5-2-304 after January 1, 2003, and before [the effective date of this act] may rescind the election.

(2) A person who is eligible under subsection (1) to rescind an election previously made by the person pursuant to 5-2-304 shall notify the public employees' retirement board in writing prior to July 1, 2007, that the person has rescinded the person's prior election.

(3) A person who rescinds, under subsection (2), the person's previous election is:

(a) subject to the applicable options available under 5-2-304 and 19-3-412 as provided for in [this act]; and

(b) is eligible to receive retroactively to January 1, 2007, the retirement benefits for which the person would have been eligible absent the original election.

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to January 1, 2003.

Approved April 27, 2007

CHAPTER NO. 335

[SB 50]

AN ACT REVISING THE PROVISION IN THE SEXUAL ASSAULT AND SEXUAL INTERCOURSE WITHOUT CONSENT LAWS TO PROVIDE THAT CONSENT IS NOT EFFECTIVE IF THE VICTIM IS ON PROBATION OR PAROLE AND THE PERPETRATOR IS AN EMPLOYEE, CONTRACTOR, OR VOLUNTEER OF THE SUPERVISING AUTHORITY WITH AUTHORITY OVER THE VICTIM; PROVIDING A LIMITED MARRIAGE EXCEPTION; REMOVING THE SPECIFIC SENTENCE FOR SEXUAL INTERCOURSE WITHOUT CONSENT BY CORRECTIONAL FACILITY EMPLOYEES; AND AMENDING SECTIONS 45-5-501, 45-5-502, AND 45-5-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-501, MCA, is amended to read:

"45-5-501. ~~Definition~~ *Definitions.* (1) As used in 45-5-503, the term "without consent" means:

(a) the victim is compelled to submit by force against the victim or another; or

(b) *subject to subsection (2),* the victim is incapable of consent because the victim is:

(i) mentally defective or incapacitated;

(ii) physically helpless;

(iii) overcome by deception, coercion, or surprise;

(iv) less than 16 years old; ~~or~~ *or*

(v) incarcerated in an adult or juvenile correctional, detention, or treatment facility *or is on probation or parole* and the perpetrator is an employee, contractor, or volunteer of the ~~facility~~ *supervising authority* and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search.

(2) Subsection (1)(b)(v) does not apply if the individuals are married to each other and one of the individuals involved is on probation or parole and the other individual is a probation or parole officer of a supervising authority.

~~(2)~~*(3)* As used in subsection (1), the term "force" means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

(4) As used in 45-5-502 and this section, the following definitions apply:

(a) "Parole":

(i) in the case of an adult offender, has the meaning provided in 46-1-202; and

(ii) in the case of a juvenile offender, means supervision of a youth released from a state youth correctional facility, as defined in 41-5-103, to the supervision of the department of corrections.

(b) "Probation" means:

(i) in the case of an adult offender, release without imprisonment of a defendant found guilty of a crime and subject to the supervision of a supervising authority; and

(ii) in the case of a juvenile offender, supervision of the juvenile by a youth court pursuant to Title 41, chapter 5.

(c) "Supervising authority" includes a court, including a youth court, a county, or the Montana department of corrections."

Section 2. Section 45-5-502, MCA, is amended to read:

"45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years, or more than 100 years and may be fined not more than $50,000.

(4) An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight after the attempt or commission.

(5) *(a)* ~~Consent~~ *Subject to subsection (5)(b), consent* is ineffective under this section if:

~~(a)~~*(i)* the victim is incarcerated in an adult or juvenile correctional, detention, or treatment facility *or is on probation or parole* and the perpetrator is an employee, contractor, or volunteer of the ~~facility~~ *supervising authority* and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search; or

~~(b)~~*(ii)* the victim is less than 14 years old and the offender is 3 or more years older than the victim.

(b) Subsection (5)(a)(i) does not apply if one of the parties is on probation or parole and the other party is a probation or parole officer of the supervising authority and the parties are married to each other."

Section 3. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iv).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term

of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

~~(d) If the victim was incarcerated in an adult or juvenile correctional, detention, or treatment facility at the time of the offense and the offender had supervisory or disciplinary authority over the victim, the offender shall be punished by imprisonment in the state prison for a term of not more than 5 years or fined an amount not to exceed $50,000, or both.~~

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission."

Approved April 28, 2007

CHAPTER NO. 336

[SB 145]

AN ACT GENERALLY REVISING WILDFIRE PROTECTION LAWS; ESTABLISHING A STATE FIRE POLICY; PROVIDING DEFINITIONS; CONSOLIDATING AND CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; STANDARDIZING TERMINOLOGY; REQUIRING THE DEPARTMENT TO APPOINT FIREWARDENS AND TO PRESCRIBE DUTIES FOR

FIREWARDENS; REMOVING PROVISIONS REQUIRING THE COUNTY TO LIST FOREST LANDS WITH THE DEPARTMENT; CLARIFYING THAT A PERMIT IS NOT NEEDED TO IGNITE CERTAIN RECREATIONAL FIRES DURING WILDFIRE SEASON; REVISING PENALTIES FOR FAILURE TO COMPLY WITH BURNING PERMITS, FAILURE TO EXTINGUISH RECREATIONAL FIRES, AND THROWING LIGHTED MATERIAL; EXTENDING TO ALL WILDLANDS CERTAIN PROVISIONS THAT PREVIOUSLY APPLIED ONLY TO FOREST LANDS; IMPOSING UPON OWNERS OF ALL LANDS THE DUTY TO PROTECT THE LANDS FROM WILDFIRE; ESTABLISHING A FORMULA FOR DETERMINING ASSESSMENTS FOR FIRE PROTECTION; REVISING THE DATE BY WHICH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION SHALL CERTIFY TO THE DEPARTMENT OF REVENUE THE NAMES OF CERTAIN LANDOWNERS; AMENDING SECTIONS 45-6-203, 76-13-101, 76-13-102, 76-13-103, 76-13-104, 76-13-105, 76-13-110, 76-13-121, 76-13-122, 76-13-123, 76-13-124, 76-13-125, 76-13-126, 76-13-201, 76-13-202, 76-13-203, 76-13-204, 76-13-205, 76-13-206, 76-13-207, 76-13-208, 76-13-209, 76-13-210, 76-13-211, AND 77-5-103, MCA; REPEALING SECTIONS 76-11-101, 76-13-106, 76-13-109, 77-5-104, 77-5-105, AND 77-5-106, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. State fire policy. The legislature finds and declares that:

(1) the safety of the public and of firefighters is paramount in all wildfire suppression activities;

(2) it is a priority to minimize property and resource loss resulting from wildfire and to minimize expense to Montana taxpayers, which is generally accomplished through an aggressive and rapid initial attack effort;

(3) interagency cooperation and coordination among local, state, and federal agencies are intended and encouraged, including cooperation when restricting activity or closing areas to access becomes necessary;

(4) fire prevention, hazard reduction, and loss mitigation are fundamental components of this policy;

(5) all property in Montana has wildfire protection from a recognized fire protection entity;

(6) all private property owners and federal and state public land management agencies have a responsibility to manage resources, mitigate fire hazards, and otherwise prevent fires on their property;

(7) sound forest management activities to reduce fire risk, such as thinning, prescribed burning, and insect and disease treatments, improve the overall diversity and vigor of forested landscapes and improve the condition of related water, wildlife, recreation, and aesthetic resources; and

(8) development of fire protection guidelines for the wildland-urban interface is critical to improving public safety and for reducing risk and loss.

Section 2. Section 45-6-203, MCA, is amended to read:

"45-6-203. Criminal trespass to property. (1) Except as provided in 15-7-139*,* ~~and~~ 70-16-111, *and [section 7],* a person commits the offense of criminal trespass to property if the person knowingly:

(a) enters or remains unlawfully in an occupied structure; or

(b) enters or remains unlawfully in or upon the premises of another.

(2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 3. Section 76-13-101, MCA, is amended to read:

"76-13-101. Purpose. (1) *(a)* It is the purpose of ~~this part and~~ part 2 *and this part* to provide for*:*

(i) the protection and conservation of ~~forest~~ *natural* resources, range, and water; *and* ~~the regulation of streamflow; and~~

(ii) the prevention of soil erosion.

(b) It is further the purpose of ~~this part and~~ part 2 *and this part* to more adequately promote and facilitate the cooperation, financial and otherwise, between the state and public and private agencies ~~which~~ *that* are associated in ~~such~~ *the* work.

(2) To achieve the conservation of ~~forest~~ *natural* and watershed resources, the legislature encourages the use of best management practices in timber sale planning, associated road construction and reconstruction, timber harvesting, site preparation, and related activities and establishes a process to ensure that information on best management practices is provided to owners and operators engaged in forest practices on private land."

Section 4. Section 76-13-102, MCA, is amended to read:

"76-13-102. Definitions. Unless the context requires otherwise, in part 2 and this part, the following definitions apply:

(1) ~~"Board" means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.~~

~~(2)~~ "Conservation" means the protection and wise use of forest, ~~forest~~ range, ~~forest~~ water, and ~~forest~~ soil resources in keeping with the common welfare of the people of this state.

~~(3)~~*(2)* "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

~~(4)~~*(3)* "Forest fire" means a fire burning uncontrolled on forest lands.

~~(5) "Forest fire protection" means the work of prevention, detection, and suppression of forest fires and includes training required to perform those functions.~~

~~(6) "Forest fire protection district" means a definite forest land area, the boundaries of which are fixed and in which forest fire protection is provided through the medium of an agency recognized by the department.~~

~~(7) "Forest fire season" means the period of each year beginning May 1 and ending September 30, inclusive.~~

~~(8)~~*(4)* "Forest land" means land that has enough timber, standing or down, slash, or brush to constitute in the judgment of the department a fire menace to life or property. Grassland and agricultural areas are included when those areas are intermingled with or contiguous to and no further than one-half mile from areas of forest land.

~~(9)~~*(5)* (a) "Forest practices" means the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site

preparation for regeneration of a timber stand, reforestation, and the management of logging slash.

(b) The term does not include activities for the purpose of:

(i) the operation of a nursery or Christmas tree farm;

(ii) the harvest of Christmas trees;

(iii) the harvest of firewood; or

(iv) the cutting of trees for personal use by an owner or operator.

~~(10) "Lands" for conservation purposes means all forest lands within this state that are officially classified by the department as forest lands under 76-13-107.~~

~~(11)~~*(6)* "Operator" means a person responsible for conducting forest practices. An operator may be the owner, the owner's agent, or a person who, through contractual agreement with the landowner, is obligated to or entitled to conduct forest practices or to carry out a timber sale.

~~(12)~~*(7)* "Owner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber other than an easement, right-of-way, or mineral reservation.

~~(13)~~*(8)* "Person" means an individual, corporation, partnership, or association of any kind.

~~(14)~~*(9)* "Recognized agency" means an agency organized for the purpose of providing ~~forest~~ fire protection and recognized by the department as giving adequate fire protection to ~~forest~~ lands in accordance with rules adopted by the department.

~~(15)~~*(10)* "Timber sale" means a series of forest practices designed to access, harvest, and regenerate trees on a defined land area.

(11) "Wildfire" means an unplanned, unwanted fire burning uncontrolled on wildland and consuming vegetative fuels.

(12) "Wildfire season" means the period of each year beginning May 1 and ending September 30, inclusive.

(13) "Wildland" means an area in which development is essentially nonexistent, except for roads, railroads, powerlines, and similar facilities, and in which structures, if any, are widely scattered.

(14) "Wildland fire protection" means the work of prevention, detection, and suppression of wildland fires and includes training required to perform those functions.

(15) "Wildland fire protection district" means a definite land area, the boundaries of which are fixed and in which wildland fire protection is provided through the medium of an agency recognized by the department.

(16) "Wildland-urban interface" means the line, area, or zone where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels."

Section 5. Section 76-13-103, MCA, is amended to read:

"76-13-103. Applicability. ~~This part and part 2~~ *Part 2 and this part* apply to all ~~forest~~ *state and private* lands within this state that are ~~officially classified by the department as forest lands according to the definition of forest land in 76-13-102~~ *susceptible to wildfire, as determined by the department*."

Section 6. Section 76-13-104, MCA, is amended to read:

"76-13-104. Functions of department — *rulemaking*. (1) *The department has the duty to ensure the protection of land under state and private ownership and to suppress wildfires on land under state and private ownership. No fees may be collected for this purpose except fees provided for in 76-13-201.*

(2) (a) The department shall adopt rules to protect the natural resources of the state, especially the natural resources owned by the state, from destruction by fire and for that purpose, in declared emergencies, may employ personnel and incur other expenses when necessary.

(b) The department may adopt and enforce reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of part 2 and this part.

(3) The duty imposed on the department under this section is not exclusive to the department and does not absolve private property owners or local governmental fire agencies organized under Title 7, chapter 33, from any fire protection or suppression responsibilities.

(4) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and ~~forest~~ fire protection.

~~(2)~~*(5)* The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

(6) The department shall establish and maintain wildland fire control training programs.

~~(3) The department shall require an owner or operator to provide a notification prior to conducting forest practices as provided in 76-13-131, shall adapt as necessary any procedure used for notification with respect to an agreement under 76-13-408 to ensure that the operator provides information on the location of the forest practices in relation to watershed features, and shall conduct onsite consultations as provided for in 76-13-132.~~

(7) The department has the authority to appoint state or federal employees as firewardens in the number and localities that it considers necessary for meeting department firefighting responsibilities and shall adopt rules prescribing the qualifications and duties of firewardens that are in addition to those provided in [section 7]. Local county governments shall retain sole authority for designation and appointment of county fire chiefs or firewardens."

Section 7. Duties of firewardens — liability. (1) In addition to the duties prescribed by rule pursuant to 76-13-104(7), a firewarden appointed by the department shall promptly report all fires to the department, take immediate and active steps toward their extinguishment, report any violation of the provisions of Title 76, chapter 13, parts 1 and 2, and assist in apprehending and convicting offenders.

(2) A firewarden is not liable for civil action for trespass committed in the discharge of the firewarden's duties, and the provisions of 45-6-203 do not apply to a firewarden acting within the course and scope of the firewarden's duties.

(3) A firewarden who has information that shows, with reasonable certainty, that a person has violated any provision of Title 76, chapter 13, parts 1 and 2, shall immediately take action against the offender by making complaint before the appropriate authority or by providing information to the appropriate

county attorney and shall obtain all possible evidence pertaining to the violation.

Section 8. Section 76-13-105, MCA, is amended to read:

"76-13-105. Protection of ~~nonforest~~ lands and improvements *from fire.* *(1)* Nonforest lands and improvements may be protected by the department when requested by the landowner at rates determined by the department *in those areas where a recognized agency is available.*

(2) Land classified as forest land under 76-13-107 that is within a wildland fire protection district, as provided in 76-13-204, or that is otherwise under contract for fire protection by a recognized agency must be protected as provided in 76-13-201 and 76-13-207.

(3) Private and public land, whether classified as forest land or otherwise, that is not within a wildland fire protection district or under the protection of a recognized agency or a municipality must be protected by a county as provided in 7-33-2202. The county governing body shall either provide direct protection, as provided in 7-33-2202(3), or it shall enter into an agreement for protection with a recognized agency."

Section 9. Section 76-13-110, MCA, is amended to read:

"76-13-110. Owner's right to ~~board~~ *department* hearing. (1) An owner of forest land is entitled to a hearing before the ~~board~~ *department*, after a request ~~therefor~~ *for a hearing*, on any subject pertaining to the activities of ~~the board,~~ the department~~,~~ or any recognized agency as agent of the department affecting the owner's property. A request for a hearing before the ~~board~~ *department* may not have the effect of suspending the operations of ~~the board,~~ the department~~,~~ or any agent of the department undertaken pursuant to this chapter, but upon the hearing, the ~~board~~ *department* may terminate those operations if found unreasonable.

(2) A hearing pertaining to costs charged against the forest land of an owner for protection ~~thereof~~, as provided in 76-13-201, must be requested on or before August 15 each year."

Section 10. Section 76-13-121, MCA, is amended to read:

"76-13-121. Permit for burning required. *(1)* During the ~~forest fire~~ *wildfire* season or an expansion ~~thereof~~ *of the wildfire season*, a person may not ignite or set a ~~forest~~ fire, *including a* slash-burning fire, land-clearing fire, debris-burning fire, or*, except as provided in subsection (2),* an open fire ~~within forest lands~~ without an official written permit to ignite or set the fire from the recognized ~~protection~~ agency for that protection area. ~~A permit is not required in order to build, set, or ignite a campfire within and upon a designated improved camping ground or upon a plot of land from which all vegetable and inflammable matter and debris have been removed to a point where it may not become ignited by the campfire or by sparks therefrom~~

(2) (a) If no restrictions are in place, a permit is not needed for recreational fires measuring less than 48 inches in diameter that are surrounded by a nonflammable area or structure and for which a suitable source of extinguishing the fire is available.

(b) A recreational fire may not be ignited if special restrictions prohibiting recreational fires have been established by an authority having jurisdiction."

Section 11. Section 76-13-122, MCA, is amended to read:

"76-13-122. Failure to comply with permit. A person to whom a written permit is issued to set or ignite a fire ~~within forest lands during the forest protection season~~ shall comply strictly with the permit. A person who fails to comply with the permit, leaves the fire unattended, leaves the fire before it is totally extinguished, or negligently allows the fire to spread from or beyond the burning area defined by the permit is ~~guilty of a misdemeanor~~ *subject to the penalty provided in 50-63-102 and is subject to the provisions of 50-63-103*. The department shall prescribe the form and substance of ~~such~~ *the* permit."

Section 12. Section 76-13-123, MCA, is amended to read:

"76-13-123. Failure to extinguish ~~campfire~~ *recreational fire*. ~~Any~~ *A* person who ~~shall fail~~ *fails* to extinguish ~~any campfire~~ *a recreational fire that the person has* set or ignited ~~by him within any forest lands before leaving the same, who shall fail to extinguish any campfire used by him or left in his charge before leaving the same,~~ *or in which the person has been left in charge* or who ~~shall~~ negligently ~~allow such~~ *allows the* fire to spread from the plot described in 76-13-121 ~~shall be guilty of a misdemeanor~~ *is subject to the penalty provided in 50-63-102 and is subject to the provisions of 50-63-103*."

Section 13. Section 76-13-124, MCA, is amended to read:

"76-13-124. Throwing lighted materials. A person who throws or places any lighted ~~cigarette, cigar, ashes, or other~~ *material or* flaming or glowing substance that may start a fire ~~in or near any forest material is guilty of a misdemeanor~~ *is subject to the penalty provided in 50-63-102 and is subject to the provisions of 50-63-103*."

Section 14. Section 76-13-125, MCA, is amended to read:

"76-13-125. Spark arresters required. ~~No~~ *A* person may *not* use, drive, or operate within ~~any forest lands~~ *wildland* any internal combustion engine that is not equipped with a modern, efficient, and adequate spark arrester ~~and with modern, efficient devices~~ to prevent the escape of sparks, coals, cinders, and other burning material from the exhaust of ~~any such~~ *the* engine."

Section 15. Section 76-13-126, MCA, is amended to read:

"76-13-126. Restrictions on ~~sawdust piles~~ *mill waste*. *(1)* ~~(1) Before each forest fire season, all~~ *Before each wildfire season, all* persons, firms, or corporations creating or responsible for mill waste ~~within the forest areas~~ *within the forest areas* shall treat, dispose of, remove, or reduce the hazards created so that the accumulation of ~~sawmilling~~ *the* waste does not constitute a fire hazard.

~~(2) A sawmill located within or contiguous to forest lands may not accumulate in one pile sawdust in excess of an amount resulting from the sawing of 500,000 feet log scale of sawlogs. However, a larger sawdust pile may be accumulated when there is no reasonable danger of fire therefrom and a permit for the additional accumulation is granted by the department. If burning is the disposal method elected, each sawdust pile so accumulated shall be prepared for burning by cribbing the base of each pile with slabs and burned in accordance with rules adopted by the department.~~

(2) A sawmill located within or contiguous to forest lands may not accumulate in one pile sawdust in excess of an amount resulting from the sawing of 500,000 feet log scale of sawlogs. However, a larger sawdust pile may be accumulated when there is no reasonable danger of fire from the sawdust pile and a permit for the additional accumulation is granted by the department. If burning is the disposal method elected, each sawdust pile must be prepared for

burning by cribbing the base of each pile with slabs and burned in accordance with rules adopted by the department."

Section 16. Duty of landowner to protect against fire. (1) An owner of land shall protect against the starting or existence of fire and shall suppress the spread of fire on that land. This protection and suppression must be in conformity with reasonable rules and standards for adequate fire protection adopted by the department.

(2) (a) The provisions of 76-13-201 apply to an owner of land that is classified as forest land under 76-13-107 and that is within a wildland fire protection district.

(b) If an owner of land does not provide for protection against the starting or existence of fire and for fire suppression and the land does not meet the criteria in subsection (2)(a), the owner may request that the department provide protection as provided in 76-13-105.

Section 17. Section 76-13-201, MCA, is amended to read:

"76-13-201. ~~Duty of owner to protect against~~ *Costs for protection from* fire. ~~(1) An owner of land classified as forest land by the department shall protect against the starting or existence and suppress the spread of fire on that land. This protection and suppression must be in conformity with reasonable rules and standards for adequate fire protection adopted by the department.~~

~~(2) If the~~ *(1) An* owner *of land classified as forest land that is within a wildland fire protection district or that is otherwise under contract for fire protection by a recognized agency* ~~does not provide for the protection and suppression, the~~ *is subject to the fees for fire protection provided in this section.*

(2) The department ~~may~~ *shall* provide ~~it~~ *fire protection to the land described in subsection (1)* at a cost to the landowner of not more than ~~$30~~ *$45* for each landowner in the protection district and of not more than an additional ~~20~~ *25* cents per acre per year for each acre in excess of 20 acres owned by each landowner in each protection district, as necessary to yield the amount of money provided for in 76-13-207. ~~The owner of the land shall pay the charge approved by the department in accordance with part 1 and this part to the department of revenue. Payments to the department of revenue are due on or before November 30 of each year~~ *Assessment, payment, and collection of the fire protection costs must be in accordance with 76-13-207.*

(3) Other charges may not be assessed to a participating landowner except in cases of ~~proven~~ *proved* negligence on the part of the landowner or the landowner's agent *or in the event of a violation of 50-63-103.*"

Section 18. Section 76-13-202, MCA, is amended to read:

"76-13-202. Means by which department may provide protection. The department may provide for ~~forest fire~~ *wildfire* protection of any ~~forest lands~~ *wildlands* through the department or by contract or any other feasible means, in cooperation with any federal, state, or other recognized agency."

Section 19. Section 76-13-203, MCA, is amended to read:

"76-13-203. Extension of ~~the forest fire~~ *wildfire* season. In the event of excessive or great fire danger, the period defined in ~~76-13-102(7)~~ *76-13-102(12)* may be expanded when in the judgment of the department dangerous fire conditions exist. When expanded, the department shall give public notice."

Section 20. Section 76-13-204, MCA, is amended to read:

"76-13-204. Creation, annexation of land into, and dissolution of ~~forest~~ *wildland* fire protection districts. (1) In accordance with the provisions of subsections (2) and (3), the department may create, annex land to, or dissolve ~~forest~~ *wildland* fire protection districts.

(2) Before a district is created, land is annexed into a district, or a district is dissolved, the department shall hold a hearing in any county in which land affected by the proposed change is located.

(a) The department shall give notice at least 20 days in advance of the hearing to all property owners to be affected by the proposed change. Service of the notice ~~may~~ *must* be made by certified mail to each affected property owner ~~or~~ *and* by publication of the notice in a newspaper published or generally circulated in the county in which the hearing is to be held.

(b) The department shall consider the arguments made for and against the proposed change in making a determination under this section.

(3) (a) A ~~forest~~ *wildland* fire protection district may not be created or dissolved unless approved in writing by a vote of not less than 51% of the owners representing at least 51% of the acreage to be involved in the affected ~~forest~~ *wildland* fire protection district.

(b) Land may not be annexed into a district unless approved by 51% of the owners representing at least 51% of the acreage to be annexed.

(4) Land annexed into a district may not be removed from that district unless that district is dissolved."

Section 21. Section 76-13-205, MCA, is amended to read:

"76-13-205. Determination of boundaries of district. In establishing boundaries of organized ~~forest~~ *wildland* fire protection districts ~~covering forest lands~~, the department may for the purpose of administrative convenience designate recognizable landmarks as boundaries."

Section 22. Section 76-13-206, MCA, is amended to read:

"76-13-206. What constitutes compliance with duty to protect against fire ~~for landowners within district~~. An owner of ~~forest lands~~ *land* within an organized ~~forest~~ *wildland* fire protection district while a member of or while participating in a recognized agency for ~~forest~~ *wildland fire* protection or within areas protected by a county ~~shall~~ *must* be considered to have fully complied with the requirements of ~~76-13-201~~ *[section 16]*."

Section 23. Section 76-13-207, MCA, is amended to read:

"76-13-207. Determination and collection of costs of fire protection. (1) The department shall prepare an annual operation assessment plan in which fire protection costs are determined. The department shall request the legislature to appropriate the state's portion of the cost. After the appropriation is made by the legislature, the department shall cause an assessment to be made on the owners of ~~classified forest~~ land, as specified in *76-13-105 and* 76-13-201, sufficient to bring the total amount received from the landowners to no greater than one-third of the amount specified in the appropriation.

(2) On or before the ~~second Tuesday in August~~ *first Tuesday in September* of each year, the department shall certify in writing to the department of revenue the names of these owners of ~~forest lands~~ *lands* in each county, together with a description of their lands and a statement of the amount found to be due and

owing by each of the owners to the department for ~~forest~~ *wildland* fire protection.

(3) Upon receiving the certificate from the department showing the amount due, the department of revenue shall extend the amounts upon the county tax rolls covering the lands, and the sums become obligations of the owner, to be paid and collected in the same manner and at the same time and subject to the same penalties as general state and county taxes upon the same property are collected."

Section 24. Section 76-13-208, MCA, is amended to read:

"76-13-208. Nature of assessments for ~~forest~~ *wildland* fire protection. All payments required of ~~owners of forest lands~~ *landowners* by ~~this part and~~ part 1 *and this part* are assessments for benefits actually received by those owners in the protection of their lands and are not a tax upon the property of ~~such~~ *the* owners."

Section 25. Section 76-13-209, MCA, is amended to read:

"76-13-209. Disposition of assessments. ~~All sums~~ *Money* collected *by the county treasurer* pursuant to 76-13-207 ~~shall~~ *must* be ~~promptly deposited~~ *remitted to the state for deposit* in the state special revenue fund."

Section 26. Section 76-13-210, MCA, is amended to read:

"76-13-210. Payment under protest. An owner who is required to pay to the county treasurer any sum for ~~forest~~ *wildland fire* protection as required by ~~this part or~~ part 1 *or this part* and who contends that ~~he~~ *the owner* is not legally obligated to pay the sum or ~~some~~ *a* part ~~thereof~~ *of the sum* shall pay it to the county treasurer under written protest, stating the reasons for the protest. The payment under protest and all proceedings subsequent ~~thereto shall be in conformity~~ *to the payment must conform* with the law of this state providing for the payment of taxes under protest and action to recover the ~~same~~ *payment*. In the hearing and determination of any action to recover the payment under protest, all questions of the legality and reasonableness of the proceedings of ~~the board and~~ the department may be reviewed and decided."

Section 27. Section 76-13-211, MCA, is amended to read:

"76-13-211. Amount due for protection treated as lien. (1) Whenever the department provides ~~forest~~ *wildland fire* protection ~~during a forest fire season~~ for any ~~forest land~~ *wildland* or timber not protected by the owner ~~thereof~~ *of the wildland or timber* as required by ~~this part or~~ part 1 *or this part*, the amount due for the ~~forest~~ protection is a lien upon the ~~land~~ *wildland* or timber ~~which shall continue~~ *that continues* until ~~such time as~~ the amount due is paid.

(2) The lien has the same force, effect, and priority as general tax liens under the laws of the state and is subject and inferior only to tax liens on the lands. The county attorney of the county in which the land is situated shall on request of the department foreclose the lien in the name of the state and in the manner provided by law, or the county attorney upon the request of the department shall institute an action against the ~~forest~~ landowner in the name of the state in any district or justice court having jurisdiction to recover the debt. The state in the action is not required to pay any fees or costs to the clerk of the court or justice of the peace.

(3) The remedies provided by this section are cumulative and do not affect the other provisions of ~~this part or~~ part 1 *or this part* for the payment and collection of amounts due to the department."

Section 28. Section 77-5-103, MCA, is amended to read:

"77-5-103. Role of department. (1) The department shall, under the direction and control of the board, do all the field work in the selection, location, examination, appraisement, and reappraisement of state timberlands.

(2) ~~It~~ *The department* shall do all acts required of it by the board, and under the direction of the board, it has general charge of the timberlands of the state.

(3) ~~It~~ *The department* shall, under the supervision of the board:~~,~~

(a) execute all matters pertaining to forestry within the jurisdiction of the state;

(b) ~~have charge of all firewardens of the state and direct and aid them in their duties;~~ direct the protection, improvement, and condition of state forests;

(c) take ~~such~~ *any* action ~~as is~~ authorized by law to prevent and extinguish ~~forest, brush, and grass~~ *wildland* fires; *and*

(d) enforce the laws pertaining to forest and ~~brushcover~~ *nonforest* lands and prosecute for any violation of those laws.

~~(4) The department shall establish and maintain forest fire control training programs for state firefighters and other persons requiring training.~~"

Section 29. Formula to set landowner assessments for fire protection. (1) The department shall, pursuant to 76-13-207, set the annual fire assessment fee due from landowners pursuant to Title 76, chapter 13, parts 1 and 2. The total of all statewide landowner assessments may be no greater than one-third of the amount appropriated by the legislature to fund the protection costs.

(2) The individual assessments must be established using the following criteria:

(a) Each person or corporation who is responsible for fire protection pursuant to 76-13-108 and 76-13-201 and for whom the department provides fire protection must be assessed a per capita landowner fee. The total per capita landowner assessments statewide from persons or corporations who own 20 acres or less of land for which the department provides protection must be as close as administratively possible to 60% of the total private landowner assessments.

(b) A person or corporation who owns more than 20 acres of land for which the department provides protection shall, in addition to the fee assessed pursuant to subsection (2)(a), pay a per-acre fee for each whole acre that the person owns in excess of 20 acres. The total of all assessments statewide from persons or corporations that own more than 20 acres must be as close as administratively possible to 40% of the total private landowner assessments.

(3) (a) Except as provided in subsection (3)(b), the per capita and per-acre fees must remain in effect for subsequent years.

(b) The department shall reset the per capita and per-acre fees whenever it is necessary to obtain up to one-third of the amount appropriated by the legislature.

(c) Whenever the department resets the fees pursuant to subsection (3)(b), it shall do so in accordance with 76-13-201(2).

Section 30. Repealer. Sections 76-11-101, 76-13-106, 76-13-109, 77-5-104, 77-5-105, and 77-5-106, MCA, are repealed.

Section 31. Codification instruction. (1) [Sections 1 and 7] are intended to be codified as an integral part of Title 76, chapter 13, part 1, and the provisions of Title 76, chapter 13, part 1, apply to [sections 1 and 7].

(2) [Sections 16 and 29] are intended to be codified as an integral part of Title 76, chapter 13, part 2, and the provisions of Title 76, chapter 13, part 2, apply to [sections 16 and 29].

Section 32. Directions to code commissioner. (1) If legislation is enacted that contains references to and definitions of "wildfire season", "wildland fire", "wildland fire protection", and "wildland fire protection district", then the code commissioner is instructed to change the terms "forest fire season", "forest fire", "forest fire protection", and "forest fire protection district" wherever they occur.

(2) Section 76-11-102 is intended to be renumbered and codified as an integral part of Title 76, chapter 13, part 1.

(3) Sections 76-13-131 through 76-13-135 are intended to be renumbered and codified as an integral part of Title 76, chapter 13, part 4.

Section 33. Coordination instruction. If Senate Bill No. 147 [LC 423] and [this act] are both passed and approved and if they contain a section that amends 76-13-121, then the sections amending 76-13-121 are void and 76-13-121 must be amended as follows:

"76-13-121. Permit for burning required. *(1)* During the ~~forest fire~~ *wildfire* season or an expansion ~~thereof~~ *of the wildfire season*, a person may not ignite or set a ~~forest~~ fire, *including a* slash-burning fire, land-clearing fire, debris-burning fire, or*, except as provided in subsection (2),* an open fire ~~within forest lands~~ without an official written permit to ignite or set the fire from the recognized ~~protection~~ agency for that protection area. ~~A permit is not required in order to build, set, or ignite a campfire within and upon a designated improved camping ground or upon a plot of land from which all vegetable and inflammable matter and debris have been removed to a point where it may not become ignited by the campfire or by sparks therefrom.~~ *A permit may not be issued where a special burning restriction in a high fire hazard area has been imposed by a county governing body under [section 3 of LC 423] or by the department under [section 1 of LC 423].*

(2) (a) If no restrictions are in place, a permit is not needed for recreational fires measuring less than 48 inches in diameter that are surrounded by a nonflammable area or structure and for which a suitable source of extinguishing the fire is available.

(b) A recreational fire may not be ignited if special restrictions prohibiting recreational fires have been established by an authority having jurisdiction."

Section 34. Coordination instruction. If Senate Bill No. 51 and [this act] are passed and approved and [this act] repeals 76-13-109, then the section in [this act] amending 76-13-104 is void and 76-13-104 must be amended as follows:

"76-13-104. Functions of department — *rulemaking.* (1) *The department has the duty to ensure the protection of land under state and private ownership and to suppress wildfires on land under state and private ownership. No fees may be collected for this purpose except fees provided for in 76-13-201.*

(2) (a) The department shall adopt rules to protect the natural resources of the state, especially the natural resources owned by the state, from destruction by

fire and for that purpose, in declared emergencies, may employ personnel and incur other expenses when necessary.

(b) The department may adopt and enforce reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of part 2 and this part.

(3) The duty imposed on the department under this section is not exclusive to the department and does not absolve private property owners or local governmental fire agencies organized under Title 7, chapter 33, from any fire protection or suppression responsibilities.

(4) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and ~~forest~~ fire protection.

~~(2)~~*(5)* The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

(6) The department shall establish and maintain wildland fire control training programs.

~~(3) The department shall require an owner or operator to provide a notification prior to conducting forest practices as provided in 76-13-131, shall adapt as necessary any procedure used for notification with respect to an agreement under 76-13-408 to ensure that the operator provides information on the location of the forest practices in relation to watershed features, and shall conduct onsite consultations as provided for in 76-13-132.~~

(7) The department shall appoint firewardens in the number and localities that it considers necessary, subject to confirmation by the local county government, and shall adopt rules prescribing the qualifications and duties of firewardens that are in addition to those provided in [section 7 of Senate Bill No. 145].

(8) By October 1, 2008, the department shall adopt rules addressing development within the wildland-urban interface, including but not limited to:

(a) best practices for development within the wildland-urban interface; and

(b) criteria for providing grant and loan assistance to local government entities to encourage adoption of best practices for development within the wildland-urban interface."

Section 35. Effective date. [This act] is effective June 1, 2007.

Approved April 28, 2007

CHAPTER NO. 337

[SB 175]

AN ACT EXPRESSLY PROVIDING THAT AN AGENCY MAY NOT ENFORCE, IMPLEMENT, OR OTHERWISE TREAT AN ADMINISTRATIVE RULE AS EFFECTIVE UNTIL THE EFFECTIVE DATE OF THE RULE; AMENDING SECTION 2-4-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, section 2-4-306(4), MCA, now provides that a rule is not effective until after publication in the Montana Administrative Register or until a different effective date as stated by the agency in the rule; and

WHEREAS, during the 2005-2006 interim, the State Administration and Veterans' Affairs Interim Committee dealt with a state agency that treated a not-yet-effective administrative rule as if that rule was effective as law.

WHEREAS, the State Administration and Veterans' Affairs Interim Committee believes that an agency may not under existing law implement a rule before the rule is effective and that the amendment of section 2-4-306, MCA, contained in this legislation does not alter the existing law.

THEREFORE, it is the intent of the State Administration and Veterans' Affairs Interim Committee to provide a short and clear statement in law that an agency may not implement a rule before the rule is effective as law.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-306, MCA, is amended to read:

"2-4-306. Filing, format, and adoption and effective dates — dissemination of emergency rules. (1) Each agency shall file with the secretary of state a copy of each rule adopted by it or a reference to the rule as contained in the proposal notice. A rule is adopted on the date that the adoption notice is filed with the secretary of state and is effective on the date referred to in subsection (4), except that if the secretary of state requests corrections to the adoption notice, the rule is adopted on the date that the revised notice is filed with the secretary of state.

(2) Pursuant to 2-15-401, the secretary of state may prescribe rules to effectively administer this chapter, including rules regarding the format, style, and arrangement for notices and rules that are filed pursuant to this chapter, and may refuse to accept the filing of any notice or rule that is not in compliance with this chapter. The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, that must be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing copies.

(3) If the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be published with the rule.

(4) Each rule is effective after publication in the register, as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date is the effective date;

(b) subject to applicable constitutional or statutory provisions:

(i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and

(ii) an emergency rule is effective at a stated date following publication in the register or immediately upon filing with the secretary of state if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons for the finding must be filed with the rule. The agency shall, in addition to the required publication in the register, take appropriate and extraordinary

measures to make emergency rules known to each person who may be affected by them.

(c) if, following written administrative rule review committee notification to an agency under 2-4-305(9), the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the rule is adopted, the rule or portion of the rule objected to is not effective until the day after final adjournment of the regular session of the legislature that begins after the notice proposing the rule was published by the secretary of state, unless, following the committee's objection under 2-4-406(1):

(i) the committee withdraws its objection under 2-4-406 before the rule is adopted; or

(ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the committee members, as communicated in writing to the committee presiding officer and staff, make it comply with the committee's objection and concerns.

(5) An agency may not enforce, implement, or otherwise treat as effective a rule proposed or adopted by the agency until the effective date of the rule as provided in this section. Nothing in this subsection prohibits an agency from enforcing an established policy or practice of the agency that existed prior to the proposal or adoption of the rule as long as the policy or practice is within the scope of the agency's lawful authority."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 27, 2007

CHAPTER NO. 338

[SB 181]

AN ACT CHANGING THE DEADLINE BY WHICH A WRITE-IN CANDIDATE IN A MAIL BALLOT ELECTION MUST FILE A DECLARATION OF INTENT; AND AMENDING SECTION 13-10-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-10-211, MCA, is amended to read:

"13-10-211. Declaration of intent for write-in candidates. (1) Except as provided in subsection (7), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. Except as provided in subsections (2) and (3), the declaration must be filed no later than 5 p.m. on the 15th day before the election and must contain:

(a) (i) the candidate's first and last names;

(ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;

(iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and

(iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;

(b) the candidate's mailing address;

(c) a statement declaring the candidate's intention to be a write-in candidate;

(d) the title of the office sought;

(e) the date of the election;

(f) the date of the declaration; and

(g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office that the write-in candidate is seeking:

(a) dies;

(b) withdraws from the election; or

(c) is charged with a felony offense.

(3) A person seeking to become a write-in candidate *in a mail ballot election or* for a trustee position ~~on~~ *in* a school board *election* shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

(4) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(5) A declaration of intent may be sent by facsimile transmission if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state.

(6) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the secretary of state or the election administrator.

(7) The requirements in subsection (1) do not apply if:

(a) an election is held;

(b) a person's name is written in on the ballot;

(c) the person is qualified for and seeks election to the office for which the person's name was written in; and

(d) no other candidate has filed a declaration or petition for nomination or a declaration of intent."

Approved April 28, 2007

CHAPTER NO. 339

[SB 204]

AN ACT PREVENTING AN INSURER FROM REQUIRING MOTOR VEHICLE REPAIR ESTIMATES OR REPAIRS FROM CERTAIN BUSINESSES BY CLAIMANTS; ALLOWING ACCESS FOR COMPETITIVE ESTIMATES; AND AMENDING SECTION 33-18-224, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-18-224, MCA, is amended to read:

"33-18-224. Designation of specific automobile body repair businesses prohibited. (1) *(a)* An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

~~(a)~~*(i)* require that a ~~person insured~~ *claimant* under the policy use a particular automobile body repair business or location *for an estimate or a repair*; or

~~(b)~~*(ii)* engage in any act or practice that intimidates, coerces, or threatens ~~an insured person~~ *a claimant* or that provides an incentive or inducement for ~~an insured person~~ *a claimant* to use a particular automobile body repair business or location.

(b) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may have access to the motor vehicle for purposes of preparing a competitive estimate.

(2) (a) Except as provided in subsection (2)(b), if an insurance company has direct repair programs with automobile body repair businesses or locations, the insurance company may not limit the number of automobile body repair businesses or locations with whom it maintains direct repair programs.

(b) An insurance company may limit the number of automobile body repair businesses or locations participating in the insurance company's direct repair program to those automobile body repair businesses or locations that comply with the provisions of subsection (2)(c). An insurance company is not required to establish a direct repair program in a particular market area in which the insurance company's number of policyholders does not support establishing a direct repair program with any automobile body repair business or location.

(c) Upon request, the insurance company shall provide, without prejudice or bias, the ~~insured person~~ *claimant* with a list that includes all automobile body repair businesses or locations that are reasonably close or convenient to the ~~insured person~~ *claimant* and willing to provide services and that meet the insurance company's criteria regarding whether the automobile body repair business or location:

(i) possesses the equipment necessary to undertake repairs;

(ii) undertakes training of management and technical personnel with respect to repair information and the claims process;

(iii) agrees to perform quality repairs at the prevailing competitive market price and that meet reasonable industry repair standards;

(iv) agrees to warrant the quality of work, including refinishing, in writing to the ~~insured person~~ *claimant*, for a period of not less than 1 year from the date of repair;

(v) agrees to inspection of its repairs and services by the insurance company and agrees that the insurance company may terminate the direct repair program with the automobile body repair business or location if the repairs and services are below the standards of quality required by the insurance company; and

(vi) if requested, agrees to execute an agreement with the insurance company that may contain additional criteria that are not designed to unfairly limit the number of automobile body repair businesses or locations with whom the insurance company maintains direct repair programs. The additional criteria may include criteria determined to be necessary by the insurance company and designed to ensure that the automobile body repair business or location has the necessary estimating systems and programs and equipment to communicate electronically with the insurance company and that the automobile body repair business or location has taken steps to ensure the privacy of the insurance company and the ~~insured person~~ *claimant*.

(d) If the ~~insured person~~ *claimant* requests the list provided for in subsection (2)(c), the insurance company shall inform the ~~insured person~~ *claimant* that the ~~insured person~~ *claimant* may use an automobile body repair business or location at the sole discretion of the ~~insured person~~ *claimant*.

(3) For the purposes of this section, an incentive or inducement does not include:

(a) providing ~~an insured person~~ *a claimant* with the list provided for in subsection (2)(c); or

(b) referring to a warranty issued by an automobile body repair business or location.

(4) The ~~insured~~ *claimant* may use an automobile body repair business or location at the ~~insured's~~ *claimant's* sole discretion, and the insurance company shall pay for the reasonable and necessary cost of the automobile body repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile body repair services than the lowest prevailing market price, as defined in 33-18-222.

(5) If the ~~insured person~~ *claimant* uses an automobile body repair business or location that is not on a list provided for in subsection (2)(c), the insurance company may not be held liable for any repair work performed by the automobile body repair business or location chosen by the ~~insured person~~ *claimant*.

(6) It is unlawful for an automobile body repair business or location to charge or agree to charge ~~an insured customer~~ *a claimant* more than an uninsured customer for any automobile body repair service.

(7) An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section.

(8) For purposes of this section~~,~~*:*

(a) "automobile body repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products*;*

(b) "claimant" means the person seeking repair of a motor vehicle whether that person is the insured person or a third party making a claim against the insurer."

Approved April 27, 2007

CHAPTER NO. 340

[SB 214]

AN ACT REVISING LAWS RELATING TO INDEPENDENT CONTRACTORS; CLARIFYING THAT CERTAIN INDEPENDENT CONTRACTORS ARE NOT EXEMPT FOR UNEMPLOYMENT INSURANCE PURPOSES; EXPANDING ELIGIBILITY FOR WORKERS' COMPENSATION PURPOSES; AMENDING SECTIONS 39-51-204 AND 39-71-417, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist or barber who is licensed under Title 37, chapter 31, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a salon or shop, as defined in 37-31-101, and the contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the salon or shop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership, members of a member-managed limited liability company that has filed with the secretary of state, or partners in a limited liability partnership that has filed with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed as a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in 5 U.S.C. 8501(1)(I) and section 3306(c)(6) of the Federal Unemployment Tax Act;

(s) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(t) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(u) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(w) service performed by an alien as identified in 8 U.S.C. 1101(a)(15)(F), (a)(15)(H)(ii)(a), (a)(15)(J), (a)(15)(M), or (a)(15)(Q);

(x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873;

(y) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(z) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an amateur athletic event; or

(aa) services performed by an election judge appointed pursuant to 13-4-101 if the remuneration received for those services is less than $1,000 in the calendar year.

(2) *(a)* ~~An~~ *Except as provided in subsection (2)(b), an* individual found to be an independent contractor by the department under the terms of 39-71-417 is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(b) An officer or a manager who is exempt under 39-71-401(2)(r)(iii) or (2)(r)(iv) and who obtains an independent contractor exemption pursuant to 39-71-417(1)(a)(ii) is not considered an independent contractor for the purposes of this chapter.

(3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act."

Section 2. Section 39-71-417, MCA, is amended to read:

"39-71-417. Independent contractor certification. (1) (a) ~~A~~ *(i) Except as provided in subsection (1)(a)(ii), a* person who regularly and customarily performs services at a location other than the person's own fixed business location shall apply to the department for an independent contractor exemption certificate unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(ii) An officer or manager who is exempt under 39-71-401(2)(r)(iii) or (2)(r)(iv) may apply, but is not required to apply, to the department for an independent contractor exemption certificate.

(b) A person who meets the requirements of this section and receives an independent contractor exemption certificate is not required to obtain a personal workers' compensation insurance policy.

(c) For the purposes of this section, "person" means*:*

(i) a sole proprietor~~,~~*;*

(ii) a working member of a partnership~~,~~*;*

(iii) a working member of a limited liability partnership~~,~~*; or*

(iv) ~~or~~ a working member of a member-managed limited liability company.

(2) The department shall adopt rules relating to an original application for or renewal of an independent contractor exemption certificate. The department shall adopt by rule the amount of the fee for an application or certificate renewal. The application or renewal must be accompanied by the fee.

(3) The department shall deposit the application or renewal fee in an account in the state special revenue fund to pay the costs of administering the program.

(4) (a) To obtain an independent contractor exemption certificate, the applicant shall swear to and acknowledge the following:

(i) that the applicant has been and will continue to be free from control or direction over the performance of the person's own services, both under contract and in fact; and

(ii) that the applicant is engaged in an independently established trade, occupation, profession, or business and will provide sufficient documentation of that fact to the department.

(b) For the purposes of subsection (4)(a)(i), an endorsement required for licensure, as provided in 37-47-303, does not imply or constitute control.

(5) An applicant for an independent contractor exemption certificate shall submit an application under oath on a form prescribed by the department and containing the following:

(a) the applicant's name and address;

(b) the applicant's social security number;

(c) each occupation for which the applicant is seeking independent contractor certification; and

(d) other documentation as provided by department rule to assist in determining if the applicant has an independently established business.

(6) The department shall issue an independent contractor exemption certificate to an applicant if the department determines that an applicant meets the requirements of this section.

(7) (a) When the department approves an application for an independent contractor exemption certificate and the person is working under the independent contractor exemption certificate, the person's status is conclusively presumed to be that of an independent contractor.

(b) A person working under an approved independent contractor exemption certificate has waived all rights and benefits under the Workers' Compensation Act and is precluded from obtaining benefits unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(c) For the purposes of the Workers' Compensation Act, a person is working under an independent contractor exemption certificate if:

(i) the person is performing work in the trade, business, occupation, or profession listed on the person's independent contractor exemption certificate; and

(ii) the hiring agent and the person holding the independent contractor exemption certificate do not have a written or an oral agreement that the independent contractor exemption certificate holder's status with respect to that hiring agent is that of an employee.

(8) Once issued, an independent contractor exemption certificate remains in effect for 2 years unless:

(a) suspended or revoked pursuant to 39-71-418; or

(b) canceled by the independent contractor.

(9) If the department denies an application for an independent contractor exemption certificate, the applicant may contest the denial by petitioning the workers' compensation court within 30 days of the mailing of the denial."

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved April 28, 2007

CHAPTER NO. 341

[SB 219]

AN ACT CLARIFYING THAT A STATE EMPLOYEE WHO TERMINATES EMPLOYMENT MAY NOT RECEIVE SEVERANCE PAY, A BONUS, OR ANY OTHER TYPE OF MONETARY PAYMENT EXCEPT AS AUTHORIZED BY LAW; AMENDING SECTION 2-18-621, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-621, MCA, is amended to read:

"2-18-621. Unlawful termination — *unlawful payments.* *(1)* It ~~shall be~~ *is* unlawful for an employer to terminate or separate an employee from ~~his~~ employment in an attempt to circumvent the provisions of 2-18-611, 2-18-612, and 2-18-614. ~~Should~~ *If* a question ~~arise~~ *arises* under this ~~section~~ *subsection*, it ~~shall~~ *must* be submitted to arbitration as provided in Title 27, chapter 5, as if an agreement described in 27-5-114 is in effect, unless there is a collective bargaining agreement to the contrary applicable.

(2) (a) An employee who terminates employment is only entitled to receive:

(i) payments for accumulated wages, vacation leave as provided in 2-18-617, sick leave as provided in 2-18-618, and compensatory time earned as provided in the rules or policies of the employer; and

(ii) if the termination is the result of a reduction in force, severance pay and a retraining allowance as provided for in 2-18-622.

(b) An employee who terminates employment may not receive severance pay, a bonus, or any other type of monetary payment not described in subsection (2)(a)(i) or (2)(a)(ii).

(3) Subsection (2) does not apply to:

(a) retirement benefits;

(b) a payment, settlement, award, or judgment that involves a potential or actual cause of action, legal dispute, claim, grievance, contested case, or lawsuit; or

(c) any other payment authorized by law."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 27, 2007

CHAPTER NO. 342

[SB 251]

AN ACT ALLOWING THE STATE TO TRANSFER PUBLIC ROADWAYS TO LOCAL GOVERNMENTS IN EXCHANGE FOR THE LOCAL GOVERNMENT TAKING OVER FULL MAINTENANCE AUTHORITY; PROVIDING FOR THE PUBLIC ROADWAY TO BE KEPT IN OPERATION FOR PUBLIC PURPOSES; AND AMENDING SECTIONS 7-14-2101 AND 60-4-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-2101, MCA, is amended to read:

"7-14-2101. General powers of county relating to roads and bridges — definitions. (1) The board of county commissioners, under the limitations and restrictions that are prescribed by law, may:

(a) (i) lay out, maintain, control, and manage county roads and bridges within the county;

(ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, and management of the county roads and bridges within the county as provided by law;

(b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county roads and bridges in adjacent counties, wholly or in part as agreed upon between the boards of the counties concerned;

(ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, management, and improvement of county roads and bridges in adjacent counties or shared jointly with other counties, as agreed upon between the boards of the counties concerned and as provided by law;

(c) (i) enter into agreements for adjusted annual contributions over not more than 6 years toward the cost of joint highway or bridge construction projects entered into in cooperation with other counties, the state, or the United States;

(ii) subject to 15-10-420, place a joint project in the budget and levy taxes for a joint project as provided by law.

(2) Unless the context requires otherwise, for the purposes of this chapter, the following definitions apply:

(a) ~~"bridge"~~ *"Bridge"* includes rights-of-way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills~~;~~.

(b) ~~"county~~ *"County* road" means:

(i) a road that is petitioned by freeholders, approved by resolution, and opened by a board of county commissioners in accordance with this title;

(ii) a road that is dedicated for public use in the county and approved by resolution by a board of county commissioners; ~~or~~

(iii) a road that has been acquired by eminent domain pursuant to Title 70, chapter 30, and accepted by resolution as a county road by a board of county commissioners*; or*

(iv) a road that has been gained by the county in an exchange with the state as provided in 60-4-201.

(3) (a) Following a public hearing, a board of county commissioners may accept by resolution a road that has not previously been considered a county road but that has been laid out, constructed, and maintained with state department of transportation or county funds.

(b) A survey is not required of an existing county road that is accepted by resolution by a board of county commissioners.

(c) A road that is abandoned by the state may be designated as a county road upon the acceptance and approval by resolution of a board of county commissioners."

Section 2. Section 60-4-201, MCA, is amended to read:

"60-4-201. Exchange of interest in real property. (1) The department may determine that an interest in real property, however acquired by it, is no longer necessary to the laying out, altering, construction, improvement, or maintenance of a highway. Except as provided in 60-4-213 through 60-4-218, the department may then exchange the interest, either as entire or partial consideration, for any other interest in real property needed for highway purposes. The department may establish the manner and terms and conditions for the exchange.

(2) Except as provided in 60-4-213 through 60-4-218, prior to making the exchange, the department shall notify all landowners whose property is adjacent to the land proposed for exchange. If any of the landowners are interested in buying the land proposed for exchange, the landowners shall notify the department of their interest by registered letter within 30 days of the receipt of the notice of exchange from the department. Upon receipt of a notice of interest, the department shall offer the land proposed for exchange for sale as provided in 60-4-202 and 60-4-203.

(3) The department may enter into an arrangement for exchange solely with a municipality or county for an interest in real property that is a public right-of-way used for transportation purposes. The department may transfer the interest to the municipality or county in exchange for the municipality or county assuming full interest and maintenance authority upon the following conditions:

(a) the real property must be maintained as a public right-of-way for transportation purposes; and

(b) no portion of the interest may be sold to or exchanged with private entities."

Approved April 28, 2007

CHAPTER NO. 343

[SB 266]

AN ACT CLARIFYING THAT INDIVIDUAL SCHOOL DISTRICT TRUSTEE MEMBERS ACTING IN THEIR OFFICIAL CAPACITY ARE IMMUNE FROM SUIT FOR DAMAGES; AMENDING SECTION 20-3-332, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-332, MCA, is amended to read:

"20-3-332. Personal immunity and liability of trustees. (1) When acting in their official capacity at a regular or special meeting of the board or a committee of the board, the trustees of each district are individually immune from ~~exemplary and punitive~~ *suit for* damages*, as provided in 2-9-305*.

(2) The trustees of each district are responsible for the proper administration and use of all money of the district in accordance with the provisions of law and this title. Failure or refusal to do so constitutes grounds for removal from office. ~~The liability of trustees for violations of this section must be determined in accordance with the provisions of 2-9-305.~~"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2007

CHAPTER NO. 344

[SB 269]

AN ACT REVISING STANDARDS FOR RECORDED DOCUMENTS; AMENDING SECTION 7-4-2636, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2636, MCA, is amended to read:

"7-4-2636. Standards for recorded documents — *exemptions.* (1) Unless accompanied by the appropriate fee required in 7-4-2637, a document submitted for recording that conveys an interest in real property must:

(a) be legibly printed or typed in black ink in at least 10-point typeface~~, not including the signature,~~ on white paper of not less than 20-pound weight, each page of which must be separated and have dimensions of either 8 1/2 x 11 inches or 8 1/2 x 14 inches;

(b) provide the names of the parties to the conveyance on the first or second page of any document with more than one page;

(c) provide a description of the property;

(d) have all signatures, initials, dates, handwriting, or notary stamps in blue or black ink;

~~(d)~~*(e)* except as provided in subsection ~~(1)(c)~~ *(1)(f)* and except for page numbers or other designations, have margins that are clear of all markings in the following dimensions:

(i) at least 3 inches at the top of the first page and at least 1 inch at the top of the second and any subsequent pages; ~~and~~

(ii) at least 1 inch on the ~~sides and~~ bottom of each page;

(iii) at least 1/2 inch on the sides of each page; and

~~(e)~~*(f)* include the name and mailing address of the person to whom the document is to be returned in the margin in the upper left-hand corner of the first page *within the 3-inch top margin and between the 1/2-inch side margins* of each document submitted and may include legibly printed or typed transactional information.

(2) Unless accompanied by the fee required in 7-4-2637, all other documents submitted for recording must meet the requirements of subsections (1)(a), ~~(1)(d)~~ *(1)(e)*, and ~~(1)(e)~~ *(1)(f)*.

(3) (a) Except as provided in subsection (3)(b), only documents submitted for recording and filing that conform to the provisions of subsection (1) or (2) are considered standard documents for the purposes of 7-4-2637.

(b) Documents that are acknowledged as having been executed prior to ~~July 1, 2005~~, *[the effective date of this act]* must be accepted for recording and considered standard documents, regardless of whether they conform to the provisions of subsection (1) or (2).

(4) (a) An acknowledgment by a notary is exempt from the color, typeface, and font requirements of this section.

(b) An officially certified court or other government document, whether from an in-state or out-of-state office, is exempt from the provisions of this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2007

CHAPTER NO. 345

[SB 287]

AN ACT ADOPTING THE PROVISIONS OF THE REVISED UNIFORM ANATOMICAL GIFT ACT TO CLARIFY THE PROCEDURES FOR MAKING AN ANATOMICAL GIFT AND AMENDING OR REVOKING A DOCUMENT OF GIFT; ALLOWING CERTAIN MINORS TO MAKE ANATOMICAL GIFTS; CLARIFYING THE PURPOSE OF CERTAIN ANATOMICAL GIFTS; ESTABLISHING PROCEDURES FOR ANATOMICAL GIFTS WHEN A DEATH IS UNDER INVESTIGATION; AMENDING SECTIONS 46-4-103, 50-9-105, 50-10-103, 72-17-101, 72-17-102, 72-17-108, 72-17-201, 72-17-202, 72-17-207, 72-17-208, 72-17-213, 72-17-214, AND 72-17-301, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-4-103, MCA, is amended to read:

"46-4-103. Autopsy — when conducted, scope. (1) If in the opinion of the coroner an autopsy is advisable, ~~he~~ *the coroner* shall order one performed on any dead human body for which the death requires an inquiry and shall retain a medical examiner or associate medical examiner to perform it. Performance of autopsies is within the discretion of the coroner except that the county attorney or attorney general may require one. Consent of the family or next of kin of the deceased is not required for an autopsy that is ordered by the coroner, county attorney, or attorney general. In ordering an autopsy the coroner, county

attorney, or attorney general shall order the body to be exhumed if it has been interred.

(2) The right to conduct an autopsy includes the right to retain specimens the medical examiner performing the autopsy considers necessary.

(3) The state of Montana shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the state medical examiner or attorney general. The county shall pay any expenses incurred whenever an autopsy, investigation, or inquiry is initiated at the request of the county attorney or county coroner.

(4) If a county does not provide a morgue or other facility for postmortem examination, the county coroner may order the use of a funeral home or an appropriate hospital facility for the examination.

(5) Autopsies performed under this section on a decedent whose death is under investigation and who has made an anatomical gift or on whose behalf an anatomical gift has been made must be performed in accordance with [sections 14 and 15]."

Section 2. Section 50-9-105, MCA, is amended to read:

"50-9-105. When declaration operative. (1) A declaration becomes operative when:

(a) it is communicated to the attending physician or attending advanced practice registered nurse; and

(b) the declarant is determined by the attending physician or attending advanced practice registered nurse to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment.

(2) ~~When~~ *Except as provided in [section 13], when* the declaration becomes operative, the attending physician or attending advanced practice registered nurse and other health care providers shall act in accordance with its provisions and with the instructions of a designee under 50-9-103(1) or comply with the transfer requirements of 50-9-203."

Section 3. Section 50-10-103, MCA, is amended to read:

"50-10-103. Adherence to do not resuscitate protocol — transfer of patients. (1) ~~Emergency~~ *Except as provided in [section 13], emergency* medical services personnel, other than physicians or advanced practice registered nurses, shall comply with the do not resuscitate protocol when presented with either do not resuscitate identification, an oral do not resuscitate order issued directly by a physician or an advanced practice registered nurse, or a written do not resuscitate order entered on a form prescribed by the department.

(2) An attending physician, an attending advanced practice registered nurse, or a health care facility unwilling or unable to comply with the do not resuscitate protocol shall take all reasonable steps to transfer a person possessing DNR identification to another physician or advanced practice registered nurse or to a health care facility in which the do not resuscitate protocol will be followed."

Section 4. Section 72-17-101, MCA, is amended to read:

"72-17-101. Short title. This chapter may be cited as the "*Revised* Uniform Anatomical Gift Act"."

Section 5. Section 72-17-102, MCA, is amended to read:

"72-17-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Adult" means an individual who is at least 18 years of age.

(2) "Agent" means an individual:

(a) authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or

(b) expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

~~(1)~~*(3)* "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death *for the purposes of transplantation, therapy, research, or education.*

~~(2)~~*(4)* "Decedent" means a deceased individual *whose body or part is or may be the source of an anatomical gift* and includes a stillborn infant or fetus.

~~(3)~~*(5)* "Department" means the department of public health and human services provided for in 2-15-2201.

(6) (a) "Disinterested witness" means a witness other than:

(i) the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift; or

(ii) another adult who exhibited special care and concern for the individual.

(b) The term does not include a person to which an anatomical gift could pass under 72-17-202.

~~(4)~~*(7)* "Document of gift" means *any of the following methods used to make an anatomical gift:* a card~~,~~*;* a statement attached to or imprinted on a ~~motor vehicle operator's~~ *driver's* license*, identification card, or donor registry*~~,~~*;* a will~~,~~ or other writing*; or a witnessed oral statement* ~~used to make an anatomical gift~~.

~~(5)~~*(8)* "Donor" means an individual ~~who makes a gift of all or part of the individual's body~~ *whose body or part is the subject of an anatomical gift.*

(9) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

(10) "Driver's license" means a license or permit issued by any state or federal authority to operate a vehicle, whether or not conditions are attached to the license or permit.

~~(6)~~*(11)* "Enucleator" means an individual who is certified pursuant to 72-17-311 to remove or process eyes or parts of eyes.

(12) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(13) (a) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, and welfare of an individual.

(b) The term does not include a guardian ad litem.

~~(7)~~*(14)* "Hospital" means a facility licensed, accredited, or approved under the laws of any state or a facility operated as a hospital by the United States government, a state, or a subdivision of a state.

(15) "Identification card" means an identification card issued by the department of justice.

(16) "Know" means to have actual knowledge.

(17) "Minor" means an individual who is under 18 years of age.

~~(8)~~*(18)* "Ophthalmologist" means a licensed physician or surgeon who specializes in the treatment or correction of diseases of the eye.

(19) "Organ procurement organization" means a person designated by the secretary of the United States department of health and human services as an organ procurement organization.

(20) "Parent" means a parent whose parental rights have not been terminated.

~~(9)~~*(21) (a)* "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.

(b) The term does not include the whole body.

~~(10)~~*(22)* "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, association, *limited liability company, association, public corporation, instrumentality,* or any other legal or commercial entity.

~~(11)~~*(23)* "Physician" or "surgeon" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.

~~(12)~~*(24)* "Procurement organization" means ~~a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts~~ *an eye bank, organ procurement organization, or tissue bank*.

(25) (a) "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education.

(b) The term does not include an individual who has made a refusal of an anatomical gift.

(26) "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(27) "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

(28) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(29) "Refusal" means a record created under 72-17-201 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

(30) "Sign" means, with the present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

~~(13)~~*(31)* "State" means a state, territory, or possession of the United States, the District of Columbia, ~~or the Commonwealth of~~ Puerto Rico*, the United States*

Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

~~(14)~~*(32)* "Technician" means an individual who is certified by the state board of medical examiners to remove or process a part.

(33) "Tissue" means a portion of the human body other than an organ, an eye, or blood unless the blood is donated for the purpose of research or education.

(34) "Tissue bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(35) "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients."

Section 6. Section 72-17-108, MCA, is amended to read:

"72-17-108. Coordination of procurement and use. Each hospital in this state~~, after consultation with other hospitals and procurement organizations,~~ shall establish agreements or affiliations *with procurement organizations* for coordination of procurement and use of ~~human bodies and parts~~ *anatomical gifts*."

Section 7. Section 72-17-201, MCA, is amended to read:

"72-17-201. Making, amending, revoking, and refusing to make anatomical gifts by individual. (1) An ~~individual who is at least 18 years of age may:~~ *anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in this section by:*

(a) ~~make an anatomical gift for any of the purposes stated in 72-17-202; or~~ *the donor, if the donor is an adult or if the donor is a minor and is:*

(i) emancipated; or

(ii) authorized under state law to apply for a driver's license because the donor is at least 15 years of age;

(b) ~~limit an anatomical gift to one or more of those purposes.~~ *an agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;*

(c) a parent of the donor, if the donor is an unemancipated minor; or

(d) the donor's guardian.

(2) ~~An~~ *A donor may make an* anatomical gift*:* ~~may be made only by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and must state that it has been signed.~~

(a) by authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;

(b) by a statement contained in a will;

(c) during a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or

(d) as provided in subsection (3).

(3) A donor or other person authorized to make an anatomical gift under subsection (1) may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign the record, the record may be signed by another individual at the direction of the donor or the other person and must:

(a) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or other person; and

(b) state that it has been signed and witnessed as provided in subsection (3)(a).

~~(3)~~*(4)* ~~If a document of gift is attached to or imprinted on a donor's motor vehicle operator's license, the document of gift must comply with subsection (2).~~ Revocation, suspension, expiration, or cancellation of ~~the~~ *a driver's* license *or identification card issued to a donor* does not invalidate the anatomical gift.

~~(4)~~*(5)* A document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

~~(5)~~*(6)* An anatomical gift by will takes effect upon the *donor's* death ~~of the testator~~, whether or not the will is probated. If, after the ~~testator's~~ *donor's* death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected. ~~A~~ *An anatomical* gift made in accordance with this section is sufficient legal authority for procurement without additional authority from the donor or the donor's family or estate.

~~(6)~~*(7)* ~~(a) A~~ *Except as provided in subsection (17) and subject to subsection (14), a* donor *or other person authorized to make an anatomical gift under subsection (1)* may amend or revoke an anatomical gift ~~not made by will~~ only by:

~~(i) a signed statement;~~

~~(ii) an oral statement made in the presence of two individuals;~~

(a) a record signed by:

(i) the donor or the other person; or

(ii) subject to subsection (8), another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign;

~~(iii)~~*(b)* any form of communication during a terminal illness or injury addressed to ~~a physician or surgeon~~ *at least two adults, one of whom is a disinterested witness*; ~~or~~

~~(iv)~~*(c)* the delivery of a signed statement to a specified donee to whom a document of gift had been delivered~~.~~*;*

(d) a later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency; or

(e) destroying or canceling the document of gift or portion of the document of gift used to make the anatomical gift with the intent to revoke the anatomical gift.

(8) A record signed pursuant to subsection (7)(a)(ii) must:

(a) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(b) state that it has been signed and witnessed as provided in subsection (8)(a).

~~(b)~~*(9)* A donor shall notify the federally designated organ procurement organization of the destruction, cancellation, or mutilation of the document for the purpose of removing the person's name from the organ and tissue donation registry created in 72-17-105 and 72-17-106.

~~(7)~~*(10)* The donor of an anatomical gift made by will may amend or revoke the *anatomical* gift in the manner provided for amendment or revocation of wills or as provided in subsection ~~(6)~~ *(7)*.

~~(8) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death. The donor's family or health care provider may not refuse to honor the gift or thwart the procurement of the donation.~~

~~(9)~~*(11)* (a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(i) a writing signed in the same manner as a document of gift;

(ii) a statement attached to or imprinted on a donor's ~~motor vehicle operator's~~ *driver's* license *or identification card*; ~~or~~

(iii) the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

~~(iii)~~*(iv)* any other writing used to identify the individual as refusing to make an anatomical gift.

(b) During a terminal illness or injury, the refusal may be an oral statement or other form of communication *addressed to at least two adults, at least one of whom is a disinterested witness*.

(12) An individual who has made a refusal may amend or revoke a refusal;

(a) in the manner provided in subsection (11) for making a refusal;

(b) by subsequently making an anatomical gift pursuant to subsection (2) or (3) that is inconsistent with the refusal; or

(c) by destroying or canceling the record evidencing the refusal or the portion of the record used to make the refusal with the intent to revoke the refusal.

(13) Except as otherwise provided in subsection (17) and subject to subsection (15), in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under subsection (2) or (3) or an amendment to an anatomical gift under subsection (7). The donor's family or health care provider may not refuse to honor the anatomical gift or thwart the procurement of the donation.

(14) Except as otherwise provided in subsection (18), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or a part bars all other persons from making an anatomical gift of the individual's body or a part.

~~(10)~~*(15)* In the absence of *an express,* contrary ~~indications~~ *indication* by the donor *or other person authorized under this section to make an anatomical gift*,

an anatomical gift of a part *for one or more of the purposes set forth in subsection (1)* is neither a refusal to give other parts nor a limitation on an anatomical gift under 72-17-214 or on a removal or release of other parts under 72-17-215.

~~(11)~~*(16)* In the absence of contrary indications by the donor, a *donor's* revocation or amendment of an anatomical gift *of the donor's body or part* is not a refusal to make another anatomical gift *and does not bar another person specified in this section or 72-17-214 from making an anatomical gift of the donor's body or part*. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection ~~(9)~~ *(11)*.

(17) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(18) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal."

Section 8. Section 72-17-202, MCA, is amended to read:

"72-17-202. Persons who may become donees — purposes for which anatomical gifts may be made. (1) The following persons may become donees of anatomical gifts for the purposes stated *if named in the document of gift*:

(a) a hospital, surgeon, physician, or procurement organization*; accredited medical school, dental school, college, or university; or other appropriate person* for ~~medical or dental~~ education*, or* research~~, advancement of medical or dental science, therapy, or transplantation~~;

~~(b) an accredited medical or dental school, college, or university for education, research, advancement of medical or dental science; or~~

~~(c) a designated individual for therapy or transplantation needed by that individual.~~

(b) subject to subsection (2), an individual designated by the person making the anatomical gift if the individual is the recipient of the part; or

(c) an eye bank or tissue bank.

(2) ~~An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by a hospital.~~ *If an anatomical gift to an individual under subsection (1)(b) cannot be transplanted into the individual, the part passes in accordance with subsection (7) in the absence of an express, contrary indication by the person making the anatomical gift.*

(3) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (1) but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(a) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(b) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(c) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(d) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate organ procurement organization.

(4) For the purpose of subsection (3), if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the anatomical gift must be used for transplantation or therapy, if suitable. If the anatomical gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(5) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection (1) and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (7).

(6) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor", "organ donor", or "body donor" or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy and the gift passes in accordance with subsection (7).

(7) For purposes of subsections (2), (5), and (6), the following rules apply:

(a) If the part is an eye, the gift passes to the appropriate eye bank.

(b) If the part is tissue, the gift passes to the appropriate tissue bank.

(c) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(8) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (1)(b), passes to the organ procurement organization as custodian of the organ.

(9) If an anatomical gift does not pass pursuant to subsections (1) through (8) or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

~~(3)~~*(10)* If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under 72-17-214, the donee may not accept the anatomical gift. *For the purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is considered to know of any amendment or revocation of the anatomical gift or any refusal to make an anatomical gift on the same document of gift.*

(11) Except as otherwise provided in subsection (1)(b), nothing in this section affects the allocation of organs for transplantation or therapy."

Section 9. Section 72-17-207, MCA, is amended to read:

"72-17-207. Examination — autopsy — liability. (1) An anatomical gift authorizes any reasonable examination necessary to ~~assure~~ *ensure* medical acceptability of the gift for the purposes intended. *Unless prohibited by law other than this chapter, an examination may include an examination of all medical and dental records of the donor or prospective donor.*

(2) ~~The~~ *Except as provided in [sections 14 and 15], the* provisions of this chapter are subject to the laws of this state governing autopsies.

(3) A hospital, physician, surgeon, coroner, enucleator, technician, nurse, or other person who acts in accordance with this chapter or with the applicable

anatomical gift act of another state or attempts in good faith to do so is not liable for that act in a civil action, ~~or~~ criminal proceeding, *or administrative proceeding*.

(4) In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely upon representations of an individual listed in 72-17-214(1)(b), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), or (1)(h) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

~~(4)~~*(5)* An individual who makes an anatomical gift pursuant to 72-17-201 or 72-17-214 and the individual's estate are not liable for any injury or damage that may result from the making or use of the anatomical gift."

Section 10. Section 72-17-208, MCA, is amended to read:

"72-17-208. ~~Delivery of document~~ *Document* of gift — *delivery* — *validity*. (1) Delivery of a document of gift during the donor's lifetime is not required for the validity of an anatomical gift.

(2) If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after death. ~~The~~ *A* document of gift *or a refusal to make an anatomical gift*, or a copy, may be deposited in any hospital, procurement organization, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of an interested person, upon or after the donor's death, the person in possession shall allow the interested person to examine or copy the document of gift *or the refusal to make an anatomical gift*.

(3) A document of gift is valid if executed in accordance with:

(a) this chapter;

(b) the laws of the state or country where it was executed; or

(c) the laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(4) If a document of gift is valid under this section, the laws of this state govern the interpretation of the document of gift.

(5) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked."

Section 11. Section 72-17-213, MCA, is amended to read:

"72-17-213. Routine inquiry and required request — search and notification. (1) ~~If, at~~ *At* or near the time of death of a *hospitalized* patient, ~~there is no medical record that the patient has made or refused to make an anatomical gift,~~ the hospital administrator or a representative designated by the administrator shall ~~discuss the option to make or refuse to make an anatomical gift and request the making of an anatomical gift pursuant to 72-17-214(1)~~ *notify the appropriate procurement organization and, if the reason for death falls under 46-4-122, the coroner with jurisdiction of the imminent or actual death of the patient and, in collaboration with the procurement organization, ensure that a trained designated requestor is readily available to discuss donation opportunities with a person authorized under 72-17-214 to make an anatomical gift. The person designated must be a representative of a procurement organization or a person who has had training provided by or*

approved by a procurement organization. ~~The request must be made with reasonable discretion and sensitivity to the circumstances of the family. A request is not required if the gift is not suitable, based upon accepted medical standards, for a purpose specified in 72-17-202 or if there are medical or emotional conditions under which the request would contribute to severe emotional distress. An entry must be made in the medical record of the patient, stating the name and affiliation of the individual making the request and the name, response, and relationship to the patient of the person to whom the request was made. The department shall adopt rules to implement this subsection.~~

(2) When a hospital refers an individual at or near death to a procurement organization, the organization:

(a) shall make a reasonable search of the records of the department of justice and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift;

(b) must be allowed reasonable access to information in the records of the department of justice to ascertain whether an individual at or near death is a donor; and

(c) may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

~~(2) The following persons shall make a reasonable search for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:~~

~~(a) a law enforcement officer, fireman, paramedic, or other emergency rescuer finding an individual whom the searcher believes is dead or near death; and~~

~~(b) a hospital, upon the admission of an individual at or near the time of death, if there is not immediately available any other source of that information.~~

(3) A hospital, as soon as practical after the arrival of an individual reasonably believed dead or near death, shall make a reasonable search of the individual for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift if there is not immediately available any other source of that information.

~~(3)~~*(4)* If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by subsection ~~(2)(a)~~ *(3)* and the individual or body to whom it relates is taken to a hospital, the hospital must be notified of the contents and the document or other evidence must be sent to the hospital.

~~(4)~~*(5)* If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been made pursuant to 72-17-214(1) or a release and removal of a part has been permitted pursuant to 72-17-215 or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital; if not, it shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part.

~~(5)~~*(6)* A person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability but ~~is~~ *may be* subject to appropriate administrative sanctions.

(7) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(8) Upon referral by a hospital under subsection (2), a procurement organization shall make a reasonable search for any person listed in 72-17-214 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information."

Section 12. Section 72-17-214, MCA, is amended to read:

"72-17-214. Making, revoking, and objecting to anatomical gifts by others. (1) ~~Any~~ *Subject to subsections (2) and (3), any* member of the following classes of persons *who is reasonably available*, in the order of priority listed, may make an anatomical gift of all or a part of the decedent's body for ~~an authorized~~ *a* purpose *authorized in 72-17-201(1)*, unless the decedent, at the time of death, had made an unrevoked refusal to make that anatomical gift *as provided for in 72-17-201*:

(a) an agent of the decedent at the time of death who could have made an anatomical gift under 72-17-201 immediately before the decedent's death;

~~(a)~~*(b)* the spouse of the decedent;

~~(b)~~*(c)* an adult son or daughter of the decedent;

~~(c)~~*(d)* either parent of the decedent;

~~(d)~~*(e)* an adult brother or sister of the decedent;

(f) adult grandchildren of the decedent;

~~(e)~~*(g)* a grandparent of the decedent; ~~and~~

~~(f)~~*(h)* a guardian of the person of the decedent at the time of death*; and*

(i) any other person having the authority to dispose of the decedent's body.

(2) If there is more than one member of a class listed in subsection (1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), or (1)(i) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift can pass under 72-17-202 knows of an objection by another member of the class. If an objection is known, the anatomical gift may be made only by a majority of the members of the class who are reasonably available.

~~(2)~~*(3)* An anatomical gift may not be made by a person listed in subsection (1) if:

(a) a person in a prior class is *reasonably* available at the time of death to make *or to object to the making of* an anatomical gift; *or*

(b) the person proposing to make an anatomical gift knows of a refusal ~~or contrary indications~~ by the decedent~~; or~~

~~(c) the person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class~~.

~~(3)~~*(4)* An anatomical gift by a person authorized under subsection (1) must be made by:

(a) a document of gift signed by the person; or

(b) the person's telegraphic, recorded telephonic, ~~or~~ other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.

(5) Subject to subsection (6), an anatomical gift by a person authorized under subsection (1) may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift may be:

(a) amended only if a majority of the reasonably available members agree to the amending of the gift; or

(b) revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

~~(4)~~*(6)* ~~An anatomical gift by a person authorized under subsection (1) may be revoked by any member of the same or a prior class~~ *A revocation made under subsection (5) is effective only* if, before ~~procedures have begun~~ *an incision has been made* for the removal of a part from the body of the decedent *or before invasive procedures have begun to prepare the recipient*, the *procurement organization, transplant hospital,* physician, surgeon, technician, or enucleator removing the part knows of the revocation.

~~(5)~~*(7)* A failure to make an anatomical gift under subsection (1) is not an objection to the making of an anatomical gift."

Section 13. Anatomical gifts — advance health care directive. (1) For the purposes of this section, the following definitions apply:

(a) "Advance health care directive" means a power of attorney for health care or a record signed by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor.

(b) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(c) "Health care decision" means any decision made regarding the health care of the prospective donor.

(2) If a prospective donor who is in a health care facility has a declaration or advance health care directive, measures necessary to ensure the medical suitability of an organ for transplantation or therapy may not be withheld or withdrawn from the prospective donor unless the declaration expressly provides to the contrary.

Section 14. Cooperation between coroner, medical examiner, county attorney, and procurement organization. (1) A county coroner, medical examiner, or associate medical examiner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

(2) A part may not be removed from the body of a decedent under the jurisdiction of a coroner or medical examiner for transplantation, therapy, research, or education unless the part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of a coroner or medical examiner may

not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude a coroner or medical examiner from performing the medicolegal investigation upon the body or parts of a decedent under the jurisdiction of the coroner or medical examiner.

Section 15. Facilitation of anatomical gift from decedent whose body is under jurisdiction of coroner, medical examiner, or county attorney. (1) Upon request of a procurement organization, a county coroner, medical examiner, or associate medical examiner shall release to the procurement organization the name, contact information, and available medical history of a decedent whose body is under the jurisdiction of the coroner or medical examiner. If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, the coroner or medical examiner shall release postmortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the postmortem examination results or other information received from the coroner or medical examiner only if relevant to transplantation or therapy.

(2) For the purpose of expediting an anatomical gift, the coroner or medical examiner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, x-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the coroner's or medical examiner's jurisdiction and that the coroner or medical examiner determines may be relevant to the investigation.

(3) A person that has any information requested by a coroner or medical examiner pursuant to subsection (2) shall provide that information as expeditiously as possible to allow the coroner or medical examiner to conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of transplantation, therapy, research, or education.

(4) If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of a coroner or medical examiner and a postmortem examination is not required or if the coroner or medical examiner determines that a postmortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the coroner or medical examiner and procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation, therapy, research, or education.

(5) If an anatomical gift of a part from the decedent under the jurisdiction of a coroner, medical examiner, or county attorney has been or might be made but the coroner, medical examiner, or county attorney initially believes that the recovery of the part could interfere with the postmortem investigation into the decedent's cause or manner of death, the collection of evidence, or the description, documentation, or interpretation of injuries on the body, the coroner, medical examiner, or county attorney may consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. After consultation, the coroner, medical examiner, or county attorney may allow the recovery.

(6) If the coroner, medical examiner, county attorney, or designee denies recovery, the person denying recovery shall:

(a) explain in a record the specific reasons for not allowing recovery of the part;

(b) include the specific reasons in the records of the coroner or medical examiner; and

(c) provide a record with the specific reasons to the procurement organization.

(7) If a coroner, medical examiner, county attorney, or designee allows recovery of a part under subsection (4) or (5), the procurement organization, upon request, shall cause the physician or technician who removes the part to provide the requestor with a record describing the condition of the part, a biopsy, a photograph, and any other information and observations that would assist in the postmortem examination.

Section 16. Section 72-17-301, MCA, is amended to read:

"72-17-301. Rights and duties at death. (1) ~~Rights~~ *Subject to 72-17-202 and [section 15], the rights* of a donee created by an anatomical gift are superior to rights of others under 72-17-214(1), except with respect to autopsies. A donee may accept or reject an anatomical gift. If the donee accepts an anatomical gift of the entire body, the donee, subject to the terms of the gift *and this chapter*, may allow embalming*, burial, or cremation* and the use of the body in funeral services. If the *anatomical* gift is of a part of the body, the donee, upon the death of the donor and before embalming, *burial, or cremation* shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the person under obligation to dispose of the body.

(2) The time of death must be determined by a physician or surgeon who attends the donor at death or, if none, the physician ~~or~~, surgeon*, or coroner* who certifies the death. Neither the physician or surgeon who attends the donor at death nor the physician ~~or~~, surgeon*, or coroner* who determines the time of death may participate in the procedures for removing or transplanting a part unless the document of gift designates a particular physician or surgeon pursuant to 72-17-201~~(4)~~*(5)*.

(3) Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under 72-17-202 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(4) Unless prohibited by law other than this chapter, an examination under 72-17-213(2)(c) or subsection (3) of this section may include an examination of all medical and dental records of the donor or prospective donor.

(5) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(6) Upon referral by a hospital under 72-17-213(2), a procurement organization shall make a reasonable search for any person listed in 72-17-214 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

~~(3)~~*(7)* If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes after determination of death by a physician or surgeon."

Section 17. False acts concerning document of gift — penalty. Any person that knowingly falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal in order to obtain a financial gain commits a felony and upon conviction is subject to a fine not exceeding $50,000 or imprisonment not exceeding 5 years, or both.

Section 18. Relation to Electronic Signatures in Global and National Commerce Act. [This act] modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(a) of that act, 15 U.S.C. 7001, or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Section 19. Codification instruction. [Sections 13 through 15 and 17] are intended to be codified as an integral part of Title 72, chapter 17, and the provisions of Title 72, chapter 17, apply to [sections 13 through 15 and 17].

Section 20. Applicability. [This act] applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift made before October 1, 2007.

Approved April 28, 2007

CHAPTER NO. 346

[SB 289]

AN ACT ALLOWING PUPILS OF PUBLIC AND NONPUBLIC SCHOOLS TO CARRY AND SELF-ADMINISTER PRESCRIBED MEDICATION FOR ASTHMA, SEVERE ALLERGIES, OR ANAPHYLAXIS; AMENDING SECTION 20-5-420, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-420, MCA, is amended to read:

"20-5-420. Self-administration *or possession* of ~~asthma~~ *asthma, severe allergy, or anaphylaxis* medication. (1) As used in this section, the following definitions apply:

(a) "Anaphylaxis" means a systemic allergic reaction that can be fatal in a short time period and is also known as anaphylactic shock.

(b) "Asthma" means a chronic disorder or condition of the lungs that requires lifetime, ongoing, medical intervention.

(c) "Medication" means a medicine, including inhaled bronchodilators, inhaled corticosteroids, and autoinjectable epinephrine, prescribed by a licensed physician as defined in 37-3-102, a physician assistant who has been authorized to prescribe ~~asthma~~ medications as provided in 37-20-404, or an advanced practice registered nurse with prescriptive authority as provided in 37-8-202(5).

(d) "Self-administration" means a pupil's discretionary use of the ~~asthma~~ medication prescribed for the pupil.

(e) "Severe allergies" means a life-threatening hypersensitivity to a specific substance such as food, pollen, or dust.

(2) A school, whether public or nonpublic, shall permit the *possession or* self-administration of medication*, as prescribed,* by a pupil with asthma*, severe allergies, or anaphylaxis* if the parents or guardians of the pupil provide to the school:

(a) written authorization, acknowledging and agreeing to the liability provisions in subsection (4), for the *possession or* self-administration of medication*, as prescribed*;

(b) a written statement from the pupil's physician, physician assistant, or advanced practice registered nurse containing the following information:

(i) the name and purpose of the medication;

(ii) the prescribed dosage; and

(iii) the time or times at which or the special circumstances under which the medication is to be administered*, as prescribed*;

(c) documentation that the pupil has demonstrated to the health care practitioner and the school nurse, if available, the skill level necessary to ~~administer the~~ *self-administer the asthma, severe allergy, or anaphylaxis* medication as prescribed; and

(d) documentation that the pupil's physician, physician assistant, or advanced practice registered nurse has formulated a written treatment plan for managing asthma*, severe allergies,* or anaphylaxis episodes of the pupil and for medication use*, as prescribed,* by the pupil during school hours.

(3) The information provided by the parents or guardians must be kept on file in the office of the school nurse or, in the absence of a school nurse, the school's administrator.

(4) The school district or nonpublic school and its employees and agents are not liable as a result of any injury arising from the self-administration of medication by the pupil unless an act or omission is the result of gross negligence, willful and wanton conduct, or an intentional tort. The parents or guardians of the pupil must be given a written notice and sign a statement acknowledging that the school district or nonpublic school may not incur liability as a result of any injury arising from the self-administration of medication by the pupil and that the parents or guardians shall indemnify and hold harmless the school district or nonpublic school and its employees and agents against any claims, except a claim based on an act or omission that is the result of gross negligence, willful and wanton conduct, or an intentional tort.

(5) The permission for self-administration of *asthma, severe allergy, or anaphylaxis* medication is effective for the school year for which it is granted and must be renewed each subsequent school year or, if the medication *expires or the* dosage, frequency of administration, or other conditions change, upon fulfillment of the requirements of this section.

(6) If the requirements of this section are fulfilled, a pupil with asthma*, severe allergies, or anaphylaxis* may possess and use the pupil's medication*, as prescribed*:

(a) while in school;

(b) while at a school-sponsored activity;

(c) while under the supervision of school personnel;

(d) before or after normal school activities, such as while in before-school or after-school care on school-operated property; or

(e) while in transit to or from school or school-sponsored activities.

(7) If provided by the parent or guardian and in accordance with documents provided by the pupil's physician, physician assistant, or advanced practice registered nurse, *asthma, severe allergy, or anaphylaxis medication may be kept by the pupil and* backup medication must be kept at a pupil's school in a predetermined location or locations to which the pupil has access in the event of an asthma*, severe allergy,* or anaphylaxis emergency.

(8) Immediately after using epinephrine during school hours, a student shall report to the school nurse or other adult at the school who shall provide followup care, including making a 9-1-1 emergency call.

~~(8)~~*(9)* Youth correctional facilities are exempt from this section and shall adopt policies related to access and use of asthma*, severe allergy, or anaphylaxis* medications."

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved April 28, 2007

CHAPTER NO. 347

[SB 295]

AN ACT STATUTORILY PROVIDING FOR THE MONTANA NATIONAL GUARD YOUTH CHALLENGE PROGRAM; SPECIFYING A DEFINITION, LEGISLATIVE INTENT, AND STAFFING; AMENDING SECTION 10-1-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, federal law, 32 U.S.C. 509, authorizes the Secretary of Defense to use the National Guard to conduct a civilian youth opportunities program to be known as the "National Guard Youth Challenge Program"; and

WHEREAS, federal law provides that the Secretary of Defense shall carry out the program by entering into agreement with the Governor of a state or the commanding general of the state National Guard; and

WHEREAS, there is a Master Youth Programs Cooperative Agreement number W9124V-05-2-4000 between the State of Montana and the National Guard Bureau, which provides for the Montana National Guard Youth Challenge Program; and

WHEREAS, the Montana National Guard Youth Challenge Program became operational on September 1, 1999, with federal and state funding; and

WHEREAS, the funding is appropriated through the state general appropriations act; and

WHEREAS, statutory language referencing the program would help articulate the operational guidelines for the program.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-101, MCA, is amended to read:

"10-1-101. Definitions. Unless the context requires otherwise, in this title, the following definitions apply:

(1) "Department" means *the* department of military affairs.

(2) "Militia" means all the military forces of this state, whether organized or active or inactive.

(3) "National guard" means the army national guard and the air national guard.

(4) "Officer" means *a* commissioned or warrant officer.

(5) "Youth challenge program" means the Montana national guard youth challenge program established pursuant to [section 2]."

Section 2. Montana national guard youth challenge program authorized. A youth challenge program provided for pursuant to 32 U.S.C. 509 may be established in the department.

Section 3. Legislative intent. It is the intent of the legislature that:

(1) the youth challenge program assist youth between 16 and 18 years of age to achieve a quality education and develop the skills and abilities necessary to become productive citizens;

(2) the youth challenge program focus on the physical, emotional, and educational needs of youth within a voluntary, highly structured environment;

(3) eligible participants be drug-free, not be on parole or probation for other than juvenile-status offenses, not have been indicted for or charged with an offense other than a juvenile-status offense, and not have been convicted of a felony or capital offense;

(4) recruiting for the youth challenge program treat all eligible youth equitably and seek representation from different genders, ethnic groups, and geographic locations;

(5) the youth challenge program conduct structured training consisting of a residential phase and a postresidential phase with curriculum that focuses on academic excellence, including the successful completion of the tests for general educational development, and on physical fitness, job skills, service to the community, health and hygiene, responsible citizenship, leadership, how to follow directions, and life-coping skills; and

(6) the youth challenge program be conducted in cooperation with other community programs for at-risk youth.

Section 4. Administration and staff. Subject to 32 U.S.C. 509 and its implementing regulations and applicable agreements, the youth challenge program may be staffed by an administrator and the professional, technical, secretarial, and clerical employees necessary for the performance of the youth challenge program's functions.

Section 5. Codification instruction. [Sections 2 through 4] are intended to be codified as an integral part of Title 10, chapter 1, and the provisions of Title 10, chapter 1, apply to [sections 2 through 4].

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 27, 2007

CHAPTER NO. 348

[SB 296]

AN ACT REVISING THE QUOTA SYSTEM FOR ISSUING RESTAURANT BEER AND WINE LICENSES; REVISING THE NUMBER OF QUOTA AREAS; INCREASING THE NUMBER OF RESTAURANT BEER AND WINE

LICENSES THAT MAY BE ISSUED IN A QUOTA AREA; AMENDING SECTION 16-4-420, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-420, MCA, is amended to read:

"16-4-420. Restaurant beer and wine license. (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and conditions:

(a) in the case of an individual applicant:

(i) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(ii) the applicant is not under 19 years of age;

(b) in the case of a corporate applicant:

(i) in the case of a corporation listed on a national stock exchange, the corporate officers and the board of directors must meet the requirements of subsection (1)(a);

(ii) in the case of a corporation not listed on a national stock exchange, each owner of 10% or more of the outstanding stock must meet the requirements for an individual listed in subsection (1)(a); and

(iii) the corporation is authorized to do business in Montana;

(c) in the case of any other business entity, including but not limited to partnerships, including limited liability partnerships, limited partnerships, and limited liability companies, but not including any form of a trust:

(i) if the applicant consists of more than one individual, all individuals must meet the requirements of subsection (1)(a); and

(ii) if the applicant consists of more than one corporation, all corporations listed on a national stock exchange must meet the requirements of subsection (1)(b)(i) and corporations not listed on a national stock exchange must meet the requirements of subsection (1)(b)(ii);

(d) the applicant operates a restaurant at the location where the restaurant beer and wine license will be used or satisfies the department that:

(i) the applicant intends to open a restaurant that will meet the requirements of subsection (6) and intends to operate the restaurant so that at least 65% of the restaurant's gross income during its first year of operation is expected to be the result of the sale of food;

(ii) the restaurant beer and wine license will be used in conjunction with that restaurant, that the restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be stated on the food bill; and

(iii) the restaurant will serve beer and wine from a service bar, as service bar is defined by the department by rule;

(e) the applicant understands and acknowledges in writing on the application that this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine license will be used, the activity must be

discontinued or the machines must be removed before the restaurant beer and wine license takes effect; and

(f) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current seating capacity if the restaurant is operating.

(2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic beverage may not be considered for a restaurant beer and wine license at the same location.

(b) *(i)* ~~A restaurant~~ *An on-premises retail licensee* ~~that~~ *who* sells ~~its~~ *the licensee's* existing retail license may not apply for a license under this section for a period of 1 year from the date that license is transferred to a new purchaser.

(ii) A person, including an individual, with an ownership interest in an existing on-premises retail license that is being transferred to a new purchaser may not attain an ownership interest in a license applied for under this section for a period of 1 year from the date that the existing on-premises retail license is transferred to a new purchaser.

(3) A completed application for a license under this section and the appropriate application fee, as provided in subsection (11), must be submitted to the department. The department shall investigate the items relating to the application as described in subsections (3)(a) through (3)(d). Based on the results of the investigation and the exercise of its sound discretion, the department shall determine whether:

(a) the applicant is qualified to receive a license;

(b) the applicant's premises are suitable for the carrying on of the business;

(c) the requirements of this code and the rules promulgated by the department are complied with; and

(d) the seating capacity stated on the application is correct.

(4) An application for a beer and wine license submitted under this section is subject to the provisions of 16-4-203, 16-4-207, and 16-4-405.

(5) If a premises proposed for licensing under this section is a new or remodeled structure, then the department may issue a conditional license prior to completion of the premises based on reasonable evidence, including a statement from the applicant's architect or contractor confirming that the seating capacity stated on the application is correct, that the premises will be suitable for the carrying on of business as a bona fide restaurant, as defined in subsection (6).

(6) For purposes of this section, "restaurant" means a public eating place where individually priced meals are prepared and served for on-premises consumption. At least 65% of the restaurant's annual gross income from the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file with the department a statement, in a form approved by the department, attesting that at least 65% of the gross income of the restaurant during the prior year resulted from the sale of food. The restaurant must have a dining room, a kitchen, and the number and kinds of employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use as a full-service restaurant. A full-service restaurant is a restaurant that provides an evening dinner meal.

(7) (a) (i) Subject to the conditions of subsection (7)(a)(ii), a restaurant beer and wine license may be transferred, upon approval by the department, from the original applicant to a new owner of the restaurant if there is no change of location, and the original owner may transfer location after the license is issued by the department to a new location, upon approval by the department.

(ii) A new owner may not transfer the license to a new location for a period of 1 year following the transfer of the license to the new owner.

(b) A license issued under this section may be jointly owned, and the license may pass to the surviving joint tenant upon the death of the other tenant. However, the license may not be transferred to any other person or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property upon the death of the owner in this state or in another state.

(c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of the department, transfer a restaurant beer and wine license to a new owner.

(8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

(i) except as provided in subsection (8)(c), for a restaurant located in a quota area with a population of 5,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

~~(i)~~*(ii)* for a restaurant located in a quota area with a population of ~~20,000~~ *5,001 to 20,000* persons ~~or fewer~~, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than ~~80%~~ *160%* of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

~~(ii)~~*(iii)* for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than ~~50%~~ *100%* of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

~~(iii)~~*(iv)* for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than ~~40%~~ *80%* of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and

~~(iv)~~*(v)* for a restaurant located in a quota area that is also a resort community, as the resort community is designated by the department of commerce under 7-6-1501(5), if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal to or less than ~~100%~~ *200%* of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.

(b) In determining the number of restaurant beer and wine licenses that may be issued under this subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through ~~(8)(a)(iii)~~ *(8)(a)(v)*, the department shall round to the nearer whole number.

(c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota area under ~~subsections~~ *subsection* (8)(a)(i)

~~through (8)(a)(iii)~~, there must be a one-time adjustment of ~~one~~ *four* additional ~~license~~ *licenses* for that quota area.

(d) If there are more applicants than licenses available in a quota area, then the license must be awarded by lottery as provided in subsection (9).

(9) (a) When a restaurant beer and wine license becomes available by the initial issuance of licenses under this section or as the result of an increase in the population in the quota area, the nonrenewal of a restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department shall advertise the availability of the license in the quota area for which it is available. If there are more applicants than number of licenses available, the license must be awarded to an applicant by a lottery.

(b) Any applicant who operates a restaurant that meets the qualifications of subsection (6) for at least 12 months prior to the filing of an application must be given a preference, and any unsuccessful lottery applicants from previous selections must also be given a preference. An applicant with both preferences must be awarded a license before any applicant with only one preference.

(c) The department shall numerically rank all applicants in the lottery. Only the successful applicants will be required to submit a completed application and a one-time required fee. An applicant's ranking may not be sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the intended license advertised by the department or to the number of licenses determined under subsection (8) when there are more applicants than licenses available. The applicant's qualifications for any other restaurant beer and wine license awarded by lottery must be determined at the time of the lottery.

(10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises consumption.

(11) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20% of the initial licensing fee. If the department does not make a decision either granting or denying the license within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies an application, the application fee, plus any interest, less a processing fee established by rule, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

(a) $5,000 for restaurants with a stated seating capacity of 60 persons or less;

(b) $10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

(c) $20,000 for restaurants with a stated seating capacity of 101 persons or more.

(12) The annual fee for a restaurant beer and wine license is $400.

(13) If a restaurant licensed under this part increases the stated seating capacity of the licensed restaurant or if the department determines that a licensee has increased the stated seating capacity of the licensed restaurant,

then the licensee shall pay to the department the difference between the fees paid at the time of filing the original application and issuance of a license and the applicable fees for the additional seating.

(14) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the total licenses issued.

(15) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved April 28, 2007

CHAPTER NO. 349

[SB 302]

AN ACT REMOVING SPECIAL SPEED RESTRICTIONS FOR CERTAIN PORTIONS OF U.S. HIGHWAY 93; AND AMENDING SECTION 61-8-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-303, MCA, is amended to read:

"61-8-303. Speed restrictions. (1) Except as provided in 61-8-309, 61-8-310, *and* 61-8-312, ~~and subsection (2) of this section,~~ the speed limit for vehicles traveling:

(a) on a federal-aid interstate highway outside an urbanized area of 50,000 population or more is 75 miles an hour at all times and the speed limit for vehicles traveling on federal-aid interstate highways within an urbanized area of 50,000 population or more is 65 miles an hour at all times;

(b) on any other public highway of this state is 70 miles an hour during the daytime and 65 miles an hour during the nighttime;

(c) in an urban district is 25 miles an hour.

~~(2) The speed limit for vehicles traveling on U.S. highway 93 between reference marker 133 northwest of Whitefish and the Idaho border is 65 miles an hour at all times. The speed limit imposed by this subsection ceases to be effective if U.S. highway 93 is upgraded to a continuous four-lane highway.~~

~~(3)~~ A vehicle subject to the speed limits imposed in subsection (1) traveling on a two-lane road may exceed the speed limits imposed in subsection (1) by 10 miles an hour in order to overtake and pass a vehicle and return safely to the right-hand lane.

~~(4)~~*(3)* Subject to the maximum speed limits set forth in ~~subsections~~ *subsection* (1) ~~and (2)~~, a person shall operate a vehicle in a careful and prudent manner and at a reduced rate of speed no greater than is reasonable and prudent under the conditions existing at the point of operation, taking into

account the amount and character of traffic, visibility, weather, and roadway conditions.

~~(5)~~*(4)* Except when a special hazard exists that requires lower speed for compliance with subsection ~~(4)~~ *(3)*, the limits specified in 61-8-312 and in this section or established as authorized in 61-8-309 through 61-8-311 and 61-8-313 are the maximum lawful speeds allowed.

~~(6)~~*(5)* "Daytime" means from one-half hour before sunrise to one-half hour after sunset. "Nighttime" means at any other hour.

~~(7)~~*(6)* The speed limits set forth in this section may be altered by the transportation commission or a local authority as authorized in 61-8-309, 61-8-310, 61-8-313, and 61-8-314."

Approved April 28, 2007

CHAPTER NO. 350

[SB 308]

AN ACT ALLOWING CERTAIN PROPERTY OWNERS TO VOTE IN A ROAD LEVY ELECTION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Qualifications to vote on question of additional mill levy. (1) An individual is entitled to vote at an election conducted pursuant to 15-10-425 to exceed the levy authority provided for in 7-14-2501(1) if the individual possesses all of the qualifications required of electors under the general election laws of the state and is:

(a) a resident of the area subject to the proposed tax; or

(b) the owner of taxable property located in the area subject to the proposed tax.

(2) An individual who is the owner of the property described in subsection (1)(b) need not possess the qualifications required of an elector in subsection (1)(a) if the elector is qualified to vote in any county of the state and files proof of registration with the election administrator at least 20 days prior to the election in which the individual intends to vote.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 14, part 25, and the provisions of Title 7, chapter 14, part 25, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 27, 2007

CHAPTER NO. 351

[SB 312]

AN ACT PROHIBITING ECONOMIC CREDENTIALING IN EXCHANGE FOR HOSPITAL OR MEDICAL STAFF PRIVILEGES; PROVIDING DEFINITIONS; AMENDING SECTIONS 50-5-105 AND 50-5-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Economic credentialing of physicians prohibited — definitions. (1) A hospital may not engage in economic credentialing by:

(a) except as may be required for medicare certification or for accreditation by the joint commission on accreditation of healthcare organizations, requiring a physician requesting medical staff membership or medical staff privileges to agree to make referrals to that hospital or to any facility related to the hospital;

(b) refusing to grant staff membership or medical staff privileges or conditioning or otherwise limiting a physician's medical staff participation because the physician or a partner, associate, or employee of the physician:

(i) provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility; or

(ii) participates or does not participate in any particular health plan; or

(c) refusing to grant participatory status in a hospital or hospital system health plan to a physician or a partner, associate, or employee of the physician because the physician or partner, associate, or employee of the physician provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility.

(2) Notwithstanding the prohibitions in subsection (1), a hospital may refuse to appoint a physician to the governing body of the hospital or to the position of president of the medical staff or presiding officer of a medical staff committee if the physician or a partner, or employee of the physician provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility.

(3) For the purposes of this section, the following definitions apply:

(a) "Economic credentialing" means the denial of a physician's application for staff membership or clinical privileges to practice medicine in a hospital on criteria other than the individual's training, current competence, experience, ability, personal character, and judgment. This term does not mean use by the hospital of:

(i) exclusive contracts with physicians;

(ii) medical staff on-call requirements;

(iii) adherence to a formulary approved by the medical staff; or

(iv) other medical staff policy adopted to manage health care costs or improve quality.

(b) "Health care facility" has the meaning provided in 50-5-101 and includes diagnostic facilities.

(c) "Health plan" means a plan offered by any person, employer, trust, government agency, association, corporation, or other entity to provide, sponsor, arrange for, indemnify another for, or pay for health care services to eligible members, insureds, enrollees, employees, participants, beneficiaries, or dependents, including but not limited to a health plan provided by an insurance company, health service organization, health maintenance organization, preferred provider organization, self-insured health plan, captive insurer,

multiple employee welfare arrangement, workers' compensation plan, medicare, or medicaid.

(d) "Physician" has the meaning provided in 37-3-102.

(4) For the purposes of this section, the provisions of 50-5-207 do not apply.

Section 2. Section 50-5-105, MCA, is amended to read:

"50-5-105. Discrimination prohibited. (1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.

(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.

(b) For the purposes of this subsection (2), the following definitions apply:

(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.

(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.

(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient must continue and remain unaffected.

(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 6.

~~(5) This section does not preclude a hospital from limiting membership or privileges based on education, training, or other relevant criteria.~~"

Section 3. Section 50-5-207, MCA, is amended to read:

"50-5-207. Denial, suspension, or revocation of health care facility license — provisional license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without the patient's or resident's consent.

(h) Any provision of parts 1 through 3*, except [section 1],* is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.

(4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 50, chapter 5, and the provisions of Title 50, chapter 5, apply to [section 1].

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Termination. [This act] terminates June 30, 2009.

Approved April 28, 2007

CHAPTER NO. 352

[SB 317]

AN ACT REVISING LAWS RELATED TO CONSERVATION EASEMENTS; REQUIRING THAT A CONSERVATION EASEMENT MAY NOT BE EXTINGUISHED BY TAKING FEE TITLE TO THE LAND TO WHICH THE CONSERVATION EASEMENT IS ATTACHED; CLARIFYING THAT A CONSERVATION EASEMENT RUNS WITH THE LAND; CLARIFYING THE REPORTING PROCESS OF CONSERVATION EASEMENT INFORMATION TO THE DEPARTMENT OF REVENUE; REQUIRING COORDINATION BETWEEN THE DEPARTMENT OF REVENUE AND DEPARTMENT OF ADMINISTRATION ON THE COLLECTION AND TRANSFER OF CONSERVATION EASEMENT INFORMATION; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO MAKE CONSERVATION EASEMENT INFORMATION ACCESSIBLE ON THE DEPARTMENT'S WEBSITE AND AVAILABLE TO THE NATURAL HERITAGE PROGRAM; AMENDING SECTIONS 70-17-111, 70-17-203, 76-6-207, AND 90-1-404, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-17-111, MCA, is amended to read:

"70-17-111. How servitude extinguished. *(1)* ~~A~~ *Except as provided in subsection (2), a* servitude is extinguished:

~~(1)~~*(a)* by the vesting of the right to the servitude and the right to the servient tenement in the same person;

~~(2)~~*(b)* by the destruction of the servient tenement;

~~(3)~~*(c)* by the performance of any act upon either tenement by the owner of the servitude or with ~~his~~ *the owner's* assent ~~which~~ *that* is incompatible with its nature or exercise; or

~~(4)~~*(d)* when the servitude was acquired by enjoyment, by disuse ~~thereof~~ *of the servitude* by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

(2) A conservation easement may not be extinguished by taking fee title to the land to which the conservation easement is attached."

Section 2. Section 70-17-203, MCA, is amended to read:

"70-17-203. ~~What covenants~~ *Covenants that* run with ~~the~~ land. (1) Every covenant contained in a grant of an estate in real property~~, which~~ *that* is made for the direct benefit of the property or some part of ~~it~~ *the property* then in existence~~,~~ runs with the land.

(2) Subsection (1) includes*:*

(a) covenants of warranty, for quiet enjoyment, or for further assurance on the part of the grantor and covenants for the payment of rent or of taxes or assessments upon the land on the part of a grantee*; and*

(b) conservation easements pursuant to 76-6-209.

(3) A covenant for the addition of some new thing to real property or for the direct benefit of some part of the property not then in existence or annexed ~~thereto~~ *to the property*, when contained in a grant of an estate in ~~such~~ *the* property and made by the covenantor expressly for ~~his~~ *covenantor's* assigns or to the assigns of the covenantee, runs with the land so far as the assigns ~~thus~~ mentioned are concerned."

Section 3. Section 76-6-207, MCA, is amended to read:

"76-6-207. Recording and description of easement. (1) All conservation easements ~~shall~~ *must* be ~~duly~~ recorded in the county where the land lies so as to effect ~~their titles~~ *the land's title* in the manner of other conveyances of interest in land and ~~shall~~ *must* describe the land subject to ~~said~~ *the* conservation easement by adequate legal description or by reference to a recorded plat showing its boundaries.

(2) *(a)* The county clerk and recorder shall*,* upon recording*,* ~~cause~~ *place* a copy of the conservation easement ~~to be placed~~ in a separate file within the office of the county clerk and recorder.

(b) ~~and shall cause a copy of the conservation easement to be mailed to the department of revenue~~ *The county clerk and recorder shall provide a copy of the conservation easement to the department of revenue office in that county within 30 days of the receipt of the original conservation easement.*"

Section 4. Section 90-1-404, MCA, is amended to read:

"90-1-404. Land information — management — duties of department. (1) The department shall:

(a) serve as the administrator of the account;

(b) work with all federal, state, local, private, and tribal entities to develop and maintain land information;

(c) annually develop a land information plan that describes the priority needs to collect, maintain, and disseminate land information. The land

information plan must have as a component a proposed budget designed to accomplish the goals and objectives of the plan.

(d) present the land information plan to the council for review and endorsement;

(e) establish, by administrative rule, an application process and a granting process that must be used to distribute funds in the account. The granting process must give preference to interagency or intergovernmental grant requests whenever multiple state agencies, local governments or agencies, or Indian tribal governments or tribal entities have partnered together to meet a requirement of the land information plan.

(f) review all grant applications from state agencies, local governments or agencies, and Indian tribal governments or tribal entities for the purpose of implementing the land information plan;

(g) monitor the use of grant funds distributed to a state agency, a local government or agency, or an Indian tribal government or tribal entity or to any combination of state, local, and Indian tribal governments or entities to ensure that the use of the funds complies with the purposes of this part;

(h) coordinate the development of technological standards for creating land information;

(i) serve as the primary point of contact for national, regional, state, and other GIS coordinating groups for the purpose of channeling issues and projects to the appropriate individual, organization, agency, or other entity;

(j) provide administrative and staff support to the council, including paying the expenses of the council;

(k) annually prepare a budget to carry out the department's responsibilities described in this section; ~~and~~

(l) report to the governor and the legislature, as provided for in 5-11-210, on the progress made in the ongoing collection, maintenance, standardization, and dissemination of land information*; and*

(m) implement the conservation easement information requirements as provided for in [section 5].

(2) To fulfill the responsibilities described in subsection (1), the department or any recipient of funds granted pursuant to this part may contract with a public or private entity."

Section 5. Additional reporting procedures — coordination of information collection, transfer, and accessibility. (1) A public body or qualified private organization holding a conservation easement before [the effective date of this section] shall mail or electronically transfer a copy of that conservation easement to the department of revenue within 6 months of [the effective date of this section].

(2) The department of revenue shall review conservation easement agreements collected pursuant to 76-6-207 and subsection (1) of this section and record the:

(a) legal description of the conservation easement as it relates to the established property boundaries identified in the conservation easement agreement;

(b) approximate acreage as identified in the conservation easement agreement;

(c) date of the conservation easement agreement;

(d) book and page or document number as provided for in 7-4-2617; and

(e) the name of the conservation easement grantee.

(3) (a) The department of revenue shall transfer conservation easement information collected pursuant to 76-6-207 and subsections (1) and (2) of this section to the department of administration.

(b) The department of revenue shall coordinate with the department of administration to develop procedures regarding the collection and transfer of conservation easement information between the two agencies.

(c) The department of administration shall convert conservation easement information received from the department of revenue to a digital format for land information purposes authorized in Title 90, chapter 1, part 4, that can be accessed through the department of administration's website.

(d) The department of administration shall provide the conservation easement data to the Montana natural heritage program for incorporation into appropriate databases developed or maintained for the purposes of Title 90, chapter 15.

Section 6. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 76, chapter 6, part 2, and the provisions of Title 76, chapter 6, part 2, apply to [section 5].

Section 7. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 5] is effective October 1, 2007.

Approved April 27, 2007

CHAPTER NO. 353

[SB 318]

AN ACT AMENDING MONTANA'S RECREATIONAL USE STATUTE TO PROVIDE LIMITED LIABILITY TO PRIVATE LANDOWNERS WHO PROVIDE AIRSTRIPS FOR THE PUBLIC WITHOUT VALUABLE CONSIDERATION; AMENDING SECTIONS 70-16-301 AND 70-16-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-16-301, MCA, is amended to read:

"70-16-301. Recreational purposes defined. "Recreational purposes", as used in this part, includes hunting, fishing, swimming, boating, waterskiing, camping, picnicking, pleasure driving, biking, winter sports, hiking, touring or viewing cultural and historical sites and monuments, spelunking, or other pleasure expeditions. *The term includes the private, noncommercial flying of aircraft in relation to private land.*"

Section 2. Section 70-16-302, MCA, is amended to read:

"70-16-302. (Temporary) Restriction on liability of landowner. (1) A person who uses property, including property owned or leased by a public entity, for recreational purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose if the

person does not give a valuable consideration to the landowner in exchange for the recreational use of the property. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct. For purposes of this section, valuable consideration does not include the state land recreational use license fee imposed under 77-1-802 or other funds provided under 77-1-815.

(2) As used in this part, *the following definitions apply:*

(a) (i) "Airstrip" means improved or unimproved landing areas on private land used by pilots to land, park, take off, unload, load, and taxi aircraft.

(ii) The term does not include municipal airports governed under Title 67, chapter 10, part 1.

(b) "Flying of aircraft" means the operation of aircraft, including but not limited to landing, parking, taking off, unloading, loading, and taxiing of aircraft at an airstrip.

(c) ~~"landowner"~~ *"Landowner"* means a person or entity of any nature, whether private, governmental, or quasi-governmental, and includes the landowner's agent, tenant, lessee, occupant, grantee of conservation easement, water users' association, irrigation district, drainage district, and persons or entities in control of the property or with an agreement to use or occupy property.

~~(3)~~*(d)* ~~As used in this part, "property"~~ *"Property"* means land, roads, *airstrips,* water, watercourses, and private ways. The term includes any improvements, buildings, structures, machinery, and equipment on property.

~~(4)~~*(3)* The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile area operator on the property, does not extend any assurance that the property is safe for any purpose, and the department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless the act or omission constitutes willful or wanton misconduct. (Void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)

70-16-302. (Effective on occurrence of contingency) Restriction on liability of landowner. (1) A person who uses property, including property owned or leased by a public entity, for recreational purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose if the person does not give a valuable consideration to the landowner in exchange for the recreational use of the property. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct. For purposes of this section, valuable consideration does not include the state land recreational use license fee imposed under 77-1-802.

(2) As used in this part, *the following definitions apply:*

(a) (i) "Airstrip" means either improved or unimproved landing areas on private land used by pilots to land, park, take off, unload, load, and taxi aircraft.

(ii) The term does not include municipal airports governed under Title 67, chapter 10, part 1.

(b) "Flying of aircraft" means the operation of aircraft, including but not limited to landing, parking, taking off, unloading, loading, and taxiing of aircraft at an airstrip.

(c) ~~"landowner"~~ *"Landowner"* means a person or entity of any nature, whether private, governmental, or quasi-governmental, and includes the landowner's agent, tenant, lessee, occupant, grantee of conservation easement, water users' association, irrigation district, drainage district, and persons or entities in control of the property or with an agreement to use or occupy property.

~~(3)~~*(d)* ~~As used in this part, "property"~~ *"Property"* means land, roads, *airstrips,* water, watercourses, and private ways. The term includes any improvements, buildings, structures, machinery, and equipment on property.

~~(4)~~*(3)* The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile area operator on the property, does not extend any assurance that the property is safe for any purpose, and the department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless the act or omission constitutes willful or wanton misconduct."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 27, 2007

CHAPTER NO. 354

[SB 335]

AN ACT PROVIDING A QUALITY EDUCATOR PAYMENT TO CERTIFIED TEACHERS EMPLOYED BY THE MONTANA YOUTH CHALLENGE PROGRAM; AMENDING SECTION 20-9-327, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-327, MCA, is amended to read:

"20-9-327. Quality educator payment. (1) (a) The state shall provide a quality educator payment to:

(i) public school districts, as defined in 20-6-101 and 20-6-701;

(ii) special education cooperatives, as described in 20-7-451;

(iii) the Montana school for the deaf and blind, as described in 20-8-101; ~~and~~

(iv) state youth correctional facilities, as defined in 41-5-103*; and*

(v) the Montana youth challenge program.

(b) A special education cooperative that has not met the requirements of 20-7-453 and 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction.

(2) (a) The quality educator payment for special education cooperatives must be distributed directly to those entities by the superintendent of public instruction.

(b) The quality educator payment for the Montana school for the deaf and blind must be distributed to the Montana school for the deaf and blind.

(c) The quality educator payment for Pine Hills and Riverside youth correctional facilities must be distributed to those facilities by the department of corrections.

(d) The quality educator payment for the Montana youth challenge program must be distributed to that program by the department of military affairs.

(3) The quality educator payment is $2,000 times the number of full-time equivalent educators, as reported to the superintendent of public instruction for accreditation purposes in the previous school year, each of whom:

(a) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in subsection (1) in a position that requires an educator license in accordance with the administrative rules adopted by the board of public education; or

(b) (i) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-23-201, 37-24-301, or 37-25-302; and

(ii) is employed by an entity listed in subsection (1) to provide services to students."

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved April 28, 2007

CHAPTER NO. 355

[SB 370]

AN ACT PROVIDING THAT AN APPROPRIATION RIGHT IS NOT ABANDONED IF AN APPROPRIATOR CEASES TO USE ALL OR PART OF AN APPROPRIATION RIGHT TO COMPLY WITH A CANDIDATE CONSERVATION AGREEMENT; AMENDING SECTION 85-2-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-404, MCA, is amended to read:

"85-2-404. (Temporary) Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of an appropriation right with the intention of wholly or partially abandoning the right or if the appropriator ceases using the appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right is, to that extent, considered abandoned and must immediately expire.

(2) If an appropriator ceases to use all or part of an appropriation right or ceases using the appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the appropriator has abandoned the right for the part not used.

(3) If an appropriator ceases to use all or part of an appropriation right *in compliance with a candidate conservation agreement initiated pursuant to 50 CFR 17.32 or* because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) The lease of an existing right pursuant to 85-2-436 or a temporary change in appropriation right pursuant to 85-2-407 or 85-2-408 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in accordance with part 2 of this chapter. (Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)

85-2-404. (Effective July 1, 2009) Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of an appropriation right with the intention of wholly or partially abandoning the right or if the appropriator ceases using the appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right is, to that extent, considered abandoned and must immediately expire.

(2) If an appropriator ceases to use all or part of an appropriation right or ceases using the appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the appropriator has abandoned the right for the part not used.

(3) If an appropriator ceases to use all or part of an appropriation right *in compliance with a candidate conservation agreement initiated pursuant to 50 CFR 17.32 or* because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) A temporary change in appropriation right pursuant to 85-2-407 or 85-2-408 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in accordance with part 2 of this chapter."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2007

CHAPTER NO. 356

[SB 419]

AN ACT PROVIDING FOR INSURANCE COVERAGE UNDER A PARENT'S POLICY FOR UNMARRIED CHILDREN UNDER 25 YEARS OF AGE; DEFINING "DEPENDENT"; AMENDING SECTIONS 2-18-701, 2-18-704, 33-22-101, 33-22-140, 33-22-1803, 33-31-102, 33-31-111, AND 33-35-306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Continuation of dependent coverage. A health insurance issuer that issues or renews an individual or a group health insurance policy, certificate, or membership contract under which an individual's or employee's dependents are eligible for coverage may not terminate coverage on the basis of the age of an unmarried dependent, as defined in 33-22-140(5)(b), prior to the dependent reaching 25 years of age. Except as otherwise provided by law, the continuation of the coverage of the dependent, as defined in 33-22-140(5)(b), is at the option of the covered employee.

Section 2. Section 2-18-701, MCA, is amended to read:

"2-18-701. Definition. ~~In~~ *As used in* this part, *the following definitions apply:*

(1) "Dependent" has the meaning provided in 33-22-140.

(2) (a) "Employee", as ~~it~~ *the term* applies to a person employed in the executive, judicial, or legislative branches of state government*:*

~~(1) "employee"~~ means:

~~(a)~~*(i)* a permanent full-time employee, as provided in 2-18-601;

~~(b)~~*(ii)* a permanent part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week;

~~(c)~~*(iii)* a seasonal full-time employee, as provided in 2-18-601, who is regularly scheduled to work 6 months or more a year or who works for a continuous period of more than 6 months a year although not regularly scheduled to do so;

~~(d)~~*(iv)* a seasonal part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week for 6 months or more a year or who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so;

~~(e)~~*(v)* elected officials;

~~(f)~~*(vi)* officers and permanent employees of the legislative branch;

~~(g)~~*(vii)* judges and permanent employees of the judicial branch;

~~(h)~~*(viii)* academic, professional, and administrative personnel having individual contracts under the authority of the board of regents of higher education or the state board of public education;

~~(i)~~*(ix)* a temporary full-time employee, as provided in 2-18-601:

~~(i)~~*(A)* who is regularly scheduled to work more than 6 months a year;

~~(ii)~~*(B)* who works for a continuous period of more than 6 months a year although not regularly scheduled to do so; or

~~(iii)~~*(C)* whose temporary status is defined through collective bargaining;

~~(j)~~*(x)* a temporary part-time employee, as provided in 2-18-601:

~~(i)~~*(A)* who is regularly scheduled to work 20 hours or more a week for 6 months or more a year;

~~(ii)~~*(B)* who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so; or

~~(iii)~~*(C)* whose temporary status is defined through collective bargaining; and

~~(k)~~*(xi)* a part-time or full-time employee of the state compensation insurance fund. As used in this subsection, "part-time or full-time employee of the state compensation insurance fund" means an employee eligible for inclusion in the state employee group benefit plans under the rules of the department of administration.

~~(2)~~*(b)* ~~"employee"~~ *The term* does not include a student intern, as defined in 2-18-101."

Section 3. Section 2-18-704, MCA, is amended to read:

"2-18-704. Mandatory provisions. (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions of a defined benefit plan provided by law or, in the case of the defined contribution plan provided in Title 19, chapter 3, part 21, a member with at least 5 years of service and who is at least age 50 while in covered employment to remain a member of the group until the member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)(a) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and subsequently terminates membership may not rejoin the group plan unless the person again serves as a legislator.

(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues to be an inactive vested member of the judges' retirement system as provided by 19-5-301. The judge shall notify the department of administration in writing within 90 days of the end of the judge's judicial service of the judge's choice to continue membership in the group plan.

(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or

(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended.

(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.

(5) A person electing to remain a member of the group under subsection (1), (2), (3), or (4) shall pay the full premium for coverage and for that of the person's covered dependents.

(6) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same

professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation.

(7) An insurance contract or plan issued under this part must include coverage for treatment of inborn errors of metabolism, as provided for in 33-22-131.

(8) An insurance contract or plan issued under this part must include substantially equivalent or greater coverage for outpatient self-management training and education for the treatment of diabetes and certain diabetic equipment and supplies as provided in 33-22-129.

(9) (a) Except as provided in subsection (9)(b), upon renewal, an insurance contract or plan issued under this part under which coverage of a dependent terminates at a specified age must, as provided in [section 1], continue to provide coverage for any unmarried dependent, as defined in 33-22-140(5)(b), until the dependent reaches 25 years of age or marries, whichever occurs first. For insurance contracts or plans issued under this part, the premium charged for the additional coverage of a dependent, as defined in 33-22-140(5)(b), may be required to be paid by the insured and not by the employer.

(b) An insurance contract or plan issued under this part for the state employee group insurance program and the university system group insurance program is not subject to subsection (9)(a)."

Section 4. Section 33-22-101, MCA, is amended to read:

"33-22-101. Exceptions to scope. (1) Subject to subsection (2), parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114, 33-22-125, 33-22-129, 33-22-130 through 33-22-136, 33-22-140, 33-22-141, 33-22-142, 33-22-243, and 33-22-304, and part 19 of this chapter do not apply to or affect:

(a) any policy of liability or workers' compensation insurance with or without supplementary expense coverage;

(b) any group or blanket policy;

(c) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance that:

(i) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

(ii) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity if the insured or annuitant becomes totally and permanently disabled as defined by the contract or supplemental contract;

(d) reinsurance.

(2) Sections 33-22-150, 33-22-151, *[section 1],* and 33-22-301 apply to group or blanket policies."

Section 5. Section 33-22-140, MCA, is amended to read:

"33-22-140. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" has the meaning given the term by 29 U.S.C. 1002(33).

(2) "Church plan" has the meaning given the term by 29 U.S.C. 1002(33).

(3) "COBRA continuation provision" means:

(a) section 4980B of the Internal Revenue Code, 26 U.S.C. 4980B, other than subsection (f)(1) of that section as that subsection relates to pediatric vaccines;

(b) Title I, subtitle B, part 6, excluding section 609, of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.; or

(c) Title XXII of the Public Health Service Act, 42 U.S.C. 300dd, et seq.

(4) (a) "Creditable coverage" means coverage of the individual under any of the following:

(i) a group health plan;

(ii) health insurance coverage;

(iii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4;

(iv) Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, other than coverage consisting solely of a benefit under section 1928, 42 U.S.C. 1396s;

(v) Title 10, chapter 55, United States Code;

(vi) a medical care program of the Indian health service or of a tribal organization;

(vii) the Montana comprehensive health association provided for in 33-22-1503;

(viii) a health plan offered under Title 5, chapter 89, of the United States Code;

(ix) a public health plan;

(x) a health benefit plan under section 5(e) of the Peace Corps Act, 22 U.S.C. 2504(e);

(xi) a high-risk pool in any state.

(b) Creditable coverage does not include coverage consisting solely of coverage of excepted benefits.

(5) "Dependent" means:

(a) a spouse;

(b) an unmarried child under 25 years of age:

(i) who is not an employee eligible for coverage under a group health plan offered by the child's employer for which the child's premium contribution amount is no greater than the premium amount for coverage as a dependent under a parent's individual or group health plan;

(ii) who is not a named subscriber, insured, enrollee, or covered individual under any other individual health insurance coverage, group health plan, government plan, church plan, or group health insurance;

(iii) who is not entitled to benefits under 42 U.S.C. 1395, et seq.; and

(iv) for whom the insured parent has requested coverage;

(c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506 and 33-30-1003; or

(d) any other individual defined as a dependent in the health benefit plan covering the employee.

~~(5)~~*(6)* "Elimination rider" means a provision attached to a policy that excludes coverage for a specific condition that would otherwise be covered under the policy.

~~(6)~~*(7)* "Enrollment date" means, with respect to an individual covered under a group health plan or health insurance coverage, the date of enrollment of the individual in the plan or coverage or, if earlier, the first day of the waiting period for enrollment.

~~(7)~~*(8)* "Excepted benefits" means:

(a) coverage only for accident or disability income insurance, or both;

(b) coverage issued as a supplement to liability insurance;

(c) liability insurance, including general liability insurance and automobile liability insurance;

(d) workers' compensation or similar insurance;

(e) automobile medical payment insurance;

(f) credit-only insurance;

(g) coverage for onsite medical clinics;

(h) other similar insurance coverage under which benefits for medical care are secondary or incidental to other insurance benefits, as approved by the commissioner;

(i) if offered separately, any of the following:

(i) limited-scope dental or vision benefits;

(ii) benefits for long-term care, nursing home care, home health care, community-based care, or any combination of these types of care; or

(iii) other similar, limited benefits as approved by the commissioner;

(j) if offered as independent, noncoordinated benefits, any of the following:

(i) coverage only for a specified disease or illness; or

(ii) hospital indemnity or other fixed indemnity insurance;

(k) if offered as a separate insurance policy:

(i) medicare supplement coverage;

(ii) coverage supplemental to the coverage provided under Title 10, chapter 55, of the United States Code; and

(iii) similar supplemental coverage provided under a group health plan.

~~(8)~~*(9)* "Federally defined eligible individual" means an individual:

(a) for whom, as of the date on which the individual seeks coverage in the group market or individual market or under an association portability plan, as defined in 33-22-1501, the aggregate of the periods of creditable coverage is 18 months or more;

(b) whose most recent prior creditable coverage was under a group health plan, governmental plan, church plan, or health insurance coverage offered in connection with any of those plans;

(c) who is not eligible for coverage under:

(i) a group health plan;

(ii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4; or

(iii) a state plan under Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, or a successor program;

(d) who does not have other health insurance coverage;

(e) for whom the most recent coverage within the period of aggregate creditable coverage was not terminated for factors relating to nonpayment of premiums or fraud;

(f) who, if offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, elected that coverage; and

(g) who has exhausted continuation coverage under the COBRA continuation provision or program described in subsection ~~(8)(f)~~ *(9)(f)* if the individual elected the continuation coverage described in subsection ~~(8)(f)~~ *(9)(f)*.

~~(9)~~*(10)* "Group health insurance coverage" means health insurance coverage offered in connection with a group health plan or health insurance coverage offered to an eligible group as described in 33-22-501.

~~(10)~~*(11)* "Group health plan" means an employee welfare benefit plan, as defined in 29 U.S.C. 1002(1), to the extent that the plan provides medical care and items and services paid for as medical care to employees or their dependents, directly or through insurance, reimbursement, or otherwise.

~~(11)~~*(12)* "Health insurance coverage" means benefits consisting of medical care, including items and services paid for as medical care, that are provided directly, through insurance, reimbursement, or otherwise, under a policy, certificate, membership contract, or health care services agreement offered by a health insurance issuer.

~~(12)~~*(13)* "Health insurance issuer" means an insurer, a health service corporation, or a health maintenance organization.

~~(13)~~*(14)* "Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, but does not include short-term limited duration insurance.

~~(14)~~*(15)* "Individual market" means the market for health insurance coverage offered to individuals other than in connection with group health insurance coverage.

~~(15)~~*(16)* "Large employer" means, in connection with a group health plan, with respect to a calendar year and a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year.

~~(16)~~*(17)* "Large group market" means the health insurance market under which individuals obtain health insurance coverage directly or through any arrangement on behalf of themselves and their dependents through a group health plan or group health insurance coverage issued to a large employer.

~~(17)~~*(18)* "Late enrollee" means an eligible employee or dependent, other than a special enrollee under 33-22-523, who requests enrollment in a group health plan following the initial enrollment period during which the individual was entitled to enroll under the terms of the group health plan if the initial enrollment period was a period of at least 30 days. However, an eligible

employee or dependent is not considered a late enrollee if a court has ordered that coverage be provided for a spouse, minor, or dependent ~~child~~ under a covered employee's health benefit plan and a request for enrollment is made within 30 days after issuance of the court order.

~~(18)~~*(19)* "Medical care" means:

(a) the diagnosis, cure, mitigation, treatment, or prevention of disease or amounts paid for the purpose of affecting any structure or function of the body;

(b) transportation primarily for and essential to medical care referred to in subsection ~~(18)(a)~~ *(19)(a)*; or

(c) insurance covering medical care referred to in subsections ~~(18)(a)~~ *(19)(a)* and ~~(18)(b)~~ *(19)(b)*.

~~(19)~~*(20)* "Network plan" means health insurance coverage offered by a health insurance issuer under which the financing and delivery of medical care, including items and services paid for as medical care, are provided, in whole or in part, through a defined set of providers under contract with the issuer.

~~(20)~~*(21)* "Plan sponsor" has the meaning provided under section 3(16)(B) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(16)(B).

~~(21)~~*(22)* "Preexisting condition exclusion" means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on presence of a condition before the enrollment date coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before the enrollment date.

~~(22)~~*(23)* "Small group market" means the health insurance market under which individuals obtain health insurance coverage directly or through an arrangement, on behalf of themselves and their dependents, through a group health plan or group health insurance coverage maintained by a small employer as defined in 33-22-1803.

~~(23)~~*(24)* "Waiting period" means, with respect to a group health plan and an individual who is a potential participant or beneficiary in the group health plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the group health plan."

Section 6. Section 33-22-1803, MCA, is amended to read:

"33-22-1803. Definitions. As used in this part, the following definitions apply:

(1) "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of 33-22-1809, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified entity or person.

(3) "Assessable carrier" means all carriers of disability insurance, including excess of loss and stop loss disability insurance.

(4) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under

the rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(5) "Basic health benefit plan" means a health benefit plan, except a uniform health benefit plan, developed by a small employer carrier, that has a lower benefit value than the small employer carrier's standard benefit plan and that provides the benefits required by 33-22-1827.

(6) "Benefit value" means a numerical value based on the expected dollar value of benefits payable to an insured under a health benefit plan. The benefit value must be calculated by the small employer carrier using an actuarially based method and must take into account all health care expenses covered by the health benefit plan and all cost-sharing features of the health benefit plan, including deductibles, coinsurance, copayments, and the insured individual's maximum out-of-pocket expenses. The benefit value must apply equally to indemnity-type health benefit plans and to managed care health benefit plans, including health maintenance organization-type plans.

(7) "Bona fide association" means an association that:

(a) has been actively in existence for at least 5 years;

(b) was formed and has been maintained in good faith for purposes other than obtaining insurance;

(c) does not condition membership in the association on a health status-related factor relating to an individual, including an employee of an employer or a dependent of an employee;

(d) makes health insurance coverage offered through the association available to a member regardless of a health status-related factor relating to the member or an individual eligible for coverage through a member; and

(e) does not make health insurance coverage offered through the association available other than in connection with a member of the association.

(8) "Carrier" means any person who provides a health benefit plan in this state subject to state insurance regulation. The term includes but is not limited to an insurance company, a fraternal benefit society, a health service corporation, and a health maintenance organization. For purposes of this part, companies that are affiliated companies or that are eligible to file a consolidated tax return must be treated as one carrier, except that the following may be considered as separate carriers:

(a) an insurance company or health service corporation that is an affiliate of a health maintenance organization located in this state;

(b) a health maintenance organization located in this state that is an affiliate of an insurance company or health service corporation; or

(c) a health maintenance organization that operates only one health maintenance organization in an established geographic service area of this state.

(9) "Case characteristics" means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer, provided that gender, claims experience, health status, and duration of coverage are not case characteristics for purposes of this part.

(10) "Class of business" means all or a separate grouping of small employers established pursuant to 33-22-1808.

(11) "Dependent" means:

(a) a spouse ~~or~~*;*

(b) an unmarried child ~~under 19 years of age;~~

~~(b) an unmarried child, under 23 years of age, who is a full-time student and who is financially dependent on the insured;~~ *under 25 years of age:*

(i) who is not an employee eligible for coverage under a group health plan offered by the child's employer for which the child's premium contribution amount is no greater than the premium amount for coverage as a dependent under a parent's individual or group health plan;

(ii) who is not a named subscriber, insured, enrollee, or covered individual under any other individual health insurance coverage, group health plan, government plan, church plan, or group health insurance;

(iii) who is not entitled to benefits under 42 U.S.C. 1395, et seq.; and

(iv) for whom the parent has requested coverage;

(c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506 and 33-30-1003; or

(d) any other individual defined as a dependent in the health benefit plan covering the employee.

(12) (a) "Eligible employee" means an employee who works on a full-time basis with a normal workweek of 30 hours or more, except that at the sole discretion of the employer, the term may include an employee who works on a full-time basis with a normal workweek of between 20 and 40 hours as long as this eligibility criteria is applied uniformly among all of the employer's employees. The term includes a sole proprietor, a partner of a partnership, and an independent contractor if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. The term also includes those persons eligible for coverage under 2-18-704.

(b) The term does not include an employee who works on a part-time, temporary, or substitute basis.

(13) "Established geographic service area" means a geographic area, as approved by the commissioner and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.

(14) *(a)* "Health benefit plan" means any hospital or medical policy or certificate providing for physical and mental health care issued by an insurance company, a fraternal benefit society, or a health service corporation or issued under a health maintenance organization subscriber contract.

(b) ~~Health benefit plan~~ *The term* does not include coverage of excepted benefits, as defined in 33-22-140, if coverage is provided under a separate policy, certificate, or contract of insurance.

(15) "Index rate" means, for each class of business for a rating period for small employers with similar case characteristics, the average of the applicable base premium rate and the corresponding highest premium rate.

(16) "New business premium rate" means, for each class of business for a rating period, the lowest premium rate charged or offered or that could have been charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(17) "Premium" means all money paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

(18) "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

(19) "Restricted network provision" means a provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier pursuant to Title 33, chapter 22, part 17, or Title 33, chapter 31, to provide health care services to covered individuals.

(20) "Small employer" means a person, firm, corporation, partnership, or bona fide association that is actively engaged in business and that, with respect to a calendar year and a plan year, employed at least two but not more than 50 eligible employees during the preceding calendar year and employed at least two employees on the first day of the plan year. In the case of an employer that was not in existence throughout the preceding calendar year, the determination of whether the employer is a small or large employer must be based on the average number of employees reasonably expected to be employed by the employer in the current calendar year. In determining the number of eligible employees, companies are considered one employer if they:

(a) are affiliated companies;

(b) are eligible to file a combined tax return for purposes of state taxation; or

(c) are members of a bona fide association.

(21) "Small employer carrier" means a carrier that offers health benefit plans that cover eligible employees of one or more small employers in this state.

(22) "Standard health benefit plan" means a health benefit plan that is developed by a small employer carrier and that contains the provisions required pursuant to 33-22-1828."

Section 7. Section 33-31-102, MCA, is amended to read:

"33-31-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Affiliation period" means a period that, under the terms of the health insurance coverage offered by a health maintenance organization, must expire before the health insurance coverage becomes effective.

(2) "Basic health care services" means:

(a) consultative, diagnostic, therapeutic, and referral services by a provider;

(b) inpatient hospital and provider care;

(c) outpatient medical services;

(d) medical treatment and referral services;

(e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);

(f) care and treatment of mental illness, alcoholism, and drug addiction;

(g) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(h) preventive health services, including:

(i) immunizations;

(ii) well-child care from birth;

(iii) periodic health evaluations for adults;

(iv) voluntary family planning services;

(v) infertility services; and

(vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction;

(i) minimum mammography examination, as defined in 33-22-132;

(j) outpatient self-management training and education for the treatment of diabetes along with certain diabetic equipment and supplies as provided in 33-22-129; and

(k) treatment and medical foods for inborn errors of metabolism. "Medical foods" and "treatment" have the meanings provided for in 33-22-131.

(3) "Commissioner" means the commissioner of insurance of the state of Montana.

(4) "Dependent" has the meaning provided in 33-22-140.

~~(4)~~*(5)* "Enrollee" means a person:

(a) who enrolls in or contracts with a health maintenance organization;

(b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or

(c) on whose behalf the health maintenance organization contracts to receive health care services.

~~(5)~~*(6)* "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.

~~(6)~~*(7)* "Health care services" means:

(a) the services included in furnishing medical or dental care to a person;

(b) the services included in hospitalizing a person;

(c) the services incident to furnishing medical or dental care or hospitalization; or

(d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

~~(7)~~*(8)* "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

~~(8)~~*(9)* "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers. This subsection does not limit methods of provider payments made by health maintenance organizations.

~~(9)~~*(10)* "Insurance producer" means an individual, partnership, or corporation appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

~~(10)~~*(11)* "Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

~~(11)~~*(12)* "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

~~(12)~~*(13)* "Point-of-service option" means a delivery system that permits an enrollee of a health maintenance organization to receive health care services from a provider who is, under the terms of the enrollee's contract for health care services with the health maintenance organization, not on the provider panel of the health maintenance organization.

~~(13)~~*(14)* "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, or advanced practice registered nurse, as specifically listed in 37-8-202, who treats any illness or injury within the scope and limitations of the provider's practice or any other person who is licensed or otherwise authorized in this state to furnish health care services.

~~(14)~~*(15)* "Provider panel" means those providers with whom a health maintenance organization contracts to provide health care services to the health maintenance organization's enrollees.

~~(15)~~*(16)* "Purchaser" means the individual, employer, or other entity, but not the individual certificate holder in the case of group insurance, that enters into a health care services agreement.

~~(16)~~*(17)* "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization becomes insolvent."

Section 8. Section 33-31-111, MCA, is amended to read:

"33-31-111. (Temporary) Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36, except as provided in 33-22-262; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Except as provided in 33-22-262, *the provisions of* Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, *[section 1],* 33-22-141, 33-22-142, 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations. (Terminates June 30, 2009—sec. 14, Ch. 325, L. 2003.)

33-31-111. (Effective July 1, 2009) Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, *[section 1],* 33-22-141, 33-22-142, 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations."

Section 9. Section 33-35-306, MCA, is amended to read:

"33-35-306. Application of insurance code to arrangements. (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions:

(a) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(b) Title 33, chapter 1, part 7;

(c) 33-3-308;

(d) Title 33, chapter 18, except 33-18-242;

(e) Title 33, chapter 19;

(f) 33-22-107, 33-22-131, 33-22-134, ~~and~~ 33-22-135*, and [section 1]*; and

(g) 33-22-525 and 33-22-526.

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

Section 10. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 1].

Section 11. Effective date. [This act] is effective January 1, 2008.

Approved April 27, 2007

CHAPTER NO. 357

[SB 442]

AN ACT CREATING AN ABANDONED MINE RECLAMATION ACCOUNT; REQUIRING USE OF THE ACCOUNT FOR RECLAMATION OF ABANDONED MINE LANDS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Abandoned mine reclamation account. (1) There is an abandoned mine reclamation account in the federal special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) money received by the state from the federal government pursuant to 30 U.S.C. 1232 through 1243; and

(b) interest earned on the account.

(3) (a) Money in the account is available to the department of environmental quality by appropriation and must be used to pay for reclamation or drainage abatement on eligible lands or waters. Eligible lands and waters are those:

(i) that were mined or processed for minerals or materials or were affected by that mining or processing;

(ii) that were abandoned or left in an inadequate reclamation status prior to:

(A) November 26, 1980, for federal lands administered by the United States bureau of land management;

(B) August 28, 1974, for federal lands administered by the United States forest service; and

(C) August 3, 1977, for state lands, private lands, and federal lands not subject to subsection (3)(a)(ii)(A) or (3)(a)(ii)(B); and

(iii) for which there is no continuing reclamation responsibility under state or federal law.

(b) Allowable reclamation or abatement activities under subsection (3)(a) include but are not limited to:

(i) reclamation of abandoned surface mine areas, abandoned mine processing areas, and abandoned mine refuse disposal areas;

(ii) sealing and filling abandoned mine entries and voids;

(iii) planting of land adversely affected by past mining practices to prevent erosion and sedimentation;

(iv) prevention, abatement, treatment, and control of water pollution created by abandoned mine drainage, including restoration of stream beds and construction and operation of water treatment plants;

(v) prevention, abatement, and control of burning coal refuse disposal areas and burning coal in situ;

(vi) prevention, abatement, and control of abandoned mine subsidence; and

(vii) payment of costs of administration of the abandoned mine land reclamation program administered by the department of environmental quality.

(4) Money in the account that is subject to restrictions on use pursuant to federal law, regulation, or grant condition may be used only for the purposes allowed by the federal provision.

(5) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account until spent or appropriated by the legislature.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 82, chapter 4, and the provisions of Title 82, chapter 4, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved April 28, 2007

CHAPTER NO. 358

[SB 443]

AN ACT REVISING THE TIMES AT WHICH THE ELECTION ADMINISTRATOR MUST MAIL ADDRESS CONFIRMATION FORMS TO ELECTORS WHO HAVE REQUESTED ABSENTEE BALLOTS FOR FUTURE ELECTIONS; AMENDING SECTION 13-13-212, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-13-212, MCA, is amended to read:

"13-13-212. Application for absentee ballot — special provisions. (1) An elector may apply for an absentee ballot by using a standardized form provided by rule by the secretary of state or by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (2) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator.

(4) (a) When applying for an absentee ballot under this section, an elector may also request to be mailed an absentee ballot, as soon as the ballot becomes available, for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application.

(b) The election administrator shall mail an address confirmation form ~~at least 75 days before the election to each elector who has requested an absentee ballot for subsequent elections~~ *in January and July of each year to each elector who has requested an absentee ballot for subsequent elections. The address confirmation form mailed in January is for elections to be held between February 1 following the mailing through July of the same year and the address confirmation form mailed in July is for elections to be held between August 1 following the mailing through January of the succeeding year*. The elector shall

sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for each subsequent election.

(c) An elector who has been removed from the register may subsequently request to be mailed an absentee ballot for each subsequent election."

Section 2. Applicability. [This act] applies to address confirmation forms to be mailed after December 31, 2007.

Approved April 28, 2007

CHAPTER NO. 359

[SB 444]

AN ACT REVISING ADVANCED PRACTICE REGISTERED NURSE TREATMENT OF INJURED WORKERS; AND AMENDING SECTION 39-71-116, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, in this chapter, the following definitions apply:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act necessary to:

(a) investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) "Aid or sustenance" means a public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

(4) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under 18 years of age;

(c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of injury;

(e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (4)(a) through (4)(d), does not exist; and

(f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (4)(a) through (4)(e), does not exist.

(5) "Business partner" means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.

(6) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.

(7) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(8) (a) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors listed in major group 23 in the North American Industry Classification System Manual.

(b) The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

(9) (a) "Claims examiner" means an individual who, as a paid employee of the department, of a plan No. 1, 2, or 3 insurer, or of an administrator licensed under Title 33, chapter 17, examines claims under chapter 71 to:

(i) determine liability;

(ii) apply the requirements of this title;

(iii) settle workers' compensation or occupational disease claims; or

(iv) determine survivor benefits.

(b) The term does not include an adjuster as defined in 33-17-102.

(10) "Days" means calendar days, unless otherwise specified.

(11) "Department" means the department of labor and industry.

(12) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(13) (a) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work.

(b) The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(14) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

(15) "Invalid" means one who is physically or mentally incapacitated.

(16) "Limited liability company" has the meaning provided in 35-8-102.

(17) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

(18) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

(19) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

(20) (a) "Occupational disease" means harm, damage, or death arising out of or contracted in the course and scope of employment caused by events occurring on more than a single day or work shift.

(b) The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.

(21) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at by the department.

(22) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

(23) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(24) "Permanent partial disability" means a physical condition in which a worker, after reaching maximum medical healing:

(a) has a permanent impairment established by objective medical findings;

(b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability to work; and

(c) has an actual wage loss as a result of the injury.

(25) "Permanent total disability" means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

(26) "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

(27) "Public corporation" means the state or a county, municipal corporation, school district, city, city under a commission form of government or special charter, town, or village.

(28) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(29) "Reasonably safe tools or appliances" are tools and appliances that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

(30) (a) "Secondary medical services" means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection (30), "disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

(31) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of a business enterprise.

(32) "State's average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department before July 1 and rounded to the nearest whole dollar number.

(33) "Temporary partial disability" means a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

(34) "Temporary service contractor" means a person, firm, association, partnership, limited liability company, or corporation conducting business that hires its own employees and assigns them to clients to fill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(35) "Temporary total disability" means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

(36) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(37) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant licensed by the state of Montana under Title 37, chapter 20, if there is not a treating physician, as provided for in subsection (37)(a), in the area where the physician assistant is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 3;

(e) a dentist licensed by the state of Montana under Title 37, chapter 4;

(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections (37)(a) through (37)(e) who is licensed or certified in another state; or

(g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8~~, recognized by the board of nursing as a nurse practitioner or a clinical nurse specialist, and practicing in consultation with a physician licensed under Title 37, chapter 3, if there is not a treating physician, as provided for in subsection (37)(a), in the area in which the advanced practice registered nurse is located~~.

(38) "Work-based learning activities" means job training and work experience conducted on the premises of a business partner as a component of school-based learning activities authorized by an elementary, secondary, or postsecondary educational institution.

(39) "Year", unless otherwise specified, means calendar year."

Approved April 28, 2007

CHAPTER NO. 360

[SB 517]

AN ACT REVISING THE TIME THAT CERTAIN POLLING PLACES MUST BE OPEN; AND AMENDING SECTION 13-1-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-1-106, MCA, is amended to read:

"13-1-106. Time of opening and closing of polls for all elections — exceptions. (1) ~~Polls~~ *Except as provided in subsections (2) and (3), polling places* must be open from 7 a.m. to 8 p.m.~~, except~~

(2) A polling ~~places~~ *place* having fewer than ~~200~~ *400* registered electors~~, which~~ must be open from noon to 8 p.m. or until all registered electors in any precinct have voted, at which time the ~~polls shall~~ *polling place must* be closed immediately.

~~(2)~~*(3)* ~~When~~ *If* an election held under 13-1-104(3) and a school election are conducted in the same polling place, the ~~polls shall~~ *polling place must* be opened and closed at the times set for the school election, as provided in 20-20-106."

Approved April 27, 2007

CHAPTER NO. 361

[SB 553]

AN ACT REVISING INCENTIVES FOR RECRUITING PHYSICIANS TO PRACTICE IN CERTAIN AREAS; EXPANDING THE REPAYMENT OF EDUCATIONAL DEBT TO INCLUDE PHYSICIANS PRACTICING IN

MEDICALLY UNDERSERVED AREAS OR FOR UNDERSERVED POPULATIONS; INCREASING THE AMOUNT OF EDUCATIONAL DEBT THAT MAY BE PAID BY THE BOARD OF REGENTS; INCREASING THE FEE THAT MAY BE ASSESSED TO CERTAIN STUDENTS PREPARING TO BE PHYSICIANS; PHASING OUT THE TAX CREDIT FOR A PHYSICIAN PRACTICING IN RURAL AREAS; PROVIDING FOR TRANSFERS FROM THE STATE GENERAL FUND TO THE STATE SPECIAL REVENUE ACCOUNT FOR PAYING EDUCATIONAL DEBT BASED ON THE PHASEOUT OF THE PHYSICIAN TAX CREDIT; AMENDING SECTIONS 15-30-189, 20-26-1501, 20-26-1502, AND 20-26-1503, MCA; REPEALING SECTIONS 15-30-188, 15-30-189, 15-30-190, AND 15-30-191, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-189, MCA, is amended to read:

"15-30-189. Tax credit for physician practicing in rural area. ~~A~~ *For tax years beginning after December 31, 2006, and before January 1, 2008, a* licensed physician who commences practice in a rural area in Montana on a full-time basis is entitled to a credit against taxes imposed by 15-30-103 in an amount of $5,000 a year for each of 4 successive years, beginning with the year in which the practice commences. To qualify for the credit provided in this section, the physician shall maintain ~~his~~ *the* practice for at least 9 months of the ~~taxable~~ *tax* year in which the credit is claimed."

Section 2. General fund transfer. (1) By November 1, 2008, the department of revenue shall determine the total amount of the tax credit claimed under 15-30-188 through 15-30-191 that was taken by physicians practicing in rural areas for tax years 2006 and 2007 and calculate the average of those amounts. The department of revenue shall report the average amount determined under this subsection to the state treasurer.

(2) (a) For the fiscal year beginning July 1, 2008, the state treasurer shall transfer 25% of the amount reported under subsection (1) from the general fund to the state special revenue account created in 20-26-1501. The transfer under this subsection (2)(a) may not occur until after the amount is reported by the department of revenue under subsection (1).

(b) For the fiscal year beginning July 1, 2009, the state treasurer shall transfer 50% of the amount reported under subsection (1) from the general fund to the state special revenue account created in 20-26-1501.

(c) For the fiscal year beginning July 1, 2010, the state treasurer shall transfer 75% of the amount reported under subsection (1) from the general fund to the state special revenue account created in 20-26-1501.

(d) For each fiscal year beginning after June 30, 2011, the state treasurer shall transfer 100% of the amount reported under subsection (1) from the general fund to the state special revenue account created in 20-26-1501.

Section 3. Section 20-26-1501, MCA, is amended to read:

"20-26-1501. ~~Rural physician incentive~~ *Incentive for physicians practicing in rural areas or medically underserved areas or for underserved populations* state special revenue account. There is ~~a rural physician~~ *an* incentive *for physicians practicing in rural areas or medically underserved areas or for underserved populations* state special revenue account ~~in the state treasury~~. Money is payable into the account as provided in *[section 2] and* 20-26-1502. Income and earnings on the account must be redeposited in the

account. The account must be administered by the board of regents as provided in this part."

Section 4. Section 20-26-1502, MCA, is amended to read:

"20-26-1502. Fee assessments — deposits. The board of regents may assess a fee to students preparing to be physicians in the fields of medicine or osteopathic medicine who are supported by the state pursuant to an interstate compact for a professional education program in those fields, as those fields are defined by the compact. The fee may not exceed an amount equal to ~~8%~~ *16%* of the annual individual medicine support fee paid by the state pursuant to 20-25-804. The fee must be assessed by the board of regents and deposited in the ~~rural physician incentive~~ state special revenue account established in 20-26-1501."

Section 5. Section 20-26-1503, MCA, is amended to read:

"20-26-1503. Use of ~~rural physician~~ incentive *for physicians practicing in rural areas or medically underserved areas or for underserved populations* state special revenue account. (1) The ~~rural physician incentive~~ state special revenue account *established in 20-26-1501* is statutorily appropriated, as provided in 17-7-502, to the board of regents to be used to pay:

(a) the educational debts of ~~rural~~ physicians who practice in *rural areas or* medically underserved areas *or for medically underserved populations* of the state that demonstrate a need for assistance in physician recruitment; and

(b) the expenses of administering the ~~rural physician~~ incentive program. The expenses of administering the program may not exceed 10% of the annual fees assessed pursuant to 20-26-1502.

(2) The board of regents shall establish procedures for determining ~~the~~ *rural areas and medically underserved* areas *or populations* of the state that qualify for assistance in physician recruitment. An eligible area *or eligible population* must demonstrate that a physician shortage exists or that the area *or population* has been unsuccessful in recruiting physicians ~~by~~ *in* other ~~mechanisms~~ *ways*.

(3) A physician from an area *or serving a population* determined to be eligible under subsection (2) may apply to the board of regents for payment of an educational debt directly related to a professional school, as provided in subsection (4). Physicians who have paid the fee authorized in 20-26-1502 must be given a preference over other applicants. To receive the educational debt payments, the physician shall sign an annual contract with the board of regents. The contract must provide that the physician is liable for the payments if the physician ceases to practice in the eligible area *or serve the eligible population* during the contract period.

(4) The maximum amount of educational debt payment that a ~~rural~~ physician *practicing in a rural area or medically underserved area or for a medically underserved population* may receive is ~~$45,000~~ *$100,000* over a 5-year period or a proportionally reduced amount for a shorter period.

(5) The amount contractually committed in a year may not exceed the annual amount deposited in the ~~rural physician incentive~~ state special revenue account *established in 20-26-1501*."

Section 6. Repealer. Sections 15-30-188, 15-30-189, 15-30-190, and 15-30-191, MCA, are repealed.

Section 7. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 17, chapter 1, and the provisions of Title 17, chapter 1, apply to [section 2].

Section 8. Effective dates. (1) Except as provided in subsections (2) through (4), [this act] is effective July 1, 2008.

(2) [Section 1 and this section] are effective on passage and approval.

(3) [Section 5] is effective July 1, 2009.

(4) [Section 6] is effective December 31, 2010.

Section 9. Applicability. (1) [Section 1] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2006.

(2) [Section 4] applies to fees charged after June 30, 2008.

(3) [Section 5] applies to applications made after June 30, 2009, for payment of educational debt.

Approved April 28, 2007

CHAPTER NO. 362

[HB 790]

AN ACT REVISING ASSESSMENTS USED FOR PAYMENT OF EXPENSES INCURRED FOR ADMINISTRATION OF THE UNEMPLOYMENT INSURANCE PROGRAM; PROVIDING THAT FUNDS IN THE EMPLOYMENT SECURITY ACCOUNT MAY BE USED FOR EXPENSES INCURRED IN ADMINISTRATION OF THE UNEMPLOYMENT INSURANCE PROGRAM; CHANGING CONTRIBUTION RATES TO THE UNEMPLOYMENT INSURANCE PROGRAM FOR GOVERNMENTAL ENTITIES AND ADJUSTING RATE SCHEDULES FOR EMPLOYERS UNDER THE UNEMPLOYMENT INSURANCE PROGRAM; AMENDING SECTIONS 39-51-404, 39-51-409, 39-51-1121, 39-51-1212, 39-51-1218, AND 39-51-3207, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-404, MCA, is amended to read:

"39-51-404. Administrative expenses. (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to sections 903 and 904 of the Social Security Act, ~~(~~42 U.S.C. 1103 and 1104~~)~~, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the legislature if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law that:

(a) specifies the purposes for which the money is appropriated and the amounts appropriated; and

(b) limits the amount that may be used during any 12-month period beginning on July 1 and ending on the next June 30 to an amount not exceeding the amount by which the aggregate of the amounts credited to the account of this state pursuant to sections 903 and 904 of the Social Security Act, ~~(~~42 U.S.C. 1103 and 1104~~)~~, as amended, during the same 12-month period and the 34 preceding 12-month periods exceeds the aggregate of the amounts used pursuant to this

section and charged against the amounts credited to the account of this state during any of the 35 12-month periods.

(2) For the purposes of this section, amounts used during any 12-month period must be charged against equivalent amounts that were first credited and that are not already charged, except that an amount used for administration during any 12-month period may not be charged against any amount credited during a 12-month period earlier than the 34th preceding period. Money requisitioned for the payment of expenses of administration pursuant to this section must be deposited in the unemployment insurance administration account but, until expended, must remain a part of the unemployment insurance fund.

(3) The department shall maintain a separate record of the deposit, obligation, expenditure, and return of funds deposited. If any money deposited is for any reason not to be expended for the purpose for which it was appropriated or if it remains unexpended at the end of the period specified by the law appropriating the money, it must be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

(4) ~~An assessment equal to 0.13% of all taxable wages provided for in 39-51-1108 and 0.05% of total wages paid by employers not covered by an experience rating must be levied against and paid by all employers. All assessments and investment income must be deposited in the employment security account provided for in 39-51-409.~~ *The following assessments must be levied against and paid by the indicated employers:*

(a) beginning January 1, 2008:

(i) 0.13% of all taxable wages paid by employers assigned a Rate Class 1, Schedules I and II, and Rate Class 2, Schedule I, contribution rate as provided in 39-51-1218;

(ii) 0.18% of all taxable wages paid by employers assigned a contribution rate other than Rate Class 1, Schedules I and II, and Rate class 2, Schedule I, as provided in 39-51-1218;

(iii) 0.18% of all taxable wages paid by employers assigned an industrial rate as provided in 39-51-1217;

(iv) 0.08% of total wages paid by all employers as provided in 39-51-1124;

(b) beginning July 1, 2008, 0.09% of total wages paid by all employers as provided in 39-51-1212.

(5) All assessments and investment income must be deposited in the employment security account provided for in 39-51-409.

(6) The following assessments and investment income from those assessments are designated to be used for the administration of the unemployment insurance program:

(a) 0.05% of all taxable wages paid by all employers as provided in 39-51-1218;

(b) 0.05% of all taxable wages paid by employers assigned an industry rate as provided in 39-51-1217;

(c) 0.03% of total wages paid by all employers as provided in 39-51-1124; and

(d) beginning July 1, 2008, 0.04% of total wages paid by all employers as provided in 39-51-1212.

(7) If unemployment insurance funding sources exceed the needs of the unemployment insurance program, all or a portion of the excess may be appropriated and used for the purposes outlined in 39-51-409."

Section 2. Section 39-51-409, MCA, is amended to read:

"39-51-409. Employment security account. (1) There is an account ~~created~~ in the state special revenue fund called the employment security account.

(2) Money deposited in the employment security account may be appropriated to the department for payment of:

(a) unemployment insurance benefits;

(b) expenses incurred in the administration of the unemployment insurance program;

~~(b)~~*(c)* expenses incurred in collecting money deposited in the account;

~~(c)~~*(d)* expenses incurred for the employment offices established in 39-51-307, including expenses for providing services to the business community;

~~(d)~~*(e)* expenses incurred for the apprenticeship and training program;

~~(e)~~*(f)* expenses for displaced homemaker programs provided for under 39-7-305;

~~(f)~~*(g)* expenses for department research and analysis functions that provide employment, wage, and economic data; and

~~(g)~~*(h)* expenses for department functions pertaining to wage and hour laws, prevailing wages, and collective bargaining.

(3) The department may transfer funds from the employment security account to the unemployment insurance fund account provided for in 39-51-402 upon receiving approval from the budget director that the transfer will not decrease the money in the account below the level appropriated by the legislature to provide for the employment services programs identified in subsection (2).

(4) The department may transfer appropriation authority in employment services programs between the federal special revenue and the state special revenue fund types."

Section 3. Section 39-51-1121, MCA, is amended to read:

"39-51-1121. Definitions. As used in *part 12 and* this part ~~and part 12~~, the following definitions apply:

(1) "Computation date" means the reporting period ending September 30 preceding the calendar year for which a covered employer's contribution rate is effective.

(2) "Cutoff date" means October 31 immediately following the computation date. The department may extend the cutoff date in meritorious cases.

(3) "Deficit employer" means an employer who is subject under this chapter and who has established a record of accumulated benefits charged to the employer's account in excess of the employer's accumulated contributions paid as of the cutoff date.

(4) "Eligible employer" means an employer who has been subject under this chapter for the 3 fiscal years immediately preceding the computation date and who has:

(a) established a record of accumulated contributions in excess of benefits charged to the employer's account; and

(b) paid wages in at least 1 of the 8 calendar quarters preceding the computation date.

(5) "Fiscal year" means the four consecutive calendar quarters ending on September 30.

(6) "Governmental entities" means the state or any political subdivision of the state or an instrumentality of the state or a political subdivision, including any employing unit funded directly by tax levies.

(7) "New employer" means an employer who:

(a) has not been subject to the provisions of this chapter for the 3 fiscal years immediately preceding the computation date; and

(b) has established a record of accumulated contributions in excess of benefits charged to the employer's account.

(8) "Taxable wage base" means the amount of wages subject to contributions and to assessments under 39-51-404~~(4)~~ for each calendar year. Payment of contributions and of assessments under 39-51-404~~(4)~~ may apply only to wages paid up to and including the amount specified in 39-51-1108."

Section 4. Section 39-51-1212, MCA, is amended to read:

"39-51-1212. Experience rating for governmental entities. (1) Governmental entities ~~newly~~ covered under this chapter ~~after December 31, 1974, shall make payments for the period prior to July 1, 1977, equal to 0.4% of total wages paid employees for services in employment during the calendar quarter and for the period after July 1, 1977,~~ shall make payments at the median rate.

(2) The rates of governmental entities who have accumulated experience rating credits ~~shall~~ *must* be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods ~~which~~ *that* are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31; and

(b) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median, with the rates so fixed using the median that the rates will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

(3) New governmental entities electing to pay contributions ~~shall~~ *must* be assigned the median rate for the year in which they become subject.

(4) ~~At no time may the~~ *The* minimum rate *may not* be less than ~~0.1%~~ *0.06%* ~~or~~ *and* the maximum rate *may not* be greater than 1.5%. The rates are to be graduated at one-tenth intervals.

(5) ~~In the event~~ *If* benefit charges exceed contributions paid in the last 2 completed fiscal years, governmental entities' rates ~~will~~ *must* be adjusted by increasing all rates to the next higher schedule.

(6) The computed rate is effective July 1 of each year.

(7) Governmental entities must be charged for their share of the total benefits paid to a claimant if the governmental entity contributed wages during the claimant's base period. The benefit charged must be based on the percentage of wages paid by the governmental entity as compared to the total wages paid by all employers in the claimant's base period.

(8) A payment may not be required under this section with respect to benefits paid to an individual if the governmental employer continues to provide employment to the individual with no reduction in hours or wages."

Section 5. Section 39-51-1218, MCA, is amended to read:

"39-51-1218. Rate schedules.

SCHEDULES OF CONTRIBUTION RATES - Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
Minimum Ratio of Fund to Total Wages	~~(.0245)~~ *(.0260)*	~~(.0225)~~ *(.0245)*	~~(.0200)~~ *(.0225)*	~~(.0170)~~ *(.0200)*
Average Tax Rate	~~1.37~~ *1.12*	~~1.57~~ *1.32*	~~1.77~~ *1.52*	~~1.97~~ *1.72*
Rate Class	Contribution Rates for Eligible Employers			
1	0.00%	~~0.07%~~ *0.00%*	~~0.27%~~ *0.02%*	~~0.47%~~ *0.22%*
2	~~0.07~~ *0.00*	~~0.27~~ *0.02*	~~0.47~~ *0.22*	~~0.67~~ *0.42*
3	~~0.27~~ *0.02*	~~0.47~~ *0.22*	~~0.67~~ *0.42*	~~0.87~~ *0.62*
4	~~0.47~~ *0.22*	~~0.67~~ *0.42*	~~0.87~~ *0.62*	~~1.07~~ *0.82*
5	~~0.67~~ *0.42*	~~0.87~~ *0.62*	~~1.07~~ *0.82*	~~1.27~~ *1.02*
6	~~0.87~~ *0.62*	~~1.07~~ *0.82*	~~1.27~~ *1.02*	~~1.47~~ *1.22*
7	~~1.07~~ *0.82*	~~1.27~~ *1.02*	~~1.47~~ *1.22*	~~1.67~~ *1.42*
8	~~1.27~~ *1.02*	~~1.47~~ *1.22*	~~1.67~~ *1.42*	~~1.87~~ *1.62*
9	~~1.47~~ *1.22*	~~1.67~~ *1.42*	~~1.87~~ *1.62*	~~2.07~~ *1.82*
10	~~1.67~~ *1.42*	~~1.87~~ *1.62*	~~2.07~~ *1.82*	~~2.27~~ *2.02*
Rate Class	Contribution Rates for Deficit Employers			
1	~~3.17%~~ *2.92%*	~~3.37%~~ *3.12%*	~~3.57%~~ *3.32%*	~~3.77%~~ *3.52%*
2	~~3.37~~ *3.12*	~~3.57~~ *3.32*	~~3.77~~ *3.52*	~~3.97~~ *3.72*
3	~~3.57~~ *3.32*	~~3.77~~ *3.52*	~~3.97~~ *3.72*	~~4.17~~ *3.92*
4	~~3.77~~ *3.52*	~~3.97~~ *3.72*	~~4.17~~ *3.92*	~~4.37~~ *4.12*
5	~~3.97~~ *3.72*	~~4.17~~ *3.92*	~~4.37~~ *4.12*	~~4.57~~ *4.32*
6	~~4.17~~ *3.92*	~~4.37~~ *4.12*	~~4.57~~ *4.32*	~~4.77~~ *4.52*
7	~~4.37~~ *4.12*	~~4.57~~ *4.32*	~~4.77~~ *4.52*	~~4.97~~ *4.72*
8	~~4.57~~ *4.32*	~~4.77~~ *4.52*	~~4.97~~ *4.72*	~~5.17~~ *4.92*
9	~~4.77~~ *4.52*	~~4.97~~ *4.72*	~~5.17~~ *4.92*	~~5.37~~ *5.12*
10	~~6.37~~ *6.12*	~~6.37~~ *6.12*	~~6.37~~ *6.12*	~~6.37~~ *6.12*

SCHEDULES OF CONTRIBUTION RATES - Part II

Sched. V	Sched. VI	Sched. VII	Sched. VIII	Sched. IX	Sched. X	*Sched. XI*
~~(.0135)~~ *(.0170)*	~~(.0095)~~ *(.0135)*	~~(.0075)~~ *(.0095)*	~~(.0050)~~ *(.0075)*	~~(....)~~ *(.0050)*	~~(....)~~ *(.0025)*	*(....)* *(....)*

~~2.17~~	~~2.37~~	~~2.57~~	~~2.77~~	~~2.97~~	~~3.17~~	
1.92	*2.12*	*2.32*	*2.52*	*2.72*	*2.92*	*3.12*
Contribution Rates for Eligible Employers						
~~0.67%~~	~~0.87%~~	~~1.07%~~	~~1.27%~~	~~1.47%~~	~~1.67%~~	
0.42%	*0.62%*	*0.82%*	*1.02%*	*1.22%*	*1.42%*	*1.62%*
~~0.87~~ *0.62*	~~1.07~~ *0.82*	~~1.27~~ *1.02*	~~1.47~~ *1.22*	~~1.67~~ *1.42*	~~1.87~~ *1.62*	*1.82*
~~1.07~~ *0.82*	~~1.27~~ *1.02*	~~1.47~~ *1.22*	~~1.67~~ *1.42*	~~1.87~~ *1.62*	~~2.07~~ *1.82*	*2.02*
~~1.27~~ *1.02*	~~1.47~~ *1.22*	~~1.67~~ *1.42*	~~1.87~~ *1.62*	~~2.07~~ *1.82*	~~2.27~~ *2.02*	*2.22*
~~1.47~~ *1.22*	~~1.67~~ *1.42*	~~1.87~~ *1.62*	~~2.07~~ *1.82*	~~2.27~~ *2.02*	~~2.47~~ *2.22*	*2.42*
~~1.67~~ *1.42*	~~1.87~~ *1.62*	~~2.07~~ *1.82*	~~2.27~~ *2.02*	~~2.47~~ *2.22*	~~2.67~~ *2.42*	*2.62*
~~1.87~~ *1.62*	~~2.07~~ *1.82*	~~2.27~~ *2.02*	~~2.47~~ *2.22*	~~2.67~~ *2.42*	~~2.87~~ *2.62*	*2.82*
~~2.07~~ *1.82*	~~2.27~~ *2.02*	~~2.47~~ *2.22*	~~2.67~~ *2.42*	~~2.87~~ *2.62*	~~3.07~~ *2.82*	*3.02*
~~2.27~~ *2.02*	~~2.47~~ *2.22*	~~2.67~~ *2.42*	~~2.87~~ *2.62*	~~3.07~~ *2.82*	~~3.27~~ *3.02*	*3.22*
~~2.47~~ *2.22*	~~2.67~~ *2.42*	~~2.87~~ *2.62*	~~3.07~~ *2.82*	~~3.27~~ *3.02*	~~3.47~~ *3.22*	*3.42*
Contribution Rates for Deficit Employers						
~~3.97%~~	~~4.17%~~	~~4.37%~~	~~4.57%~~	~~4.77%~~	~~4.97%~~	
3.72%	*3.92%*	*4.12%*	*4.32%*	*4.52%*	*4.72%*	*4.92%*
~~4.17~~ *3.92*	~~4.37~~ *4.12*	~~4.57~~ *4.32*	~~4.77~~ *4.52*	~~4.97~~ *4.72*	~~5.17~~ *4.92*	*5.12*
~~4.37~~ *4.12*	~~4.57~~ *4.32*	~~4.77~~ *4.52*	~~4.97~~ *4.72*	~~5.17~~ *4.92*	~~5.37~~ *5.12*	*5.32*
~~4.57~~ *4.32*	~~4.77~~ *4.52*	~~4.97~~ *4.72*	~~5.17~~ *4.92*	~~5.37~~ *5.12*	~~5.57~~ *5.32*	*5.52*
~~4.77~~ *4.52*	~~4.97~~ *4.72*	~~5.17~~ *4.92*	~~5.37~~ *5.12*	~~5.57~~ *5.32*	~~5.77~~ *5.52*	*5.72*
~~4.97~~ *4.72*	~~5.17~~ *4.92*	~~5.37~~ *5.12*	~~5.57~~ *5.32*	~~5.77~~ *5.52*	~~5.97~~ *5.72*	*5.92*
~~5.17~~ *4.92*	~~5.37~~ *5.12*	~~5.57~~ *5.32*	~~5.77~~ *5.52*	~~5.97~~ *5.72*	~~6.17~~ *5.92*	*6.12*
~~5.37~~ *5.12*	~~5.57~~ *5.32*	~~5.77~~ *5.52*	~~5.97~~ *5.72*	~~6.17~~ *5.92*	~~6.37~~ *6.12*	*6.12*
~~5.57~~ *5.32*	~~5.77~~ *5.52*	~~5.97~~ *5.72*	~~6.17~~ *5.92*	~~6.37~~ *6.12*	~~6.37~~ *6.12*	*6.12*
~~6.37~~ *6.12*	~~6.37~~ *6.12*	~~6.37~~ *6.12*	~~6.37~~ *6.12*	~~6.37~~ *6.12*	~~6.37~~ *6.12*	*6.12*"

Section 6. Section 39-51-3207, MCA, is amended to read:

"39-51-3207. Authority to determine uncollectibility of debts — transfer of debts for collection — liability for payment of fees and costs of collection. (1) After making all reasonable efforts to collect unpaid contributions, assessments under 39-51-404~~(4)~~, and penalties and interest, or overpaid benefits under 39-51-3206 and interest, the department may determine a debt to be uncollectible. Upon determining that a debt is uncollectible, the department may transfer the debt to the department of revenue for collection as provided in 17-4-104.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the department of revenue may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the department of revenue. If less than the full amount of the debt is collected, the department of revenue shall retain only a proportionate share of the collection fees or costs."

Section 7. Effective dates. (1) [Section 2 and this section] are effective October 1, 2007.

(2) [Sections 1, 3, 5, and 6] are effective January 1, 2008.

(3) [Section 4] is effective July 1, 2008.

Approved April 30, 2007

CHAPTER NO. 363

[HB 7]

AN ACT PROVIDING FOR RECLAMATION AND DEVELOPMENT GRANTS; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; TRANSFERRING FUNDS; REVISING THE USE OF THE RECLAMATION AND DEVELOPMENT GRANTS ACCOUNT; AMENDING SECTION 90-2-1104, MCA, AND SECTION 2, CHAPTER 473, LAWS OF 2003; REPEALING SECTION 10, CHAPTER 308, LAWS OF 2005; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations for reclamation and development grants. (1) There is appropriated to the department of natural resources and conservation from the reclamation and development grants special revenue account, established in 90-2-1104, up to $800,000 to be used for planning grants to be awarded by the department over the course of the 2009 biennium.

(2) The amount of $4,496,500 is appropriated to the department of natural resources and conservation from the reclamation and development grants special revenue account from funds allocated for the purpose of making grants from the interest income of the resource indemnity trust fund as set forth in Title 15, chapter 38.

(3) The funds appropriated in subsection (2) must be awarded by the department to the entities listed in [section 2] for the prescribed purposes and in the prescribed grant amounts, subject to the conditions provided in [sections 2 through 5].

Section 2. Approved grants and projects. (1) The legislature approves the grants listed in subsection (2), to be made in the order of priority as indicated within the following list of projects and activities. If the conditions in [sections 3 and 4] are met, funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted by grantees or funds not used by higher-ranked projects and activities must be provided for projects and activities lower on the priority list that would not otherwise receive funding. Descriptions of the various projects and activities and specific conditions established for each project and activity are contained within the department of natural resources and conservation's reclamation and development grants program report to the 60th legislature for the 2009 biennium.

(2) The following are the grants program prioritized projects and activities:

Applicant/Project	Grant Amount
Montana Board of Oil and Gas Conservation	
(2007 Northern District Orphaned Well Plug and Abandonment and Site Restoration)	$300,000
(2007 Southern District Orphaned Well Plug and Abandonment and Site Restoration)	$300,000

Montana Department of Environmental Quality	
(Snowshoe Mine Reclamation Project)	$300,000
Montana Department of Environmental Quality	
(Bald Butte Mine and Millsite Reclamation Project)	$300,000
Montana Department of Natural Resources and Conservation	
(St. Mary Facilities Rehabilitation)	$300,000
Powell County	
(Milwaukee Roundhouse Voluntary Cleanup)	$286,000
Montana Department of Natural Resources and Conservation	
(Reliance Refinery)	$300,000
Central Montana Water Authority	
(Utica Well 2)	$300,000
Montana Board of Oil and Gas Conservation	
(Southern District Tank Battery Cleanup)	$300,000
Meagher County Conservation District	
(Hydrologic Investigation of the Smith River Watershed)	$300,000
Montana Department of Environmental Quality	
(Belt Acid Mine Drainage Mitigation)	$282,000
Montana Department of Environmental Quality	
(Swift Gulch Placer Tailings and Wetland Establishment)	$300,000
Broadwater Conservation District	
(White's Gulch Reclamation Fish Barrier Project)	$24,500
Montana Department of Environmental Quality	
(Landusky Mine - Characterization of Surface Water/Ground Water Interactions in Swift Gulch and the Adjacent Landusky Pit Complex)	$150,000
Big Horn Conservation District	
(Montana Regional Coal Bed Methane)	$160,000
Gallatin Local Water Quality District	
(Assessment and Distribution of Pharmaceuticals)	$294,000
Flathead Basin Commission	
(British Columbia-Montana Action Plan)	$300,000
Montana Tech of the University of Montana	
(Butte Native Plant Propagation Nursery)	$289,922

(3) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2009 biennium pursuant to 17-7-302.

Section 3. Coordination of fund sources for grants program projects. A sponsor of a grants program project who has applied for a grant for that project under both the reclamation and development grants program and

the renewable resource grant and loan program may not receive duplicate funding.

Section 4. Condition of grants. Disbursement of grant funds under [sections 1 through 5] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work and budget for the project must be approved by the department of natural resources and conservation. Reduction in a scope of work or budget may not affect priority activities or improvements.

(2) Other funds required for project completion must have been committed, and the commitment must be documented.

(3) The project sponsor shall show satisfactory completion of conditions described in the recommendation section of the project narrative of the reclamation and development grants program report to the legislature for the 2009 biennium.

(4) An agreement between the department and the project sponsor must be executed in a timely manner, taking into consideration any changed conditions or circumstances that govern the administration and disbursement of funds.

(5) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or as defined by the legislature.

Section 5. Other appropriations. There is appropriated to any entity of state government that receives a grant under [sections 1 through 4] the amount of the grant upon award of the grant by the department of natural resources and conservation. Grants to state entities from a prior biennium are reauthorized for completion of contract work.

Section 6. Fund transfer. On July 1, 2007, there is transferred from the reclamation and development grants special revenue account established in 90-2-1104 $4.3 million to the renewable resource grant and loan program state special revenue account created in 85-1-604.

Section 7. Section 90-2-1104, MCA, is amended to read:

"90-2-1104. Reclamation and development grants *special revenue* account. (1) There is a reclamation and development grants special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the reclamation and development grants *special revenue* account money allocated from:

(a) the interest income of the resource indemnity trust fund under the provisions of 15-38-202;

(b) the resource indemnity and ground water assessment tax under provisions of 15-38-106;

(c) the metal mines license tax proceeds as provided in 15-37-117(1)(d); and

(d) the oil and gas production tax as provided in 15-36-331.

(3) Appropriations may be made from the reclamation and development grants *special revenue* account for the following purposes:

(a) grants for designated projects; and

(b) administrative expenses, including salaries and expenses for personnel, equipment, office space, and other expenses necessarily incurred in the

administration of the grants program. These expenses may be funded before funding of projects.

(4) ~~For the biennium beginning July 1, 2005, appropriations~~ *Appropriations* may be made from the reclamation and development grants special revenue account for administrative expenses, including salaries and expenses for personnel and equipment, office space, and other expenses necessarily incurred in natural resource-related programs. ~~(Subsection (4) terminates June 30, 2007—sec. 10, Ch. 308, L. 2005.)~~"

Section 8. Section 2, Chapter 473, Laws of 2003, is amended to read:

"**Section 2. Approved grant projects.** (1) The legislature approves the grants listed in subsection (2), to be made in the order of priority as indicated within the following list of projects and activities. If the conditions in [sections 3 and 4] are met, funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted by grantees or funds not used by higher-ranked projects and activities must be provided for projects and activities lower on the priority list that would otherwise not receive funding. Descriptions of the various projects and activities and specific conditions established for each project and activity are contained within the department of natural resources and conservation's reclamation and development grants program report to the 58th legislature for the 2005 biennium.

(2) The following are the grants program prioritized projects and activities:

Applicant/Project	Grant Amount
Big Horn Conservation District	
(Ground Water Monitoring—Tongue & Powder River Watersheds)	300,000
Sunburst, Town of	
(Sunburst Water Supply Renovation)	185,249
Governor's Office	
(Growing Carbon)	300,000
Board of Oil and Gas Conservation	
(Oil and Gas Plug and Abandonment)	200,000
Toole County	
(2003 Plugging and Abandonment)	240,000
Board of Oil and Gas Conservation	
(2003 Northern District Plug and Abandonment)	300,000
Board of Oil and Gas Conservation	
(2003 Southern District Plug and Abandonment)	100,000
Department of Environmental Quality	
(Washington Mine and Millsite Reclamation)	300,000
Powell County*	
(CMC Roundhouse Site Cleanup)	76,400
~~Department of Environmental Quality~~	
~~(Drumlummon Tailings, Goldsil Mine Waste Reclamation)~~	~~300,000~~

Sheridan County Conservation District	
(Reclaiming Oilfield Brine Contaminated Soils)	150,000
Department of Natural Resources and Conservation	
(Planning Grants)	50,000
Fergus County Conservation District	
(Central Montana Aquifer Project)	150,000
Judith Basin Conservation District	
(Judith Basin Aquifer Restoration and Conservation)	70,000

The project grant identified with an asterisk (*) is contingent on the transfer of the site that is 14.5 acres located south of Milwaukee avenue to Powell County without compensation to the current owner.

(3) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2005 biennium pursuant to 17-7-302."

Section 9. Repealer. Section 10, Chapter 308, Laws of 2005, is repealed.

Section 10. Coordination instruction. If House Bill No. 116 is passed and approved, then the appropriations in [section 1 of this act] are appropriated from the natural resources projects state special revenue account established in [section 28] of House Bill No. 116 and the appropriation in [section 1 of this act] for the purpose of making grants is increased by $289,922 and [section 6 of this act] is void.

Section 11. Effective dates. (1) [Section 9 and this section] are effective on passage and approval.

(2) [Sections 1 through 8 and 10] are effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 364

[HB 8]

AN ACT APPROVING RENEWABLE RESOURCE PROJECTS AND REGIONAL WATER PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 59TH LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING REGIONAL WATER PROJECTS AND PROVIDING AN APPROPRIATION FOR THE PROJECTS; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Approval of renewable resource projects and authorization to provide loans. (1) The legislature finds that the renewable resource projects listed in this section meet the provisions of 17-5-702. The department of natural resources and conservation is authorized to make loans

to the political subdivisions of state government and local governments listed in subsections (2) through (5) in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) The interest rate for the projects in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan	Amount
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	
Ackley Lake Dam Rehabilitation	$200,000
Smith Creek Canal Seepage Abatement and Rehabilitation Project	$50,000

(3) The interest rate for the loans in this group is 3% for up to 20 years. These loans will be made to governmental entities to refinance outstanding debt on or rehabilitation of either their water or wastewater facilities.

Loan	Amount
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	
Refinance Existing Debt or Rehabilitation of Existing Water or Wastewater Facilities	$3,000,000

(4) The interest rate for the project in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 30 years.

Loan	Amount
SUNSET IRRIGATION DISTRICT	
Gravity Flow Irrigation Pipelines	$1,465,266

(5) The interest rate for the project in this group is 3% or the rate at which the state bonds are sold, whichever is lower, for up to 30 years.

Loan	Amount
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	
East Fork Siphon Replacement and Main Canal Lining Project	$400,000

Section 2. Projects not completing requirements — projects reauthorized. (1) The legislature finds that the renewable resource projects in subsection (2) that were approved by the 59th legislature in Chapter 309, Laws of 2005, may not complete the requirements necessary to obtain the loan funds prior to June 30, 2007. The projects described in this section are reauthorized. The department of natural resources and conservation is authorized to make loans to the state government agency and local government entity listed in subsection (2) in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) The interest rate for the projects in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan	Amount
MILL CREEK IRRIGATION DISTRICT	
Mill Lake Dam Rehabilitation	$572,000
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	
Martinsdale Dam Riprap Project	$90,000

Section 3. Coal severance tax bonds authorized. (1) The legislature finds that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax bonds for financing specific approved renewable resource projects as part of the state renewable resource grant and loan program. Available funds from previous sales of coal severance tax bonds, plus any additional principal amount on bonds as may be necessary, pursuant to the conditions in 85-1-605, to fund emergency loans, as authorized and approved in accordance with 85-1-605(4), may also be used for the projects approved in [sections 1 through 8]. The board of examiners is authorized to issue coal severance tax bonds in an amount not to exceed $26,279,448, of which $5,777,266 is to be used to finance the projects approved in [sections 1 and 2], $2,658,596 is to be used to finance additional loans in lieu of grants listed in House Bill No. 6, $15.4 million is to be used to finance the state share of construction expenses of regional water projects, and up to $2,443,586 is to be used to establish a reserve for the bonds. Proceeds of the bonds are appropriated to the department of natural resources and conservation for financing the projects identified in [sections 1 and 2] and may be used as authorized in 85-1-605(4). Proceeds of the bonds may also be used to pay the costs of issuance of the bonds. Loans made under 85-1-605(4) must bear interest at the rate borne by the state bonds unless the legislature in a subsequent session provides for a lower interest rate, in which case the rate must be reduced to the rate specified by the legislature.

(2) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds when due from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(3) Earnings on bond proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during this period. Earnings in excess of debt service, if any, must be allocated to the renewable resource grant and loan program state special revenue account.

(4) Loan repayments from loans financed with coal severance tax bonds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

Section 4. Conditions of loans. (1) Disbursement of funds under [sections 1 through 6 and 8] for loans is subject to the following conditions that must be met by project sponsors:

(a) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(b) documented commitment of other funds required for project completion;

(c) satisfactory completion of conditions described in the recommendations section of the project narrative in the renewable resource grant and loan program project evaluations and recommendations report for the biennium;

(d) execution of a loan agreement with the department; and

(e) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the loan as evidenced from the application to the department or from the proposal to the legislature.

(2) Each sponsor authorized for a loan from coal severance tax bond proceeds may be required to pay to the department a pro rata share of the bond issuance

costs and the administrative costs incurred by the department to complete the loan transaction.

Section 5. Private and discount purchase of loans. Loans to political subdivisions and local government entities and bonds, warrants, and notes issued in evidence of the loans may be made, purchased by, and sold to the department of natural resources and conservation at a discount and at a private negotiated sale, notwithstanding the provisions of any other law applicable to political subdivisions or local government entities.

Section 6. Appropriation established. For any entity of state government that receives a loan under [sections 1 through 6 and 8], an appropriation is established for the amount of the loan upon award of the loan by the department of natural resources and conservation.

Section 7. Regional water projects — conditions of loans — appropriation established. (1) The regional water projects to be funded with proceeds of the bonds authorized in [section 3] are projects for the construction, expansion, or improvement of regional water systems eligible to receive funding under 90-6-715 to the extent determined by the department of natural resources and conservation.

(2) Disbursement of proceeds of the bonds is authorized in [section 3] to pay construction expenses for an eligible regional water project subject to the following conditions, which must be met by the regional water authority or other governmental entity owning the regional water system:

(a) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(b) documented commitment of other funds required for project completion.

(3) An appropriation is established for the amount awarded to a regional water project funded pursuant to this section.

Section 8. Creation of state debt — appropriation of coal severance tax — bonding provisions. (1) Because [section 3] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 3].

(2) The legislature, through the enactment of [sections 1 through 8] by a vote of three-fourths of the members of each house of the legislature, as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond fund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by [section 3] to be issued pursuant to Title 17, chapter 5, part 7, and pursuant to the provisions of [sections 1 through 8] and the general resolution for this bond program that has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

(3) The legislature does not pledge any revenue, assets, or money from any regional water project funded by the coal severance tax bonds authorized in [section 3] or from any other source to pay debt service on the bonds, other than the coal severance tax bond fund. The legislature may at its discretion appropriate to the payment of principal and interest on the bonds authorized in [section 3] for regional water projects payable in a fiscal year any available funds in the treasure state endowment regional water system special revenue account established in 90-6-715. Subject to the limitations in 90-6-715, funds in the treasure state endowment regional water system special revenue account are

subject to appropriation for other purposes by the legislature and are not reserved to pay debt service on the bonds authorized in [section 3] for regional water projects.

Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Effective date. [This act] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 365

[HB 24]

AN ACT PROVIDING COMMON CARRIER STATUS TO PIPELINES MOVING CARBON DIOXIDE; AMENDING SECTIONS 69-13-101, 69-13-102, 69-13-201, 69-13-301, 69-13-302, AND 69-13-303, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-13-101, MCA, is amended to read:

"69-13-101. Common carrier pipeline. (1) ~~The following are hereby declared to be common carriers and subject to the provisions of this chapter: every~~ *Pursuant to subsection (3), each* person, firm, corporation, limited partnership, joint-stock association, or association ~~of any kind whatever~~ *is a common carrier if it engages in*:

(a) owning, operating, or managing any pipeline or any part of any pipeline within the state for the transportation of crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide* to or for the public for hire or engaging in the business of transporting crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide* by pipelines;

(b) owning, operating, or managing any pipeline or any part of any pipeline for the transportation of crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide* to or for the public for hire~~, which~~ *when the* pipeline is constructed or maintained upon, along, over, or under any public road or highway;

(c) owning, operating, or managing any pipeline or any part of any pipeline for transportation to or for the public for hire of crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide*~~, which~~ *when the* pipeline is or may be constructed, operated, or maintained across, upon, along, over, or under the right-of-way of any railroad, corporation, or other common carrier required by law to transport crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide* as a common carrier;

(d) owning, operating, or managing or participating in ownership, operation, or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipeline or any part of any pipeline for the transportation from any oil field, coal mine or field, or place of production within the state to any distributing, refining, or marketing center or reshipping point ~~thereof~~, within this state, of crude

petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide*, bought ~~of~~ *from* others; or

(e) made a common carrier by or under the terms of contract with or in pursuance of the law of the United States.

(2) The provisions of this chapter ~~shall~~ *do* not apply to*:*

(a) ~~those~~ pipelines ~~which~~ *that* are limited in their use to the wells, stations, plants, and refineries of the owner and ~~which~~ *that* are not a part of the pipeline transportation system of any common carrier~~, as herein defined~~; ~~nor shall such provisions apply to~~ *or*

(b) any property of ~~such~~ a common carrier ~~which~~ *that* is not a part of or necessarily incident to its pipeline transportation system.

(3) To be defined as a common carrier of carbon dioxide under this section, the carbon dioxide may be transported only for the purpose of permanent sequestration in a geologic formation."

Section 2. Section 69-13-102, MCA, is amended to read:

"69-13-102. Scope of chapter — enforcement. (1) It is declared that the operation of ~~these~~ pipelines, to which this chapter applies, for the transportation of crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide*, in connection with the purchase or purchase and sale of ~~such~~ crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide*, is a business in ~~mode of the conduct of~~ which the public is interested and ~~as such~~ is subject to regulation by law. The business of purchasing or of purchasing and selling crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide*, using in connection with ~~such~~ *that* business a pipeline of the class subject to this chapter to transport the crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide* ~~so~~ bought or sold ~~shall~~ *may* not be conducted unless ~~such~~ *the* pipeline ~~so~~ used in connection with ~~such~~ *that* business is a common carrier within the purview of this ~~law~~ *chapter* and subject to the jurisdiction ~~herein~~ conferred upon the commission.

(2) It ~~shall be~~ *is* the duty of the attorney general to enforce this provision by injunction or other adequate remedy."

Section 3. Section 69-13-201, MCA, is amended to read:

"69-13-201. Establishment of rates and operating rules. (1) The commission ~~shall have the power to~~ *may* establish and enforce rates of charges and regulations for gathering, transporting, loading, and delivering crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide* by ~~such~~ common carrier in this state and for the use of storage facilities necessarily incident to ~~such~~ *the* transportation and to prescribe and enforce rules for the government and control of ~~such~~ common carriers in respect to their pipelines and receiving, transferring, and loading facilities. ~~It shall be its duty to~~ *The commission shall* exercise ~~such~~ *the* power upon petition by any person showing a substantial interest in the subject.

(2) ~~No~~ *An* order establishing or prescribing rates and rules ~~shall~~ *may not* be made except after hearing and at least 10 days' and not more than 30 days' notice to the person, firm, corporation, partnership, joint-stock association, or association owning or controlling and operating the pipeline or pipelines affected.

(3) ~~In the event any~~ *If a* rate ~~shall be~~ *is* filed by any pipeline and complaint against the ~~same~~ *rate* or petition to reduce the ~~same shall be~~ *rate is* filed by any shipper and ~~such~~ *the* complaint ~~be~~ *is* sustained, in whole or in part, all shippers who ~~shall~~ have paid the rates ~~so~~ filed by the pipeline ~~shall~~ have the right to reparation or reimbursement of all excess in transportation charges ~~so~~ paid, over and above the proper rate as finally determined, on all shipments made after the date of the filing of ~~such~~ *the* complaint."

Section 4. Section 69-13-301, MCA, is amended to read:

"69-13-301. Records and reports. (1) ~~Such common~~ *Common* carriers of crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide* shall make and publish their tariffs under ~~such~~ rules ~~as~~ *that* may be prescribed by ~~said~~ *the* commission. The commission shall require ~~them~~ *the common carriers* to make reports and may investigate their books and records kept in connection with ~~such~~ *the* business.

(2) The commission shall require ~~of such~~ common carrier pipelines *to make* monthly reports, duly verified under oath, of the total quantities of crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide* owned by ~~such~~ *the* pipelines, of that held by them in storage for others, and of their unfilled storage capacity. ~~No publicity shall~~ *Publicity may not* be given by the commission to the reports as to stock of crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide* on hand of any particular pipeline, but the commission in its discretion may make public the aggregate amounts held by all the pipelines making ~~such~~ *the* reports and of their aggregate storage capacity."

Section 5. Section 69-13-302, MCA, is amended to read:

"69-13-302. Connection and interchange facilities. (1) ~~Every~~ *Each* common carrier shall exchange crude petroleum tonnage, coal tonnage, ~~or~~ petroleum or coal products tonnage*, or carbon dioxide volume* with each ~~like~~ *similar* common carrier. The commission ~~shall have the power to~~ *may* require ~~such~~ connections and facilities for the interchange of ~~such~~ *the* tonnage *and volume* to be made at every locality reached by both pipelines whenever a necessity ~~therefor~~ *for the connections and facilities* exists, subject to ~~such~~ rates and regulations ~~as~~ *that* may be made by the commission. Any ~~such~~ common carrier under ~~like~~ *similar* rules ~~shall~~ *must* be required to install and maintain facilities for the receipt and delivery of crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide* of patrons at all points on ~~such~~ *the* pipeline.

(2) ~~No~~ *A* carrier ~~shall~~ *may not* be required to receive or transport any crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide* except ~~such~~ as may be marketable under rules ~~to be~~ prescribed by the commission~~, which they are hereby empowered and required to prescribe~~. The commission ~~is also empowered and required to~~ *shall* make rules for the ascertainment of the amount of water and other foreign matter in crude oil, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide* tendered for transportation, for deduction ~~therefor~~ *for water and foreign matter*, and for the amount of deduction to be made for temperature, leakage, and evaporation.

(3) The ~~recital herein of~~ particular powers ~~on~~ *delegated to* the ~~part of said~~ commission ~~shall~~ *in this section may* not be construed to limit the general powers conferred by this chapter."

Section 6. Section 69-13-303, MCA, is amended to read:

"69-13-303. Prohibition of discrimination in rates or service. (1) Except as provided in subsection (2), ~~no such~~ *a* common carrier in its operations ~~as such shall~~ *may not* discriminate between or against shippers in regard to facilities furnished, service rendered, or rates charged under *the* same or similar circumstances in the transportation of crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide.*~~; nor shall there~~ *There may not* be any discrimination in the transportation of crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide* produced or purchased by ~~itself~~ *the common carrier* directly or indirectly. In this connection the pipeline ~~shall~~ *must* be considered as a shipper of the crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide* produced or purchased by ~~itself~~ *the pipeline* directly or indirectly and handled through its facilities. ~~No such~~ *A* carrier in ~~such~~ *the* operation ~~shall~~ *may not* directly or indirectly charge, demand, collect, or receive from any one a greater or lesser compensation for any service rendered than from another for a like and contemporaneous service. Subject to the provisions of this chapter and the rules ~~which~~ *that* may be prescribed by the commission, every ~~such~~ common carrier shall receive and transport crude petroleum, ~~or~~ coal*, the products of crude petroleum or coal, or carbon dioxide* delivered to it for transportation and shall ~~so~~ receive and transport the ~~same~~ *products* and perform its other duties with respect ~~thereto~~ *to the products* without discrimination.

(2) The provisions of subsection (1) ~~shall~~ *do* not limit the right of the commission to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine.~~; nor shall any~~ *A* carrier ~~be~~ *is not* guilty of discrimination when obeying any order of the commission. When there ~~shall be~~ *is* offered for transportation more crude petroleum, coal, ~~or~~ the products ~~thereof~~ *of crude petroleum or coal, or carbon dioxide* than can be immediately transported, the ~~same shall~~ *products must* be equitably apportioned. The commission may make and enforce general or specific regulations in this regard. ~~No such~~ *A* common carrier ~~shall~~ *may not* at any time be required to receive for shipments exceeding 3,000 barrels of petroleum or the products ~~thereof~~ *of petroleum* in any one day from any person, firm, corporation, or association of persons."

Section 7. Contingent voidness. If Senate Bill No. 218 is not passed and approved, [this act] is void.

Section 8. Contingent effective date. [This act] is effective when the department of environmental quality certifies to the code commissioner that the board of environmental review has adopted the rules required by Senate Bill No. 218.

Approved May 6, 2007

CHAPTER NO. 366

[HB 39]

AN ACT REVISING THE WATER RIGHT OWNERSHIP UPDATE PROCESS; PROVIDING THAT THE DIVISION, SEVERANCE, OR EXEMPTING OF A WATER RIGHT REQUIRES THE FILING OF A FORM; PROVIDING THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE DEPARTMENT OF REVENUE WILL COORDINATE TO UPDATE OTHER WATER RIGHT OWNERSHIP RECORDS BASED ON PROPERTY

TRANSFERS; PROVIDING THAT A TRANSFEREE OF A WATER RIGHT IS LIABLE FOR PAYMENT OF THE FEE AFTER RECEIVING NOTICE; PROVIDING THAT THE RECORDING OF A DEED OR OTHER INSTRUMENT MUST BE DELAYED IN CERTAIN INSTANCES; INCREASING THE PENALTY FOR NOT UPDATING WATER RIGHT OWNERSHIP RECORDS WITH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS 15-7-308, 85-2-421, 85-2-422, 85-2-424, 85-2-426, AND 85-2-431, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-308, MCA, is amended to read:

"15-7-308. Disclosure of information restricted — ~~water right ownership update form exception~~ *exceptions.* (1) Except as provided in subsection (2), the certificate required by this part and the information contained in the certificate is not a public record and must be held confidential by the county clerk and recorder and the department. This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The confidentiality provisions do not apply to compilations from the certificates or to summaries, analyses, and evaluations based upon the compilations.

(2) The confidentiality provisions of this section do not apply to the information ~~in the clerk and recorder's abbreviated copy of the realty transfer certificate or to the information~~ contained in the water right ownership update form *or any other form* prepared and filed with the department of natural resources and conservation pursuant to 85-2-424 for purposes of maintaining a system of centralized water right records as mandated by Article IX, section 3(4), of the Montana constitution. A person may access water right transfer information through the department of natural resources and conservation pursuant to the department's implementation of the requirements of 85-2-112(3)."

Section 2. Section 85-2-421, MCA, is amended to read:

"85-2-421. Purpose. The purpose of 85-2-421 through 85-2-424 and 85-2-426 is to facilitate the maintenance of a reliable record of water right ownership ~~by requiring that water right ownership update forms be filed with the department and that the department notify the water court of each water right ownership update form filed~~."

Section 3. Section 85-2-422, MCA, is amended to read:

"85-2-422. Definition. As used in 85-2-421 through 85-2-424 and 85-2-426, "water right" means the right to use water as documented by a claim to an existing right, a permit, ~~or~~ a certificate of water right*, a state water reservation, or a compact*."

Section 4. Section 85-2-424, MCA, is amended to read:

"85-2-424. Filing. ~~(1) The transferor of a water right shall file with the department a water right ownership update form within 60 days of recording a deed or other instrument evidencing a transfer of real property.~~

~~(2)~~*(1)* Except in the case of a transfer of real property served by a public service water supply, when ~~any~~ *a* person presents for recording a deed or other instrument evidencing a transfer of real property, the realty transfer certificate ~~shall~~ *must* contain a water rights disclosure ~~whereby~~ *in which* the transferor

shall acknowledge, at or before closing *or transfer of real property*, whether or not any water rights are associated with the property to be transferred and whether or not any water rights will transfer with the real property.

(2) (a) If the realty transfer certificate discloses ~~a transfer of water rights, a water right ownership update form must be completed and filed with the department.~~ *that the water rights will transfer with the property, the department's records must be updated to reflect the purchaser of the property as the new owner of the water right based on information received from the department of revenue. The appropriate fee must be paid at closing or upon completion of the transfer of real property as provided in 85-2-426.*

(b) The transferee of a water right, after receiving notice provided in subsection (2)(c), is responsible for compliance with this section.

(c) If the department receives notice from the department of revenue that a property transfer has occurred and the proper fee was not received by the department, the department shall send a notice to the transferee requesting payment of the fee. If the transferee does not pay the fee within 60 days, the department may assess a penalty against the transferee pursuant to 85-2-431.

(3) If the realty transfer certificate discloses the division of a water right among parcels, the person dividing the water right shall complete and file with the department a water right ownership update form, a map, and the required fee.

(4) If a person exempts a water right pursuant to 85-2-403, the person shall file with the department, on a form provided by the department, information describing the exempting of the water right and the appropriate fee.

(5) If a person severs a water right from appurtenant property without selling the property, the person shall file with the department, on a form provided by the department, information describing the severance and the appropriate fee.

~~The recording of the deed or other instrument may not be delayed because of the transfer of the water rights.~~

(6) If the realty transfer certificate submitted with a deed or other instrument indicates that a water right is being severed, divided, or exempted, the clerk and recorder may not record the deed or instrument unless there is submitted with the deed or instrument a certification under penalty of false swearing, on a form provided by the department and signed by the transferor and transferee, that either states:

(a) that the documents and fee necessary to comply with this section are held in escrow, in which case the certification must also be signed by the escrow agent; or

(b) if there is no escrow, that the transferor and transferee certify that they have prepared the required documents and will send the required documents and fee to the department within 5 business days of recording, in which case the certification must also require the transferee to acknowledge that failure to file the appropriate documents and fee with the department will result in the department assessing the penalty in 85-2-431 against the transferee.

(7) Any written agreement to transfer land that has appurtenant water rights on record with the department must contain the following disclosure or words of a similar nature:

"WATER RIGHT OWNERSHIP UPDATE DISCLOSURE:

By Montana law, failure of the parties at closing or transfer of real property to pay the required fee to the Montana Department of Natural Resources and Conservation for updating water right ownership may result in the transferee of the property being subject to a penalty. Additionally, in the case of water rights being exempted, severed, or divided, the failure of the parties to comply with section 85-2-424, MCA, could result in a penalty against the transferee and rejection of the deed for recording.""

Section 5. Section 85-2-426, MCA, is amended to read:

"85-2-426. Fee. (1) ~~The department shall by rule prescribe a fee that will be no higher than necessary to cover the cost to the department of processing the water right ownership update form. The~~ *The department shall by rule prescribe a fee that may not be higher than necessary to cover the cost to the department of updating its water right ownership records. A* fee must be paid*:*

(a) at *closing when the realty transfer certificate discloses the transfer of a water right; or*

(b) at the time of filing of the water right ownership update form *or the form describing the severance or exempting of the water right*.

(2) The fee must be deposited in the water right appropriation account provided for in 85-2-318."

Section 6. Section 85-2-431, MCA, is amended to read:

"85-2-431. Penalty. ~~(1) The transferor of a water right is responsible for the filing of a water right ownership update form with the department in accordance with 85-2-424.~~

~~(2) The transferor of a water right who violates 85-2-424(1)~~ *(1) A person who fails to comply with the requirements of 85-2-424* is liable for a civil penalty of not more than ~~$50~~ *$75*.

~~(3)~~*(2)* An action to recover the penalty must be brought by the department and filed in the district court for the first judicial district. *At the discretion of the department, the judgment may be certified to the district court in the county where the real property is located.*

~~(4)~~*(3)* Any penalty fee collected under this section must be deposited in the water right appropriation account provided for in 85-2-318."

Section 7. Effective date. [This act] is effective July 1, 2008.

Approved May 3, 2007

CHAPTER NO. 367

[HB 40]

AN ACT AMENDING THE BIG SKY ON THE BIG SCREEN ACT; REMOVING THE $1 MILLION LIMITATION ON THE AMOUNT OF CREDITS ALLOWED; STANDARDIZING THE APPLICATION FEE FOR TAX CREDITS; INCREASING PERCENTAGES FOR MONTANA LABOR AND FOR QUALIFIED MONTANA EXPENDITURES TO DETERMINE THE AMOUNT OF ALLOWABLE CREDITS; REQUIRING THAT ALL PURCHASES MADE BY A TAXPAYER IN CONNECTION WITH A STATE-CERTIFIED PRODUCTION MUST BE PAID IN FULL BEFORE THE

CREDIT FOR QUALIFYING EXPENDITURES MAY BE CLAIMED; AMENDING SECTIONS 15-31-906, 15-31-907, 15-31-908, AND 15-31-911, MCA; REPEALING SECTION 15-31-909, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-31-906, MCA, is amended to read:

"15-31-906. (Temporary) Application for tax credit — fee. (1) To receive the tax credits under 15-31-907 and 15-31-908 for a state-certified production, a production company shall apply to the department on a form prescribed by the department. The form must be accompanied by an application fee. The application must be made and the fee paid at the time the production company files its tax return.

(2) The application fee is ~~determined as follows:~~

~~(a) if the total compensation paid to Montana residents for the production is less than or equal to $30,000, the application fee is $500;~~

~~(b) if the total compensation paid to Montana residents for the production is more than $30,000, the application fee is $75 for each resident employed by the production company; or~~

~~(c) if the production company is applying only for the qualified expenditure tax credit, the application fee is~~ $500.

(3) The fee must be deposited in the state special revenue account. The fee is statutorily appropriated, as provided in 17-7-502, in equal amounts to the department of revenue and the department of commerce to administer the provisions of 15-31-906 through *15-31-908, 15-31-910, and* 15-31-911. (Terminates January 1, 2010—sec. 17, Ch. 593, L. 2005.)"

Section 2. Section 15-31-907, MCA, is amended to read:

"15-31-907. (Temporary) Employment production tax credit. (1) ~~Subject to 15-31-909, a~~ *A* production company that has submitted an application for a tax credit and paid the fee as required under 15-31-906 is allowed a tax credit against the taxes imposed by chapter 30 or 31 for the employment of residents of this state in connection with a state-certified production in the state. Except as provided in subsection (4)(b), the credit is equal to credit carryovers and the credit for the tax year.

(2) The aggregate of the credit allowed under this section for a production occurring in the production company's tax year is equal to the sum of ~~12%~~ *14%* of the first $50,000 or less of actual compensation paid to each Montana resident employed in connection with the state-certified production during the tax year.

(3) The taxpayer is required to provide to the department, on a form prescribed by the department, a list of all cast and crew participating in the production and the amount of compensation paid to each Montana resident. The form returned by the taxpayer must include the certification number provided for in 15-31-904.

(4) If the credit exceeds the taxpayer's tax liability, the taxpayer shall make a one-time election to claim the credit for each state-certified production allowed under this section as follows:

(a) the credit may be refunded; or

(b) the credit may be carried forward against the taxes imposed by chapter 30 or 31 for the 4 succeeding tax years. ~~However, the credit may not be carried forward to the extent that the credit in the tax year in which the credit is received exceeds the limitation under 15-31-909.~~

(5) A C. corporation, an individual, an S. corporation, or a partnership qualifies for the credit under this section. If the credit is claimed by an S. corporation or a partnership, the credit must be attributed to the shareholders, partners, or members in the same proportion used to report income or loss for state tax purposes.

(6) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has included the amount of the compensation upon which the amount of the credit was computed as a deduction under 15-30-121 or 15-31-114.

(7) If any application of this section is held invalid, this section applies to other situations or persons in a manner that is not included in the invalid application. (Terminates January 1, 2010—sec. 17, Ch. 593, L. 2005.)"

Section 3. Section 15-31-908, MCA, is amended to read:

"15-31-908. (Temporary) Tax credit for qualified expenditures. (1) ~~Subject to 15-31-909, a~~ *A* production company that has submitted an application and paid the fee as required under 15-31-906 is allowed a tax credit against the taxes imposed by chapter 30 or 31 for qualified expenditures in this state made in connection with a state-certified production in the state. The credit allowed under this section is equal to ~~8%~~ *9%* of the total qualified expenditures incurred in connection with the state-certified production during the tax year.

(2) *(a)* The taxpayer is required to provide to the department, on a form prescribed by the department, the amount of qualified expenditures. The form returned by the taxpayer must include the certification number provided for in 15-31-904. The taxpayer shall also provide other information required by the department to verify the accuracy of the qualified expenditures.

(b) The taxpayer shall certify in writing to the department, under penalty of false swearing as provided in 45-7-202, that the taxpayer has paid in full to each vendor in Montana for all goods and services purchased by the taxpayer in connection with the state-certified production during the tax year. A credit under this section may not be claimed unless the taxpayer has paid in full for all purchases of goods and services from Montana vendors.

(3) The credit allowed under this section must be refunded if a taxpayer has tax liability less than the amount of the credit.

(4) A C. corporation, an individual, an S. corporation, or a partnership qualifies for the credit under this section. If the credit is claimed by an S. corporation or a partnership, the credit must be attributed to the shareholders, partners, or members in the same proportion used to report income or loss for state tax purposes.

(5) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has included the amount of the qualified expenditure upon which the amount of the credit was computed as a deduction under 15-30-121 or 15-31-114. (Terminates January 1, 2010—sec. 17, Ch. 593, L. 2005.)"

Section 4. Section 15-31-911, MCA, is amended to read:

"15-31-911. (Temporary) Rules. (1) The department of revenue shall adopt rules that are necessary to implement and administer 15-31-906 through ~~15-31-911~~ *15-31-908, 15-31-910, and this section*. The department shall, in

consultation with the department of commerce, develop procedures for determining compensation paid to residents and qualified expenditures for the credits allowed under 15-31-907 and 15-31-908 and for taxpayer compliance with the provisions of 15-31-904.

(2) The department and the department of commerce shall jointly adopt rules related to the definitions in 15-31-903. (Terminates January 1, 2010—sec. 17, Ch. 593, L. 2005.)"

Section 5. Repealer. Section 15-31-909, MCA, is repealed.

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective date. [This act] is effective on passage and approval.

Section 8. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2006.

Section 9. Termination — carryforward. [Sections 1 through 4] terminate January 1, 2010, but an unused credit under 15-31-907 may be carried forward for use on returns for tax years beginning before January 1, 2014, subject to use, limitations on the amount of the credit, carryfoward, and recapture provisions of the credit effective on December 31, 2009.

Approved May 3, 2007

CHAPTER NO. 368

[HB 49]

AN ACT REQUIRING THE EDUCATION AND LOCAL GOVERNMENT INTERIM COMMITTEE TO APPOINT A SUBCOMMITTEE TO CONDUCT A STUDY OF LOCAL GOVERNMENT SPECIAL PURPOSE DISTRICTS; SPECIFYING THE MEMBERSHIP OF THE SUBCOMMITTEE; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, current laws governing special purpose districts are not uniform as to the creation, alteration, dissolution, right of protest, operation, funding, and structure of the districts; and

WHEREAS, this absence of uniformity creates confusion and results in numerous bills being introduced each legislative session to address disparities, differences, and specific situations; and

WHEREAS, a single set of statutes governing the creation, alteration, dissolution, right of protest, operation, funding, and structure of special purpose districts would simplify and streamline special purpose district processes.

Be it enacted by the Legislature of the State of Montana:

Section 1. Interim study on local government special purpose districts. (1) The education and local government interim committee provided for in 5-5-224 shall conduct an interim study of local government special purpose districts. The study must include:

(a) a comprehensive review of current law governing local government special purpose districts, including an inventory of all of the districts and the various processes provided in law specific to those districts;

(b) a determination of which special purpose districts should be included in the study and which should be excluded;

(c) consideration of the needs of cities and counties with regard to special purpose districts;

(d) consideration of the appropriateness of consolidating the processes for numerous special purpose districts into one statute or set of statutes; and

(e) any other aspect of special purpose districts that the committee determines should be addressed to achieve more consistency, clarity, and uniformity in special purpose district statutes.

(2) (a) The education and local government interim committee shall establish a subcommittee to conduct the study and report to the full committee. The subcommittee members must be appointed by the presiding officer of the committee. In making appointments of nonlegislative members, the presiding officer shall consider recommendations from the Montana association of counties and the Montana league of cities and towns. The subcommittee must include:

(i) four members, two from each political party and two from each house, who are legislators appointed to the education and local government interim committee;

(ii) one county commissioner;

(iii) one county clerk and recorder;

(iv) one county treasurer;

(v) one city manager;

(vi) one city commissioner or town council member; and

(vii) one town clerk.

(b) All of the members of the subcommittee have voting privileges on issues taken up by the subcommittee, but the nonlegislative members do not have voting privileges on the education and local government interim committee. Any final recommendations and other work products that will be represented as being produced or endorsed by the education and local government interim committee must be finally approved by the education and local government interim committee.

(c) Nonlegislative members of the subcommittee must be compensated as provided in 5-5-211(7).

(3) In conducting the study, the subcommittee shall involve and regularly consult with trustees of special purpose districts.

(4) The subcommittee may travel to the extent it considers appropriate to achieve an enhanced level of public participation in the study.

(5) The education and local government interim committee shall complete the study by September 15, 2008, and report to the 61st legislature on its findings and recommendations, including any recommendations for legislation.

Section 2. Appropriation. There is appropriated from the general fund to the legislative services division $20,000 for the biennium beginning July 1,

2007, for use by the education and local government interim committee for the purposes provided in [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2007

CHAPTER NO. 369

[HB 69]

AN ACT CREATING THE MONTANA RESIDENTIAL MORTGAGE LENDER LICENSING ACT; PROVIDING DEFINITIONS; ESTABLISHING LICENSING REQUIREMENTS; PROVIDING FOR LICENSE SUSPENSION, REVOCATION, AND REINSTATEMENT; PROVIDING RULEMAKING AUTHORITY FOR THE DEPARTMENT OF ADMINISTRATION; AUTHORIZING EXAMINATIONS AND INVESTIGATIONS BY THE DEPARTMENT; REGULATING ACTIVITIES OF MORTGAGE LENDERS; PROVIDING CIVIL AND CRIMINAL PENALTIES; PROVIDING FOR CRIMINAL PROCEEDINGS; AND AMENDING SECTION 31-1-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 32] may be cited as the "Montana Residential Mortgage Lender Licensing Act".

Section 2. License requirement — scope. (1) A person, except a person who is exempt pursuant to [section 8], may not engage in the business of making residential mortgage loans after October 1, 2008, without first obtaining a license from the department in accordance with the licensing procedures provided for in [sections 1 through 32] and rules promulgated by the department.

(2) A person required to be licensed under [sections 1 through 32] who is not licensed may not:

(a) transact business without a residential mortgage lender license under any name or title; or

(b) circulate or use any advertising, including by electronic media, or make any representation or give any information to any other person that indicates or implies that the person is authorized to conduct activities within the scope of [sections 1 through 32].

(3) Each person, unless exempt, conducting activities regulated by [sections 1 through 32] must be issued a residential mortgage lender license restricting operations to those activities that the person has applied to conduct.

(4) A residential mortgage lender license must be issued to the person applying. Employees or independent contractors of the licensee are not required to be separately licensed.

(5) A person who is exempt as provided for in [section 8] is not subject to the requirements of [sections 1 through 32].

Section 3. Definitions. As used in [sections 1 through 32], the following definitions apply:

(1) "Advertising" means a commercial message in any medium that promotes, either directly or indirectly, a mortgage lending transaction.

(2) "Annual audit" means an audit of the licensee's books, accounts, records, and systems of internal control performed by an independent certified public accountant in accordance with generally accepted accounting principles and auditing standards.

(3) "Borrower" means the person or persons seeking a residential mortgage loan.

(4) "Branch office" means a location, other than a licensee's principal place of business:

(a) the address of which appears on business cards, stationery, or advertising used by the licensee;

(b) at which the licensee's name or advertising suggests that mortgage loans are made; or

(c) that, due to the actions of an employee or independent contractor employed by the licensee, is held out to the public as a branch office of the licensee where mortgage loans are made.

(5) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a licensee, whether through the ownership of voting stock of the licensee, the ownership of voting stock of any entity that possesses that power, or otherwise. Control must be presumed to exist if any person, directly or indirectly, owns, controls, or holds the power to vote 10% or more of the voting stock of any licensee or of any entity that owns, controls, or holds the power to vote 10% or more of the voting stock of the licensee. A person may not be considered to control a licensee solely by reason of being an officer or director of the licensee.

(6) "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

(7) "Electronically transmitted" or "by electronic media" means any transmission via diskette, wire, or tape, including but not limited to the intranet, interactive or otherwise, the internet, any other computer network, electronic mail, or other similar method of transmission.

(8) "Employee" means an individual who is engaged in the service of a licensee for a salary or wages and who is subject to the licensee's direction and control.

(9) "Escrow funds, trust funds, or reserves" means money entrusted to a mortgage lender by a borrower for the purpose of payment of taxes, insurance, or other payments to be made in connection with the servicing of a mortgage loan.

(10) "Financial institution" means any state, national, or federal bank, savings bank, savings and loan association, credit union, or trust company.

(11) "Financial institution holding company" means a bank holding company, as defined under 12 U.S.C. 1841, a savings and loan holding company, as defined under 12 U.S.C. 1467a, or any other financial institution holding company as defined under federal law or regulation.

(12) "Independent contractor" means a person certified as an independent contractor pursuant to 39-71-417.

(13) "Interest rate lock-in agreement" means an agreement, transmitted in writing or by electronic media, in which the mortgage lender guarantees for a specified number of days or until a specified date the availability of a specified rate of interest, a specified formula by which the rate of interest will be

determined, or a specific number of discount points if the mortgage loan is approved and closed within the stated period of time.

(14) "Licensee" means a person who is authorized pursuant to [sections 1 through 32] to engage in the activities regulated by [sections 1 through 32].

(15) "Loan commitment" or "commitment" means a statement transmitted in writing or electronically transmitted by a mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular mortgage loan to a particular borrower.

(16) "Making a mortgage loan" means to advance funds, offer to advance funds, or make a commitment to advance funds to a loan applicant for a mortgage loan.

(17) "Mortgage lender" means a person who makes a mortgage loan or who represents that the person is capable of making a mortgage loan.

(18) "Mortgage lending" means making a mortgage loan or the capability of making a mortgage loan.

(19) "Mortgage loan" or "residential mortgage loan" means a loan primarily secured by either a mortgage, deed of trust, or trust indenture on residential real estate located in this state.

(20) "Person" means an individual, partnership, corporation, association, limited liability company, limited liability partnership, or other entity.

(21) "Principal place of business" means a licensee's primary business office as designated on the application for licensure or any amendment to the application.

(22) "Residential real property" or "residential real estate" means real property located in this state that is improved by a one- to four-family dwelling or a manufactured home, as defined by 24 CFR 3280, either of which is intended to be the borrower's primary residence.

(23) "Subsidiary" means an organization that is wholly owned or controlled by a financial institution.

(24) "Third-party fees" means fees received by a mortgage lender as part of the mortgage loan application process that are designated to be paid to a person other than the mortgage lender. These fees include but are not limited to credit reports, property appraisals, title searches, title insurance, and attorney, survey, or private mortgage insurance fees.

(25) "Ultimate equity owner" means an individual who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether the individual owns or controls the ownership interest, individually or in any combination, through one or more individuals or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.

Section 4. Licensee name. A person engaged in the business regulated by [sections 1 through 32] may not operate the business under names other than the names filed with the department and appearing on the license.

Section 5. License application — investigation — fees. (1) The department shall issue a license to an applicant upon:

(a) the applicant filing a complete application for a residential mortgage lender license;

(b) the applicant filing a listing of material judgments entered against and bankruptcy petitions by the applicant for the preceding 5 years and the disposition of those actions;

(c) the applicant paying nonrefundable investigation and application fees for licensure as a mortgage lender in the amount of $750 and an application fee for any branch location of $250; and

(d) the department completing an investigation to ensure the fitness of the applicant to transact business pursuant to [sections 1 through 32].

(2) (a) The department shall conduct an investigation that is sufficient to allow the department to make findings pertaining to the financial responsibility and criminal records of the applicant or, if the applicant is other than an individual, pertaining to the financial responsibility and criminal records of the principal officers, directors, managers, or members of the entity making the application. The findings may be verified by an examination of experience, character, general fitness, and criminal records. The department may not issue a license to an applicant unless the department concludes after completing the investigation that the business will be operated honestly, fairly, and efficiently within the purposes of [sections 1 through 32].

(b) (i) As a prerequisite to the issuance of a license, the department shall require the applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(ii) The applicant shall sign a release of information to the department and is responsible to the department of justice for the payment of all fees associated with the criminal background check.

(iii) Upon completion of the criminal background check, the department of justice shall forward all criminal justice information, as defined in 44-5-103, concerning the applicant that involves the conviction of a criminal offense in any jurisdiction to the department, as authorized in 44-5-303.

(iv) At the conclusion of any background check required by this section, the department must receive the criminal background check report but may not receive the fingerprint card of the applicant. Upon receipt of the criminal background check report, the department of justice shall promptly destroy the fingerprint card of the applicant.

(3) All fees collected under this section must be deposited in the department's state special revenue account to be used by the department in administering the provisions of [sections 1 through 32].

(4) Licenses issued pursuant to [sections 1 through 32] are nontransferable and nonassignable.

(5) A mortgage broker and its branches licensed under Title 32, chapter 9, is exempt from licensing fees under [sections 1 through 32]. A licensed mortgage broker that engages in mortgage lending shall comply with the provisions of [sections 1 through 32].

Section 6. License application. (1) The application for a residential mortgage lender license must be in a form prescribed by the department.

(2) (a) The application must contain the name and complete business address or addresses of the applicant. If the applicant is other than an individual, the application must contain the names and complete business and

residential addresses of each officer, director, manager, and ultimate equity owner of 10% or greater interest in the entity making the application.

(b) The application must include a detailed description of the proposed activities of the license that the department may require by rule.

(c) The application must also include the following:

(i) evidence that the applicant meets the minimum surety bond requirements provided for in [section 13] and has provided access to supporting credit information as required by rule;

(ii) an affirmation that the applicant and its employees, independent contractors, officers, directors, or principals are at least 18 years of age;

(iii) a biographical statement providing information as to the character, fitness, financial and business responsibility, background, experience, and criminal convictions of any person that:

(A) owns or controls, directly or indirectly, 10% or more of any class of stock of the entity making the application;

(B) controls with respect to an applicant, directly or indirectly, the election of 25% or more of the members of the board of directors or if a limited liability company, the election of its manager; or

(C) significantly influences or controls the management of the entity making the application.

(3) The department may require that each officer, director, and ultimate equity owner of 10% or greater interest in the entity making the application file a personal financial statement, a biographical report, and a complete set of fingerprints taken by an authorized law enforcement officer or other person authorized by the state.

(4) If the applicant is other than an individual, evidence must be submitted that the applicant is duly incorporated, registered, or otherwise formed as a general partnership, limited partnership, limited liability company, or other lawful entity under the laws of this state or another state.

(5) An applicant shall provide all other information required by rule.

(6) The applicant may obtain branch licenses upon compliance with this section and the applicable provisions of [sections 1 through 32].

Section 7. License renewal. (1) Residential mortgage lender licenses must be renewed annually and expire on September 30. Properly completed renewal application forms and nonrefundable renewal fees set by rule must be received by the department by July 31.

(2) It is the responsibility of each licensee to renew its license. Failure of the licensee to receive renewal forms, absent a request by the licensee for forms sent by certified mail, does not waive the licensee's renewal responsibility. Failure by a licensee to submit a properly completed renewal application form and nonrefundable renewal fees in a timely fashion, absent a written extension from the department, will result in the assessment of additional fees and the reversion of the license to an inactive status. A residential mortgage lender license that is not renewed by September 30 automatically expires.

(3) A licensee that ceases any activity regulated by [sections 1 through 32] and that desires to discontinue being licensed as a mortgage lender shall inform the department in writing and at the same time convey the license and all other symbols or indicia of licensure. The licensee shall include a plan for the

withdrawal from regulated business, including a timetable for the disposition of the business, and shall identify the location where the books, accounts, records, and documents will be kept until the end of the retention period provided for in [section 15].

(4) An application for the renewal of an existing residential mortgage lender license must contain the information specified pursuant to [sections 1 through 32] and by department rule. However, only the requested information that has changed from the most recent application must be submitted.

Section 8. Exemption from licensing. The following are not subject to the licensing provisions of [sections 1 through 32]:

(1) A person is exempt who is doing business under the laws of this state, another state, or the United States as a financial institution. Wholly owned operating subsidiaries of an exempt financial institution are also exempt.

(2) A person is exempt who is engaged solely in nonresidential or commercial real estate lending.

(3) A person is exempt who does not make more than five mortgage loans with the person's own funds for the person's own investment during any 12-month period and who does not represent to the public in any manner that the person is in the mortgage lending business.

(4) An individual is exempt who assists in the performance of the activities regulated by [sections 1 through 32] as an employee or independent contractor of a licensee or exempt person. A licensee is responsible for the actions of an independent contractor under the licensee's license and bond.

(5) An agency of a federal, state, or municipal government is exempt.

(6) An employee or employer pension plan is exempt if the plan makes mortgage loans only to the plan's participants.

(7) A person is exempt who is acting in a fiduciary capacity conferred by the authority of any court except for a person subject to an injunction to comply with a provision of [sections 1 through 32] or subject to an order of the department issued under [sections 1 through 32].

(8) A person is exempt who is licensed under Title 32, chapter 9, if the person is engaged solely in the business of mortgage brokering and does not advance funds, offer to advance funds, or commit to advancing funds.

(9) A person is exempt who is a retail seller, as defined in 31-1-102, if the person complies with the provisions of Title 31, chapter 1, part 2.

(10) A person is exempt who sells the person's own real property.

Section 9. Representations of applicant. Each application for a residential mortgage lender license must be accompanied by the following representations stating that the applicant, if granted a license:

(1) shall maintain a staff reasonably adequate to meet the requirements of [sections 1 through 32] and rules adopted by the department;

(2) shall keep and maintain for 5 years business records and any other information required by [section 15] or by rules of the department regarding any mortgage loan made subject to [sections 1 through 32];

(3) shall file with the department, when due, any required report;

(4) shall post the license at the physical location listed on the license application and shall display the license number or other evidence of licensing

on any advertising or internet websites or other electronic media used by the licensee;

(5) shall disburse funds in accordance with the licensee's loan agreements and shall make a good faith effort to effect closings in a timely manner;

(6) has not committed a crime against any law of this state, any other state, or the United States involving moral turpitude or fraudulent or dishonest dealing and that a final judgment has not been entered against the applicant in a civil action upon grounds of fraud, misrepresentation, or deceit that has not been previously reported to the department;

(7) shall account for or deliver to any person at the time that has been agreed upon or is required by law or, in the absence of a fixed time, upon demand of the person entitled to the accounting or delivery any personal property, such as money, funds, a deposit, check, or draft, a mortgage, or any other document or thing of value, that has come into the licensee's possession and that is not the licensee's property or that a licensee is not in law or equity entitled to retain under the circumstances;

(8) has not engaged in any conduct that would be cause for denial of a license;

(9) shall continuously maintain the surety bond required by [section 13];

(10) shall advise the department in writing, signed in the same form as the license application being amended, of any material changes to the address, officers, and names of controlling shareholders submitted on the most recent application for a residential mortgage lender license within 45 days of the change;

(11) shall comply with the provisions of [sections 1 through 32] and with any lawful order or rule issued or made under the provisions of [sections 1 through 32];

(12) shall submit to periodic examinations by the department as provided for in [sections 1 through 32]; and

(13) shall advise the department in writing of financially material judgments entered against or bankruptcy petitions filed by the licensee within 10 days of the occurrence.

Section 10. Refusal to issue or renew license. The department may refuse to issue or renew a residential mortgage lender license if:

(1) it is determined that the license applicant is not in material compliance with any provision of [sections 1 through 32];

(2) the department cannot make the findings specified in [section 5(2)]; or

(3) all material requirements for renewal or issuance of a license have not been met.

Section 11. Change in control. (1) Except with the prior approval of the department, it is unlawful for any action to be taken that results in a change of control of the business of a licensee. Prior to any change of control of the business of a licensee, the person wishing to acquire control shall apply in writing to the department and pay an application and investigation fee to the department. The application must contain any information the department prescribes by rule as being necessary or appropriate for the purpose of determining that a person meets the requirements of [sections 1 through 32].

(2) The department shall approve or disapprove the proposed change of control of a licensee in accordance with the provisions of [sections 1 through 32].

(3) The department shall grant a 90-day temporary residential mortgage lender license for the principal place of business and each branch office location that currently has a residential mortgage lender license within 10 days after the department's receipt of an application for the change of control. The department may issue subsequent 90-day temporary licenses at the department's discretion. The existing licensee shall surrender the existing license for each licensed location, including the principal place of business and each branch office location, within 10 business days of receipt of the temporary licenses. The temporary licensee is subject to all provisions of [sections 1 through 32] and all rules adopted under [sections 1 through 32].

Section 12. Annual audit. (1) (a) Within 180 days of the end of a licensee's fiscal year, the licensee shall have the licensee's books and accounts audited by an independent certified public accountant and have the audit report filed with the department. The department may accept the audit of a parent company of the licensee in lieu of an audit of the licensee if the department determines that the parent company's audit is sufficient for the department's purposes.

(b) The audit must be sufficiently comprehensive in scope to permit the expression of an opinion on the financial statements.

(c) The audit must be prepared in accordance with generally accepted accounting principles and must be performed in accordance with generally accepted auditing standards.

(d) The audit report must be certified by the certified public accountant conducting the audit.

(2) As used in this section, the term "expression of an opinion" includes either:

(a) an unqualified opinion;

(b) a qualified opinion;

(c) a disclaimer of opinion; or

(d) an adverse opinion.

(3) If a qualified or adverse opinion is expressed or if an opinion is disclaimed, the reasons must be fully explained. An opinion qualified in its scope is not acceptable.

(4) If a licensee fails to obtain an audit as required, the department may obtain an audit by an independent certified public accountant at the licensee's expense. The department may select an independent certified public accountant by advertising for bids or by other fair and impartial means as the department establishes by rule if allowed by law.

(5) Audits conducted in accordance with the Consolidated Audit Guide for Audits of HUD Programs may be accepted to fulfill the requirements of this section.

(6) The department may establish by rule additional requirements for annual audits.

Section 13. Surety bonds. (1) (a) Licensees shall continuously maintain a surety bond in accordance with this section.

(b) A surety bond must be used for the recovery of expenses, fines, and fees levied by the department for losses or damages incurred by borrowers or consumers as the result of a licensee's noncompliance with [sections 1 through 32].

(c) The surety bond must be payable when a licensee fails to comply with any provision of [sections 1 through 32], must be payable to the department, and must be issued by an insurance company authorized to do business in this state.

(d) A copy of the surety bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, must be filed with the department within 10 days of the execution of the bond.

(2) The department may adopt rules with respect to the requirements for surety bonds.

(3) The surety bond must contain a clause that the insurance company will notify the department at least 30 days prior to canceling the surety bond for any reason.

(4) If a licensee or the issuer of the surety bond cancels the bond, the licensee shall inform the department of the cancellation in writing by certified mail and provide a new surety bond to the department.

(5) If the department is notified that a surety bond has been canceled and the licensee has not supplied a new surety bond to the department by the date of the cancellation, the licensee's license is automatically suspended until a new surety bond acceptable to the department is received.

Section 14. Escrow funds — trust funds — reserves. (1) Escrow funds, trust funds, or reserves authorized for any purpose by the mortgage loan contract are subject to all applicable state and federal requirements, must be immediately placed and maintained in separate accounts in a federally insured financial institution having an office in this state, and may not be commingled with any licensee funds.

(2) An escrow fund or reserves account must be placed in a segregated account with a federally insured financial institution having an office in this state. The funds must be kept in the segregated account until disbursement. The escrow funds or reserves account may be used only for:

(a) payments authorized by the borrower, allowed by the mortgage loan contract, or required by federal or state law;

(b) refunds to the borrower;

(c) transfer to another federally insured financial institution having an office in this state;

(d) forwarding to the appropriate mortgage lender or mortgage servicer in case of a transfer of servicing;

(e) any other purpose authorized by the mortgage loan contract; or

(f) compliance with a department or court order.

(3) All accounting for escrow funds or reserves must be performed in compliance with the aggregate accounting rules established in regulation X, 24 CFR 3500.

(4) A trust fund account must be placed in a segregated account with a federally insured financial institution having an office in this state. The funds must be kept in the segregated account until disbursement. Trust funds may be removed from the trust fund account and used only for:

(a) payments authorized by the borrower to pay for third-party services required for origination of the mortgage loan;

(b) refunds to the borrower;

(c) transfer to another financial institution or mortgage lender; or

(d) compliance with a department or court order.

(5) The requirement of keeping the escrow funds, trust funds, or reserves in accounts in a financial institution having an office in this state may be waived by the department by rule.

Section 15. Recordkeeping requirements. (1) (a) Each licensee shall maintain at its principal place of business as designated on the license, all books, accounts, records, and documents necessary to determine the licensee's compliance with [sections 1 through 32].

(b) All books, accounts, records, and documents must be kept available for review and examination by the department for a period of 5 years from the date of the last entry.

(2) (a) The department may authorize the maintenance of books, accounts, records, and documents at a location other than a principal place of business if the licensee ensures that the books, accounts, records, and documents will be kept in a secure location under conditions that will not lead to the damage or destruction of the books, accounts, records, or documents.

(b) The department may require that books, accounts, records, and documents be produced and made available at a reasonable and convenient location in this state.

(3) If the department determines that it is more effective or cost-efficient to perform a review or examination of the books, accounts, records, and documents at a licensee's out-of-state location, the licensee shall pay the reasonable travel expenses and per diem for each department employee who participates in the review or examination.

(4) The department may prescribe by rule the minimum information to be shown in the books, accounts, records, and documents of licensees to enable the department to determine compliance with [sections 1 through 32].

(5) This section does not prohibit a licensee from the use of document imaging or other electronic means in maintaining books, accounts, records, and documents if the licensee can ensure adequate safeguards against alteration, damage, or destruction of the imaged or electronically stored books, accounts, records, or documents.

(6) Failure to comply with this section is grounds for administrative action by the department in accordance with [sections 1 through 32].

Section 16. Prohibited practices. It is unlawful for any person to:

(1) provide or offer to provide any service requiring a license unless the person has been issued the appropriate license or is exempt from licensure;

(2) disburse the mortgage loan proceeds to a closing agent in any form other than, as applicable:

(a) direct deposit to a borrower's account:

(b) wire;

(c) bank or certified check;

(d) attorney's check drawn on a trust account; or

(e) other form as specifically authorized by applicable law;

(3) disburse the proceeds of a mortgage loan without sufficient collected funds on hand at the time of the disbursement in the account upon which the funds are drawn;

(4) fail to disburse funds in accordance with a loan commitment to make a mortgage loan that was accepted by the borrower;

(5) accept any fees at closing that were not disclosed as required by law;

(6) retain third-party fees at closing in excess of the actual cost of third-party services;

(7) require the borrower to be represented by a third-party service provider except under the terms permitted by applicable federal law;

(8) fail to take the actions required to effect a release of the lender's security interest in the property as described in 71-1-212;

(9) obtain any agreement or instrument in which blanks are left to be filled in after execution;

(10) obtain any exclusive dealing or exclusive agency agreement from any borrower;

(11) delay closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;

(12) engage in unfair, deceptive, or fraudulent mortgage loan practices;

(13) make payment of any kind, whether directly or indirectly, to any appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of any residential real property that is to be mortgaged;

(14) make any misrepresentations or false promises likely to influence or persuade or pursue a course of misrepresentation and false promises through officers, directors, partners, trustees, independent contractors, employees, agents, advertising, or otherwise;

(15) misrepresent, circumvent, or conceal, through any subterfuge or device, any of the material facts or terms of a mortgage loan;

(16) act as a mortgage lender in this state without a license issued by the department;

(17) advertise that a mortgage applicant will have unqualified access to credit without disclosing what material limitations on the availability of credit exist, such as the percentage of down payment required, that a higher rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan offered could apply;

(18) advertise a mortgage loan for which a prevailing rate is indicated in the advertisement unless the advertisement specifically states that the expressed rate could change or not be available at commitment or closing;

(19) advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on mortgage loans, unless the person is able to make advertised mortgage loans to a reasonable number of qualified applicants;

(20) falsely advertise or misuse names in violation of 18 U.S.C. 709; or

(21) make any untrue statement of a material fact in any document filed with the department or to omit any material fact that is required to be stated in any document.

Section 17. Violation of specified federal law. A violation of any provision of the federal Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601, et seq., the federal Truth in Lending Act, 15 U.S.C. 1601, et seq., or any regulations promulgated under those acts is also a violation of [sections 1 through 32].

Section 18. Appropriation of licensee's property — omissions — false statements — withholding documents. (1) A person who is an officer, director, partner, trustee, independent contractor, or employee of a licensee, a licensee's holding company, or a licensee's affiliates violates the provisions of [sections 1 through 32] if the person:

(a) knowingly receives or appropriates any of the licensee's property other than in payment of a just demand;

(b) with intent to defraud, causes or concurs in an omission being made in the licensee's books and accounts; or

(c) (i) knowingly makes or concurs in the making or publishing of any false entry of a material fact in the licensee's books or records or in any written report, exhibit, or statement of the licensee's affairs or pecuniary condition; or

(ii) having the custody of the licensee's books, willfully refuses or neglects to make any proper entry in the books as required by law or refuses to allow the books to be inspected by the department or the department's designees.

(2) An officer, director, partner, trustee, independent contractor, or employee of a licensee, its holding company, or its affiliates violates the provisions of [sections 1 through 32] upon:

(a) making a false entry of material fact in any book, record, or other document of the licensee's business or in connection with any condition, affair, or transaction of the licensee's business with the intent to deceive any authorized public officer, any officer, director, partner, trustee, independent contractor, or employee of the licensee, or any agent, investigator, or examiner employed or lawfully appointed to examine any condition, affair, or transaction of the licensee's business;

(b) failing to make an entry of a material fact in any book, account, record, or other document of the licensee's business pertaining to any condition, affair, or transactions of the licensee; or

(c) making unavailable any book, accounts, record, or document of the licensee that is required to be made, written, or kept and that is subject to disclosure to the public, the department, or any state or federal agency.

Section 19. Taking, withholding, or misapplication of funds or property — restitution. (1) It is a violation of [sections 1 through 32] for an officer, director, partner, trustee, independent contractor, or employee of a licensee to:

(a) take, withhold, or misapply the funds or property of a licensee or misapply the licensee's credit; or

(b) take, withhold, or misapply funds, trust obligations, or property deposited with a licensee.

(2) If a violation of this section also results in a criminal conviction under applicable criminal law, the court shall, in addition to any other punishment imposed, order the person convicted to make full restitution to the licensee.

Section 20. Improper disbursement of escrow, reserves, or escrow closing funds — misstatement or omission of material fact pertaining to mortgage loan — misappropriation of funds. (1) Any person subject to the provisions of [sections 1 through 32], including but not limited to a licensee, a director, partner, or shareholder controlling an ownership interest of 10% or more of a licensee, or an officer, trustee, agent, independent contractor, or employee of a licensee may not:

(a) knowingly or recklessly take, withhold, disburse, or cause the disbursal of escrow funds, trust funds, reserves, or escrow closing funds except as permitted by [sections 1 through 32] or knowingly or recklessly direct, participate in, or aid or abet in a material way any activity that constitutes theft or fraud in connection with any escrow funds, trust funds, reserves, or escrow closing funds transaction; or

(b) knowingly or recklessly make or cause to be made any misstatement or omission of a material fact pertaining to mortgage lending.

(2) If a violation of this section also results in a criminal conviction under applicable criminal law, the court shall, in addition to any other punishment imposed, order the person convicted to make full restitution to injured parties.

Section 21. Disclosure of mortgage costs. (1) Within 3 business days of taking a mortgage loan application and prior to receiving any consideration from the borrower, the mortgage lender shall disclose the terms of the loan to the borrower in compliance with the disclosure requirements of the federal Real Estate Settlement Procedures Act, 12 U.S.C. 2601, et seq., the federal Truth in Lending Act, 15 U.S.C. 1601, et seq., and any regulations promulgated under those acts.

(2) A mortgage lender shall disclose the terms of any prepayment penalty on the mortgage loan, including the amount of the prepayment penalty or the formula for calculating the prepayment penalty. If the initial mortgage loan offer does not include a prepayment penalty, but a prepayment penalty is later included in the mortgage loan offer, disclosure of the terms of the prepayment penalty must be made within 3 business days of the prepayment penalty being added to the mortgage loan offer.

(3) A licensed mortgage lender may not require a borrower to pay any fees or charges prior to the mortgage loan closing, except:

(a) charges to be incurred by the mortgage lender on behalf of the borrower for services from third parties necessary to process the application, such as credit reports and appraisals;

(b) an application fee;

(c) an interest rate lock-in fee if the borrower is provided an interest rate lock-in agreement, the terms of which must include but are not limited to:

(i) the expiration date of the interest rate lock-in agreement;

(ii) the principal amount of the mortgage loan, the term of the mortgage loan, and identification of the residential real estate;

(iii) the initial interest rate and the discount points to be paid; and

(iv) the amounts and payment terms of the interest rate lock-in along with a statement as to whether the fee is refundable and the terms and conditions necessary to obtain a refund; and

(d) a commitment fee, upon approval of the mortgage loan application, if the borrower is provided a commitment in writing that it is signed by the mortgage lender and the borrower and the terms include the terms and conditions of the mortgage loan as well as the terms and conditions of the commitment, including but not limited to:

(i) the time period during which the commitment is irrevocable and may be accepted by the borrower, which may not be less than 7 calendar days from date of commitment or date of mailing, whichever is later;

(ii) the amount and payment terms of the commitment fee, along with a statement as to whether the fee is refundable and the terms and conditions necessary to obtain a refund;

(iii) the expiration date of the commitment;

(iv) conditions precedent to closing; and

(v) the terms and conditions, if any, for obtaining a refund of fees for third-party services or arranging for the transfer of third-party service work products to another mortgage lender.

(4) Any amount collected under subsection (3) in excess of the actual costs must be returned to the borrower within 60 days after rejection, withdrawal, or closing.

(5) (a) Except as provided in subsection (5)(b), fees or charges collected pursuant to this section, other than fees for third-party services collected pursuant to subsection (3)(a), must be refunded if a valid commitment is not produced or if closing does not occur.

(b) Applicable fees may be retained by the licensee in accordance with the terms of the commitment upon the licensee's ability to demonstrate any of the following:

(i) the borrower withdraws the mortgage loan application after the lender has issued a commitment on the same terms and conditions disclosed to the borrower on the most recent good faith estimate;

(ii) the borrower has made a material misrepresentation or omission on the mortgage loan application; or

(iii) the borrower has failed to provide documentation necessary to the processing or closing of the mortgage loan application and closing does not occur without fault of the lender.

Section 22. License suspension and revocation — restitution — penalty. (1) If the department finds, after providing a 10-day written notice that includes a statement of alleged violations and a notice of an opportunity for hearing, as provided in the Montana Administrative Procedure Act, that any person, licensee, or officer, director, partner, trustee, employee, or representative, whether licensed or unlicensed, of the person or licensee has violated any of the provisions of [sections 1 through 32], has failed to comply with the rules or orders promulgated by the department, has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a license, the department may impose a civil penalty not to exceed $10,000 for each violation and may issue an order revoking or suspending the right of the person or licensee, directly or through an officer, director, partner, trustee, employee, or representative, to do business in this state as a licensee or to engage in the business of making residential mortgage loans. In addition, the department may issue an order requiring

restitution to borrowers and reimbursement of the department's cost in bringing the administrative action.

(2) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or, in the case of an unlicensed business, to the last-known address of record.

(3) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

(4) The department may reinstate any suspended or revoked license if there is not a fact or condition existing at the time of reinstatement that would have justified the department refusing to originally issue the license. If a license has been revoked for cause, an application may not be made for issuance of a new license or the reinstatement of a revoked license for a period of 6 months from the date of revocation.

(5) All civil fines collected under this section must be deposited in the general fund.

Section 23. Authority of department — rulemaking. (1) The department has the powers set forth in [sections 1 through 32]. These powers may be exercised whether or not an application for a license has been filed with the department or whether or not a license has been issued or, if issued, has been surrendered, suspended, or revoked.

(2) The department may adopt rules to implement the provisions of [sections 1 through 32]. The rules may include but are not limited to establishing forms and procedures for licensing, acceptable practices, establishing surety bond amounts, annual audits, records maintenance, and fees for license renewal and examination.

Section 24. Investigations by department — subpoenas — oaths — examination of witnesses and evidence. (1) The department may investigate any matter, upon complaint or otherwise, if it appears that a person has engaged or offered to engage in any act or practice that is in violation of any provision of [sections 1 through 32] or any rule adopted or order issued by the department pursuant to [sections 1 through 32].

(2) The department may issue subpoenas to compel the attendance of witnesses and the production of books, accounts, records, documents, and other evidence in any matter over which the department has jurisdiction, control, or supervision under [sections 1 through 32]. The department may administer oaths and affirmations to a person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by the subpoena issued by the department, a judge of the district court of Lewis and Clark County or the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of the court shall issue the subpoena requiring the person to whom it is directed to appear at the time and place designated in the subpoena.

(4) If a person served with a court-ordered subpoena refuses to obey the subpoena or to give testimony or produce evidence as required by the subpoena, the department may proceed under the contempt provisions of Title 3, chapter 1, part 5.

(5) Failure to comply with the requirements of a court-ordered subpoena is punishable pursuant to 45-7-309.

Section 25. Cease and desist orders. (1) If it appears to the department that a person is engaged in or is about to engage in any act or practice constituting a violation of any provision of [sections 1 through 32] or any rule adopted or order issued by the department pursuant to [sections 1 through 32], the department may issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for hearing. The order may apply only to the alleged act or practice constituting a violation of [sections 1 through 32]. The department may issue a temporary order pending the hearing that:

(a) remains in effect until 10 days after the hearings examiner issues proposed findings of fact and conclusions of law; or

(b) becomes final if the person to whom notice is addressed does not request a hearing within 10 days after receipt of the notice.

(2) A violation of an order issued pursuant to this section is subject to the penalty provisions of [sections 1 through 32].

Section 26. Injunctions — receivers. (1) Whenever the department has reason to believe that a person is using, has used, or is about to use any method, act, or practice that violates any provision of [sections 1 through 32] or any rule adopted or order issued by the department pursuant to [sections 1 through 32], the department, upon determining that proceeding would be in the public interest, may bring an action in the name of the state to restrain by temporary or permanent injunction or temporary restraining order the use of the unlawful method, act, or practice.

(2) The notice for an action pursuant to subsection (1) must state generally the relief sought and must be served at least 20 days before the hearing of the action in which the relief sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by 27-19-315.

(3) An action under this section may be brought in the district court in the county in which a person resides or has the person's principal place of business or in the district court of Lewis and Clark County if the person is not a resident of this state or does not maintain a place of business in this state.

(4) A district court may issue temporary or permanent injunctions or temporary restraining orders to restrain and prevent violations of [sections 1 through 32], and an injunction must be issued without bond to the department. If the department is successful in obtaining an injunction or restraining order under this section, the department is entitled to an award of reasonable attorney fees and costs.

(5) In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which the action is brought may impound and appoint a receiver for the property and business of the defendant, including books, accounts, records, and documents pertaining to the property or business, or as much of the property or business as the court considers reasonably necessary to prevent violations of [sections 1 through 32]. The receiver, when appointed and qualified, has the powers and duties as to custody, collection, administration, winding up, and liquidation of the property and business that are conferred upon the receiver by the court.

Section 27. Failure to comply with reporting requirements. (1) A licensee shall file any report required by the department on or before the date

required by the department or within any extension of time granted by the department.

(2) The department may charge the licensee a fine of up to $100 a day for each day up to 10 days that a required report is late in being filed.

(3) The failure of a licensee to include in a report any matter required by law or by the department is grounds for the suspension or revocation of the licensee's license.

Section 28. Examinations by department — confidentiality — sharing information with other agencies. (1) The department and the department's appointees may examine the books, records, accounts, documents, and operations of a licensee or person required to be licensed under [sections 1 through 32] as often as the department considers necessary. The department may cooperate and share information with any agency of this state, the federal government, or agencies of other states. The department may accept an examination conducted by the federal government or an agency of this state or another state in place of an examination by the department.

(2) Within 6 months of the completion of an examination, the department shall issue a statement of findings of the examination to the licensee or person examined. The department may allow the licensee or person 30 days to respond to the examination findings. The department shall take appropriate steps to ensure correction of any violations of [sections 1 through 32] indicated by the examination.

(3) An affiliate of a licensee is subject to examination by the department on the same basis as the licensee, but only when reports from a licensee or examination of a licensee provides documented evidence of unlawful activity between a licensee and affiliate.

(4) The expenses of any examination of a licensee or affiliate of the licensee must be borne by the licensee and must be assessed by the department as established by rule. Fees collected under this section must be deposited into the department's state special revenue fund to be used by the department in administering the provisions of [sections 1 through 32].

(5) Unless otherwise required by state law, examination findings and any information contained in the examination report must be considered confidential information for the department's use only. The information may not be released to persons who are not officially associated with the department, and the information contained in the findings and report may be used by the department only in the furtherance of its official duties.

(6) Information obtained during an examination or investigation or from an application may be disclosed to law enforcement officials and other state and federal agencies for further investigation and enforcement.

Section 29. Conviction of crime — nolo contendere. (1) Any person who has pleaded guilty to, been convicted of, or pleaded nolo contendere to any offense specified in subsection (2) within the past 10 years or who has been held liable in any civil action by final judgment or administrative judgment by any public agency within the past 7 years of any of the provisions specified in subsection (2) may not serve as an officer, director, partner, trustee, independent contractor, or employee of a mortgage lender or may not be a shareholder controlling 10% or more of the ownership interest in the mortgage lender without prior written approval of the department.

(2) Subsection (1) applies to criminal convictions of, pleas of nolo contendere to, or civil or administrative judgments entered for the following:

(a) offenses involving robbery, burglary, theft, embezzlement, fraud, fraudulent conversion or misappropriation of property, forgery, bookmaking, receiving stolen property, counterfeiting, extortion, or check, credit card, or computer violations specified in the provisions of Montana's criminal laws, federal criminal laws, or another state's criminal laws; or

(b) offenses specified in provisions of the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3310, et seq.

(3) Any officer, director, partner, trustee, or other person who seeks a controlling ownership interest of 10% or more in the business of a licensed mortgage lender shall, as a condition to obtaining that interest or participation, authorize the department access to that person's criminal history information for purposes of determining whether the person has a prior conviction of or has pleaded nolo contendere to a criminal offense specified in subsection (2).

(4) A person who violates a provision of this section, including but not limited to a licensee who permits a controlling ownership interest in or other participation in the business of the licensee in violation of this section, is subject to the penalty provisions of [sections 1 through 32].

(5) For purposes of this section, the term "employee" means:

(a) a loan officer or other individual who negotiates agreements with the public; or

(b) an individual with access to or responsibility for escrow funds, trust funds, reserves, or escrow closing funds held by the licensee.

Section 30. Penalties. (1) A person who knowingly violates any provision of [sections 1 through 32] or any rule adopted or order issued pursuant to [sections 1 through 32] is subject to a fine for each violation not to exceed $10,000 or imprisonment for not more than 1 year, or both.

(2) All fines collected under this section must be deposited in the general fund.

Section 31. Institution of criminal proceedings. (1) (a) The department may refer any evidence that is available concerning a violation of the provisions of [sections 1 through 32] or of a rule adopted or order issued pursuant to the provisions of [sections 1 through 32] to the attorney general or to the appropriate county attorney in the jurisdiction in which the violation occurred.

(b) The attorney general or the appropriate county attorney may, with or without the department's referral, institute criminal proceedings under the provisions of [sections 1 through 32].

(c) The department and its employees may, upon request of the attorney general or the appropriate county attorney, assist in presenting the law or facts at trial.

(2) After an examination, investigation, or hearing under [sections 1 through 32], if the department considers it of public interest or advantage, the department may certify a record to the proper prosecuting official of the county or city in which the act complained of, examined, or investigated occurred.

Section 32. Disciplinary action against licensee by other agencies. (1) A disciplinary action taken against a licensee by another agency of this state, another state, or the federal government for any action substantially related to

an activity regulated under [sections 1 through 32] may be grounds for disciplinary action by the department. A certified copy of the record of the disciplinary action taken against the licensee must be treated as evidence of the events related in the record.

(2) A disciplinary action taken against the licensee by another agency does not preclude the department from applying a specific statutory provision in [sections 1 through 32] that provides for discipline against a licensee.

Section 33. Section 31-1-111, MCA, is amended to read:

"31-1-111. Definition of regulated lender. The term "regulated lender", as used in 31-1-112 and 31-1-116, means:

(1) a bank, building and loan association, savings and loan association, trust company, credit union, credit association, consumer loan licensee, *residential mortgage lender licensee,* development corporation, bank holding company, or ~~a~~ mutual or stock insurance company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by:

(a) an agency of the state of Montana; or

(b) an agency of the federal government;

(2) a subsidiary of an entity described in subsection (1);

(3) a Montana state agency or a federal agency that is authorized to lend money;

(4) a corporation or other entity established by congress or the state of Montana that is owned, in whole or in part, by the United States or the state of Montana and that is authorized to lend money."

Section 34. Codification instruction. [Sections 1 through 32] are intended to be codified as an integral part of Title 32, and the provisions of Title 32 apply to [sections 1 through 32].

Approved May 3, 2007

CHAPTER NO. 370

[HB 96]

AN ACT GENERALLY REVISING THE ESTABLISHMENT OF STATE VETERANS' CEMETERIES; AUTHORIZING THE BOARD OF VETERANS' AFFAIRS TO DESIGNATE A COUNTY VETERANS' CEMETERY AS A STATE VETERANS' CEMETERY SUBJECT TO BOARD CERTIFICATION; PROVIDING AN APPROPRIATION; AMENDING SECTION 10-2-601, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-2-601, MCA, is amended to read:

"10-2-601. State veterans' cemeteries. (1) The board shall establish and operate state veterans' cemeteries*, except as provided in subsection (4).*

(2) A cemetery must be located at Fort William Henry Harrison in Lewis and Clark County, Montana, and at Miles City. A cemetery may be located in Missoula County and in Yellowstone County if funding allows.

(3) The board may establish additional state veterans' cemeteries only as funding allows.

(4) (a) The board may designate a veterans' cemetery established pursuant to [section 1 of Senate Bill No. 21] as a state veterans' cemetery if:

(i) the legislature has authorized the cemetery pursuant to subsection (2) or (3); and

(ii) the board certifies that the cemetery is operated and maintained under the same standards and interment eligibility criteria as required for a state veterans' cemetery established by the board.

(b) A cemetery designated under this subsection (4) as a state veterans' cemetery must be recognized and identified as a state veterans' cemetery on official state maps, in other appropriate state publications and websites, and on appropriate state road signs."

Section 2. Appropriation. There is appropriated $1 from the general fund to the department of military affairs for fiscal year 2008.

Section 3. Contingent voidness. If Senate Bill No. 21 is not passed and approved, then [this act] is void.

Section 4. Effective date. [This act] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 371

[HB 131]

AN ACT REVISING PUBLIC RETIREMENT LAWS; PROVIDING FOR THE ACTUARIAL FUNDING OF THE PUBLIC EMPLOYEES' AND SHERIFFS' RETIREMENT SYSTEMS BY INCREASING EMPLOYER CONTRIBUTION RATES; PROVIDING THAT THE INCREASE WILL NOT BE IMPOSED IF CERTAIN ACTUARIAL CONDITIONS ARE MET; ALLOCATING A PORTION OF THE EMPLOYER CONTRIBUTION IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM DEFINED CONTRIBUTION PLAN TO PAY FOR THE PLAN'S STARTUP LOAN; REDUCING THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT FOR MEMBERS OF THE PUBLIC EMPLOYEES', SHERIFFS', AND GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEMS HIRED OR ASSUMING OFFICE ON OR AFTER JULY 1, 2007; INCREASING THE STATUTORY APPROPRIATION FOR STATE RETIREMENT CONTRIBUTIONS FOR EMPLOYEES OF SCHOOL DISTRICTS; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 19-3-316, 19-3-319, 19-3-1605, 19-3-2117, 19-7-404, 19-7-711, 19-8-1105, AND 19-21-214, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-316, MCA, is amended to read:

"19-3-316. Employer contribution rates. (1) Each employer shall contribute to the system. Except as provided in subsection (2), the employer shall pay as employer contributions 6.9% of the compensation paid to all of the employer's employees *plus any additional contribution under subsection (3)*, except *for* those *employees* properly excluded from membership. Of employer contributions made under this subsection for both defined benefit plan and defined contribution plan members, a portion must be allocated for educational

programs as provided in 19-3-112. Employer contributions for members under the defined contribution plan must be allocated as provided in 19-3-2117.

(2) Local government and school district employer contributions must be the total employer contribution rate provided in subsection (1) minus the state contribution ~~rate~~ *rates* under 19-3-319.

(3) Subject to subsection (4), each employer shall contribute to the system an additional employer contribution equal to the following percentage of the compensation paid to all of the employer's employees, except for those employees properly excluded from membership:

(a) beginning July 1, 2007, 0.135%; and

(b) beginning July 1, 2009, 0.27%.

(4) (a) The board shall periodically review the additional employer contribution provided for under subsection (3) and recommend adjustments to the legislature as needed to maintain the amortization schedule set by the board for payment of the system's unfunded liabilities.

(b) The employer contribution required under subsection (3) terminates on July 1 immediately following the system's actuarial valuation if:

(i) the actuarial valuation determines that the period required to amortize the system's unfunded liabilities, including adjustments made for any benefit enhancements enacted by the legislature after the valuation, is less than 25 years; and

(ii) terminating the additional employer contribution would not cause the amortization period as of the most recent actuarial valuation to exceed 25 years."

Section 2. Section 19-3-319, MCA, is amended to read:

"19-3-319. State contributions for local government and school district employers. *(1)* The state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.1% of the compensation paid to all employees of local government entities and school districts on and after July 1, 1997, except those *employees* properly excluded from membership.

(2) (a) Subject to subsection (2)(b), in addition to the contribution required under subsection (1), the state shall contribute monthly from the general fund to the pension trust fund a sum equal to the following percentage of the compensation paid to all employees of school districts on and after July 1, 2007, except for those employees properly excluded from membership:

(i) beginning July 1, 2007, 0.135%; and

(ii) beginning July 1, 2009, 0.27%.

(b) The additional contribution under subsection (2)(a) terminates when the additional contribution under 19-3-316(3) terminates.

(3) The board shall certify amounts due under this section on a monthly basis, and the state treasurer shall transfer those amounts to the pension trust fund within 1 week. The ~~payment is~~ *payments in this section are* statutorily appropriated as provided in 17-7-502."

Section 3. Section 19-3-1605, MCA, is amended to read:

"19-3-1605. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under

subsection (3) must be increased by ~~3%~~ *the applicable percentage provided in subsection (4).*

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than ~~a 3%~~ *an* annualized increase *of the applicable percentage provided in subsection (4)*, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of ~~3%~~ *the applicable percentage* in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than ~~a 3%~~ *an* annualized increase *of the applicable percentage provided in subsection (4)*, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to ~~3%~~ *the applicable percentage provided in subsection (5)* more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made.

(4) (a) The applicable percentage is 3% for benefit recipients hired or assuming office:

(i) before July 1, 2007; or

(ii) on or after July 1, 2007, if the benefit recipient is an existing member of a benefit plan for which the applicable percentage is 3%.

(b) Except as provided in subsection (4)(a)(ii), the applicable percentage is 1.5% for benefit recipients hired or assuming office on or after July 1, 2007.

(5) (a) The applicable percentage rate for a contingent annuitant described in subsection (2)(c) is 3% if the original payee:

(i) was hired or assumed office before July 1, 2007; or

(ii) was an existing member of a benefit plan for which the applicable percentage is 3%.

(b) Except as provided in subsection (5)(a)(ii), the applicable percentage rate for a contingent annuitant described in subsection (2)(c) is 1.5% if the original payee was hired or assumed office on or after July 1, 2007.

~~(4)~~*(6)* The board shall adopt rules to administer the provisions of this section."

Section 4. Section 19-3-2117, MCA, is amended to read:

"19-3-2117. Allocation of contributions and forfeitures. (1) The member contributions made under 19-3-315 and additional contributions paid by the member for the purchase of service must be allocated to the plan member's retirement account.

(2) Subject to adjustment by the board as provided in 19-3-2121, of the employer contributions under 19-3-316 *received* ~~received~~*:*

(a) ~~on or after July 1, 2002,~~ an amount equal to:

~~(a)~~*(i)* 4.19% of compensation must be allocated to the member's retirement account;

~~(b)~~*(ii)* 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate;

~~(c)~~*(iii)* 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(b); and

~~(d)~~*(iv)* 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to 19-3-2141*; and*

(b) on July 1, 2007, through June 30, 2009, 0.135% of compensation and on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316, 0.27% of compensation must be allocated in the following order:

(i) to the administrative account used by the board to meet the expenses of the plan's startup loan, until paid in full;

(ii) to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability; and

(iii) to the long-term disability plan trust fund to provide disability benefits to eligible members.

(3) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the plan's administrative expenses, including startup expenses."

Section 5. Section 19-7-404, MCA, is amended to read:

"19-7-404. Employer contributions. (1) ~~The~~ *Each* employer shall pay 9.535% of the compensation paid to all of the employer's employees *plus any additional contribution under subsection (3)*, except *for* those *employees* properly excluded from membership.

(2) If the required contribution to the retirement system exceeds the funds available to a county from general revenue sources, a county may, subject to 15-10-420, budget, levy, and collect annually a tax on the taxable value of all taxable property within the county that is sufficient to raise the amount of revenue needed to meet the county's obligation.

(3) Subject to subsection (4), each employer shall contribute to the system an additional employer contribution equal to the following percentage of the compensation paid to all of the employer's employees, except for those employees properly excluded from membership:

(a) beginning July 1, 2007, 0.29%; and

(b) beginning July 1, 2009, 0.58%.

(4) (a) The board shall periodically review the additional employer contribution provided for under subsection (3) and recommend adjustments to the legislature as needed to maintain the amortization schedule set by the board for payment of the system's unfunded liabilities.

(b) The employer contribution required under subsection (3) terminates on July 1 immediately following the system's actuarial valuation if:

(i) the actuarial valuation determines that the period required to amortize the system's unfunded liabilities, including adjustments made for any benefit

enhancements enacted by the legislature after the valuation, is less than 25 years; and

(ii) terminating the additional employer contribution would not cause the amortization period as of the most recent actuarial valuation to exceed 25 years."

Section 6. Section 19-7-711, MCA, is amended to read:

"19-7-711. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by ~~3%~~ *the applicable percentage provided in subsection (4).*

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than ~~a 3%~~ *an* annualized increase *of the applicable percentage provided in subsection (4)*, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of ~~3%~~ *the applicable percentage* in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than ~~a 3%~~ *an* annualized increase *of the applicable percentage provided in subsection (4)*, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to ~~3%~~ *the applicable percentage provided in subsection (5)* more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made.

(4) (a) The applicable percentage is 3% for benefit recipients hired or assuming office:

(i) before July 1, 2007; or

(ii) on or after July 1, 2007, if the benefit recipient is an existing member of a benefit plan for which the applicable percentage is 3%.

(b) Except as provided in subsection (4)(a)(ii), the applicable percentage is 1.5% for benefit recipients hired or assuming office on or after July 1, 2007.

(5) (a) The applicable percentage rate for a contingent annuitant described in subsection (2)(c) is 3% if the original payee:

(i) was hired or assumed office before July 1, 2007; or

(ii) was an existing member of a benefit plan for which the applicable percentage is 3%.

(b) Except as provided in subsection (5)(a)(ii), the applicable percentage rate for a contingent annuitant described in subsection (2)(c) is 1.5% if the original payee was hired or assumed office on or after July 1, 2007.

~~(4)~~*(6)* The board shall adopt rules to administer the provisions of this section."

Section 7. Section 19-8-1105, MCA, is amended to read:

"19-8-1105. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by ~~3%~~ *the applicable percentage provided in subsection (4).*

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than ~~a 3%~~ *an* annualized increase *of the applicable percentage provided in subsection (4)*, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of ~~3%~~ *the applicable percentage* in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than ~~a 3%~~ *an* annualized increase *of the applicable percentage provided in subsection (4)*, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to ~~3%~~ *the applicable percentage provided in subsection (5)* more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made.

(4) (a) The applicable percentage is 3% for benefit recipients hired or assuming office:

(i) before July 1, 2007; or

(ii) on or after July 1, 2007, if the benefit recipient is an existing member of a benefit plan for which the applicable percentage is 3%.

(b) Except as provided in subsection (4)(a)(ii), the applicable percentage is 1.5% for benefit recipients hired or assuming office on or after July 1, 2007.

(5) (a) The applicable percentage rate for a contingent annuitant described in subsection (2)(c) is 3% if the original payee:

(i) was hired or assumed office before July 1, 2007; or

(ii) was an existing member of a benefit plan for which the applicable percentage is 3%.

(b) Except as provided in subsection (5)(a)(ii), the applicable percentage rate for a contingent annuitant described in subsection (2)(c) is 1.5% if the original payee was hired or assumed office on or after July 1, 2007.

~~(4)~~*(6)* The board shall adopt rules to administer the provisions of this section."

Section 8. Section 19-21-214, MCA, is amended to read:

"19-21-214. Contributions and allocations for employees in positions covered under the public employees' retirement system. (1) The contribution rates for employees in positions covered under the public employees' retirement system who elect to become program members pursuant to 19-3-2112 are as follows:

(a) the member's contribution rate must be the rate provided in 19-3-315; and

(b) the employer's contribution rate must be the rate provided in 19-3-316.

(2) Subject to subsection (3), *of* the employer's contribution ~~under subsection (1)(b) must be allocated as follows~~:

(a) an amount equal to:

~~(a)~~*(i)* 4.49% of compensation must be allocated to the participant's program account;

~~(b)~~*(ii)* 2.37% of compensation must be allocated to the defined benefit plan under the public employees' retirement system as the plan choice rate; and

~~(c)~~*(iii)* 0.04% of compensation must be allocated to the education fund pursuant to 19-3-112(1)(b)*; and*~~.~~

(b) on July 1, 2007, through June 30, 2009, 0.135% of compensation and on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316, 0.27% of compensation must be allocated in the following order:

(i) to the administrative account used by the public employees' retirement board to meet the expenses of the defined contribution plan's startup loan, until paid in full; and

(ii) to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability.

(3) The allocations under subsection (2) are subject to adjustment by the public employees' retirement board, but only as described in and in a manner consistent with the express provisions of 19-3-2121."

Section 9. Appropriation. For the fiscal year beginning July 1, 2007, there is appropriated to the office of budget and program planning the following amounts from the indicated fund for the purpose of making the additional employer contributions in [sections 1, 2, and 4]:

	FY 2008	FY 2009
General fund	$309,633	$326,913
State special	212,659	221,068
Federal special	138,193	142,593
Proprietary	80,831	84,637

Section 10. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 11. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. Effective date. [This act] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 372

[HB 141]

AN ACT GENERALLY REVISING THE MONTANA CONSUMER LOAN ACT; REVISING DEFINITIONS; INCREASING LICENSING FEES; REVISING LICENSE ISSUANCE, DENIAL, SUSPENSION, REVOCATION, AND REINSTATEMENT PROVISIONS; REVISING PROVISIONS RELATING TO FEES CHARGED CONSUMERS; REVISING PROVISIONS RELATING TO INSTALLMENT AND BALLOON PAYMENTS; MODIFYING PROVISIONS RELATING TO WAGE ASSIGNMENTS; REVISING THE DEPARTMENT OF ADMINISTRATION'S AUTHORITY TO CONDUCT INVESTIGATIONS, ISSUE SUBPOENAS, TAKE OATHS, AND EXAMINE WITNESSES; PROVIDING FOR THE ISSUANCE OF CEASE AND DESIST ORDERS BY THE DEPARTMENT; MODIFYING INJUNCTION REQUIREMENTS; PROVIDING A COMPLAINT PROCEDURE; AMENDING SECTIONS 32-5-102, 32-5-103, 32-5-201, 32-5-202, 32-5-204, 32-5-207, 32-5-208, 32-5-301, 32-5-302, 32-5-303, 32-5-305, 32-5-306, 32-5-308, 32-5-310, 32-5-401, 32-5-402, 32-5-403, 32-5-405, AND 32-5-407, MCA; REPEALING SECTIONS 32-5-104, 32-5-321, 32-5-322, 32-5-323, 32-5-324, 32-5-404, 32-5-406, 32-5-501, 32-5-502, 32-5-503, 32-5-504, 32-5-505, AND 32-5-506, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-5-102, MCA, is amended to read:

"32-5-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Balloon payment" means any repayment option in which the borrower is required to repay the entire amount of any outstanding balance as of a specific date or at the end of a specified term and the aggregate amount of the required minimum periodic payments would not fully amortize the outstanding balance by the specific date or at the end of the loan term.

~~(1)~~*(2)* (a) "Consumer loan" means credit offered or extended to an individual primarily for personal, family, or household purposes, including loans for personal, family, or household purposes that are *not primarily* secured by a mortgage, deed of trust, trust indenture, or other security interest in real estate.

(b) Consumer loans do not include:

~~(i) loan transactions that are governed by 12 U.S.C. 1735f-7a, but a consumer loan business may engage in transactions that are governed by 12 U.S.C. 1735f-7a;~~

~~(ii)~~*(i)* deferred deposit loans provided for in Title 31, chapter 1, part 7; or

~~(iii)~~*(ii)* title loans provided for in Title 31, chapter 1, part 8.

~~(2) "Consumer loan business" means the business of making consumer loans as a licensee under this chapter.~~

(3) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(4) "Interest" means the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money and includes loan origination fees, points, and prepaid finance charges, as defined in 12 CFR 226.2.

~~(4)~~*(5)* "License" means ~~one or both of the licenses~~ *a license* provided for by this chapter.

~~(5)~~*(6)* "Licensee" means the person holding a license.

~~(6)~~*(7)* "Person" means individuals, partnerships, associations, corporations, and all legal entities ~~in the loaning business~~."

Section 2. Section 32-5-103, MCA, is amended to read:

"32-5-103. Engaging in business of making consumer loans restricted. (1) Except as provided in subsection (5), a person may not engage in the business of making consumer loans in any amount and contract for, charge, or receive directly or indirectly on or in connection with any loan any ~~charges~~ *compensation*, whether for interest, ~~compensation~~ *fees*, *other* consideration, or expense, except as provided in and authorized by this chapter. The provisions of this chapter do not apply to any exempted person.

(2) A licensee may sell its business and assets to a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, *other licensee,* or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by an agency of the state of Montana or an agency of the federal government. All contracts for loans and all other contracts entered into by the licensee pursuant to the provisions of this chapter that are sold and transferred to an acquiring organization continue to be governed by the provisions of this chapter.

(3) The provisions of subsection (1) apply to any person who seeks to evade its applications by any device, subterfuge, or pretense.

(4) Any loan made or collected in violation of subsection (1) by a person other than a licensee or a ~~lender~~ *person* exempt under subsection (5) is void, and the person does not have the right to collect, receive, or retain any principal, interest, *fees,* or *other* charges.

(5) A consumer loan licensee or a person who seeks a regulated lender exemption under 31-1-112 as a consumer loan licensee shall fully comply with this chapter. A regulated lender as defined in 31-1-111, other than a consumer loan licensee, or a ~~lender~~ *person* who *makes fewer than four consumer loans a year with the person's own funds and does not represent that the person is a licensee, who* complies with the provisions of Title 31, chapter 1, part 1, is not required to comply with this chapter. A deferred deposit lender, as defined in 31-1-703, who complies with the provisions of Title 31, chapter 1, part 7, is not required to comply with this chapter. A title lender, as defined in 31-1-803, who complies with the provisions of Title 31, chapter 1, part 8, is not required to comply with this chapter."

Section 3. Section 32-5-201, MCA, is amended to read:

"32-5-201. License application and fees — ~~supplementary license~~. (1) (a) ~~A~~ *Each* place of business operated under this chapter shall properly display on the premises a nontransferable and nonassignable license. The same person may obtain additional licenses *for each business location* upon compliance with this chapter ~~as to each license~~.

(b) ~~Application~~ *Applications* for a license *or renewal* ~~shall~~ *must* be on a form prescribed and furnished by the department.

(c) A licensee may move ~~his~~ *the licensee's* place of business from one place to another ~~within a county without obtaining a new license, provided he obtains written permission from~~ *upon providing written notice to and receiving approval from* the department *prior to the move*.

(d) With each application the applicant shall submit ~~$50~~ *$500* as ~~an investigation fee and $125 as~~ a license *application* fee. ~~The license fee shall be returned to the applicant if the application is denied.~~ *The license application fee is nonrefundable.* The license year is the calendar year, and the license fee for any period less than 6 months is ~~$62.50~~ *$250*. ~~A license remains in force until surrendered, suspended, or revoked.~~

~~(2) No licensee under the provisions of this chapter shall lend money in a total sum greater than $1,000 to any borrower or to any borrower and spouse except under the following circumstances:~~

~~(a) When any person holding a license provided for in subsection (1) desires to make loans for any amount in excess of $1,000, the holder of such license may apply to the department for a supplementary license and pay therefor an additional license fee of $75 per calendar year or one-half of said sum for any period less than 6 months.~~

~~(b) The department shall grant, on application, a supplementary license to a holder of a license provided for in subsection (1).~~

~~(c) Section 32-5-204 shall be applicable as to time of payment of supplementary license fee and penalty for failure to pay the same.~~

~~(d) Provisions of 32-5-301 relating to refunds, fees, and charges and the other provisions of this chapter not inconsistent with this section shall be applicable to loans made under authority of a supplementary license.~~

~~(3)~~*(2)* All ~~moneys collected under the authority of~~ *licensing and examination fees collected pursuant to* this chapter ~~shall~~ *must* be paid by the department into the state special revenue fund for the use of the department in its supervision function.

~~(4) The amount of $1,000 in subsection (2) is subject to change pursuant to the provisions of 32-5-104.~~"

Section 4. Section 32-5-202, MCA, is amended to read:

"32-5-202. Issuance or denial of license *or license renewal.* ~~(1)~~ Within 30 days after ~~an~~ *a complete* application for *a* license *or a license renewal* is filed with the department together with ~~the~~ *all* required fees, the department shall issue the license~~,~~ *or license renewal* if the *department determines that the* character and general fitness of the applicant ~~is such as to warrant~~ *warrants the* belief that the business will be operated lawfully and fairly within the provisions of this chapter~~,~~. *The department may* ~~or~~ enter an order denying the license *or license renewal application subject to notifying the applicant and providing the applicant an opportunity for a hearing*~~, if it finds to the contrary~~. *All notices and orders must be served as provided in 32-5-207(2).*

~~(2) A copy of the order granting or denying a license, together with a summary of the department's findings, shall be filed in the office of the department and shall be a public record. A copy of the order denying a license, together with a summary of the department's findings, shall be mailed postage prepaid to the applicant at the address stated in the application.~~"

Section 5. Section 32-5-204, MCA, is amended to read:

"32-5-204. License renewal fee. Every licensee shall *pay to the department*, on or before December 1, ~~pay to the department the sum of $125~~ *a nonrefundable license fee of $500* for each license held ~~as a license fee~~ for the succeeding calendar year. Failure to pay ~~such~~ *the* license fee within the time prescribed ~~shall~~ *results in an automatic revocation of the* ~~automatically revoke such~~ license."

Section 6. Section 32-5-207, MCA, is amended to read:

"32-5-207. Revocation and suspension of license — *penalty — restitution.* *(1) (a)* The department, ~~upon 10 days'~~ *after providing a 10-day* written notice to the licensee ~~and~~ *that includes a* statement of the grounds *for the proposed suspension or revocation* and ~~upon reasonable opportunity to be heard at a public hearing, if requested by the licensee, may suspend for not more than 30 days or revoke a license if it finds the licensee has knowingly violated any provision of this chapter. When the department enters an order revoking or suspending a license, it shall mail a copy of the order by certified or registered mail to the licensee at the address for which the license was issued.~~ *informing the licensee that the licensee has the right to an administrative hearing, may issue an order suspending or revoking a license if it finds that the licensee has violated any provision of this chapter, has failed to comply with any department rule, written instruction, or order, has failed or refused to make required reports, has furnished false information, or has operated without a license.*

(b) The department may impose a civil penalty of not more than $1,000 for each violation of this chapter, not to exceed $5,000 for each administrative action, and may order restitution to borrowers and reimbursement of the department's costs in bringing an administrative action. The department may suspend or revoke the right of a person or licensee, directly or through an officer, agent, employee, or representative, to operate as a licensee or to engage in the business of making consumer loans.

(2) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or in the case of an unlicensed business to the last-known address of record.

(3) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

(4) All civil penalties collected pursuant to this section must be deposited in the state general fund."

Section 7. Section 32-5-208, MCA, is amended to read:

"32-5-208. Reinstatement. The department may reinstate any ~~suspended or~~ revoked license if ~~no~~ *there is not a* fact or condition ~~then exists~~ *existing at the time of reinstatement that* ~~which clearly~~ would have justified the department in refusing originally to issue ~~such~~ *the* license. In any case where the license has been revoked for cause, ~~no~~ *an* application ~~shall~~ *may not* be made for issuance of a new license or the reinstatement of a revoked license for a period of 6 months from the date of revocation."

Section 8. Section 32-5-301, MCA, is amended to read:

"32-5-301. ~~Charges, refunds, penalties, filing fees~~ *Fees charged to consumers.* (1) A licensee ~~or holder of a supplementary license under this part~~

may contract for and receive, on any loan of money, interest ~~charges~~ as provided under 31-1-112.

~~(2) Charges in subsection (1) must be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. The charges must be added to the principal of the loan and may not be discounted or deducted from the principal or paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day is considered one-thirtieth of a month.~~

~~(3) (a) When any loan contract, new loan, renewal, or otherwise for a period of not more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower as determined by schedules prepared under the rule of 78ths or sum of the digits principle as follows: the amount of the refund or credit must be as great a proportion of the total charges originally contracted for as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, both sums to be determined according to the payment schedule originally contracted for.~~

~~(b) When any loan contract, new loan, renewal, or otherwise for a period of more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower that is applicable to all fully unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose the applicable charge is the charge that would have been earned for that contract if charges had not been precomputed, by applying to the unpaid principal balance, by the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled. For all loans that may be subject to this section, charges are computed initially in the same manner used to determine the annual percentage rate.~~

~~(4)~~*(2)* If *provided for in* the contract ~~so provides~~, ~~the~~ *an* additional ~~charge~~ *fee may be charged* for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement~~,~~. *The fee charged* may be the greater of *$15 or* 5% of the amount past due ~~or $15~~, *not to exceed $50.* ~~and that~~ *The fee charged for any past-due* amount may be charged only once. *Except as provided in subsection (3), other fees may not be charged for default or extension of the contract by the borrower.*

(3) (a) If provided for in the contract, a licensee may grant a deferral at any time. A deferral postpones the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled or as previously deferred for a period equal to the agreed-upon deferral period. The deferral period is that period during which an installment is not scheduled to be paid by reason of the deferral.

(b) A licensee may charge an additional fee for each deferral. The fee charged may be the greater of $15 or 5% of the amount currently due, not to exceed $50.

(c) Other fees may not be charged by the lender for any deferrals granted by the lender.

~~(5)~~*(4)* ~~(a)~~ The licensee may include in the principal amount of any loan:

~~(i)~~*(a)* the actual fees paid a public official or agency of the state for filing, recording, or releasing any instrument securing the loan; ~~or~~

~~(ii)~~*(b)* the premium for insurance in lieu of filing or recording any instrument securing the loan to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or releasing any instrument securing the loan~~.~~*;*

~~(b)~~*(c)* ~~The licensee may include in the principal amount of any loan~~ bona fide *fees or* charges related to real estate security ~~and~~ paid to third parties~~,~~; ~~including:~~

~~(i)~~*(d)* fees or premiums for title examination, title insurance, or similar purposes, including survey;

~~(ii)~~*(e)* fees for preparation of a deed, settlement statement, or other documents;

~~(iii)~~*(f)* fees for notarizing deeds and other documents;

~~(iv)~~*(g)* appraisal fees;

~~(v)~~*(h)* fees for credit reports; and

~~(vi)~~*(i)* fees paid to a trustee for release of a trust deed.

~~(6)~~*(5) (a)* ~~Further or other charges~~ *Other fees* may not be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. A licensee may not divide into separate parts any contract made for the purpose of or with the effect of obtaining ~~charges~~ *fees* in excess of those authorized by this chapter. If any amount in excess of the ~~charges~~ *fees* permitted by this chapter is charged, contracted for, ~~and~~ *or* received, ~~except as the result of an accidental and bona fide error of computation,~~ the licensee shall forfeit to the borrower a sum that is double the amount that is in excess of the ~~charges~~ *fees* authorized by this chapter.

(b) This section does not apply to fees for services rendered in connection with a loan after the loan has been consummated and if the borrower's participation in the services is strictly voluntarily.

~~(7) Subsections (2) and (3) apply only to loans on which charges are made on an add-on basis and do not apply to loans on which charges are made on an interest-bearing basis. The contracting for, charging of, receiving of, or financing of loan origination fees, points, or prepaid finance charges on a loan on which other charges are made on an interest-bearing basis does not make the loan subject to being considered an add-on basis loan.~~

~~(8) If a consumer loan is prepaid in whole or in part for any reason, including after a default, prior to the final payment due date and the amount of prepayment exceeds 10% of the then-outstanding principal balance of the loan, a licensee may charge a prepayment charge as follows:~~

~~(a) 10% of the then-outstanding principal balance of the loan if the prepayment occurs during the first 6 months after the date of the loan;~~

~~(b) 7% of the then-outstanding principal balance of the loan if the prepayment occurs more than 6 months after the date of the loan, but on or before 18 months after the date of the loan; or~~

~~(c) 3.5% of the then-outstanding principal balance of the loan if the prepayment occurs more than 18 months after the date of the loan, but before 61 months after the date of the loan.~~

~~(9) A prepayment charge may not be collected if:~~

~~(a) the prepayment results solely because of the enforcement of a "due on sale" clause in a real estate mortgage or deed of trust that secures the loan;~~

~~(b) the loan provided is prepaid by another loan made by the same licensee or an affiliate of the licensee; or~~

~~(c) prepayment occurs as a result of a payment made by a credit life insurance policy or other insurance policy.~~"

Section 9. Section 32-5-302, MCA, is amended to read:

"32-5-302. Installment ~~payment — contract period~~ and balloon payments. ~~(1) A licensee may not enter into any contract of loan:~~

~~(a) of $300 or less, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 21 calendar months from the date of making the contract;~~

~~(b) for more than $300 to and including $1,000, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 25 calendar months from the date of making; or~~

~~(c) for more than $1,000 to and including $2,500, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 48 calendar months from the date of making.~~

~~(2)~~*(1)* ~~Each loan contract requires payment of principal and charges in installments that are~~ *Except as provided in subsection (4), if the loan contract requires installment payments, the contract must provide that principal and interest be* payable at approximately equal periodic intervals, except that payment dates may be omitted to accommodate borrowers with seasonal incomes.

(2) ~~With respect to a loan on which charges are made on an add-on basis, an~~ *An* installment contracted for may not be substantially larger than any preceding installment. ~~When~~ *If* a loan contract provides for monthly ~~installments~~ *installment payments*, the first installment ~~may~~ *must* be payable at any time within 45 days of the date of the loan and ~~the charges~~ *interest may be charged* for the number of days in excess of 30 from the date of *the* making *of the loan and* may be added to the scheduled amount of the installments.

(3) A licensee may not enter into any loan contract in which a borrower agrees to pay principal or interest in one lump sum unless the payment is due not less than 45 days from the date of the making of the loan and not more than 1 year from the date of the making of the loan.

(4) Loans with a balloon payment are permissible so long as all installment payments cover at least the interest that has accrued since the previous installment payment."

Section 10. Section 32-5-303, MCA, is amended to read:

"32-5-303. Borrower to receive copy of contract or statement of contents. At the time ~~the~~ *a* loan is made, there ~~will~~ *must* be delivered to the borrower~~, or if there be two or more~~ *or* borrowers ~~to one of them,~~ the disclosures required by the ~~Federal~~ *federal* Consumer Credit Protection Act *and the federal Truth in Lending Act, 15 U.S.C. 1601, et seq., and* a copy of the loan contract~~,~~ or a written statement ~~in the English language~~ showing in clear and distinct terms:

(1) the name and address of the lender and of one of the borrowers or a maker of the loan;

(2) the date of the loan contract;

(3) the *description or* schedule of ~~installments or description thereof~~ *payments*;

(4) the principal amount of the loan excluding ~~charges~~ *interest*;

(5) the rate ~~or~~ *and* amount of ~~charges~~ *interest* as *provided in* the contract ~~may provide~~;

(6) the amount collected or paid out for each kind of insurance, if any;

(7) the amount collected or paid out for filing and other fees as allowed in ~~32-5-301(5)~~ *this chapter*;

(8) the collateral or security for the loan including all other accommodation or other joint makers *or* ~~(~~comakers~~)~~; *and*

(9) that the borrower may prepay the loan in whole or in part *without penalty* at any time during a licensee's regular business hours ~~and, in case the charges have been added to the principal of the loan, that such charges are subject to the refund requirements of 32-5-301(3) if such loan is prepaid in full~~."

Section 11. Section 32-5-305, MCA, is amended to read:

"32-5-305. Confessions of judgment — incomplete instruments forbidden. ~~No~~ *A* licensee ~~shall~~ *may not*:

(1) take any confession of judgment *from the borrower* or any power of attorney running to ~~himself~~ *the licensee* or to any third person to confess judgment *for the borrower* or to appear for the borrower in a judicial proceeding;

(2) take any note or promise to pay that does not disclose the amount of the loan, a schedule of payments or a description ~~thereof~~ *of the schedule of payments*, and the agreed ~~charges and in which~~ *interest and fees to be charged. The note or promise may not contain* blanks *that* are left to be filled in after execution. ~~However, such details~~ *The disclosures required by this subsection* ~~need~~ *are* not ~~appear~~ *required* on a certificate of title to a motor vehicle, *on* a policy or certificate of insurance, ~~a chattel mortgage or deed of trust covering future advances according to the law of the district or state where the property is located,~~ or *on* customary powers in connection with bonds or stocks ~~which~~ *that* may be pledged as collateral~~; or~~.

(3) take any instrument in which blanks are left to be filled in after the loan is made."

Section 12. Section 32-5-306, MCA, is amended to read:

"32-5-306. Insurance — real property security — definitions. (1) Except as provided in this section, insurance may not be written by a licensee or employee, affiliate, or associate of the licensee in connection with any loan.

(2) Insurance permitted under the provisions of this section must be obtained through an insurance company authorized to conduct business in Montana by a licensed insurance producer or agency of this state. Premiums may not exceed those fixed by law or current applicable manual rates. Insurance written as authorized by this section may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

(3) (a) When the principal amount of the loan exceeds $300 exclusive of the portion of the loan attributable to insurance premiums and ~~charges~~ *fees*, the licensee may require a borrower to insure property offered as security against any substantial risk of loss, damage, or destruction for an amount not to exceed

the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It is optional with the borrower to obtain insurance in an amount greater than the amount of the loan or for a longer term.

(b) A lender may not require a borrower, as a condition of obtaining or maintaining a loan secured by real property, to provide insurance on improvements to real property in an amount that exceeds the reasonable replacement value of the improvements.

(4) Subject to the laws of this state, credit life insurance, credit disability insurance, and loss of income insurance may be provided at the expense of the borrower and may be provided by a licensee upon the request of the borrower when the principal amount of the loan exceeds $300, exclusive of the portion of the loan attributable to insurance premiums and ~~charges~~ *fees*.

(5) The insurance authorized by this section may be sold, obtained, or provided by or through a licensee, and the premium or identifiable ~~charge~~ *fee* for the insurance may be included in the principal amount of the loan. However, a licensee may not require a borrower to purchase insurance from the licensee or from any particular insurance producer, broker, or insurance company as a condition precedent for obtaining a loan. Any gain or advantage to the licensee or any employee, affiliate, or associate of the licensee from the sale, provision, or obtaining of insurance as authorized by this section may not be considered to be ~~additional charges or~~ a violation of this chapter.

(6) A licensee may not require insurance under this section until any existing insurance of the same type has expired or has been canceled ~~and the unearned portion of the premium for the canceled insurance has been rebated to the borrower~~.

~~(7) The amount of $300 in subsections (3) and (4) is subject to change pursuant to 32-5-104 on adjustment of dollar amounts.~~

~~(8)~~*(7)* As used in this section:

(a) "borrower" means a mortgagor, grantor of a deed of trust, or other debtor;

(b) "improvement to real property" means a fixture, building, or other structure attached to real property and intended as a permanent addition to the real property; and

(c) "lender" means a mortgagee, beneficiary of a deed of trust, or other creditor who holds a mortgage, deed of trust, or other instrument that encumbers real property as security for the repayment of a debt."

Section 13. Section 32-5-308, MCA, is amended to read:

"32-5-308. Annual report. (1) A licensee shall file an annual report before April 15 for the preceding calendar year with the department.

~~(2) The report must provide information with respect to the financial condition of the licensee and must include:~~

~~(a) the name and address of the licensee;~~

~~(b) a statement of income and expenses;~~

~~(c) an analysis of charges, size of loans made, and types of security on loans;~~

~~(d) an analysis of suits and foreclosures; and~~

~~(c) other relevant information the department may reasonably require concerning the business conducted during the preceding calendar year for each licensed place of business of the licensee in this state.~~

~~(3)~~*(2)* The report must be made under oath and be in a form *and contain the information* prescribed by the department. The department shall publish annually an analysis and summary of the reports."

Section 14. Section 32-5-310, MCA, is amended to read:

"32-5-310. Wage assignments — limitations. (1) ~~The payment in money, credit, goods, or things in action as consideration for any sale or assignment of or order for the payment of wages, salary, commission, or other compensation for services, whether earned or to be earned, shall, for the purpose of regulation under this chapter, be considered a loan secured by such assignment, and the~~ *Subject to the limitations in subsection (2), wage assignments, which include salary, wages, commissions, and other compensation for services, are permitted and any loan made subject to a wage assignment must be considered a loan secured by the wage assignment. The* amount by which the ~~assigned compensation~~ *assignment* exceeds the amount of the consideration actually paid ~~shall~~, for the purposes of regulation under this chapter, *may not* be considered interest ~~or charges upon~~ *on* the loan ~~from the date of payment to the date the compensation is payable~~ *and must be credited to the borrower*. ~~Such transactions shall be~~ *Transactions subject to the provisions of this section are* governed by and ~~be~~ *are* subject to the provisions of this chapter.

(2) Any assignment ~~or other transfer~~ to a licensee or for the benefit of a licensee of salary, wages, commissions, or other compensation for services ~~must be limited to not exceeding~~ *may not exceed* 10% of ~~such~~ *the* salary, wages, commissions, or other compensation owing at the time of the notice to the debtor's employer ~~and thereafter to become owing~~ *or that is subsequently owed.* ~~However, no such~~ *An* assignment ~~or order~~ is *not* valid unless it is in writing, signed in person by the borrower*,* or if the borrower is married~~, unless it is~~ signed in person by both husband and wife, provided that written assent of a spouse is not required when husband and wife have been and are living separate and apart when ~~such~~ *the* assignment ~~or order~~ is made. ~~Only~~ *Notice of the assignment must be given to the debtor's employer only* if the debtor defaults in payment of the whole or some part of the loan for which ~~such~~ *the* assignment ~~or transfer~~ is security ~~shall notice be given to the debtor's employer of such assignment or transfer~~. ~~Such~~ *The* notice must be served on the employer or a managing agent of ~~such~~ *the* employer, must be verified by the oath of the licensee or ~~his~~ *the licensee's* agent, and must include:

(a) a correct copy of the assignment;

(b) a statement of the amount of ~~such~~ *the* loan and the amount due and unpaid ~~thereon~~; *and*

(c) a copy of this section.

(3) The acceptance and honoring of any assignment ~~shall~~ *must* be at the option of the employer."

Section 15. Section 32-5-401, MCA, is amended to read:

"32-5-401. Department — powers and duties — adoption of rules. (1) All powers and duties of regulation and supervision conferred by this chapter are vested in the department. The department shall adopt rules necessary to carry out the intent and purposes of this chapter. ~~A copy of every rule shall be mailed to each licensee at least 15 days in advance of its effective date. However,~~

~~the failure of a licensee to receive a copy of a rule does not exempt him from complying with a rule adopted under this chapter.~~

(2) All rules adopted under this chapter are binding on all ~~licensees~~ *persons* and enforceable by the department ~~through the power of suspension or revocation of licenses~~ *as provided in this chapter*."

Section 16. Section 32-5-402, MCA, is amended to read:

"32-5-402. Investigations *by department — subpoenas — oaths — examination of witnesses and evidence.* *(1)* The department may at any time investigate any transaction with borrowers and may examine the books, accounts, and records in this state to discover violations of this chapter by:

~~(1)~~*(a)* a licensee; or

~~(2)~~*(b)* a person ~~whom~~ *who* the department has reason to believe is violating or is about to violate this chapter.

(2) The department or the department's authorized representatives must be given free access to the offices and places of business and files of all licensees. The department may investigate any matter, upon complaint or otherwise, if it appears that a person has engaged in or offered to engage in any act or practice that is in violation of any provision of this chapter or any rule adopted or order issued by the department pursuant to this chapter.

(3) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this chapter. The department may administer oaths and affirmations to a person whose testimony is required.

(4) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by the subpoena, a judge of the district court of Lewis and Clark County or the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated in the subpoena.

(5) If a person served with a subpoena refuses to obey the subpoena or to give testimony or produce evidence as required by the subpoena, the department may proceed under the contempt provisions of Title 3, chapter 1, part 5.

(6) Failure to comply with the requirements of a court-ordered subpoena is punishable pursuant to 45-7-309."

Section 17. Section 32-5-403, MCA, is amended to read:

"32-5-403. ~~Annual examinations~~ *Examinations* — cost. (1) The department ~~shall make an annual examination of~~ *may examine* the books, accounts, and records of every licensee insofar as they relate to transactions with borrowers under this chapter ~~and may make such additional examinations as the department deems necessary~~.

(2) The expenses of the department incurred in the examination of the books, *accounts,* and records of the licensees ~~shall~~ *must* be charged at a rate ~~to be~~ established by the department by rule. ~~Such fees shall~~ *The amount charged must* be established to recover all of the costs of the *department's* supervision program ~~of the department~~. Each licensee ~~shall~~ *must* be billed by the

department for the amount ~~so~~ charged to ~~such~~ *the* licensee *pursuant to this section*. If ~~said~~ *the* charge is not paid within 30 days after the mailing of ~~such~~ *the* bill, the license of ~~said~~ *the* licensee may be suspended or revoked."

Section 18. Cease and desist orders. (1) If it appears to the department that a person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule adopted or order issued by the department pursuant to this chapter, the department may issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The order may apply only to the alleged act or practice constituting a violation of this chapter. The department may issue a temporary order pending the hearing that:

(a) remains in effect until 10 days after the hearings examiner issues proposed findings of fact and conclusions of law and a proposed order; or

(b) becomes final if the person to whom notice is addressed does not request a hearing within 10 days after receipt of the notice.

(2) A violation of an order issued pursuant to this section is subject to the penalty provisions of this chapter.

Section 19. Section 32-5-405, MCA, is amended to read:

"32-5-405. Injunctions — receivers. (1) Whenever the department has reasonable cause to believe that ~~any~~ *a* person is violating or is threatening to violate any provision of this chapter, the department may, in addition to all actions provided for in this chapter and without prejudice ~~thereto~~ *to those actions*, ~~enter an order requiring such person to desist or to refrain from such violation~~ *bring an action in the name of the state against the person to restrain by temporary or permanent injunction or temporary restraining order the use of the unlawful method, act, or practice.*

~~(2) An action may be brought on the relation of the attorney general and the department to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper.~~

(2) The notice for an action pursuant to subsection (1) must state generally the relief sought and must be served at least 20 days before the hearing of the action in which the relief sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by 27-19-315.

(3) An action under this section may be brought in the district court in the county in which a person resides or has the person's principal place of business or in the district court of Lewis and Clark County if the person is not a resident of this state or does not maintain a place of business in this state.

(4) A district court may issue temporary or permanent injunctions or temporary restraining orders to restrain and prevent violations of this chapter, and an injunction must be issued without bond to the department.

~~(3)~~*(5)* In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which ~~such~~ *the* action is brought ~~shall have power and jurisdiction to~~ *may* impound~~,~~ and ~~to~~ appoint a receiver for~~,~~ the property and business of the defendant, including books, papers, documents, and records pertaining ~~thereto~~ *to the property or business* or ~~so~~ *as* much ~~thereof~~ *of the property or business* as the court ~~may deem~~ *considers* reasonably necessary to prevent violations of this chapter ~~through or by means of the use of~~

~~said property and business~~. ~~Such~~ *The* receiver, when appointed and qualified, ~~shall have such~~ *has the* powers and duties as to custody, collection, administration, winding up, and liquidation of ~~such~~ *the* property and business ~~as shall from time to time be~~ *that are* conferred upon ~~him~~ *the receiver* by the court."

Section 20. Section 32-5-407, MCA, is amended to read:

"32-5-407. Attorney fees — bad check ~~charge~~ *fee*. (1) If *provided in* the contract ~~so provides~~, reasonable attorney fees may be awarded to the party in whose favor final judgment is rendered in any action on a contract entered into pursuant to the provisions of this chapter.

(2) In addition to any other ~~charges~~ *fees* authorized by this chapter, a licensee may charge a borrower the greater of $25 or the licensee's actual expense for each check, received in payment of a loan, that is dishonored for any reason."

Section 21. Complaint procedure. (1) The department shall maintain a list of licensees that is available to interested persons and to the general public. The department shall also establish by rule a procedure under which an aggrieved consumer or any member of the public may file a complaint against a licensee or an unlicensed person who violates any provision of this chapter.

(2) The department, after giving reasonable notice, may hold hearings, subject to the contested case provisions of Title 2, chapter 4, part 6, upon the request of a party to the complaint, make findings of fact or conclusions of law, issue cease and desist orders, refer the matter to the appropriate law enforcement agency for prosecution for a violation of this chapter, seek injunctive or other relief in district court, or suspend or revoke a license granted under this chapter.

Section 22. Repealer. Sections 32-5-104, 32-5-321, 32-5-322, 32-5-323, 32-5-324, 32-5-404, 32-5-406, 32-5-501, 32-5-502, 32-5-503, 32-5-504, 32-5-505, and 32-5-506, MCA, are repealed.

Section 23. Codification instruction. [Sections 18 and 21] are intended to be codified as an integral part of Title 32, chapter 5, and the provisions of Title 32, chapter 5, apply to [sections 18 and 21].

Section 24. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2008.

(2) [Sections 3 and 5 and this section] are effective October 1, 2007.

Approved May 3, 2007

CHAPTER NO. 373

[HB 155]

AN ACT CREATING AN ACCOUNT IN THE STATE TREASURY FROM WHICH PREMIUMS PAID FOR GROUP LIFE INSURANCE BY MONTANA RESIDENTS WHO ARE MEMBERS OF THE MONTANA NATIONAL GUARD, RESERVE, OR ARMED FORCES WHO ARE ON ACTIVE DUTY FOR A CONTINGENCY OPERATION MAY BE REIMBURSED; REQUIRING THE DEPARTMENT OF MILITARY AFFAIRS TO ADOPT RULES TO DETERMINE SERVICE MEMBERS' ELIGIBILITY FOR REIMBURSEMENT FOR GROUP LIFE INSURANCE PREMIUMS PAID AND IMPLEMENT THE

REIMBURSEMENT PROGRAM; EXEMPTING FROM STATE INCOME TAXATION THE AMOUNT RECEIVED BY A SERVICE MEMBER AS REIMBURSEMENT FOR GROUP LIFE INSURANCE PREMIUMS PAID; APPROPRIATING FUNDS TO REIMBURSE SERVICE MEMBERS WHO ARE ON ACTIVE DUTY FOR A CONTINGENCY OPERATION FOR THE PREMIUMS PAID BY MEMBERS FOR GROUP LIFE INSURANCE; AMENDING SECTION 15-30-116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings — purpose. (1) The legislature finds that:

(a) Montana has a proud tradition of military service with thousands of Montanans having answered the call of the nation and having served in the national guard, reserve, and armed forces;

(b) there have been instances in which the dependents of members of the Montana national guard, reserve, and armed forces have been left without adequate financial resources when a service member has been killed while on active duty;

(c) members of the Montana national guard, reserve, and armed forces are now being asked to serve extended periods of active duty in support of contingency operations;

(d) members of the Montana national guard, reserve, and armed forces are eligible for life insurance policies with limits of up to $400,000 through the federal service members' group life insurance program; and

(e) members of the Montana national guard, reserve, and armed forces provide Montana and its citizens with valuable benefits through the members' service inside this state and through the members' recently extended periods of active duty in combat areas outside of Montana, and in exchange for these extended periods of active duty they should receive assistance with the premiums that members pay for the federal service members' group life insurance program.

(2) The purpose of creating and funding the account established in [section 3] is to provide a benefit to members of the Montana national guard, reserve, and armed forces in exchange for and in recognition of the members' assumption of extended periods of active duty in a contingency operation, in addition to the members' increased contributions to the safety and welfare of the citizens of Montana.

Section 2. Definitions. As used in [sections 1 through 4], unless the context requires otherwise, the following definitions apply:

(1) "Active duty" has the meaning provided in 38 U.S.C. 1965(1)(A) and generally means full-time duty in the armed forces, other than active duty for training.

(2) "Contingency operation" means an assignment within the provisions of 10 U.S.C. 101(a)(13).

(3) "National guard" has the meaning provided in 10-1-101.

(4) "Reserve" means a member of a reserve component, as defined in 38 U.S.C. 101, of the United States armed forces.

(5) "Service member" means a Montana resident who is a member of the national guard or reserve or a member of the armed forces, as defined in 10 U.S.C. 101(a)(4).

Section 3. Account for service members' life insurance. (1) There is an account in the state treasury that is composed of statutory deposits to the account and includes any gifts, grants, donations, or bequests to the account and earnings from investing the money in the account.

(2) Money in the account must be used, as provided in [section 4], to reimburse service members serving on active duty in a contingency operation for the premiums paid, if any, for service members' group life insurance.

Section 4. Military service members' life insurance — reimbursement — eligibility. (1) (a) Subject to subsections (1)(b) and (1)(c), the department shall reimburse eligible service members for premiums paid for benefits under the service members' group life insurance program pursuant to 38 U.S.C. 1965 through 1980.

(b) A service member is eligible for reimbursement of group life insurance premiums only if the service member:

(i) paid premiums for service members' life insurance available under 38 U.S.C. 1965 through 1980 after February 28, 2006;

(ii) served on active duty in a contingency operation after February 28, 2006; and

(iii) was not reimbursed for premiums paid under subsection (1)(b)(i).

(c) The maximum amount of premium to be reimbursed may not exceed $17.50 a month for each month during which the member was on active duty in a contingency operation and purchased service members' group life insurance pursuant to 38 U.S.C. 1965 through 1980.

(2) The amount received by a service member as reimbursement for group life insurance premiums paid is considered to be a bonus for the purposes of taxation.

(3) The department shall adopt rules necessary to determine eligibility for reimbursement from the service members' life insurance reimbursement account and to implement the reimbursement program.

(4) This section does not alter, amend, or change the eligibility or applicability of the service members' group life insurance program pursuant to 38 U.S.C. 1965 through 1980 or any rights, responsibilities, or benefits under the program.

Section 5. Section 15-30-116, MCA, is amended to read:

~~**"15-30-116. (Temporary) Veterans' bonus or military salary — exemptions.** (1) All payments made under the World War I bonus law, the Korean bonus law, and the veterans' bonus law are exempt from taxation under this chapter. Any income tax that has been or may be paid on income received from the World War I bonus law, the Korean bonus law, and the veterans' bonus law is considered an overpayment and must be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.~~

~~(2) The salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana is exempt from state income tax.~~

~~(3) The amount received pursuant to 10-1-1104 or from the federal government by a service member, as defined in 10-1-1102, as reimbursement for group life insurance premiums paid is considered to be a bonus and is exempt from taxation under this chapter. (Terminates on occurrence of contingency—sec. 9, Ch. 604, L. 2005.)~~

15-30-116. ~~(Effective on occurrence of contingency)~~ Veterans' bonus or military salary — exemptions. (1) All payments made under the World War I bonus law, the Korean bonus law, and the veterans' bonus law are ~~hereby~~ exempt from taxation under ~~the income tax laws of the state of Montana, and any~~ *this chapter. Any* income tax ~~which~~ *that* has been or may ~~hereafter~~ be paid on income received from ~~this source shall be~~ *the World War I bonus law, Korean bonus law, and the veterans' bonus law is* considered an overpayment and ~~shall~~ *must* be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

(2) The salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana is exempt from state income tax.

(3) The amount received pursuant to [section 4] or from the federal government by a service member, as defined in [section 2], as reimbursement for group life insurance premiums paid is considered to be a bonus and is exempt from taxation under this chapter."

Section 6. Appropriation — periodic transfer — reversion. (1) There is transferred from the general fund to the account established in [section 3] to reimburse the premiums for service members' life insurance $60,000 for fiscal year 2007, $100,000 for fiscal year 2008, and $100,000 for fiscal year 2009. The amount transferred is appropriated to the department of military affairs to be used as provided in [sections 1 through 4].

(2) Subject to subsection (1), the adjutant general shall, as necessary to administer the program for reimbursing service members for premiums paid for group life insurance under [sections 1 through 4], request the state treasurer to transfer sufficient funds from the general fund to the account established in [section 3]. The state treasurer shall comply with the request.

(3) Any unexpended or unencumbered balance remaining in the account at the end of a fiscal year reverts to the general fund.

Section 7. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 10, and the provisions of Title 10 apply to [sections 1 through 4].

Section 8. Effective date. [This act] is effective on passage and approval.

Section 9. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to February 28, 2006.

Approved May 3, 2007

CHAPTER NO. 374

[HB 195]

AN ACT RELATING TO SERVICES FOR INDIVIDUALS WHO ARE DEVELOPMENTALLY DISABLED; CLARIFYING THAT AN INDIVIDUAL

MAY RETURN TO HIGH SCHOOL AFTER GRADUATION IF THE INDIVIDUAL IS NOT 19 YEARS OF AGE; PROVIDING THAT INDIVIDUALS ELIGIBLE TO RECEIVE SERVICES FOR THE DEVELOPMENTALLY DISABLED ARE NOT DISQUALIFIED FROM ALSO RECEIVING MEDICAID IF QUALIFIED FOR MEDICAID; REQUIRING THAT ASSISTANCE FOR SERVICES BE MADE AVAILABLE TO INDIVIDUALS WHO ARE DEVELOPMENTALLY DISABLED; PROVIDING AN APPROPRIATION; AMENDING SECTION 20-5-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-101, MCA, is amended to read:

"20-5-101. Admittance of child to school. (1) The trustees shall assign and admit a child to a school in the district when the child is:

(a) 6 years of age or older on or before September 10 of the year in which the child is to enroll but is not yet 19 years of age;

(b) a resident of the district; and

(c) otherwise qualified under the provisions of this title to be admitted to the school.

(2) The trustees of a district may assign and admit any nonresident child to a school in the district under the tuition provisions of this title.

(3) The trustees may at their discretion assign and admit a child to a school in the district who is under 6 years of age or an adult who is 19 years of age or older if there are exceptional circumstances that merit waiving the age provision of this section. *The trustees may also admit an individual who has graduated from high school but is not yet 19 years of age even though no special circumstances exist for waiver of the age provision of this section.*

(4) The trustees shall assign and admit a child who is homeless, as defined in the Stewart B. McKinney Homeless Assistance Act (Public Law 100-77), to a school in the district regardless of residence. The trustees may not require an out-of-district attendance agreement or tuition for a homeless child.

(5) Except for the provisions of subsection (4), tuition for a nonresident child must be paid in accordance with the tuition provisions of this title."

Section 2. Dual eligibility for services. An individual with developmental disabilities who is eligible for services pursuant to this chapter may also apply for and, if qualified, receive medicaid services pursuant to law governing the Montana medicaid program.

Section 3. Appropriation. (1) There is appropriated from the general fund $156,640 in fiscal year 2008 and $161,320 in fiscal year 2009 to the department of public health and human services to provide services to individuals who have graduated from high school but have not turned 19 years of age on or before September 10 in the school year or years following graduation and who are qualified to receive developmental disability services from the department of public health and human services by:

(a) providing payments to a school district that admits an individual under the provisions of 20-5-101; or

(b) providing direct assistance to an individual to purchase community-based services.

(2) All or a portion of the money appropriated to the department of public health and human services may be used as a state match for federal funds.

(3) The appropriations in subsection (1) are one-time in nature and are not to be included in the base budget for the 2011 biennium budget.

Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 53, chapter 20, and the provisions of Title 53, chapter 20, apply to [section 2].

Section 5. Effective date. [This act] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 375

[HB 240]

AN ACT ESTABLISHING A TEMPORARY EMERGENCY LODGING PROGRAM FOR INDIVIDUALS AND FAMILIES DISPLACED FROM THEIR RESIDENCES; PROVIDING A TAX CREDIT FOR PARTICIPATING ESTABLISHMENTS; ESTABLISHING LIABILITY FOR DAMAGES; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Temporary emergency lodging program — definitions. (1) There is a voluntary temporary emergency lodging program for licensed establishments located in Montana to assist designated charitable organizations in providing short-term lodging in Montana to individuals and families displaced from their residences.

(2) Except as provided in subsection (8), participating establishments may receive a tax credit as provided in [section 3] for providing temporary lodging to an individual who is:

(a) displaced from the individual's residence because of temporary immediate danger to the individual posed by an assault, as described in 45-5-206, or potential assault by a partner or family member, as defined in 45-5-206; and

(b) referred to the establishment by a designated charitable organization.

(3) Except as provided in subsection (8), establishments participating in the temporary emergency lodging program are eligible for a tax credit as provided in [section 3] for up to five nights of lodging for each individual per calendar year.

(4) Temporary emergency lodging provided under this section must be provided at no cost to the individual or the referring organization.

(5) Participating establishments may offer lodging based on availability of rooms.

(6) The department shall maintain a registry of designated charitable organizations and shall provide a list of approved organizations to establishments upon request. The department shall seek comment from statewide nonprofit organizations that work with victims of disaster and domestic violence when developing and updating the registry.

(7) For the purposes of [section 2] and this section, "designated charitable organization" means an organization approved by the department to make referrals for temporary emergency lodging.

(8) The tax credit referred to in subsections (2) and (3) does not apply to the costs of providing lodging to an individual who is displaced by a major disaster declared by the president under 42 U.S.C. 5170 or 5191 and who receives financial assistance for temporary housing under 42 U.S.C. 5174.

Section 2. Temporary emergency lodging — liability for damages. (1) An individual who is provided with temporary emergency lodging under [section 1] is liable for damages caused to the property during the individual's stay.

(2) If the individual is unable to pay for damages caused to the property, the designated charitable organization that referred the individual for temporary emergency lodging is responsible for the cost of the damages.

Section 3. Tax credit for providing temporary emergency lodging. (1) There is a credit for taxes otherwise due under this chapter for participation in the temporary emergency lodging program established in [section 1].

(2) The tax credit is:

(a) equal to $30 for each day of lodging provided; and

(b) limited to a maximum of five nights' lodging for each individual per calendar year.

(3) The credit may be claimed only for lodging provided in Montana.

(4) If the amount of the credit exceeds the taxpayer's liability under this chapter, the amount of the excess must be refunded to the taxpayer. The credit may be claimed even if the taxpayer has no tax liability.

(5) If the credit allowed under this section is claimed by a small business corporation, as defined in 15-30-1101, or a partnership, the credit must be attributed to shareholders or partners, using the same proportion to report the corporation's or partnership's income or loss for Montana income tax purposes.

Section 4. Codification instructions. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 50, chapter 51, and the provisions of Title 50, chapter 51, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 30, and Title 15, chapter 31, apply to [section 3].

Section 5. Applicability. [This act] applies to tax years beginning after December 31, 2007.

Approved May 3, 2007

CHAPTER NO. 376

[HB 257]

AN ACT REVISING THE TAXPAYER BILL OF RIGHTS; REQUIRING THE DEPARTMENT OF REVENUE TO TREAT SIMILARLY SITUATED TAXPAYERS IN A SIMILAR MANNER REGARDING THE ADMINISTRATION AND COLLECTION OF TAXES AND AVAILABLE TAXPAYER REMEDIES; REQUIRING THE DEPARTMENT OF REVENUE TO ADHERE TO THE SAME TAX APPEAL DEADLINES AS THE TAXPAYER; PROVIDING FOR A FEE FOR MONITORING COMPLIANCE WITH THE MONTANA TAXPAYER BILL OF RIGHTS; AMENDING

SECTIONS 15-1-222 AND 15-1-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-222, MCA, is amended to read:

"15-1-222. Taxpayer bill of rights. The department of revenue shall in the course of performing its duties in the administration and collection of the state's taxes ensure that:

(1) the taxpayer has the right to record any interview, meeting, or conference with auditors or any other representatives of the department;

(2) the taxpayer has the right to hire a representative of the taxpayer's choice to represent the taxpayer's interests before the department or any tax appeal board. The taxpayer has a right to obtain a representative at any time, except that the selection of a representative may not be used to unreasonably delay a field audit that is in progress. The representative must have written authorization from the taxpayer to receive from the department confidential information concerning the taxpayer. The department shall provide copies to the authorized representative of all information sent to the taxpayer and shall notify the authorized representative concerning contacts with the taxpayer.

(3) except as provided in subsection (5), the taxpayer has the right to be treated by the department in a similar manner as all similarly situated taxpayers regarding the administration and collection of taxes, imposition of penalties and interest, and available taxpayer remedies unless there is a rational basis for the department to distinguish them;

~~(3)~~*(4)* the taxpayer has the right to obtain tax advice from the department. The taxpayer has a right to the waiver of penalties and interest, but not taxes, when ~~he~~ *the taxpayer* has relied on written advice provided to ~~him~~ *the taxpayer* by an employee of the department.

~~(4)~~*(5)* at the discretion of the department, *upon consideration of all facts relevant to the specific taxpayer,* the taxpayer has the right to pay delinquent taxes, interest, and penalties on an installment basis. This subsection applies only to taxes collected by the department, provided the taxpayer meets reasonable criteria.

~~(5)~~*(6)* the taxpayer has the right to a complete and accurate written description of the basis for any additional tax assessed by the department;

~~(6)~~*(7)* the taxpayer has the right to a review by management level employees of the department for any additional taxes assessed by the department;

~~(7)~~*(8)* the taxpayer has the right to a full explanation of the available procedures for review and appeal of additional tax assessments;

~~(8)~~*(9)* the taxpayer, after the exhaustion of all appropriate administrative remedies, has the right to have the state tax appeal board or a court, or both, review any final decision of the department assessing an additional tax. The taxpayer shall seek a review in a timely manner. A taxpayer is entitled to collect court costs and attorney fees from the department for frivolous or bad faith lawsuits as provided in 25-10-711.

(10) the taxpayer has the right to expect that the department will adhere to the same tax appeal deadlines as are required of the taxpayer unless otherwise provided by law;

~~(9)~~*(11)* the taxpayer has the right to a full explanation of the department's authority to collect delinquent taxes, including the procedures and notices that are required to protect the taxpayer;

~~(10)~~*(12)* the taxpayer has the right to have certain property exempt from levy and seizure as provided in Title 25, chapter 13, part 6, and any other applicable provisions in Montana law;

~~(11)~~*(13)* the taxpayer has the right to the immediate release of any lien the department has placed on property when the tax is paid or when the lien is the result of an error by the department;

~~(12)~~*(14)* the taxpayer has the right to assistance from the department in complying with state and local tax laws that the department administers; and

~~(13)~~*(15)* the taxpayer has the right to be guaranteed that an employee of the department is not paid, promoted, or in any way rewarded on the basis of assessments or collections from taxpayers."

Section 2. Section 15-1-223, MCA, is amended to read:

"15-1-223. Office of taxpayer assistance. (1) The department of revenue shall establish and maintain an office of taxpayer assistance.

(2) The office shall assist taxpayers by:

(a) providing easily understandable tax information on audits and corrections and review procedures of the department;

(b) providing easily understandable information on appeal procedures;

(c) answering questions regarding preparing and filing *of* returns and reports with the department; and

(d) locating documents or payments filed with or submitted to the department.

(3) The office of taxpayer assistance shall also:

(a) receive and evaluate complaints related to improper or abusive behavior or inefficient service provided by employees of the department and recommend appropriate action to the director of the department ~~of revenue~~ to resolve the complaints;

(b) compile data on the number and type of taxpayer complaints received and evaluate the actions taken to resolve complaints;

(c) survey taxpayers to obtain their evaluation of the quality of service provided by the department;

(d) monitor the department's compliance with the taxpayer bill of rights and report any abuses to the director of the department;

(e) monitor the department's collection activities to:

(i) report any abuses in collection activities by the department to the director;

(ii) recommend to the director whether a particular collection activity should be stopped if the taxpayer has not had an adequate opportunity to discuss alternative means of payment; and

(f) perform any other functions that the director may assign to assist taxpayers in complying with Montana's tax laws.

(4) The department may charge a fee of $1 for processing a complaint."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2007

CHAPTER NO. 377

[HB 278]

AN ACT SETTING THE GENETICS PROGRAM FEE; AMENDING SECTION 33-2-712, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-712, MCA, is amended to read:

"33-2-712. Genetics program fee. ~~(1)~~ Except as provided in 33-2-713, for each Montana resident insured under any individual or group disability or health insurance policy on February 1 of each year, the insurer or health service corporation issuing the policy, and the state group health plan provided for in Title 2, chapter 18, part 8, shall pay ~~the~~ *a* fee ~~provided for in subsection (2)~~ *of $1* to the commissioner. The fee must be paid on or before March 1 of each year and be deposited in an account in the state special revenue fund provided for in 50-19-212. The fee may be used only to fund the statewide genetics program established in 50-19-211.

~~(2) (a) From October 1, 2005, through June 30, 2007, the fee is $1.~~

~~(b) Beginning July 1, 2007, the fee is 70 cents.~~"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2007

CHAPTER NO. 378

[HB 330]

AN ACT CREATING THE MONTANA CLEAN RENEWABLE ENERGY BOND ACT; AUTHORIZING GOVERNMENTAL BODIES TO OWN AND OPERATE QUALIFIED ENERGY PROJECTS; AUTHORIZING GOVERNMENTAL BODIES TO ISSUE CLEAN RENEWABLE ENERGY BONDS TO FINANCE THE ACQUISITION OR CONSTRUCTION OF QUALIFIED ENERGY PROJECTS; AUTHORIZING GOVERNMENTAL BODIES TO ENTER INTO CONTRACTS NECESSARY TO ACQUIRE AND CONSTRUCT QUALIFIED ENERGY PROJECTS; PROVIDING TERMS AND CONDITIONS FOR THE ISSUANCE OF THE BONDS; PROVIDING THAT CERTAIN REQUIREMENTS BE MET PRIOR TO PROJECT FINANCING; CLARIFYING THAT THE PROVISIONS OF THIS ACT DO NOT AUTHORIZE A LOCAL GOVERNING BODY TO CONSTRUCT, OWN, OR OPERATE SOME POWERLINES; INCREASING THE AMOUNT OF BONDS ALLOWED UNDER THE MUNICIPAL FINANCE CONSOLIDATION ACT; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 17-5-1604 AND 17-5-1608, MCA; AND PROVIDING EFFECTIVE DATES.

WHEREAS, the Montana Legislature has previously determined that Montana is blessed with an abundance of diverse renewable resources, that renewable energy production promotes and sustains economic development activity in local communities across the state, that increased use of renewable

resources will enhance Montana's energy self-sufficiency, that economic and environmental benefits from renewable energy production accrue to the public at large, and that the expanded development of these resources to meet Montana's electricity demand and stabilize electricity prices should be encouraged and promoted; and

WHEREAS, Congress, pursuant to the Energy Tax Incentives Act of 2005, codified in part as section 54 of the Internal Revenue Code and referred to as the Federal Act, has created a federal tax credit program that would enable qualified issuers to issue clean renewable energy bonds for which the holder would receive a federal tax credit, in lieu of interest, to finance the capital costs of qualified projects as described in the Federal Act; and

WHEREAS, qualified issuers and qualified borrowers under the Federal Act include governmental bodies, which are defined as any state, territory, or possession of the United States, the District of Columbia, an Indian tribal government, or any political subdivision of those entities; and

WHEREAS, the Legislature, in enacting the Montana Renewable Power Production and Rural Economic Development Act, has required Montana public utilities to establish graduated renewable energy standards and to purchase renewable energy from the community renewable energy projects and has allowed Montana political subdivisions or governmental bodies to be owners of community renewable energy projects; and

WHEREAS, several Montana cities, towns, and counties have expressed a desire to issue clean renewable energy bonds and to acquire and construct qualified projects under the Federal Act that would provide the energy for their own needs at a stable price and have applied to the Internal Revenue Service for allocations under the Federal Act; and

WHEREAS, the purpose of this legislation is to authorize Montana local governmental bodies and Indian tribal governments to participate as qualified issuers or qualified borrowers under the Federal Act and to enable governmental bodies and Indian tribal governments to better access financial investments for community renewable energy projects or alternative renewable energy sources.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 18] may be cited as the "Montana Clean Renewable Energy Bond Act".

Section 2. Definitions. Unless the context requires otherwise, in [sections 1 through 18], the following definitions apply:

(1) "Ancillary services" has the meaning provided in 69-8-1003.

(2) "Bond" means bond, note, or other obligation.

(3) "Clean renewable energy bonds" means one or more bonds issued by a governmental body pursuant to [sections 1 through 18] and section 54 of the Internal Revenue Code, 26 U.S.C. 54.

(4) "Commission" means the public service commission provided for in 69-1-102.

(5) "Governing authority" means a council, board, or other body governing the affairs of the governmental body.

(6) "Governmental body" means a city, town, county, school district, consolidated city-county, Indian tribal government, or any other political subdivision of the state, however organized.

(7) "Intermittent generation resource" means a generator that operates on a limited and irregular basis due to the inconsistent nature of its fuel supply, which is primarily wind or solar power.

(8) "Internal Revenue Code" has the meaning provided in 15-30-101.

(9) "Project" means:

(a) a facility qualifying as a "qualified project" within the meaning of section 54(d)(2) of the Internal Revenue Code, 26 U.S.C. 54(d)(2);

(b) a community renewable energy project as defined in 69-8-1003; or

(c) an alternative renewable energy source as defined in 15-6-225.

Section 3. Authority to acquire, construct, and operate projects. A governmental body may:

(1) acquire, construct, reconstruct, extend, or improve a project within or outside of the boundaries of the governmental body or partially within or partially outside the boundaries of the governmental body;

(2) acquire any interest in or any right to capacity of a project and acquire by gift, purchase, or lease land or rights in land or other real or personal property that is necessary for the ownership, operation, or maintenance of a project;

(3) operate and maintain a project to provide electricity for its own use and, to the extent that production is in excess of its own requirements, sell the production to:

(a) a party allowed to choose an electricity supplier under 69-8-201;

(b) a public utility or cooperative;

(c) through June 30, 2009, a public utility under a qualifying contract governed by Title 69, chapter 3, part 6, if:

(i) the commission determines that adequate ancillary services are available for increases in the amount of intermittent generation resources connected to the transmission grid;

(ii) the cost of any ancillary services provided to the generator by the public utility can be adjusted to reflect actual costs, the costs are deductible by the public utility from the price of electricity paid to the generator, and adjustments may be made as frequently as every 12 months; and

(iii) the public utility can refuse acceptance of electricity from the generator when the loss of ancillary services threatens system reliability or the public utility is unable to purchase sufficient ancillary services to meet its obligations, subject to 90 days' written notice to the generator;

(d) a competitive electricity supplier; or

(e) an out-of-state purchaser;

(4) prescribe and collect rates, fees, and charges for the services and facilities furnished by a project;

(5) enter into and perform contracts and agreements that are necessary for the planning, construction, lease, operation, and maintenance of a project and the sale, transmission, distribution, or exchange of the electricity generated

from the project on terms and for a period of time that its governing authority may determine;

(6) contract with a person or entity, within or outside the state, for the construction of a project, for the sale or transmission of electricity generated by a project, or for any interest in the project or any right to capacity of the project on terms and conditions that its governing authority may determine.

Section 4. Cooperation among governmental bodies. (1) Two or more governmental bodies through their respective governing authorities may enter into interlocal or joint power agreements in accordance with Title 7, chapter 11, part 1, to facilitate project financing, acquisition, construction, operation, and maintenance and to provide related services including the sale and purchase of electricity.

(2) Governmental bodies that enter into agreements pursuant to subsection (1) may:

(a) authorize a board, commission, or other body to supervise, manage, or operate a project and may prescribe its powers and duties and fix the compensation of the members of the body supervising, managing, or operating the project; or

(b) hire a private party to supervise, manage, and operate the project on behalf of the governmental bodies.

Section 5. Authority to issue revenue bonds. (1) Except as provided in [section 16], a governmental body may:

(a) issue revenue bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, or extension of any project;

(b) pledge to the punctual payment of its revenue bonds issued under this section and interest on the bonds all or a portion of the gross or net revenue of the project; and

(c) create and maintain reasonable reserves.

(2) The revenue bonds provided for in subsection (1) may be authorized by a resolution adopted by the governing authority of the governmental body. The resolution must establish the terms, covenants, and conditions of the revenue bonds. It is not necessary to submit the question of issuing the revenue bonds to the electors of the governmental body. The revenue bonds do not constitute indebtedness for the purpose of statutory debt limitations.

(3) The revenue of the project must include the charges for energy used or reserved for use by the governmental body, which may be made payable from its general fund or other available revenue, and the revenue generated from the sale of energy or capacity to third parties.

Section 6. Determination of cost. The governing authority of a governmental body, in determining the cost of a project to be financed by the issuance of revenue bonds pursuant to [section 5], may include:

(1) engineering, inspection, fiscal, and legal expenses;

(2) interest estimated to accrue during the construction period of the project and for up to 6 months after the construction period on borrowed funds; and

(3) costs of issuance of the revenue bonds and the funding of a debt service reserve to secure the revenue bonds.

Section 7. Nature of revenue bonds. (1) A holder of a revenue bond issued pursuant to [section 5] does not have the right to compel the governmental body to exercise its taxing power to pay off the bonds or the interest on those bonds.

(2) Each revenue bond issued pursuant to [section 5] must state that:

(a) the bond, including interest on the bond, is payable from the revenue pledged to the payment of the bond; and

(b) the bond does not constitute a debt of the governmental body within the meaning of any constitutional or statutory limitation or provision.

Section 8. Authority to issue other bonds. If the principal amount of clean renewable energy bonds, as limited by the Internal Revenue Code, is insufficient to finance all costs of a project as determined pursuant to [section 6], the governmental body may issue bonds to finance those costs and the costs of issuance of those bonds either as:

(1) additional revenue bonds pursuant to [section 5];

(2) obligations under 7-7-4104; or

(3) general obligations of a governmental body, provided that the issuance of the bonds are submitted to the electors of the governmental body as required by law.

Section 9. Use of revenue from project. (1) A governmental body issuing bonds or entering into a contract pursuant to [sections 1 through 18] with respect to a project may appropriate, apply, or expend the revenue of the project for the following purposes:

(a) to pay when due all bonds and interest on the bonds or amounts owing under contracts for the payment of the revenue that is or has been pledged, charged, or otherwise encumbered, including reserves;

(b) to provide for all expenses of operation and maintenance of the project, including reserves;

(c) to pay and discharge bonds and interest on the bonds or amounts under contracts not issued or entered into under [sections 1 through 18], for which the revenue of the project is or has been pledged, charged, or encumbered;

(d) to pay and discharge bonds and interest on the bonds that do not constitute a lien, charge, or encumbrance on the revenue of the project and that have been issued for the purpose of financing the acquisition, purchase, construction, reconstruction, improvement, or extension of the project; and

(e) to provide a reserve for improvements to the project.

(2) A governing authority shall fulfill the requirements of subsection (1) before the governing authority may transfer any of the revenue of the project to its general fund.

Section 10. Covenants in resolution of authorizing issuance of bonds. (1) A resolution authorizing the issuance of bonds under [sections 1 through 18] or a contract entered into under [sections 1 through 18] may contain covenants as to:

(a) the purpose or purposes to which the proceeds of sale of the bonds or amounts payable under the contract may be applied and the disposition of the proceeds or amounts;

(b) the use and disposition of the revenue of the project, including the creation and maintenance of reserves;

(c) the transfer, from the general fund of the governmental body to the account or accounts of the project, of an amount equal to the cost of furnishing the municipality or any of its departments, boards, or agencies with the services, facilities, or commodities of the project;

(d) the issuance of other bonds or the incurrence of other contractual obligations payable from the revenue of the project;

(e) the operation and maintenance of the project;

(f) the insurance to be carried on the project and the use and disposition of insurance proceeds;

(g) books of account and the inspection and audit of the books; and

(h) the terms and conditions upon which the holders or trustees of the bonds or any portion of the bonds or the contracting party are entitled to the appointment of a receiver by the district court having jurisdiction.

(2) If a receiver is appointed, the receiver may:

(a) enter and take possession of the project;

(b) operate and maintain the project;

(c) prescribe rates, fees, or charges, subject to any required approval of the public service commission; and

(d) collect, receive, and apply all revenue arising from the project in the same manner as the governmental body itself might do.

Section 11. Remedies. The provisions of [sections 1 through 18] and any resolution or contract are enforceable by a bondholder or contracting party in a court of competent jurisdiction by mandamus or other appropriate suit, action, or proceeding.

Section 12. Presumptions of validity of bonds. (1) Bonds issued under [sections 1 through 18] bearing the signatures of officers in office on the date of the signing of the bonds are valid and binding obligations even if, before bond delivery and payment, the persons whose signatures appear on the bonds are no longer officers of the governmental body issuing the bonds.

(2) The validity of the bonds is not dependent on or affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, or extension of the project for which the bonds are issued.

(3) The resolution authorizing the bonds may provide that the bonds must contain a recital that they are issued pursuant to [sections 1 through 18] and that the recital is conclusive evidence of the bonds' validity and of the regularity of the bonds' issuance.

Section 13. Liens arising from bonds or contracts — mortgages. (1) A resolution or contract must specify and define the revenue or portion of the revenue that is appropriated and pledged for the security and payment of the bonds or amounts payable under the contract and the relative security of liens on the revenue in favor of bonds of one or more series or issues, whether issued concurrently or at different times, or in favor of different contracts, whether entered into concurrently or at different times.

(2) A governmental body may mortgage, pledge, and assign any or all of the real and personal property comprising a project to secure payment of bonds, contracts, or other obligations issued or incurred under [sections 1 through 18].

Section 14. Sale of bonds. Bonds issued under [sections 1 through 18] may be incurred or sold at public or private sale on terms and at prices that the governing authority determines to be advantageous.

Section 15. Interim receipts or certificates. Pending the preparation of the definitive bonds, interim receipts or certificates, in a form and with provisions as the governing authority may determine, may be issued to the purchaser or purchasers of bonds sold pursuant to [sections 1 through 18]. The bonds and interim receipts or certificates are fully negotiable, as provided in the Uniform Commercial Code.

Section 16. Requirements prior to project construction. Prior to starting construction under [sections 1 through 18], the governmental body shall enter into a contract or contracts:

(1) with a transmission services provider to interconnect with the transmission or distribution facilities of a utility or cooperative;

(2) that ensure that all ancillary services as required by the control area operator are available to regulate the generation of electricity from the project;

(3) for the sale of electricity from the project; and

(4) with a tribal government for projects being constructed within the exterior boundaries of that tribal government's Indian reservation.

Section 17. Prohibition on construction, ownership, and operation of powerlines. (1) [Sections 1 through 18] do not authorize a governmental body to:

(a) construct, own, or operate electricity distribution or transmission facilities; or

(b) use the proceeds from bonds under [sections 1 through 18] to construct, own, or operate electricity distribution or transmission facilities.

(2) Subsections (1)(a) and (1)(b) do not apply to electrical lines connecting component parts within the perimeter of an electric generation facility or to a dedicated tie line between an electric generation facility and the transmission grid or the point of use by the governmental body.

Section 18. Interpretation. (1) The powers conferred in [sections 1 through 18] are in addition and supplemental to the powers conferred by any other general, special, or local law.

(2) If the provisions of [sections 1 through 18] are inconsistent with the provisions of any other general, special, or local law, the provisions of [sections 1 through 18] are controlling.

Section 19. Section 17-5-1604, MCA, is amended to read:

"17-5-1604. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Department" means the department of commerce created in 2-15-1801.

(3) "Eligible government unit" means:

(a) any municipal corporation or political subdivision of the state, including without limitation any city, town, county, school district, authority as defined in 75-6-304, or other special taxing district or assessment or service district authorized by law to borrow money; ~~or~~

(b) the state, any board, agency, or department of the state, or the board of regents of the Montana university system when authorized by law to borrow money*; or*

(c) for the purposes of [sections 1 through 18] only, an Indian tribal government.

(4) "Reserve fund" means the municipal finance consolidation act reserve fund created in 17-5-1630."

Section 20. Section 17-5-1608, MCA, is amended to read:

"17-5-1608. Limitations on amounts. The board may not issue any bonds or notes that cause the total outstanding indebtedness of the board under this part, except for bonds or notes issued to fund or refund other outstanding bonds or notes or to purchase registered warrants or tax or revenue anticipation notes of a local government as defined in 7-6-1101, to exceed ~~$120~~ *$190* million."

Section 21. Appropriation. There is appropriated $10 from the general fund to the office of the governor for the biennium beginning July 1, 2007, for administrative costs.

Section 22. Codification instruction. [Sections 1 through 18] are intended to be codified as an integral part of Title 90, chapter 4, and the provisions of Title 90, chapter 4, apply to [sections 1 through 18].

Section 23. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 21] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 379

[HB 390]

AN ACT PROVIDING FOR AND REGULATING A FORM OF PARIMUTUEL WAGERING IN WHICH A PERSON DEPOSITS MONEY IN AN ACCOUNT WITH AN ADVANCE DEPOSIT WAGERING HUB OPERATOR LICENSED BY THE BOARD OF HORSERACING TO CONDUCT ADVANCE DEPOSIT WAGERING; AMENDING SECTIONS 23-4-101, 23-4-202, 23-4-301, 23-4-302, AND 23-5-112, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-4-101, MCA, is amended to read:

"23-4-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advance deposit wagering" means a form of parimutuel wagering in which a person deposits money in an account with an advance deposit wagering hub operator licensed by the board to conduct advance deposit wagering, and the money is used to pay for parimutuel wagers made in person, by telephone, or through a communication by other electronic means on horse or greyhound races held in or outside this state.

(2) "Advance deposit wagering hub operator" means a simulcast and interactive wagering hub business licensed by the board that, through a subscriber-based service located in this or another state, conducts parimutuel wagering on the races that it simulcasts and on other races that it carries in its wagering menu and that uses a computer that registers bets and divides the total amount bet among those who won.

~~(1)~~*(3)* "Board" means the board of horseracing provided for in 2-15-3106.

~~(2)~~*(4)* "Board of stewards" means a board composed of three stewards who supervise race meets.

~~(3)~~*(5)* "Department" means the department of livestock provided for in Title 2, chapter 15, part 31.

~~(4)~~*(6)* "Immediate family" means the spouse, parents, children, grandchildren, brothers, or sisters of an official or licensee regulated by this chapter who have a permanent or continuous residence in the household of the official or licensee and all other persons who have a permanent or continuous residence in the household of the official or licensee.

~~(5)~~*(7)* "Minor" means a person under 18 years of age.

~~(6)~~*(8)* "Persons" means individuals, firms, corporations, fair boards, and associations.

~~(7)~~*(9)* (a) "Race meet" means racing of registered horses or mules at which the parimutuel system of wagering is used. The term includes horseraces, mule races, and greyhound races that are simulcast.

(b) The term does not include live greyhound racing.

~~(8)~~*(10)* "Racing" means live racing of registered horses or mules and simulcast racing of horses, mules, and greyhounds.

~~(9)~~*(11)* "Simulcast" means a live broadcast of an actual horserace, mule race, or greyhound race at the time it is run. The term includes races of local or national prominence.

~~(10)~~*(12)* "Simulcast facility" means a facility at which horseraces, mule races, or greyhound races are simulcast and wagering on the outcome is permitted under the parimutuel system.

(13) "Source market fee" means the portion of a wager made with a licensed advance deposit wagering hub operator by a Montana resident that is paid to the board.

~~(11)~~*(14)* "Steward" means an official hired by the department and by persons sponsoring a race meet to regulate and control the day-to-day conduct and operation of a sanctioned meet."

Section 2. Section 23-4-202, MCA, is amended to read:

"23-4-202. (Temporary) Penalty for violations of law — authority of board — judicial review. (1) A person holding a race meet or an owner, trainer, or jockey participating in a race meet~~,~~ without first being licensed under this chapter~~,~~ or a person violating this chapter is guilty of a misdemeanor.

(2) The board or, upon the board's authorization, the board of stewards of a race meet at which ~~they~~ *the stewards* officiate may exclude from racecourses ~~in this state~~ a person whom the board considers detrimental to the best interest of racing as defined by rules of the board.

(3) As its own formal act or through an act of a board of stewards of a race meet, the board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed $1,000, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may forbid application for relicensure for a 2-year period. Fines collected under this subsection must be deposited in the general fund.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed under this chapter. The rules may include provisions for the following:

(a) summary imposition of penalty by the stewards of a race meet, including a fine and license suspension, subject to review under the contested case provisions of the Montana Administrative Procedure Act;

(b) stay of a summary imposition of penalty by either the board or board of stewards;

(c) retention of purses pending final disposition of complaints, protests, or appeals of stewards' rulings;

(d) setting aside of up to 3% of exotic wagering on races, including simulcast races, to be deposited in the board's agency fund account. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(e) using 2% of exotic wagering on live racing to be immediately and equally distributed to all purses except stakes races;

(f) assessment of penalty and interest on the late payment of fines, which must be paid before licenses are reinstated;

(g) definition of exotic forms of wagering on races to be allowed;

(h) standards for simulcast facilities; ~~and~~

(i) conduct and supervision of simulcast races and parimutuel betting or wagering on simulcast races*; and*

(j) conduct and supervision of advance deposit wagering.

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter.

23-4-202. (Effective July 1, 2007) Penalty for violations of law — authority of board — judicial review. (1) A person holding a race meet or an owner, trainer, or jockey participating in a race meet without first being licensed under this chapter or a person violating this chapter is guilty of a misdemeanor.

(2) The board or, upon the board's authorization, the board of stewards of a race meet at which the stewards officiate may exclude from racecourses a person whom the board or board of stewards considers detrimental to the best interest of racing as defined by rules of the board.

(3) As its own formal act or through an act of a board of stewards of a race meet, the board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed $1,000, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may prohibit application for relicensure for a 2-year period. Fines collected under this subsection must be deposited in the general fund.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed under this chapter. The rules may include provisions for the following:

(a) summary imposition of penalty by the stewards of a race meet, including a fine and license suspension, subject to review under the contested case provisions of the Montana Administrative Procedure Act;

(b) stay of a summary imposition of penalty by either the board or board of stewards;

(c) retention of purses pending final disposition of complaints, protests, or appeals of stewards' rulings;

(d) setting aside of up to 3% of exotic wagering on races, including simulcast races, to be deposited in a state special revenue account and statutorily appropriated to the board as provided in 17-7-502. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(e) using 2% of exotic wagering on live racing to be immediately and equally distributed to all purses except stakes races;

(f) assessment of penalty and interest on the late payment of fines, which must be paid before licenses are reinstated;

(g) definition of exotic forms of wagering on races to be allowed;

(h) standards for simulcast facilities; ~~and~~

(i) conduct and supervision of simulcast races and parimutuel betting or wagering on simulcast races*; and*

(j) conduct and supervision of advance deposit wagering.

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter."

Section 3. Section 23-4-301, MCA, is amended to read:

"23-4-301. Parimutuel betting — other betting illegal. (1) It is unlawful to make, report, record, or register a bet or wager on the result of a contest of speed, skill, or endurance of an animal, whether the contest is held within or outside ~~of~~ this state, except under 23-5-502 or this chapter.

(2) A licensee conducting a race meet under this chapter may provide a place in the race meet grounds or enclosure where the licensee may conduct or supervise the use of the parimutuel system by patrons on the result of the races conducted under this chapter and the rules of the board.

(3) A person licensed under this chapter to hold a race meet may simulcast live races at a place in the race meet grounds or simulcast facility where the licensee may conduct or supervise the use of the parimutuel system by patrons on the results of simulcast races approved by the board.

(4) It is unlawful to conduct pool selling or bookmaking or to circulate handbooks or to bet or wager on a race of a licensed race meet, other than by the parimutuel system and in the race meet grounds or enclosure where the race is held, or to permit a minor to use the parimutuel system.

(5) Each licensee conducting a parimutuel system for an intrastate simulcast race meet shall combine the parimutuel pools at a simulcast facility with those at the actual racing facility for the purpose of determining the odds

and computing payoffs. The amount of the handle at the simulcast race meet must be combined with the amount of *the* parimutuel handle at the live racing facility for the purposes of distribution of money derived from parimutuel betting under 23-4-302 and 23-4-304.

(6) Negotiated purse money from intrastate and interstate simulcast parimutuel handles at racing associations that do not conduct live racing will be pooled and distributed to all tracks conducting live racing,. ~~all moneys to~~ *All money must* be distributed on a ~~percent~~ *percentage*, based on each track's percent, of *the* total annual on-track parimutuel handle.

(7) The board may license an advance deposit wagering hub operator to conduct advance deposit wagering. Advance deposit wagering is prohibited and illegal unless it is conducted through an advance deposit wagering hub operator licensed by the board. A licensed advance deposit wagering hub operator:

(a) may accept advance deposit wagering money for races conducted by a licensed race meet;

(b) may not accept a wager in an amount in excess of the money on deposit in the account of a person who wishes to make the wager;

(c) may not allow a person under 18 years of age to open an account with the advance deposit wagering hub operator, make a wager from an account, or otherwise have access to an account;

(d) shall include a statement in any of its advertising for advance deposit wagering that a person under 18 years of age is not allowed to participate;

(e) shall verify the identification, residence, and age of each person seeking to open an advance deposit wagering account;

(f) shall agree to pay to the board a source market fee in an amount equal to a percentage, as set forth in its license agreement, of the total amount wagered by Montana residents from their accounts with the advance deposit wagering hub operator; and

(g) shall agree to a payment schedule of source market fees as set forth in its license agreement."

Section 4. Section 23-4-302, MCA, is amended to read:

"23-4-302. (Temporary) Distribution of deposits — breakage. (1) Each licensee conducting the parimutuel system shall distribute all funds deposited in any pool to the winner of the parimutuel pool, less an amount that in the case of exotic wagering on races may not exceed 26% and in all other races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(2) Each licensee conducting the parimutuel system for a simulcast race meet shall distribute all funds deposited with the licensee in any pool for the simulcast race meet, less an amount that in the case of exotic wagering on these races may not exceed 26%, unless the signal originator percentage is higher, in which case the Montana simulcast licensee may adopt the same percentage withheld as the place where the signal originated, and that in all other of these races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(3) Each licensee conducting a parimutuel system for a simulcast race meet shall deduct 1% of the total amount wagered on the race meet and deposit it in the board's agency fund account. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(4) (a) Source market fees from licensed advance deposit wagering hub operators must be deposited by the board in the board's agency fund account.

(b) The board shall pay 80% of the source market fees generated between May 1 and the following April 30 to live race meet licensees based on each live race meet licensee's percentage of the total annual on-track parimutuel handle during the previous live race season. Prior to the beginning of each year's live race season, the correct percentage must be distributed by the board to each live race meet licensee to be used for race purses or other purposes that the board considers appropriate for the good of the horseracing industry.

(c) Ten percent of the source market fees paid to the board in a calendar year may be retained by the board for the payment of administrative expenses. One-half of the remaining 10% of the source market fees paid to the board in a calendar year must, by January 31 of the following calendar year, be paid to the owner bonus program and the other one-half to the breeder bonus program.

23-4-302. (Effective July 1, 2007) Distribution of deposits — breakage. (1) Each licensee conducting the parimutuel system shall distribute all funds deposited in any pool to the winner of the parimutuel pool, less an amount that in the case of exotic wagering on races may not exceed 26% and in all other races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(2) Each licensee conducting the parimutuel system for a simulcast race meet shall distribute all funds deposited with the licensee in any pool for the simulcast race meet, less an amount that in the case of exotic wagering on these races may not exceed 26%, unless the signal originator percentage is higher, in which case the Montana simulcast licensee may adopt the same percentage withheld as the place where the signal originated, and that in all other of these races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(3) Each licensee conducting a parimutuel system for a simulcast race meet shall deduct 1% of the total amount wagered on the race meet and deposit it in a state special revenue account. The funds deposited are statutorily appropriated to the board as provided in 17-7-502. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(4) (a) Source market fees from licensed advance deposit wagering hub operators must be deposited by the board in the board's state special revenue account.

(b) The board shall pay 80% of the source market fees generated between May 1 and the following April 30 to live race meet licensees based on each live race meet licensee's percentage of the total annual on-track parimutuel handle during the previous live race season. Prior to the beginning of each year's live race season, the correct percentage must be distributed by the board to each live race

meet licensee to be used for race purses or other purposes that the board considers appropriate for the good of the horseracing industry.

(c) Ten percent of the source market fees paid to the board in a calendar year may be retained by the board for the payment of administrative expenses. One-half of the remaining 10% of the source market fees paid to the board in a calendar year must, by January 31 of the following calendar year, be paid to the owner bonus program and the other one-half to the breeder bonus program."

Section 5. Section 23-5-112, MCA, is amended to read:

"23-5-112. Definitions. Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. More than 75 numbers may not be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover one or more previously designated arrangements of numbers on the bingo card.

(5) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(6) "Card game table" or "table" means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

(7) "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

(8) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

(9) "Department" means the department of justice.

(10) "Distributor" means a person who:

(a) purchases or obtains from a licensed manufacturer, distributor, or route operator equipment of any kind for use in gambling activities; and

(b) sells the equipment to a licensed distributor, route operator, or operator.

(11) (a) "Gambling" or "gambling activity" means risking any money, credit, deposit, check, property, or other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise.

(b) The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(12) "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

(13) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(14) (a) "Gift enterprise" means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services.

(b) The term does not mean:

(i) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

(ii) a promotional game of chance; or

(iii) an amusement game regulated under Title 23, chapter 6.

(15) "Gross proceeds" means gross revenue received less prizes paid out.

(16) "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under Title 23, chapter 7, or under part 5 of this chapter or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, or craps table or a slot machine except as provided in 23-5-153.

(17) "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, including craps, hazard, or chuck-a-luck, but not including activities authorized by 23-5-160;

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in Title 23, chapter 4, and parts 2, 5, and 8 of this chapter;

(d) credit gambling; and

(e) internet gambling.

(18) (a) "Internet gambling", by whatever name known, includes but is not limited to the conduct of any legal or illegal gambling enterprise through the use of communications technology that allows a person using money, paper checks, electronic checks, electronic transfers of money, credit cards, debit cards, or any other instrumentality to transmit to a computer information to assist in the placing of a bet or wager and corresponding information related to the display of the game, game outcomes, or other similar information.

(b) The term does not include the operation of a simulcast facility *or advance deposit wagering with a licensed advance deposit wagering hub operator* allowed by Title 23, chapter 4, or the state lottery provided for in Title 23, chapter 7. If all aspects of the gaming are conducted on Indian lands in conformity with federal statutes and with administrative regulations of the national Indian gaming commission, the term does not include class II gaming or class III gaming as defined by 25 U.S.C. 2703.

(19) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

(20) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

(21) "License" means a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab game seller, manufacturer of electronic live bingo or keno equipment, other manufacturer, distributor, or route operator that is issued to a person by the department.

(22) "Licensee" means a person who has received a license from the department.

(23) "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

(24) (a) "Lottery" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance.

(b) The term does not mean lotteries authorized under Title 23, chapter 7.

(25) "Manufacturer" means a person who:

(a) assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device and who sells the equipment directly to a licensed distributor, route operator, or operator; or

(b) possesses gambling devices or components of gambling devices for the purpose of testing them.

(26) "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established for purposes other than to conduct a gambling activity.

(27) "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public a gambling device or gambling enterprise authorized under parts 1 through 8 of this chapter.

(28) "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter.

(29) "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

(30) "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

(31) "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it. The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by the department that was manufactured or intended for use for purposes other than gambling.

(32) "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

(33) "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

(34) "Route operator" means a person who:

(a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in a gambling activity;

(b) leases the equipment to a licensed operator for use by the public; and

(c) may sell to a licensed operator equipment that had previously been authorized to be operated on a premises.

(35) "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of public health and human services.

(36) (a) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable

consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner.

(b) This definition does not apply to video gambling machines authorized under part 6 of this chapter.

(37) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

Section 6. Effective date. [This act] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 380

[HB 426]

AN ACT REMOVING THE $500,000 LIMIT ON A COUNTY'S ROAD AND BRIDGE CAPITAL IMPROVEMENT FUND; AMENDING SECTION 7-14-2506, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, under current Montana law, the governing body of a county may establish a road and bridge capital improvement fund to be used for acquisition and replacement of property and equipment; and

WHEREAS, that fund currently may not exceed $500,000; and

WHEREAS, many projects or acquisitions can substantially exceed the current limit.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-2506, MCA, is amended to read:

"7-14-2506. County road and bridge capital improvement fund ~~— limitation~~. The governing body of a county may establish a road and bridge capital improvement fund in accordance with the provisions of Title 7, chapter 6, part 6. ~~The fund may not exceed $500,000.~~"

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 381

[HB 480]

AN ACT APPROPRIATING MONEY FOR THE MAINTENANCE AND RESTORATION OF THE DALY MANSION; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation. (1) The amounts of $25,000 in fiscal year 2008 and $25,000 in fiscal year 2009 are appropriated from the general fund to the department of commerce to be awarded to the Daly mansion preservation trust

to be used for direct maintenance and restoration of the Daly mansion and grounds.

(2) If it is determined by the personnel or officers of the Daly mansion preservation trust that the funds provided for in this section are no longer needed, the funds must be returned to the general fund.

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 382

[HB 488]

AN ACT REQUIRING THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE TO CONDUCT A STUDY ON THE REVALUATION OF CLASS THREE AGRICULTURAL LAND, CLASS FOUR RESIDENTIAL AND COMMERCIAL PROPERTY, AND CLASS TEN FOREST LANDS; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, section 15-7-111, MCA, requires the periodic revaluation of class three agricultural land, class four residential and commercial property, and class ten forest lands; and

WHEREAS, class three, class four, and class ten property in each county must be revalued by January 1, 2009; and

WHEREAS, recent periodic revaluations have resulted in disparate changes in assessed valuations across the state; and

WHEREAS, these disparate changes in assessed valuations have a significant effect on property taxpayers, local governments, and school districts; and

WHEREAS, Article VIII, section 3, of the Montana Constitution requires that the state equalize the valuation of all property that is to be taxed in the manner provided by law; and

WHEREAS, the Legislature has not developed a prospective method for dealing with the periodic revaluation of property; and

WHEREAS, some responses to periodic revaluations have been constitutionally suspect; and

WHEREAS, the 60th Legislature desires to respond to the new revaluation of property in a systematic and rational way.

THEREFORE, it is the purpose of this bill to require the Revenue and Transportation Interim Committee to conduct a study of periodic revaluation of property and to make recommendations to the next Legislature and the Governor.

Be it enacted by the Legislature of the State of Montana:

Section 1. Interim study on property reappraisal cycle. (1) The revenue and transportation interim committee, provided for in 5-5-227, shall conduct an interim study of the periodic revaluation of taxable property that is required by 15-7-111. In the study, the committee shall:

(a) evaluate, using the best data available for the revaluation of property that goes into effect January 1, 2009:

(i) changes in the productivity value of class three agricultural land and nonqualifying agricultural land by county;

(ii) changes in market value of class four residential and commercial property by county; and

(iii) changes in the productivity value of class ten forest lands by county;

(b) consider strategies to mitigate the effects of changes in revaluation, including strategies to maintain:

(i) equity among property taxpayers; and

(ii) the financial integrity of local governments and school districts;

(c) review the department of revenue's methods for revaluing class three, class four, and class ten property and consider procedures that would improve the periodic revaluation process;

(d) review other matters that the committee considers relevant in the conduct of the study; and

(e) make recommendations to the 61st legislature.

(2) The committee may request the assistance of the legislative services division, the legislative fiscal division, the department of revenue, other state agencies, the general public, and other interested parties in the conduct of the study.

(3) The committee shall complete the study by September 15, 2008, and report to the 61st legislature its findings and recommendations, including recommendations for legislation.

Section 2. Appropriation. There is appropriated $50,000 to the legislative services division for the 2009 biennium for the operating expenses and personnel expenses related to the study required by [section 1].

Section 3. Effective date. [This act] is effective July 1, 2007.

Section 4. Termination. [This act] terminates September 15, 2008.

Approved May 3, 2007

CHAPTER NO. 383

[HB 512]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS THROUGH THE TREASURE STATE ENDOWMENT PROGRAM; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT STATE SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR PRELIMINARY ENGINEERING GRANTS; APPROPRIATING MONEY FROM THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM STATE SPECIAL REVENUE ACCOUNT TO THE DEPARTMENT OF NATURAL RESOURCES AND

CONSERVATION FOR FINANCIAL ASSISTANCE TO REGIONAL WATER AUTHORITIES FOR REGIONAL WATER PROJECTS; TERMINATING A PRIOR TREASURE STATE ENDOWMENT GRANT; AMENDING SECTION 1, CHAPTER 435, LAWS OF 2001; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation from treasure state endowment state special revenue account. (1) There is appropriated to the department of commerce $17,333,653 of the interest earnings from the treasure state endowment state special revenue account to finance grants authorized by this section.

(2) The funds appropriated in this section must be used by the department to make grants to the governmental entities listed in subsection (3) for the described purposes and in amounts not to exceed the amounts set out in subsection (3). The appropriations are subject to the conditions set forth in [sections 2 and 3] and described in the treasure state endowment program 2009 biennium report to the 60th legislature. The legislature, pursuant to 90-6-710, authorizes the grants for the projects listed in subsection (3). The department shall commit funds to projects listed in subsection (3), up to the amounts authorized, based on the manner of disbursement set forth in [section 3] until interest earnings deposited into the treasure state endowment state special revenue account during the 2009 biennium are expended.

(3) The following applicants and projects are authorized for grants:

Applicant/Project	Grant Amount
1. Lewis and Clark County for the Woodlawn Addition (water)	$596,420
2. Bainville, Town of (wastewater)	715,000
3. Madison County (bridge)	370,100
4. Sweet Grass County (bridge)	151,493
5. Powell County (bridge)	263,074
6. Circle, Town of (wastewater)	750,000
7. Harlem, City of (water)	750,000
8. Jordan, Town of (wastewater)	700,000
9. Thompson Falls, City of (water)	363,000
10. Twin Bridges, Town of (wastewater)	750,000
11. Seeley Lake-Missoula County Water District (water)	750,000
12. Fergus County (bridge)	238,362
13. Sunny Meadows-Missoula County Water and Sewer District (water)	325,000
14. Tri-County Water District (water)	313,500
15. Blaine County (bridge)	617,017
16. Loma County Water and Sewer District (water)	750,000
17. Ekalaka, Town of (water and wastewater)	706,369
18. Stillwater County (bridge)	407,500
19. Sheridan, Town of (wastewater)	750,000
20. Carter-Chouteau County Water and Sewer District (water)	750,000

21. Bigfork County Water and Sewer District (wastewater)	750,000
22. Dayton-Lake County Water and Sewer District (wastewater)	750,000
23. Judith Basin County (bridge)	192,215
24. Pinesdale, Town of (water)	750,000
25. Power-Teton County Water and Sewer District (water)	604,286
26. Superior, Town of (water)	600,000
27. RAE Subdivision County Water and Sewer District No. 313 (water)	750,000
28. Jefferson County (bridge)	295,800
29. Fort Benton, City of (stormwater)	750,000
30. Laurel, City of (wastewater)	750,000
31. Yellowstone County (bridge)	97,079
32. Neihart, Town of (water)	223,000
33. Three Forks, City of (wastewater)	750,000
34. Manhattan, Town of (water)	600,000
35. Cut Bank, City of (water)	550,000
36. Whitehall, Town of (wastewater)	750,000
37. Crow Tribe (wastewater)	750,000
38. Big Sandy, Town of (wastewater)	750,000
39. Fairfield, Town of (wastewater)	750,000
40. Hamilton, City of (wastewater)	750,000
41. Gallatin County/Hebgen Lake Estates (wastewater)	750,000
42. Shelby, City of (water)	750,000
43. Whitefish, City of (wastewater)	750,000
44. Panoramic Mountain River Heights (water)	191,500
45. Custer County (bridge)	63,750
46. Brady, Town of (wastewater)	750,000
47. Elk Meadows (water)	410,000
48. Polson, City of (water)	750,000
49. Darby, Town of (water)	750,000
50. Goodan-Keil (water)	532,250
51. Butte-Silver Bow (water)	750,000
52. Columbia Falls, City of (wastewater)	750,000
53. North Valley County (water)	750,000
54. Saltese, Town of (wastewater)	390,000
55. Red Lodge, City of (water)	750,000
56. Black Eagle, Town of (water)	365,000

(4) This section constitutes a valid obligation of funds to the grant recipients listed in subsection (3) for purposes of encumbering the treasure state endowment state special revenue account funds during the 2009 biennium pursuant to 17-7-302. However, a grant recipient's entitlement to receive funds

is dependent on the grant recipient's compliance with the conditions described in [section 3(1)] and on the availability of funds.

(5) Funding for projects numbered 1 through 56 in subsection (3) and for the department of natural resources and conservation project in subsection (6) will be provided from interest earnings deposited into the treasure state endowment special revenue account during the biennium ending June 30, 2009. Funding for the projects listed in subsection (3) will be made available in the order that the grant recipients satisfy the conditions described in [section 3(1)]. If funds appropriated in subsection (1) are insufficient to fund any of the projects that have satisfied the conditions described in [section 3(1)] prior to June 30, 2009, the treasure state endowment program must fund the projects by borrowing money from the board of investments pursuant to 90-6-701(1)(b) for those projects that have satisfied the conditions described in [section 3(1)] by June 30, 2009. There is appropriated to the department of commerce up to $17,563,890 for funds borrowed from the board of investments.

(6) Up to $2,200,000 is granted to the department of natural resources and conservation in fiscal year 2009, which must be used to fund local government renewable resource projects. The grant may only be awarded for the amount of anticipated shortfall in funding all of the renewable resource program grants authorized in [section 1(3) of House Bill No. 6]. Any unexpended funds remaining from this grant on July 1, 2009, will be remitted to the department of commerce, treasure state endowment program, to be used for repayment of loans.

Section 2. Approval of grants. The legislature, pursuant to 90-6-701, authorizes grants for the projects identified in [section 1(3)].

Section 3. Conditions and manner of disbursement of grant funds. (1) The disbursement of grant funds under [sections 1 through 3] for the projects specified in [section 1(3)] is subject to completion of the following conditions:

(a) The grant recipient shall execute a grant agreement with the department of commerce.

(b) The scope of work and budget for the project as approved by the department in the grant agreement must be consistent with the intent and circumstances under which the application was originally ranked by the department and approved by the legislature. The department may not approve amendments to the scope of work or budget affecting activities or improvements that would materially alter the intent and circumstances under which the application was originally ranked by the department and approved by the legislature.

(c) The grant recipient shall document that other matching funds required for completion of the project are firmly committed.

(d) The grant recipient must be in compliance with the auditing and reporting requirements provided for in 2-7-503 and have established a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles. Tribal governments shall comply with auditing and reporting requirements provided for in OMB Circular A-133.

(e) The grant recipient shall satisfactorily comply with any conditions described in the application (project) summaries section of the treasure state endowment program 2009 biennium report to the 60th legislature.

(f) The grant recipient shall satisfy other specific requirements considered necessary by the department to accomplish the purpose of the project as evidenced by the application to the department.

(2) The department shall commit grant funds to projects authorized in [section 1(3)] in the order that projects have met the conditions in subsection (1).

(3) The department shall disburse grant funds on a reimbursement basis as grant recipients incur eligible project expenses.

(4) If actual project expenses are lower than the projected expense of the project, the department may, at its discretion, reduce the amount of treasure state endowment program grant funds to be provided to grant recipients in proportion to all other project funding sources. In the alternative, the department may authorize the use of the remaining authorized treasure state endowment program grant amount for the construction of additional, directly related components that will further enhance the overall system.

(5) If actual project expenses are lower than the projected expense of a project as presented in the grant recipient's treasure state endowment program application, the department may, at its discretion, reduce the amount of treasure state endowment program grant funds to be provided so that the grant recipient's projected average residential user rates do not become lower than their target rate as determined by the department.

(6) With the exception of bridges, all projects must adhere to the design standards required by the department of environmental quality. Recipients of treasure state endowment program funds that are not subject to the department of environmental quality design standards must adhere to generally accepted industry standards, such as Recommended Standards for Wastewater Facilities or Recommended Standards for Water Works, published by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, latest edition.

(7) Recipients of treasure state endowment program funds are subject to the requirements of the department of commerce as described in the treasure state endowment program project administration manual, adopted by the department through the administrative rulemaking process.

Section 4. Appropriations from treasure state endowment state special revenue account for emergency grants. There is appropriated to the department of commerce $100,000 for the biennium beginning July 1, 2007, from the interest earnings of the treasure state endowment state special revenue account for the purpose of providing local governments, as defined in 90-6-701, with emergency grants for infrastructure projects, as defined in 90-6-701.

Section 5. Appropriations from treasure state endowment special revenue account for preliminary engineering grants. There is appropriated to the department of commerce $600,000 for the biennium beginning July 1, 2007, from the interest earnings of the treasure state endowment state special revenue account for the purpose of providing local governments, as defined in 90-6-701, with preliminary engineering grants for infrastructure projects, as defined in 90-6-701.

Section 6. Section 1, Chapter 435, Laws of 2001, is amended to read:

"**Section 1. Appropriations from treasure state endowment special revenue account.** (1) There is appropriated to the department of commerce the

interest earnings of the treasure state endowment special revenue account to finance grants authorized by this section.

(2) The funds appropriated in this section must be used by the department to make grants to the governmental entities listed in subsection (3) for the described purposes and in amounts not to exceed the amounts set out in subsection (3). The appropriations are subject to the conditions set forth in [sections 1 through 3] and described in the treasure state endowment program 2003 biennium report to the 57th legislature. The legislature, pursuant to 90-6-710, authorizes the grants for the projects listed in subsection (3). The department shall commit funds to projects listed in subsection (3), up to the amounts authorized, based on the manner of disbursement set forth in [section 3] until interest earnings deposited into the treasure state endowment special revenue account during the 2003 biennium are expended.

(3) The following applicants and projects are authorized for grants in the order of their priority:

Applicant/Project	Grant
1. Lewis and Clark County (bridge)	$500,000
2. Alder Water and Sewer District, Madison County (wastewater)	500,000
3. Hot Springs, Town of (water)	500,000
4. Whitewater Water and Sewer District, Phillips County (wastewater)	500,000
5. Virginia City, Town of (wastewater)	500,000
6. Froid, Town of (wastewater)	390,600
7. Nashua, Town of (wastewater)	500,000
8. Richland County (bridge)	296,500
9. Lavina, Town of (wastewater)	483,000
10. Gardiner-Park County Water District, Park County (water)	398,500
11. Park City/County Water and Sewer District, Stillwater County (wastewater)	500,000
12. Stanford, Town of (wastewater)	500,000
13. Florence County Water and Sewer District, Ravalli County (wastewater)	500,000
14. Ashland County Water and Sewer District, Rosebud County (wastewater)	500,000
15. Geraldine, Town of (water)	167,460
16. Manhattan, Town of (wastewater)	500,000
17. Lambert County Water and Sewer District, Richland County (water)	403,000
18. Browning, Town of (water)	500,000
19. Kevin, Town of (wastewater)	385,000
20. Power-Teton Co. Water and Sewer District, Teton County (water)	425,000
21. Blackfeet Tribe (water)	500,000
22. Whitefish, City of (wastewater)	500,000
23. Choteau, City of (wastewater)	500,000

~~24. Lockwood Water and Sewer District, Yellowstone County (wastewater) 500,000~~

25. Eureka, Town of (water)	369,000
26. Shelby, City of (water)	500,000
27. Charlo Sewer District, Lake County (wastewater)	500,000
28. Essex Water and Sewer District, Flathead County (water)	225,000
29. Yellowstone County (bridge)	300,000
30. Hinsdale Water and Sewer District, Valley County (wastewater)	329,000
31. Havre, City of (water)	500,000
32. Helena, City of (storm drain)	500,000
33. Fairfield, Town of (wastewater)	500,000
34. Jordan, Town of (water/wastewater)	500,000

(4) If sufficient funds are available, this section constitutes a valid obligation of funds to the grant recipients listed in subsection (3) for purposes of encumbering the treasure state endowment special revenue account funds received during the 2003 biennium under 17-7-302. However, a grant recipient's entitlement to receive funds is dependent on the grant recipient's compliance with the conditions described in [section 3(1)] and on the availability of funds.

(5) If funds deposited into the treasure state endowment special revenue account during the biennium ending June 30, 2003, are insufficient to fully fund the projects numbered 1 through 31 in subsection (3) that have satisfied the conditions described in [section 3(1)] by June 30, 2003, these projects will be funded from deposits into the treasure state endowment special revenue account made during the 2005 biennium, before projects authorized by the 58th legislature receive funding from the account. However, any of the projects numbered 1 through 31 listed in subsection (3) that have not completed the conditions described in [section 3(1)] by January 1, 2003, must be reviewed by the next regular session of the legislature to determine if the authorized grant should be withdrawn.

(6) Projects numbered 32 through 34 listed in subsection (3) that have satisfied the conditions described in [section 3(1)] may not receive grant funds unless sufficient funds have been deposited into the treasure state endowment special revenue account to fully fund the projects numbered 1 through 31 in subsection (3). However, if a subsequent legislature withdraws funding for any of the projects numbered 1 through 31 listed in subsection (3), those funds could be made available to projects numbered 32 through 34 listed in subsection (3) that have completed the conditions described in [section 3(1)].

(7) In the event that any remaining funds deposited into the treasure state endowment special revenue account are insufficient to fully fund one of the grant recipients listed in subsection (3), the department may make the remaining funds from the treasure state endowment special revenue account available to the grant recipient on condition that the grant recipient is able to firmly commit the balance of the amount necessary to fund the project in its entirety."

Section 7. Appropriation from treasure state endowment regional water system special revenue account. (1) There is appropriated to the department of natural resources and conservation the interest earnings of the treasure state endowment regional water system state special revenue account

to finance the state's share of regional water system projects authorized by this section and as set forth in 90-6-715.

(2) The dry prairie rural water authority and the north central Montana regional water authority are authorized to receive funds.

(3) Up to $6,686,000 is authorized to provide the state's share for regional water system projects.

(4) A regional water authority's receipt of funds is dependent on the authority's compliance with the conditions described in [section 9(1)].

(5) This section constitutes a valid obligation of funds to the regional water authorities listed in subsection (2) for purposes of encumbering the treasure state endowment regional water system state special revenue account funds received during the 2009 biennium under 17-7-302.

Section 8. Approval of funds — completion of appropriation. (1) The legislature, pursuant to 90-6-715, authorizes funds for the regional water authorities identified in [section 7(2)].

(2) The authorization of these funds completes an appropriation from the treasure state endowment regional water system special revenue account provided for in 17-5-703(4)(d).

Section 9. Conditions — manner of disbursement of funds. (1) The disbursement of funds under [sections 7 through 9] is subject to completion of the following conditions:

(a) The regional water authority shall execute an agreement with the department of natural resources and conservation.

(b) The regional water authority must have a project management plan that is approved by the department.

(c) The regional water authority shall establish a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles.

(d) The regional water authority shall provide the department with a detailed preliminary engineering report.

(2) The department shall disburse funds on a reimbursement basis as the regional water authority incurs eligible project expenses.

Section 10. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 11. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2007.

(2) [Sections 7 through 9 and this section] are effective on passage and approval.

Approved May 3, 2007

CHAPTER NO. 384

[HB 569]

AN ACT GENERALLY REVISING LAWS RELATED TO THE CONTROL OF DISEASES AND INSECTS IN NURSERIES; REVISING DEFINITIONS;

DEFINING "PLANT DEALER" AND "LANDSCAPE SERVICE"; REVISING NURSERY LICENSE FEES; CLARIFYING THAT DEPARTMENT ACTIONS REQUIRED TO DEAL WITH INFECTED OR INFESTED NURSERY STOCK MUST BE CONDUCTED AT THE OWNER'S EXPENSE; REVISING THE DEPOSIT AND USE OF NURSERY OR PLANT DEALER FEES AND CIVIL PENALTIES; AND AMENDING SECTIONS 80-7-105, 80-7-106, 80-7-108, 80-7-109, 80-7-110, 80-7-122, 80-7-123, 80-7-133, AND 80-7-135, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-7-105, MCA, is amended to read:

"80-7-105. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Firm" means an individual, company, partnership, association, or corporation.

(2) "Landscape service" means a firm that buys, sells, or resells nursery stock.

~~(2)~~*(3)* "Nursery" means the business or location where nursery stock is grown or offered for sale or resale or as part of a landscape service.

~~(3)~~*(4)* "Nursery stock" means botanically classified plants or parts of plants*, including but not limited to tropical potted plants, aquatic plants, cut trees and their products, and turf or sod grass*. The following plants and plant materials may not be considered nursery stock:

~~(a) aquatic plants used for aquarium purposes;~~

~~(b)~~*(a)* field crop plants and seeds;

~~(c)~~*(b)* pasture grasses;

~~(d)~~*(c)* cut plants not for propagation;

~~(e) corms, tubers, and bulbs;~~

~~(f)~~*(d)* fruits or vegetables for human or animal consumption;

~~(g)~~*(e)* cut trees and products ~~for processing~~ *that are going to be processed to a point that they no longer represent a pest risk*; and

~~(h)~~*(f)* plant debris for disposal or processing.

~~(4)~~*(5)* "Nursery stock certification" means the process by which the nursery stock or other plants have been inspected and found to meet certification standards established by department rule.

(6) "Plant dealer" means a firm that buys plants or plant products from a producer for the purpose of offering the plants or plant products for sale or resale or as part of a landscape service.

~~(5)~~*(7)* "Plant inspection certificate" means a document issued by the department or the plant pest regulatory agency of another state that declares that the nursery stock, plants, or plant material grown by the firm named on the certificate is apparently free of injurious plant pests.

~~(6)~~*(8)* "Plant pest" means an insect, *weed,* fungus, virus, bacteria, or other organism that can directly or indirectly injure or cause damage in a plant or a product of a plant and that meets the criteria as a pest established by department rule. For purposes of this chapter, noxious weeds, as defined in 7-22-2101(8)(a)(i), or other exotic weeds are defined as plant pests."

Section 2. Section 80-7-106, MCA, is amended to read:

"80-7-106. License required — application and payment of license fee. (1) A firm, *nursery, or plant dealer* engaging in the business of selling or distributing nursery stock in this state shall obtain a license for each ~~nursery~~ *location* from the department.

(2) The license must be in the name of the firm, *nursery, or plant dealer* seeking the license and expires on the anniversary date established by rule by the board of review established in 30-16-302. The applicant shall provide information that the department finds necessary to carry out the provisions and purposes of this chapter and in the form determined by rule by the board of review established in 30-16-302.

~~(3) (a) A nursery that earns less than $1,000 in gross annual sales of nursery stock and that submits an affidavit to that effect to the department is exempt from licensing.~~

~~(b) A nursery that earns $1,000 but less than $3,000 in gross annual sales of nursery stock and that submits an affidavit to that effect to the department shall pay a license fee of $30.~~

~~(c) A nursery that earns $3,000 or more in gross annual sales of nursery stock shall pay a license fee of $95.~~

(3) The department shall establish license fees by rule. License fees may be no less than $95 or more than $125. If the department determines that the revenue from the license fee is inadequate to accomplish the purposes of this chapter, the department may by rule increase the fee within the statutory limit.

(4) A new applicant or a firm, *nursery, or plant dealer* failing to renew a license on or before the annual anniversary date provided for in subsection (2) shall pay an additional nonrefundable ~~application~~ *late* fee of $25 for each license.

(5) An out-of-state firm that imports nursery stock into Montana for resale by a licensed Montana nursery *or plant dealer* is not required to obtain a license if the firm is licensed in the state of origin of the nursery stock and if that state extends a similar exemption to Montana firms.

~~(6) If the department determines that the revenue from the license fee is inadequate to accomplish the purposes of this chapter, the department may by rule increase the fee.~~

~~(7)~~*(6)* The fees required by the provisions of this section may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party."

Section 3. Section 80-7-108, MCA, is amended to read:

"80-7-108. Nursery stock inspection — fees. (1) The department may enter *the premises of* a firm, ~~or~~ nursery, *or plant dealer* ~~premises~~ during regular business hours for the purpose of inspecting nursery stock or other materials for possible plant pests or for determining licensure compliance. An inspection fee may not be assessed if the department requests the inspection.

(2) A firm, ~~or~~ nursery, *or plant dealer* may request the inspection of nursery stock, plants, or other materials by giving the department 5 days' notice prior to the time when the nursery stock, plants, or other materials are ready for inspection. A firm, ~~or~~ nursery, *or plant dealer* requesting an inspection shall pay a fee as established by department rule. The fee must cover the actual costs of inspection, surveys, and other services required to issue the plant inspection certificate.

(3) The department may issue a plant inspection certificate based on the results of a nursery stock or other plant inspection or inspection survey."

Section 4. Section 80-7-109, MCA, is amended to read:

"80-7-109. Duty to notify department of infestation. A firm, ~~or~~ nursery, *or plant dealer* with nursery stock or other materials that are *infected or* infested with plant pests, as defined in 80-7-105, shall notify the department. The firm, ~~or~~ nursery, *or plant dealer* shall comply with the instructions of the department for the control of the plant pests."

Section 5. Section 80-7-110, MCA, is amended to read:

"80-7-110. Removal of ~~infected~~ nursery stock — assessment of costs. (1) If a firm, *nursery, or plant dealer that owns* ~~owning~~ nursery stock or other materials infected or infested with any injurious plant pest fails to comply with the instructions of the department for the destruction or control of the injurious plant pest or the destruction of the infested or infected nursery stock or other material within the time specified by the department, the department may condemn, remove, or destroy the nursery stock or other material or treat it with a proper remedy *at the expense of the owner*.

(2) If an owner fails to pay the actual cost of the removal, treatment, or destruction within 30 days after notice has been mailed to the owner at the owner's last-known post-office address and to any purchaser of the property under contract for deed at the purchaser's last-known post-office address, the cost becomes a lien on the land of the owner and must be added by the county treasurer to the taxes upon the property and collected as other taxes."

Section 6. Section 80-7-122, MCA, is amended to read:

"80-7-122. Nursery stock certification. At the request of a *licensed* firm, ~~or~~ nursery, *or plant dealer*, the department may inspect nursery stock for the purpose of nursery stock certification. The department shall establish certification standards, inspection procedures, and fees by department rule."

Section 7. Section 80-7-123, MCA, is amended to read:

"80-7-123. Nursery account — investment of funds. (1) There is an account in the state special revenue fund. All inspection and license fee revenue *and reimbursements for costs* authorized under 80-7-106, 80-7-108, *80-7-110,* 80-7-122, 80-7-135, and this section must be deposited in this account. *Revenue in the account must be used for the purposes and provisions of this part.*

(2) Revenue received under 80-7-106, 80-7-108, *80-7-110,* 80-7-122, 80-7-135, and this section not immediately required for the purpose of ~~80-7-105,~~ 80-7-106, 80-7-108, ~~80-7-109,~~ *80-7-110,* 80-7-122, 80-7-135, and this section must be invested in accordance with the unified investment program established in Title 17, chapter 6, part 2. Income from the investments must be deposited in the account."

Section 8. Section 80-7-133, MCA, is amended to read:

"80-7-133. Acts made unlawful — penalty. (1) It is unlawful for a firm, *nursery, or plant dealer* to:

(a) fail to properly identify nursery stock offered for sale ~~at retail~~. Identification must include but is not limited to the *scientific name,* common name, and variety, *except with regard to mixed annual plantings*. Each nursery plant offered for sale as a separate plant must be identified. A single means of

identification is allowed on each bundle of bare root seedlings, liners, or hedging grade nursery stock.

(b) falsely represent or misrepresent the name, age, variety, or class of any nursery stock sold or offered for sale;

(c) falsely represent or state that any nursery stock offered for sale, sold, or delivered was grown in ~~or came from~~ a certain ~~nursery or locality~~ *location*, when in fact the nursery stock was grown in ~~or came from~~ another location ~~or nursery~~;

(d) deceive or defraud any firm in the sale of any nursery stock by substituting inferior or different varieties or ages from those ordered;

(e) ~~willfully or intentionally~~ bring into this state, offer for sale or distribution within this state, or ship, sell, or deliver upon any sale any nursery stock that is infected or infested with a plant pest dangerous to the horticultural interests of the state~~;~~ or *that violates any federal or state quarantine; or*

(f) sell or distribute nursery stock*,* ~~or~~ cut decorative *plants,* or ~~aquarium~~ *aquatic* plants declared to be noxious weeds as defined in 7-22-2101~~(8)(a)(i)~~.

(2) In case of misrepresentation, false representation, deceit, fraud, substitution, or sale and distribution of noxious weeds, the firm*, nursery, or plant dealer* is subject to punishment as provided in 80-7-135 and is liable to a party damaged or injured~~,~~ to the extent of all damages sustained, ~~to~~ *which may* be recovered in a civil action in any court of competent jurisdiction."

Section 9. Section 80-7-135, MCA, is amended to read:

"80-7-135. Penalty for violation. (1) A firm*,* ~~or~~ nursery*, or plant dealer* that ~~purposely, knowingly, or negligently~~ violates or aids in the violation of a provision of this ~~chapter~~ *part* or of the rules, orders, or quarantines of the department adopted under Title 2, chapter 4, and this ~~chapter~~ *part* commits a civil offense and is subject to a civil penalty of not more than $1,000 for each violation.

(2) Assessment of a civil penalty may be made in conjunction with another warning, order, or administrative action authorized by this chapter. A civil penalty collected under this section must be deposited in the ~~general fund~~ *nursery account established in 80-7-123 for education, training, research, and development for the nursery industry pursuant to rules established by the department*.

(3) The department shall establish by rule:

(a) a penalty schedule that establishes the types of penalties and the amounts, not to exceed $1,000, for initial and subsequent offenses; and

(b) other matters necessary for the administration of civil penalties.

(4) Sections 80-7-105, 80-7-106, 80-7-108, 80-7-109, 80-7-122, 80-7-123, and this section may not be construed as requiring the department or its agents to report violations of this ~~chapter~~ *part* when the department believes that the public interest will be best served by a suitable notice of warning."

Approved May 3, 2007

CHAPTER NO. 385

[HB 583]

AN ACT GENERALLY REVISING THE OPENCUT MINING ACT; AMENDING DEFINITIONS AND TERMINOLOGY; EXPANDING EXEMPTIONS; PROVIDING FOR SUSPENSION AND REVOCATION ORDERS; ELIMINATING APPLICATION FEES; REVISING APPEAL PROVISIONS; AMENDING SECTIONS 82-4-402, 82-4-403, 82-4-406, 82-4-422, 82-4-424, 82-4-425, 82-4-426, 82-4-427, 82-4-431, 82-4-432, 82-4-433, 82-4-434, 82-4-436, AND 82-4-441, MCA; AND REPEALING SECTIONS 82-4-421 AND 82-4-423, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Annual report. For each permitted operation, the operator shall file an annual report on a form furnished by the department. The report must contain the information and be submitted at times provided in rules of the board.

Section 2. Section 82-4-402, MCA, is amended to read:

"82-4-402. Intent, findings, and policy. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Opencut Mining Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) Because the extraction and use of opencut materials is important to the economy of this state, it is the policy of this state to provide for the reclamation and conservation of land subjected to opencut ~~materials mining~~ *operations*. Therefore, it is the purpose of this part:

(a) to preserve natural resources;

(b) to aid in the protection of wildlife and aquatic resources;

(c) to safeguard and reclaim through effective means and methods all agricultural, recreational, home, and industrial sites subjected to or that may be affected by opencut ~~materials mining~~ *operations*;

(d) to protect and perpetuate the taxable value of property through reclamation;

(e) to protect scenic, scientific, historic, or other unique areas; and

(f) to promote the health, safety, and general welfare of the people of this state."

Section 3. Section 82-4-403, MCA, is amended to read:

"82-4-403. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Affected land" means the area of land and land covered by water that is disturbed by opencut ~~mining~~ operations, including the area from which overburden or ~~material is~~ *materials are* to be or ~~has~~ *have* been removed and upon which the overburden is to be or has been deposited, *existing private roads that are used and* roads constructed to gain access to the ~~material~~ *materials*, areas of processing facilities on or contiguous to the opencut mine, treatment and sedimentation ponds, *soil* and ~~material~~ *materials* stockpile areas on or

contiguous to the opencut mine*, and any other surface or subsurface disturbance associated with opencut operations. For the purposes of this subsection, an existing private road may be included as affected land only with the landowner's consent*.

(2) "Amendment" means a change to the approved permit.

~~(2)~~*(3)* "Board" means the board of environmental review provided for in 2-15-3502.

~~(3)~~*(4)* "Department" means the department of environmental quality provided for in 2-15-3501.

~~(4) "Final cut" means the last pit created in an opencut-mined area.~~

(5) "Landowner" means the ~~owner of~~ *holder of legal title to* land subjected to an ~~opencut-mining~~ *opencut* operation.

(6) "Materials" means bentonite, clay, scoria, peat, sand, soil ~~materials~~, ~~or~~ gravel*, or mixtures of those substances*.

(7) "Opencut ~~mining~~ *operation*" means the ~~mining of materials by~~ *following activities, if they are conducted for the primary purpose of sale or utilization of materials*:

(a) *(i)* removing the overburden ~~lying upon natural deposits of materials~~ and mining directly from the exposed natural deposits; or

~~(b)~~*(ii)* mining directly from natural deposits of materials*;*

(b) mine site preparation, including access;

(c) processing of materials within the area that is to be mined or contiguous to the area that is to be mined or the access road;

(d) transportation of materials on areas referred to in subsections (7)(a) through (7)(c);

(e) storing or stockpiling of materials on areas referred to in subsections (7)(a) through (7)(c);

(f) reclamation of affected land; and

(g) any other associated surface or subsurface activity conducted on areas referred to in subsections (7)(a) through (7)(c).

(8) "Operator" means a person engaged in or controlling an ~~opencut-mining~~ *opencut* operation. *When a permit has been issued for an operation, a person who removes materials from the site under the control of the operator is not considered an operator*.

(9) "Overburden" means ~~all of~~ the earth ~~and other materials~~ that ~~lie~~ *lies* above a natural deposit of materials.

(10) "Person" means:

(a) a natural person;

(b) a firm, association, partnership, cooperative, or corporation;

(c) a department, agency, or instrumentality of the state or any governmental subdivision; or

(d) any other entity.

(11) "Plan of operation" means a plan that:

(a) meets the requirements of 82-4-434; and

(b) contains a description of current land use, topographical data, hydrologic data, soils data, proposed mine areas, proposed mining and processing operations, proposed reclamation, and appropriate maps.

~~(11)~~*(12)* "Processing facilities" means*:*

(a) ~~all~~ crushers, screens, *and pug mills;* ~~and~~

(b) asphalt*, wash,* ~~or~~ *and* concrete plants*; and*

(c) other equipment used in processing opencut materials.

~~(12) "Progress report" means a report on a form provided by the department, with appropriate maps, that shows:~~

~~(a) any change in ownership or control of the affected land and includes a landowner consent form if a change has occurred;~~

~~(b) any change in personnel who are in charge of the operation or responsible for reclamation;~~

~~(c) any change in any contractors or subcontractors who will be working at the site; and~~

~~(d) all land that has been affected by the operation.~~

(13) "Reclamation" means the reconditioning of ~~the area of land~~ affected *land* ~~by opencut mining operations~~ to make the area suitable for productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential ~~and~~ *or* industrial ~~sites~~ *development*.

~~(14) "Reclamation plan" means a plan that:~~

~~(a) meets the requirements of 82-4-434; and~~

~~(b) contains a description of current land use, topographical data, water data, soils data, leased areas, and intended mine areas and an explanation of proposed reclamation of the land, including appropriate maps.~~

~~(15) "Refuse" means all waste material directly connected with the opencut mining operations.~~

~~(16)~~*(14)* ~~"Soil materials" are those horizons that contain topsoil or other soils leached free of deleterious salts,~~ *"Soil" means the dark or root-bearing surface matter that has been generated through time by the interaction of biological activity, climate, topography, and parent material and* that ~~are~~ *is* capable of sustaining plant growth~~,~~ and ~~that are~~ *is* recognized *and identified* as such by standard authorities *and methods*.

~~(17) "Spoil" means the overburden that is disturbed from its natural state in the process of opencut mining.~~"

Section 4. Section 82-4-406, MCA, is amended to read:

"82-4-406. Exemption — *opencut* operations on federal *and state* lands. This part is not applicable to operations on certain federal *and state* lands as specified by the board, provided it is first determined by the board that ~~federal law~~ *laws,* ~~or~~ regulations*, or rules administered or* issued by the federal ~~agency~~ *or state agency* administering *or having jurisdiction over* the *affected* land impose controls for ~~reclamation of~~ *opencut operations on* those lands equal to or greater than those imposed by this part."

Section 5. Section 82-4-422, MCA, is amended to read:

"82-4-422. Powers, duties, and functions. (1) The department has the powers, duties, and functions to:

(a) issue permits when, ~~it is found~~ on the basis of the information set forth in the application and an evaluation of the ~~operation~~ *proposed opencut operations,* ~~by~~ the department *finds* that the requirements of this part and rules adopted to implement this part will be observed ~~and that the operation and the reclamation of the affected area can be carried out consistently with the purpose of this part~~;

(b) amend permits in accordance with the provisions of 82-4-436;

(c) reclaim any affected land with respect to which a bond has been forfeited; ~~and~~

(d) make investigations or inspections that are considered necessary to ensure compliance with any provision of this part*; and*

(e) enforce and administer the provisions of this part and issue orders necessary to implement the provisions of this part.

(2) The board shall:

(a) adopt rules that pertain to opencut ~~mining~~ *operations* in order to accomplish the purposes of this part;

(b) adopt rules*:*

(i) establishing uniform procedures for filing of necessary records~~,~~*;*

(ii) providing procedures for the issuance of permits~~,~~ and ~~for any other matters of administration not specifically enumerated in this part~~ *filing of annual reports*; and

(iii) providing other administrative requirements that the board considers necessary to implement this part; and

(c) conduct hearings and, for the purposes of conducting those hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the production of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or material to the inquiry."

Section 6. Section 82-4-424, MCA, is amended to read:

"82-4-424. Receipt and expenditure of funds — disposition of ~~fees, fines,~~ penalties~~,~~ and other money. (1) The department may receive any federal funds, state funds, or any other funds for the reclamation of ~~land~~ affected *land* ~~by opencut mining~~. The department may cause the reclamation work to be done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons.

(2) All ~~fees, fines,~~ penalties~~,~~ and other money paid under the provisions of this part must be deposited in the environmental rehabilitation and response account in the state special revenue fund provided for in 75-1-110. Funds held by the department as bond or as a result of bond forfeiture that are no longer needed for reclamation and for which the department is not able to locate a surety or other person who owns the funds after diligent search must be deposited in the environmental rehabilitation and response account in the state special revenue fund."

Section 7. Section 82-4-425, MCA, is amended to read:

"82-4-425. Inspection of opencut ~~mining~~ *operations.* The department or its accredited representatives may enter upon lands subjected to opencut ~~mining~~ *operations* at all reasonable times for the purpose of inspection to determine whether the provisions of this part have been complied with."

Section 8. Section 82-4-426, MCA, is amended to read:

"82-4-426. Reclamation of land on which bond forfeited. In keeping with the provisions of this part, the department may reclaim any affected ~~lands~~ *land* with respect to which a bond has been forfeited. ~~If the amount of the forfeited bond exceeds the cost of reclamation, the excess must be deposited in the environmental rehabilitation and response account in the state special revenue fund provided for in 75-1-110.~~"

Section 9. Section 82-4-427, MCA, is amended to read:

"82-4-427. Hearing — appeal — venue. (1) A person ~~who is aggrieved~~ *whose interests are or may be adversely affected* by a final decision of the department *to approve or disapprove a permit application and accompanying material or a permit amendment application and accompanying material* under this part is entitled to a hearing before the board, if a written request *stating the reasons for the appeal* is submitted to the board within 30 days of the department's decision.

(2) *An operator may request a hearing before the board on:*

(a) a final decision of the department director pursuant to 82-4-436(4) by submitting a request for a hearing within 15 days of receipt of notice of the director's decision; and

(b) an order of suspension or revocation issued under [section 16] by filing a request for hearing within 30 days of receipt of the decision.

(3) The operator or the landowner may request a hearing before the board on a decision on a bond release application.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

~~(3)~~*(5)* ~~An action to challenge the issuance of a permit~~ *A petition for judicial review of a board decision made* pursuant to this section must be brought in the county in which the permitted activity is proposed to occur *or, if mutually agreed upon by both parties in the action, in the first judicial district, Lewis and Clark County*. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the activity is proposed to occur.

~~(4)~~*(6)* ~~A judicial challenge to a permit issued pursuant to this part by a party other than the permitholder or applicant~~ *The petition for judicial review* must include the party to whom the permit was issued *or the applicant* unless otherwise agreed to by the permitholder or applicant. All judicial challenges of permits for projects with a project cost, as determined by the court, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

Section 10. Section 82-4-431, MCA, is amended to read:

"82-4-431. Permit for *mining, processing, and* reclamation required. (1) An operator may not conduct ~~opencut mining operations~~ *an opencut operation* that ~~result~~ *results* in the removal of a total of 10,000 cubic yards or more of materials and overburden until the department has issued a permit to the operator ~~for the reclamation of the land affected~~. ~~A person~~ *An operator* may not, without a permit, remove materials *or overburden* from a site from which a total of 10,000 cubic yards or more of materials and overburden *in the aggregate*

has been removed. An operator conducting a number of *opencut* operations, each of which results in the removal of less than 10,000 cubic yards of materials and overburden but that result in the removal of 10,000 cubic yards or more of materials and overburden in the aggregate, is subject to the provisions of this part, except as provided in this section.

(2) Except as provided in or conditioned under subsections (3) and (4), an operator who holds a permit ~~for reclamation~~ *under this part* may ~~operate~~ *conduct* an opencut ~~mine~~ *operation* without first securing an additional permit or an amendment to ~~the~~ *an* existing permit ~~or bond~~ if the ~~mine~~ *opencut operation* meets the following criteria:

(a) the total amount of materials and overburden removed *from the site* does not exceed ~~2,500~~ *5,000* cubic yards *and the total area from which the materials and overburden are removed does not exceed 5 acres*; and

(b) the operator*:*

(i) ~~notifies~~ *submits* ~~the department prior to beginning operations~~ *appropriate site and opencut operation information;* and~~,~~

(ii) within ~~30~~ *180* days of ~~notifying the department, submits a completed site information~~ *submitting the* form, salvages ~~and stockpiles~~ all ~~root-bearing~~ soil ~~materials~~ *from the area to be disturbed, removes the materials*, ~~regrades~~ *grades* the affected ~~area~~ *land* to 3:1 or flatter ~~slope and~~ *slopes,* blends the ~~reclaimed area~~ *graded land* into the ~~adjacent~~ *surrounding* topography, ~~and during the first appropriate growing season,~~ replaces *an appropriate amount of overburden and* all ~~topsoil and~~ *soil, and reclaims to conditions present prior to mining all access roads used for the operation, unless the landowner requests in writing that specific roads or portions of the roads remain open. Roads left open at the landowner's request must be sized to support the use of the road after opencut operations.*

(iii) ~~reseeds or revegetates as required by the department~~ *at the first seasonal opportunity, seeds or plants all affected land to vegetative species that meet the requirements of 82-4-434.*

(3) The department may refuse to approve an application for issuance of a permit under subsection (1) or ~~allow~~ *may prohibit* the operator ~~to operate~~ *from conducting* an opencut ~~mine~~ *operation* under ~~subsections (1) and~~ *subsection* (2) if, at the time of notification by the operator to the department, the operator has a pattern of violations or is in current violation of this part, rules adopted under this part, or provisions of a permit ~~for reclamation~~.

(4) The department may require an additional bond as a condition for the *conduct of an opencut* operation ~~of an opencut mine~~ under subsection (2).

(5) Opencut ~~mines~~ *operations* described in subsection (2) may not ~~be placed~~ *occur*:

(a) in ~~flowing,~~ ephemeral, ~~or~~ intermittent*, or perennial* streams;

~~(b) in the bottom or head of a confined drainage;~~

~~(c)~~*(b)* in an area where the ~~operation~~ *opencut operation* will intercept *surface water,* ground water, or ~~intercept~~ any slope that is ~~naturally~~ steeper than 3:1; or

~~(d)~~*(c)* in any area where mining would be restricted by other laws.

(6) Sand and gravel opencut ~~mines~~ *operations* must meet applicable local zoning regulations adopted under Title 76, chapter 2."

Section 11. Section 82-4-432, MCA, is amended to read:

"82-4-432. Application for permit — contents — issuance — amendment. (1) ~~Applications~~ *An application* for a permit must be made ~~upon a form~~ *using forms* furnished by the department~~. The form~~ *and* must contain the following:

(a) the name of the ~~operator~~ *applicant* and, if other than the owner of the land, the name and address of the owner;

(b) the type of operation to be conducted;

(c) the *estimated* volume of ~~earth~~ *overburden and materials* to be removed~~, as accurately as the volume may then be estimated, and the volume that has been previously removed, if any~~;

(d) the location of the *proposed opencut* operation by legal ~~subdivision, section, township and range,~~ *description* and county;

(e) the date when the ~~operation was or will be commenced~~ *opencut operation is proposed to commence*; and

(f) a statement that the applicant has the *legal* right ~~and power, by legal estate owned, to mine, by opencut mining,~~ *to mine the designated materials in* the lands described.

(2) The application must be accompanied by:

(a) a bond or security meeting the requirements as set out in this part;

~~(b) a fee of $50 for an application to mine bentonite, clay, scoria, sand, or gravel;~~

~~(c)~~*(b)* a statement from the local governing body having jurisdiction over the area to be mined certifying that ~~a~~ *the* proposed sand and gravel opencut ~~mine and its operating and reclamation plans comply~~ *operation complies* with applicable local zoning regulations adopted under Title 76, chapter 2; ~~and~~

~~(d)~~*(c)* ~~the operator's plan of operation and a complete reclamation plan~~ *a plan of operation that meets the requirements of 82-4-434; and*

(d) written documentation that the landowner has been consulted about the proposed plan of operation.

(3) If, prior to applying for a permit, a person notifies the department of the intention to submit an application and requests *that* the department ~~to~~ examine the area to be mined, the department shall ~~cause the area to be examined~~ *examine the area* and make recommendations to the person regarding ~~reclamation~~ *the proposed opencut operation*. The person may request a meeting with the department. The department shall hold a meeting if requested.

(4) *(a)* Except as provided in 75-1-208(4)(b), upon receipt of an application containing all items listed in subsections (1) and (2), the department shall, within ~~15~~ *30* days, *review the application, inspect the proposed site, and* notify the person whether or not the department believes that the application is ~~complete~~ *acceptable. An application is acceptable if it complies with all requirements of subsections (1) and (2).* If the department determines that the application is not ~~complete~~ *acceptable*, the department shall include in the notification a detailed identification of all deficiencies.

(b) Within 30 days of receipt of ~~a complete application~~ *the applicant's responses to the identified deficiencies*, the department shall notify the applicant if ~~it has approved or denied~~ the application *is acceptable or not*. If the ~~department denies the~~ application *is unacceptable*, the notice must include a

detailed explanation ~~describing why the application was denied~~ *of the remaining deficiencies*.

(c) The department may for sufficient cause extend ~~its period of review~~ *either or both of the 30-day review periods* for an additional 30 days if it notifies the ~~person~~ *applicant* of the extension prior to the end of the *respective* original 30-day period. The department shall include in the notification of extension the reason for the extension.

(d) ~~Upon approval of~~ *If* the application *is acceptable*, the department shall issue a permit to the operator that entitles the operator to ~~continue or~~ engage in *the* opencut ~~mining~~ *operation* on the land described in the application.

(5) An operator ~~desiring to have a permit amended to cover additional contiguous or nearby land may file an amended~~ *may amend a permit by submitting an amendment* application ~~with~~ *to* the department. Upon receipt of the ~~amended application and any additional bond that may be required and upon agreement to the terms of the amendment by the parties,~~ *amendment application, the department shall review it in accordance with the requirements and procedures in subsection (4). If the amendment application is acceptable,* the department ~~may~~ *shall* issue an amendment to the original permit ~~covering the additional land described in the amended application without the payment of any additional fee.~~

~~(6) An operator may withdraw any land covered by a permit, except affected land, by notifying the department of the withdrawal, in which case the penalty of the bond or security filed by the operator pursuant to the provisions of this part must be reduced proportionately~~."

Section 12. Section 82-4-433, MCA, is amended to read:

"82-4-433. Bond. (1) ~~A bond required to be filed under this part by the operator must be in a form that the department prescribes,~~ *Before a permit or permit amendment may be issued, a surety bond made* payable to the state of Montana and conditioned upon the operator's full compliance with all requirements of this part, the rules ~~of the board~~ *adopted under this part*, and the permit *must be submitted to and approved by the department*. The bond must be signed by the ~~landowner or operator, as appropriate,~~ *applicant* as principal~~,~~ and by a good and sufficient corporate surety licensed to do business in the state of Montana~~, as surety~~. ~~The bond must be in an amount not to exceed the costs of restoration required by this part as determined by the department. The amount of the bond may not be less than $200 or more than $1,000 an acre unless the department determines, in writing, that the cost of restoration of the land exceeds $1,000 an acre. Upon the cost determination, the~~ *The* bond amount must be ~~set~~ *determined* by the department at the cost of ~~restoring the~~ *reclamation of the affected* land *by the department. The applicant shall submit a bond that is no less than the amount determined by the department*.

(2) (a) For ~~opencut mining~~ *opencut* operations on federal land within the state, the department may accept a bond payable to the state of Montana and the federal agency administering the land. The bond must provide at least the same amount of financial guarantee as required by this part.

(b) The bond must provide that the department may forfeit the bond without the concurrence of the federal land management agency. The bond may provide that the federal land management agency may forfeit the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable to the department and may also be payable to the federal land

management agency. If the bond is payable to the department and the federal land management agency, the department, before accepting the bond, shall enter into an agreement or memorandum of understanding with the federal land management agency providing for administration of the bond funds in a manner that will allow the department to provide for compliance with the requirements of this part, the rules adopted under this part, and the permit.

(3) In lieu of ~~the~~ *submitting a surety* bond *pursuant to subsection (1)*, the operator may ~~deposit with the department~~ *submit* cash, government securities, a letter of credit in a form acceptable to the department, or a bond with property sureties in an amount equal to that of the required bond on conditions as prescribed in this part. In the discretion of the department, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities located on the land as security, in which event a surety may not be required but the department may require that the amount of the bond be adjusted to reimburse the department for foreclosure costs.

(4) The ~~penalty of the~~ bond or ~~amount of cash and securities~~ *other security* must be increased or reduced ~~from time to time~~ as provided in this part.

(5) The bond or security remains in effect until the affected land has been reclaimed as provided under the permit and the ~~reclamation has been approved and the bond or security has been released by the department~~ *department has approved the reclamation and released the bond or security*. The bond or security may cover only actual affected land and ~~may~~ *must* be increased or reduced to cover only ~~those~~ *unreclaimed* acreages ~~as remain unreclaimed~~.

~~(4)~~*(6)* If the license of a surety ~~upon~~ *that has issued* a bond filed with the department pursuant to this part is suspended or revoked, the operator, within 30 days after receiving notice of the suspension or revocation from the department, shall substitute ~~for that surety~~ a good and sufficient *bond from another* surety licensed to do business in the state *or shall submit another type of security pursuant to subsection (3)*. Upon failure of the operator to make *the bond* substitution ~~of surety~~ *within the 30-day time period*, the department ~~may~~ *shall* suspend the permit of the operator to conduct *opencut* operations upon the land described in the permit until the substitution has been made. *If the operator demonstrates in writing that the operator has been pursuing a replacement bond in good faith but additional time is necessary to complete the transaction, the department may grant up to an additional 60 days for the operator to submit a replacement bond before suspending the permit.*

~~(5) The department shall cause the reclamation of any affected land with respect to which a bond has been forfeited.~~

~~(6)~~*(7)* Whenever an operator has completed all of the *reclamation* requirements under the provisions of this part as to any affected land, the operator shall notify the department of the completed requirements *and may request bond release*. If the ~~board~~ *department* releases the operator from further obligation regarding any affected land, the ~~penalty of the~~ bond must be reduced proportionately. *The department shall notify the operator and the landowner in writing of the decision on the bond release application.*"

Section 13. Section 82-4-434, MCA, is amended to read:

"82-4-434. ~~Reclamation plan part of permit~~ *Plan of operation* — requirements. ~~The reclamation plan must meet the following requirements:~~

~~(1) The department shall submit each reclamation plan or operator-proposed amendments to the reclamation plan to the landowner for~~

~~recommendations and shall consider those recommendations in deciding whether to approve or disapprove any plan or operator-proposed amendments. The department may seek technical help from any state or federal agency.~~ *(1)* The department shall *immediately* submit ~~the~~ *a* plan *of operation received in a permit or permit amendment application involving expansion of the permit area* ~~immediately~~ to the state historic preservation office for evaluation of possible archaeological or historical values in the area to be mined.

(2) The department ~~may approve~~ *shall accept* a ~~reclamation~~ plan *of operation* ~~only~~ if the department ~~has found~~ *finds* that the plan ~~provides for the best possible reclamation under the circumstances at the time, so~~ *complies with the requirements of this part and the rules adopted pursuant to this part and* that after ~~mining operations are~~ *the opencut operation is* completed, the affected land will be reclaimed to a productive use. Once the ~~reclamation~~ plan *of operation* is accepted~~, in writing,~~ by the department, ~~the plan must become~~ *it becomes* a part of the permit but is subject to annual review and ~~modification~~ *amendment* by the department. Any ~~modification~~ *amendment* by the department must comply with the provisions of 82-4-436(2).

~~(2)~~*(3)* The department may not ~~approve a reclamation plan or~~ *accept* a plan of ~~operations~~ *operation* unless the ~~plans provide~~ *plan provides*:

(a) that the *affected* land will be reclaimed for one or more specified uses, including but not limited to forest, pasture, orchard, cropland, residence, recreation, industry, habitat for wildlife, including food, cover, or water, or other *reasonable, practical, and achievable* uses;

~~(b) that to the extent reasonable and practicable, the operator will establish vegetative cover commensurate with the proposed land use;~~

~~(c)~~*(b) that* whenever ~~operations result~~ *the opencut operation results* in a need to prevent acid drainage or sedimentation on or in adjoining lands or streams, ~~for the construction of earth dams~~ *catchments, ponds,* or other reasonable devices to control water drainage *and sediment will be constructed and maintained*, provided the ~~formation of the impoundments or~~ devices will not interfere with other landowners' rights or contribute to water pollution;

~~(d)~~*(c)* that ~~to accomplish practical utilization of~~ soil *and other suitable overburden* ~~materials, the material~~ will be salvaged and ~~utilized for placement~~ *replaced* on affected ~~areas~~ *land*, ~~if~~ *when* required ~~by the reclamation plan~~ *by the postmining land use,* after completion or termination of that particular phase of the *opencut operation* ~~mining operations, at a depth sufficient for plant growth on slopes of 3:1 or less~~. The depth of soil *and other suitable overburden* ~~materials~~ to be placed on the reclaimed area must be specified in the plan.

~~(e)~~*(d)* that grading will ~~be commensurate with the~~ *result in a postmining* topography ~~sought and~~ *conducive to the designated postmining* land use ~~designated~~;

~~(f)~~*(e)* that ~~metal and other~~ waste will be ~~removed or~~ buried *on site in a manner that protects water quality and is compatible with the postmining land use or will be disposed of off site in accordance with state laws and rules*;

~~(g)~~*(f)* that all access, haul, and other support roads will be located, constructed, and maintained in ~~such~~ a manner ~~as to control and minimize channeling and other~~ *that controls and minimizes* erosion;

~~(h) that the operator will submit a progress report annually to the department;~~

~~(i)~~*(g)* that ~~all operations~~ *the opencut operation* will be conducted to avoid range and forest fires and spontaneous combustion and that open burning ~~of carbonaceous materials~~ will be *conducted* in accordance with suitable practices for fire prevention and control~~;~~*. Approval of the plan for fire prevention and control under this part does not relieve the operator of the duty to comply with the air quality permitting and protection requirement of Title 75, chapter 2.*

~~(j)~~*(h)* that archaeological and historical values ~~in areas to be mined~~ *on affected lands* will be given appropriate protection;

~~(k)~~*(i)* that except for those ~~postmine~~ *postmining* land uses that do not require vegetation, each surface area of the mined premises that will be disturbed will be revegetated when its use for ~~extractive purposes~~ *the opencut operation* is no longer required;

~~(l)~~*(j)* that seeding and planting will be done in a manner to achieve a permanent vegetative cover that is suitable for the ~~postmine~~ *postmining* land use and that retards erosion ~~and that all seed will be drilled unless otherwise provided in the plan~~;

~~(m)~~*(k)* that reclamation will be as concurrent with ~~mining operations~~ *the opencut operation* as feasible and will be completed within a specified length of time;

~~(n)~~*(l)* that surface water and ground water will be given appropriate protection, consistent with state law, from deterioration of water quality and quantity that may arise as a result of the *opencut* operation;

~~(o)~~*(m)* that noise and visual impacts on residential areas will be minimized to the degree practicable through berms, vegetation screens, and reasonable limits on hours of operation; and

~~(p)~~*(n)* that any additional procedures*, including monitoring,* that are necessary, consistent with the purposes of this part, to prevent significant physical harm to the affected land or adjacent land, structures, improvements, or life forms will be implemented.

~~(3)~~*(4)* If reclamation according to the plan *of operation* has not been completed in the time specified, the department, after 30 days' written notice, shall order the operator to cease mining and, if the operator does not cease, may issue an order to reclaim, a notice of violation, or an order of abatement or may institute an action to enjoin further operation and may sue for damages for breach of the conditions of the permit, for payment of the performance bond, or for both.

~~(4)~~*(5)* (a) At any time during the term of the permit, the operator may for good reason submit to the department a new ~~reclamation~~ plan *of operation* or amendments to the existing plan, including extensions of time *for reclamation*.

(b) The department may approve the proposed new ~~reclamation~~ plan *of operation* or amendments to the existing plan if:

(i) *the new plan of operation or amendments comply with the requirements of this section; and*

(ii) (A) the operator has in good faith ~~carried on reclamation~~ *conducted opencut operations* according to the existing plan *of operation* ~~and the proposed new plan or amendments to the existing plan will result in reclamation as or more desirable than the reclamation proposed under the existing plan~~; or

~~(ii)~~*(B)* it is highly improbable *that* reclamation will be successful unless the existing plan *of operation* is replaced or amended.

~~(c) When accepted, the proposed new reclamation plan or the proposed amendments to the existing plan become a part of the permit.~~

~~(5) The operator shall provide a performance bond or an alternative acceptable to the department in an amount commensurate with the estimated cost of reclamation, but in no case may the bond be less than $200 an acre. The estimated cost of reclamation must be set forth in the reclamation plan.~~

(6) The permit, ~~reclamation~~ plan *of operation*, and amendments accepted by the department are a public record and are open to inspection.

~~(7) The permit is effective when signed by the department and the operator and remains in force until terminated by mutual consent or by the department upon 6 months' notice.~~"

Section 14. Section 82-4-436, MCA, is amended to read:

"82-4-436. Plan amendments ~~— venue~~ *by department.* (1) Unless an amendment to a plan of operation~~, reclamation plan,~~ or ~~other~~ permit is proposed by the operator, the department may ~~modify~~ *amend* only the terms of a plan or permit in compliance with this section.

(2) If the department believes, based on credible evidence, that *a* continued *opencut* operation under the terms of an existing plan *of operation* or permit would violate a substantive numerical or narrative state standard or regulation or otherwise violate a purpose of this part, it may propose to the operator an amendment to the plan or permit.

(3) The department shall notify the operator of the proposed amendment in writing. The notice must include:

(a) an identification of the existing plan or permit;

(b) the justification for the amendment, including all test results or other credible evidence that the department relied on in proposing the amendment; and

(c) the text*, maps, drawings, and other appropriate information that constitute* ~~of~~ the proposed amendment.

(4) The operator may, within 15 days of receipt of the department's amendment notice, request a review of the amendment by the department director. The amendment is not effective or enforceable until 15 days following the issuance of the department's amendment notice or*, if a review by the director is requested,* until *15 days* after the ~~department~~ director affirms or modifies the amendment ~~if a review by the director is requested~~. A decision by the department director is subject to the contested case provisions *in 82-4-427* ~~of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, parts 6 and 7~~.

(5) If the operator ~~does not appeal~~ *requests a hearing on* the proposed amendment, the amendment ~~becomes~~ *is not* effective and enforceable ~~15 days after the operator receives the notification~~ *until completion of the contested case process*.

~~(6) An action to challenge the issuance of an amendment pursuant to this section must be brought in the county in which the activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the activity is proposed to occur.~~

~~(7) A judicial challenge to an amendment issued pursuant to this section by a party other than the amendment holder or applicant must include the party to whom the amendment was issued unless otherwise agreed to by the amendment holder or applicant. All judicial challenges of amendments for projects with a project cost, as determined by the court, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.~~"

Section 15. Section 82-4-441, MCA, is amended to read:

"82-4-441. Administrative and judicial penalties — enforcement. (1) When the department has reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, or a term or condition of a permit issued under this part, it shall send a violation letter to the person. The violation letter must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The letter must also recommend corrective actions that are necessary to return to compliance. Issuance of a violation letter under this subsection does not limit the authority of the department under this part to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.

(2) By issuance of an order pursuant to subsection (5), the department may assess against a person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a ~~reclamation~~ permit:

(a) an administrative penalty of not less than $100 or more than $1,000 for the violation; and

(b) an additional administrative penalty of not less than $100 or more than $1,000 for each day during which a violation continues.

(3) The department may bring a judicial action seeking a penalty of not more than $5,000 against a person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a permit and a penalty of not more than $5,000 for each day that the violation continues. In determining the amount of the penalty, the district court shall consider the factors in subsection (4).

(4) Penalties assessed under this section must be determined in accordance with the penalty factors in 82-4-1001.

(5) (a) In addition to the violation letter sent pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The order may require necessary corrective action within a reasonable period of time, may assess an administrative penalty determined in accordance with this section, or both. The order must be served personally or by certified mail.

(b) An order issued pursuant to subsection (5)(a) becomes final unless, within 30 days after the order is served, the person to whom the order is issued submits to the board a written request for a hearing stating the reason for the request. Service of an order by mail is complete 3 business days after mailing. If a request for a hearing is filed, a hearing must be held within a reasonable time under the contested case provisions of the Montana Administrative Procedure

Act, Title 2, chapter 4, part 6. After a hearing, the board shall affirm, modify, or rescind the order.

(6) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part. Actions for injunctions or penalties must be filed in the district court of the county in which the opencut ~~mine~~ *operation* is located or, if mutually agreed on by both parties in the action, in the first judicial district, Lewis and Clark County.

(7) The provisions of this section do not limit the authority of the department to bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part."

Section 16. Suspension and revocation orders. (1) (a) The department may, after affording the operator an opportunity for an informal conference, order the suspension of a permit if:

(i) the operator fails to comply with a penalty order or a corrective action order issued pursuant to 82-4-441; or

(ii) the operator has violated this part, a rule adopted pursuant to this part, or the permit and the violation could reasonably be expected to create a danger to the health or safety of persons outside the permit area or significant environmental harm to land, air, or water. The order of suspension must be served on the operator personally or by certified mail addressed to the permanent address shown on the most recently filed annual report. The order of suspension must specify the provision of this part, the rules adopted under this part, or the permit violated and the facts alleged to constitute the violation and must, if the violation has not been corrected, order corrective action within a specified time period.

(b) The department may order immediate suspension of a permit whenever it finds that a violation of this part, the rules adopted under this part, or a permit is creating an imminent danger to the health or safety of persons outside the permit area. The order must require immediate corrective action.

(c) The operator upon whom an order is served may file a request for hearing with the board within 30 days of service of the order. The request for hearing must specify the reason for the request. The filing of a request for hearing on an order issued does not stay the suspension or corrective action requirement, but the board may, upon written request of the operator, stay either or both of these requirements.

(2) If the operator has not complied with the requirements set forth in the order of suspension within the time limits set in the order, the permit may be revoked by order of the department and the performance bond forfeited to the department. The operator may request a hearing before the board by submitting a written request stating the reason for the request to the board within 30 days after service of the order. If a hearing is requested within the 30-day period, the permit may not be revoked and the bond may not be forfeited until the board makes a final decision.

(3) If an operator fails to file the report required under [section 1], the department shall serve personally or by certified mail a notice letter informing the operator of the failure. If the operator does not file the report within 30 days of receipt of the letter, the department may issue a penalty order pursuant to 82-4-441 or a suspension order pursuant to this section. If the permit has been suspended, the department shall reinstate the permit upon compliance.

(4) Maintenance, monitoring, reporting, reclamation, and other activities required by statute, rule, or the permit and intended to protect public health or safety or the environment must continue during any period of suspension unless otherwise provided in the order.

Section 17. Codification instruction. [Sections 1 and 16] are intended to be codified as an integral part of Title 82, chapter 4, part 4, and the provisions of Title 82, chapter 4, part 4, apply to [sections 1 and 16].

Section 18. Repealer. Sections 82-4-421 and 82-4-423, MCA, are repealed.

Approved May 3, 2007

CHAPTER NO. 386

[HB 608]

AN ACT TRANSFERRING MONEY FROM THE STATE GENERAL FUND TO THE ENDOWMENT FOR CHILDREN FUND; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to section 2-15-2214, MCA, there is a Montana Children's Trust Fund Board, established in 1985, consisting of seven members appointed by the Governor for 3-year terms; and

WHEREAS, pursuant to section 52-7-105, MCA, there is within the permanent fund type an endowment for children, the endowment is not subject to appropriation, and the purpose of the endowment is to provide a permanent source of funding to support the programs and services related to a broad range of child abuse and neglect primary prevention activities and family resource programs operated by nonprofit or public, community-based educational and service organizations; and

WHEREAS, pursuant to section 52-7-105, MCA, the endowment may receive funds from appropriations; gifts, grants, and donations, from public or private sources; and other money credited or transferred to the endowment from any other fund or source; and

WHEREAS, pursuant to section 52-7-105, MCA, the State Treasurer must receive and shall deposit money in the endowment, the Board of Investments shall invest the money in the endowment, and only interest generated by the endowment is available for expenditure by the Board; and

WHEREAS, the Montana Legislature has not transferred funds to the endowment for children to support child abuse and neglect prevention efforts statewide; and

WHEREAS, the Montana children's trust fund program receives a federal community-based child abuse and neglect prevention grant in the amount of approximately $179,000 annually; and

WHEREAS, the Montana children's trust fund program receives approximately $50,000 annually in state special revenue generated by the income tax checkoff and $5 for every divorce filing in Montana; and

WHEREAS, the Montana children's trust fund program has served at-risk children and families statewide by providing a broad range of child abuse and neglect primary prevention programming, the main focus being parent education; and

WHEREAS, additional resources are needed to help at-risk families remain intact and out of the state child protective services system; and

WHEREAS, the child protective services system is overburdened by increasing caseloads and has limited financial and human resources to serve the critical cases coming into the system.

Be it enacted by the Legislature of the State of Montana:

Section 1. Fund transfer. There is transferred $1 million for the 2009 biennium from the state general fund to the endowment for children fund established under 52-7-105.

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 387

[HB 616]

AN ACT PROVIDING THAT IT IS LAWFUL TO WAGER ON A FANTASY SPORTS LEAGUE CONDUCTED BY A PARIMUTUEL FACILITY THAT HAS BEEN LICENSED BY THE BOARD OF HORSERACING; PROVIDING A STATUTORY APPROPRIATION; AND AMENDING SECTIONS 23-4-101, 23-4-104, 23-4-201, 23-4-202, 23-4-301, 23-4-302, 23-4-304, 23-5-801, 23-5-802, 23-5-805, AND 23-5-806, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-4-101, MCA, is amended to read:

"23-4-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of horseracing provided for in 2-15-3106.

(2) "Board of stewards" means a board composed of three stewards who supervise race meets.

(3) "Department" means the department of livestock provided for in Title 2, chapter 15, part 31.

(4) "Fantasy sports league" has the meaning provided in 23-5-801.

~~(4)~~*(5)* "Immediate family" means the spouse, parents, children, grandchildren, brothers, or sisters of an official or licensee regulated by this chapter who have a permanent or continuous residence in the household of the official or licensee and all other persons who have a permanent or continuous residence in the household of the official or licensee.

~~(5)~~*(6)* "Minor" means a person under 18 years of age.

(7) "Parimutuel facility" means a facility licensed by the board at which fantasy sports leagues are conducted and wagering on the outcome under a parimutuel system is permitted.

(8) "Parimutuel network" means an association licensed by the board to compile and distribute fantasy sports league rosters and weekly point totals for licensed parimutuel facilities and to manage statewide parimutuel wagering pools on fantasy sports leagues.

~~(6)~~*(9)* "Persons" means individuals, firms, corporations, fair boards, and associations.

~~(7)~~*(10)* (a) "Race meet" means racing of registered horses or mules at which the parimutuel system of wagering is used. The term includes horseraces, mule races, and greyhound races that are simulcast.

(b) The term does not include live greyhound racing.

~~(8)~~*(11)* "Racing" means live racing of registered horses or mules and simulcast racing of horses, mules, and greyhounds.

~~(9)~~*(12)* "Simulcast" means a live broadcast of an actual horserace, mule race, or greyhound race at the time it is run. The term includes races of local or national prominence.

~~(10)~~*(13)* "Simulcast facility" means a facility at which horseraces, mule races, or greyhound races are simulcast and wagering on the outcome is permitted under the parimutuel system.

(14) "Simulcast parimutuel network" means an association licensed by the board to receive or originate intrastate and interstate simulcast race signals, relay the race signals to licensed simulcast facilities, and manage statewide parimutuel wagering pools on simulcast races. A simulcast parimutuel network may be licensed by the board to operate a statewide parimutuel wagering pool for fantasy sports leagues.

~~(11)~~*(15)* "Steward" means an official hired by the department and by persons sponsoring a race meet to regulate and control the day-to-day conduct and operation of a sanctioned meet."

Section 2. Section 23-4-104, MCA, is amended to read:

"23-4-104. Duties of board. The board shall adopt rules to govern race meets and the parimutuel system. These rules shall include the following:

(1) definitions;

(2) auditing;

(3) supervision of the parimutuel system;

(4) corrupt practices;

(5) supervision, duties, and responsibilities of the executive secretary, presiding steward, racing secretary, and other racing officials;

(6) licensing of all personnel who have anything to do with the substantive operation of racing;

(7) the establishment of dates for race meets and meetings in the best interests of breeding and racing in this state;

(8) the veterinary practices and standards ~~which~~ *that* must be observed in connection with race meets;

(9) absolute responsibility of trainers for the condition of horses and mules, regardless of the acts of third parties;

(10) licensing or renewal of a license of a person whose license has been suspended by the board or another horseracing jurisdiction;

(11) setting license fees commensurate with the cost of issuing a license;

(12) the time, conduct, and supervision of simulcast races *and fantasy sports leagues* and parimutuel betting on simulcast races *and fantasy sports leagues*; and

(13) licensing, approval, and regulation of simulcast facilities."

Section 3. Section 23-4-201, MCA, is amended to read:

"23-4-201. Licenses. (1) A person may not hold a race meet, including simulcast race meets under the parimutuel system, *or conduct fantasy sports league wagering through a parimutuel facility, parimutuel network, or a simulcast parimutuel network conducting a fantasy sports league* in this state without a valid license issued by the department under this chapter. A person applying for a license to hold a race meet under this chapter shall file with the department an application that must set forth the time, place, and number of days the license will continue and other information the board requires.

(2) A person who participates in a race meet must be licensed and charged an annual fee set by the board. The annual fee must be paid to the department and used for expenses of administering this chapter. Each person holding a license under this chapter shall comply with this chapter and with the rules adopted and orders issued by the board.

(3) A license may not be issued to a person who has failed to pay the fees, taxes, or money required under this chapter.

(4) An application to hold a race meet must be submitted to the department, and the board shall act on the application within 30 days. The board is the sole judge of whether the race meet may be licensed and the number of days the meet may continue.

(5) The board shall require that a fair board and an independent racing association conducting a race meet comply with the requirements of the rules adopted by the board before granting a license.

(6) A racing association consisting of a local fair board or an association approved by a local fair board may apply for a license to hold a simulcast race meet in a simulcast facility.

(7) An unexpired license held by a person who violates this chapter or who fails to pay to the department the sums required under this chapter is subject to cancellation and revocation by the board.

(8) A license to operate a parimutuel facility conducting fantasy sports league wagering may not be issued to an applicant unless the applicant is also licensed under Title 23, chapter 5."

Section 4. Section 23-4-202, MCA, is amended to read:

"23-4-202. (Temporary) Penalty for violations of law — authority of board — judicial review. (1) A person holding a race meet or an owner, trainer, or jockey participating in a race meet, without first being licensed under this chapter, or a person violating this chapter is guilty of a misdemeanor.

(2) The board or, upon the board's authorization, the board of stewards of a race meet at which they officiate may exclude from racecourses in this state a person whom the board considers detrimental to the best interest of racing as defined by rules of the board.

(3) As its own formal act or through an act of a board of stewards of a race meet, the board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed $1,000, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may forbid application for

relicensure for a 2-year period. Fines collected under this subsection must be deposited in the general fund.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed under this chapter. The rules may include provisions for the following:

(a) summary imposition of penalty by the stewards of a race meet, including a fine and license suspension, subject to review under the contested case provisions of the Montana Administrative Procedure Act;

(b) stay of a summary imposition of penalty by either the board or board of stewards;

(c) retention of purses pending final disposition of complaints, protests, or appeals of stewards' rulings;

(d) setting aside of up to 3% of exotic wagering on races, including simulcast races, to be deposited in the board's agency fund account. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(e) using 2% of exotic wagering on live racing to be immediately and equally distributed to all purses except stakes races;

(f) assessment of penalty and interest on the late payment of fines, which must be paid before licenses are reinstated;

(g) definition of exotic forms of wagering on races to be allowed;

(h) standards for simulcast facilities; and

(i) conduct and supervision of simulcast races and parimutuel betting or wagering on simulcast races.

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter.

23-4-202. (Effective July 1, 2007) Penalty for violations of law — authority of board — judicial review. (1) *(a)* A person holding a race meet or an owner, trainer, or jockey participating in a race meet without first being licensed under this chapter or a person violating this chapter is guilty of a misdemeanor.

(b) A person operating a parimutuel facility, parimutuel network, or simulcast parimutuel network that conducts fantasy sports league wagering without first being licensed under this chapter or a person violating this chapter is guilty of a misdemeanor.

(2) The board or, upon the board's authorization, the board of stewards of a race meet at which the stewards officiate may exclude from racecourses a person whom the board or board of stewards considers detrimental to the best interest of racing as defined by rules of the board.

(3) As its own formal act or through an act of a board of stewards of a race meet, the board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed $1,000, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may prohibit application for relicensure for a 2-year period. Fines collected under this subsection must be deposited in the general fund.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed under this chapter. The rules may include provisions for the following:

(a) summary imposition of penalty by the stewards of a race meet, including a fine and license suspension, subject to review under the contested case provisions of the Montana Administrative Procedure Act;

(b) stay of a summary imposition of penalty by either the board or board of stewards;

(c) retention of purses pending final disposition of complaints, protests, or appeals of stewards' rulings;

(d) setting aside of up to 3% of exotic wagering on races, including simulcast races, to be deposited in a state special revenue account and statutorily appropriated to the board as provided in 17-7-502. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(e) using 2% of exotic wagering on live racing to be immediately and equally distributed to all purses except stakes races;

(f) assessment of penalty and interest on the late payment of fines, which must be paid before licenses are reinstated;

(g) definition of exotic forms of wagering on races to be allowed;

(h) standards for simulcast facilities; ~~and~~

(i) conduct and supervision of simulcast races and parimutuel betting or wagering on simulcast races*; and*

(j) conduct and supervision of parimutuel facilities, parimutuel networks, simulcast parimutuel networks, and parimutuel wagering on fantasy sports leagues conducted at parimutuel facilities.

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter."

Section 5. Section 23-4-301, MCA, is amended to read:

"23-4-301. Parimutuel betting — other betting illegal. (1) It is unlawful to make, report, record, or register a bet or wager on the result of a contest of speed, skill, or endurance of an animal, whether the contest is held within or outside of this state, except under 23-5-502 or this chapter.

(2) A licensee conducting a race meet under this chapter may provide a place in the race meet grounds or enclosure where the licensee may conduct or supervise the use of the parimutuel system by patrons on the result of the races conducted under this chapter and the rules of the board.

(3) A person licensed under this chapter to hold a race meet may simulcast live races at a place in the race meet grounds or simulcast facility where the licensee may conduct or supervise the use of the parimutuel system by patrons on the results of simulcast races approved by the board.

(4) It is unlawful to conduct pool selling or bookmaking or to circulate handbooks or to bet or wager on a race of a licensed race meet, other than by the parimutuel system and in the race meet grounds or enclosure where the race is held, or to permit a minor to use the parimutuel system.

(5) Each licensee conducting a parimutuel system for an intrastate simulcast race meet shall combine the parimutuel pools at a simulcast facility with those at the actual racing facility for the purpose of determining the odds and computing payoffs. The amount of the handle at the simulcast race meet must be combined with the amount of parimutuel handle at the live racing facility for the purposes of distribution of money derived from parimutuel betting under 23-4-302 and 23-4-304.

(6) Negotiated purse money from intrastate and interstate simulcast parimutuel handles at racing associations that do not conduct live racing will be pooled and distributed to all tracks conducting live racing, all moneys to be distributed on a percent, based on each track's percent, of total annual on-track parimutuel handle.

(7) It is unlawful to:

(a) conduct pool selling or bookmaking or to wager on a fantasy sports league other than by the parimutuel system and by being physically present at the licensed parimutuel facility;

(b) permit a minor to use the parimutuel system; or

(c) conduct internet or telephone wagering on fantasy sports leagues."

Section 6. Section 23-4-302, MCA, is amended to read:

"23-4-302. (Temporary) Distribution of deposits — breakage. (1) Each licensee conducting the parimutuel system shall distribute all funds deposited in any pool to the winner of the parimutuel pool, less an amount that in the case of exotic wagering on races may not exceed 26% and in all other races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(2) Each licensee conducting the parimutuel system for a simulcast race meet shall distribute all funds deposited with the licensee in any pool for the simulcast race meet, less an amount that in the case of exotic wagering on these races may not exceed 26%, unless the signal originator percentage is higher, in which case the Montana simulcast licensee may adopt the same percentage withheld as the place where the signal originated, and that in all other of these races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(3) Each licensee conducting a parimutuel system for a simulcast race meet shall deduct 1% of the total amount wagered on the race meet and deposit it in the board's agency fund account. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

23-4-302. (Effective July 1, 2007) Distribution of deposits — breakage. (1) Each licensee conducting the parimutuel system *for a simulcast race meet* shall distribute all funds deposited in any pool to the winner of the parimutuel pool, less an amount that in the case of exotic wagering on races may not exceed 26% and in all other races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(2) Each licensee conducting the parimutuel system for a simulcast race meet shall distribute all funds deposited with the licensee in any pool for the

simulcast race meet, less an amount that in the case of exotic wagering on these races may not exceed 26%, unless the signal originator percentage is higher, in which case the Montana simulcast licensee may adopt the same percentage withheld as the place where the signal originated, and that in all other of these races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(3) Each licensee conducting a parimutuel system for a simulcast race meet shall deduct 1% of the total amount wagered on the race meet and deposit it in a state special revenue account. The funds deposited are statutorily appropriated to the board as provided in 17-7-502. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(4) (a) The parimutuel network licensee conducting fantasy sports league wagering shall distribute all funds deposited in the pool to the winner of the parimutuel pool less the takeout amount of 26% of the total deposits.

(b) The takeout amount must be distributed as follows:

(i) 15.3846% to the parimutuel facility licensee;

(ii) 23.0769% to the parimutuel network licensee as an administrative fee; and

(iii) 61.5385% to the board's special revenue account. No more than $316,000 for fiscal year 2008, or 10% for succeeding fiscal years, of the amount collected under this subsection (4)(b)(iii) may be appropriated by the legislature for administration of this chapter. The remaining portion collected under this subsection (4)(b)(iii) is statutorily appropriated, as provided in 17-7-502, to the board for distribution to live race purses and for other purposes the board considers appropriate for the good of the existing horseracing industry.

(c) The odd cents of all redistribution based on each dollar deposited that exceeds a sum equal to the next lowest multiple of 10, known as "breakage", as well as unclaimed winning tickets from each parimutuel pool must be distributed to the parimutuel network licensee."

Section 7. Section 23-4-304, MCA, is amended to read:

"23-4-304. (Temporary) Gross receipts — department's percentage — collection and allocation. (1) (a) The licensee shall pay to the department within 5 days following receipt by the licensee 1% of the gross receipts of each day's parimutuel betting at each race meet. At the end of each race meet the licensee shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance must be paid to the department. Money paid to the department may be used for the expenses incurred in carrying out this chapter. The licensee shall, at the same time, pay to the department all funds collected under 23-4-202(4)(d) on exotic wagering on races. These funds must be deposited in the board's agency fund account. The board shall then distribute all funds collected under 23-4-202(4)(d) to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(b) Each licensed simulcast facility shall pay to the department either 1% of the gross receipts of each day's parimutuel betting at each race meet or the actual cost to the board of regulating the simulcast race meet, whichever is higher. The money must be paid to the department within 5 days after receipt of

the money by the licensee. At the end of each race meet the licensed simulcast facility shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance must be paid to the department. Money paid to the department must be deposited in an account in the state special revenue fund and must be used for the administration of this chapter. The licensed simulcast facility shall, at the same time, pay to the department all funds collected under 23-4-202(4)(d) on exotic wagering on races. These funds must be deposited in the board's agency fund account. The board shall then distribute all funds collected under 23-4-202(4)(d) to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(2) Prior to the beginning of the live racing season, funds collected under 23-4-202(4)(d) must be distributed by the department, after first passing through the board's agency fund account, to be used for race purses that are distributed to each live race meet by the board or for other purposes that the board considers appropriate for the good of the horseracing industry.

23-4-304. (Effective July 1, 2007) Gross receipts — department's percentage — collection and allocation. (1) (a) ~~The~~ *Each live race meet* licensee shall pay to the department within 5 days following receipt by the licensee 1% of the gross receipts of each day's parimutuel betting at each race meet. At the end of each race meet the licensee shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance must be paid to the department. Money paid to the department may be used for the expenses incurred in carrying out this chapter. The licensee shall, at the same time, pay to the department all funds collected under 23-4-202(4)(d) on exotic wagering on races. These funds must be deposited in a state special revenue account. The board shall then distribute all funds collected under 23-4-202(4)(d) to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(b) Each licensed simulcast facility shall pay to the department either 1% of the gross receipts of each day's parimutuel betting at each race meet or the actual cost to the board of regulating the simulcast race meet, whichever is higher. The money must be paid to the department within 5 days after receipt of the money by the licensee. At the end of each race meet the licensed simulcast facility shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance must be paid to the department. Money paid to the department must be deposited in an account in the state special revenue fund and must be used for the administration of this chapter. The licensed simulcast facility shall, at the same time, pay to the department all funds collected under 23-4-202(4)(d) on exotic wagering on races. These funds must be deposited in a state special revenue account. The board shall then distribute all funds collected under 23-4-202(4)(d) to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(c) The licensed parimutuel network conducting fantasy sports league wagering shall pay the funds distributed pursuant to 23-4-302(4)(b)(iii) to the department within 10 days after receipt of the money by the licensee.

(2) Prior to the beginning of the live racing season, funds collected under 23-4-202(4)(d) must be distributed by the department, after first passing through a state special revenue account, to be used for race purses that are distributed to each live race meet by the board or for other purposes that the board considers appropriate for the good of the horseracing industry.

(3) ~~The~~ *Except for funds collected under subsection (1)(c), the* funds collected under this section and deposited in a state special revenue account are statutorily appropriated to the board as provided in 17-7-502."

Section 8. Section 23-5-801, MCA, is amended to read:

"23-5-801. Fantasy sports leagues defined. As used in this part, a "fantasy sports league" means a gambling activity conducted in the following manner:

(1) A fantasy sports league consists of a limited number of persons or groups of persons who pay an entrance fee for membership in the league. The entrance fee may include an administrative fee.

(2) Each league member creates a fictitious team composed of athletes from a given professional sport, such as baseball, basketball, or football. Player selection is conducted through random drawings ~~or~~*,* a bidding process~~.~~*, or by selection from a roster prepared by the parimutuel network coordinator*.

(3) ~~After~~ *Except for fantasy sports leagues operated under Title 23, chapter 4, after* the initial teams are selected, interim replacement of players may occur by trade or purchase. A specific fee, which may not exceed the total entrance fee, is charged for each transaction.

(4) A method, as defined by league rules, is devised to permit each team to compete against other teams in the league. Points are awarded to a team according to the performance of individual players or teams or both during a designated time period.

(5) A *league* member may be eligible to receive a payout based on the number of points accumulated. Payouts, which may be in the form of cash or prizes, are awarded according to league rules.

(6) The roster of eligible participants prepared by the parimutuel network must be provided to each league member.

~~(6)~~*(7)* Rules governing the conduct of the fantasy sports league must be provided in writing to each *league* member."

Section 9. Section 23-5-802, MCA, is amended to read:

"23-5-802. Fantasy sports leagues authorized. It is lawful to conduct or participate in a fantasy sports league*, including a fantasy sports league that is operated under a parimutuel system of wagering regulated under Title 23, chapter 4. It is unlawful to wager on a fantasy sports league by telephone or by the internet.*"

Section 10. Section 23-5-805, MCA, is amended to read:

"23-5-805. Payouts — administrative fees charged by commercial establishments. (1) ~~The~~ *Except as provided in subsection (2)(b), the* total value of payouts to all league members must equal the amount collected for entrance, administrative, and transactions fees, minus payment for administrative expenses.

(2) *(a)* ~~If~~ *Except as provided in subsection (2)(b), if* a commercial establishment charges an administrative fee for conducting a fantasy sports

league, the fee for each participant may not be more than 15% of the amount charged as a participant's entrance fee.

(b) The parimutuel network, as defined in 23-4-101, shall distribute all funds wagered on fantasy sports leagues in any wagering pool pursuant to the requirements of 23-4-302 and 23-4-304."

Section 11. Section 23-5-806, MCA, is amended to read:

"23-5-806. Sports betting prohibited — applicability. Sections 23-5-801, 23-5-802, and 23-5-805 do not:

(1) authorize betting or wagering on the outcome of an individual sports event; or

(2) apply to gambling activities governed under *Title 23,* chapter 4, *except for parimutuel facilities, parimutuel networks, or simulcast parimutuel networks conducting fantasy sports leagues,* or *under Title 23,* chapter 5, part 2 or 5~~, of this title~~."

Approved May 3, 2007

CHAPTER NO. 388

[HB 665]

AN ACT LICENSING AND REGULATING ATHLETIC TRAINERS; ESTABLISHING A BOARD OF ATHLETIC TRAINERS; PROVIDING RULEMAKING AUTHORITY FOR THE BOARD; ESTABLISHING QUALIFICATIONS FOR LICENSURE; PROVIDING TERMS OF LICENSURE; AND PROVIDING VIOLATIONS AND PENALTIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Board of athletic trainers. (1) There is a board of athletic trainers.

(2) The board is composed of five members appointed by the governor as follows:

(a) one member who is a physician licensed under Title 37, chapter 3, preferably with a background in the practice of sports medicine;

(b) three members who are athletic trainers who have been engaged in the practice of athletic training in the state for at least 2 years prior to being appointed. After the initial appointments are made to establish the board, each of the three members must be licensed as an athletic trainer under [sections 2 through 8]. Of these three members, at the time of appointment:

(i) one must be employed by or retired from employment with a postsecondary institution in Montana;

(ii) one must be employed in or retired from a secondary school in Montana; and

(iii) one must be employed by or retired from a health care facility or an athletic facility in Montana.

(c) one member of the public who is not engaged in or directly connected with the practice of athletic training.

(3) There may be no more than one retired athletic trainer serving on the board at anytime.

(4) A vacancy on the board must be filled for an unexpired term to maintain the representation provided in subsection (2).

(5) The board is attached for administrative purposes only, as prescribed in 2-15-121, to the department of labor and industry.

(6) Members must be compensated as provided in 2-18-501 through 2-18-503.

(7) Members shall serve 4-year, staggered terms. A member may be reappointed for one consecutive term. A member who is reappointed must be eligible under the same criteria as when first appointed.

(8) For the purposes of this section, an appointment to fill an unexpired term does not constitute a full term.

(9) The governor may remove a member from the board for neglect of duty, for incompetency, or for cause.

Section 2. Definitions. As used in [sections 2 through 8], the following definitions apply:

(1) "Athlete" means a person who participates in an athletic activity that involves exercises, sports, or games requiring physical strength, agility, flexibility, range of motion, speed, or stamina and the exercises, sports, or games are of the type conducted in association with an educational institution or a professional, amateur, or recreational sports club or organization.

(2) "Athletic injury" means a physical injury received by an athlete.

(3) "Athletic trainer" means an individual who is licensed to practice athletic training.

(4) "Athletic training" means the practice of prevention, recognition, assessment, management, treatment, disposition, and reconditioning of athletic injuries. The term includes the following:

(a) the use of heat, light, sound, cold, electricity, exercise, reconditioning, or mechanical devices related to the care and conditioning of athletes; and

(b) the education and counseling of the public on matters related to athletic training.

(5) "Board" means the board of athletic trainers provided for in [section 1].

(6) "Department" means the department of labor and industry provided for in 2-15-1701.

(7) "Licensee" means an individual licensed under [sections 2 through 8].

Section 3. Board duties — rulemaking. (1) The board shall meet at least twice a year for the purposes provided in Title 37, chapter 1, and [sections 2 through 8].

(2) The board shall adopt rules necessary to implement the provisions of [sections 2 through 8].

Section 4. Qualifications — temporary license — exemption from examination. (1) Applicants for licensure as an athletic trainer shall:

(a) satisfactorily complete an application and an examination prescribed by the department in accordance with rules adopted by the board;

(b) pay application, examination, and licensure fees established by the board;

(c) provide documentation that the applicant has received at least a baccalaureate degree from a postsecondary institution that meets the academic standards for athletic trainers established by the national athletic trainers' association board of certification;

(d) provide the board with letters of recommendation from at least two clinical supervisors familiar with the applicant's clinical training and other documentation by which the board may determine that an applicant has not had a criminal conviction or disciplinary action taken against the applicant by a board or a licensing agency in another state or territory of the United States that may have a direct bearing on the applicant's ability to practice athletic training competently.

(2) (a) The board may issue a temporary license to an applicant who:

(i) meets the qualifications in subsections (1)(b) through (1)(d) but has not yet met the examination requirement in subsection (1)(a); or

(ii) has a valid license from another state or certification as provided in subsection (3)(a) or (3)(b).

(b) A temporary license issued under this section is valid after the date of issuance for 90 days or until the board acts on the person's license application, whichever is earlier.

(3) An applicant may be exempted from the examination requirement in subsection (1)(a) if the applicant:

(a) has a current, valid license to practice athletic training in another state and that state's standards, as determined by the board, are at least equal to the standards for licensure in this state; or

(b) is certified as an athletic trainer by an organization recognized by the national commission for certifying agencies.

Section 5. License — revocation. (1) Except as provided in subsection (2), a license issued under [sections 2 through 8] is valid for 3 years.

(2) The board may revoke a license if a licensee knowingly:

(a) provided fraudulent information on the application or documentation required in [section 4];

(b) violated standards of conduct as prescribed by the board; or

(c) engaged in practices beyond the scope and limitation of the person's training and education as determined by the board.

Section 6. Representation to public — practice — exemptions. (1) (a) Except as provided in subsection (2), an individual may not practice athletic training without a license.

(b) Upon issuance of a license in accordance with [sections 2 through 8], a licensee may use the title "licensed athletic trainer" or "certified athletic trainer" and may use the abbreviations "LAT" or "AT" indicating that the individual is licensed in the practice of athletic training. A person who is not licensed may not use the titles listed in this subsection (1)(b). Except for an individual listed in subsection (2)(a), an individual who is not certified or licensed as an athletic trainer may not advertise for athletic training services.

(2) This section does not prohibit:

(a) a health care professional licensed under Title 37, chapter 3, 6, 8, 11, 12, 20, 24, or 26, from practicing an occupation or profession for which the health care professional is licensed or from practicing on an athlete;

(b) an educator or an information specialist from providing general information regarding prevention of athletic injuries;

(c) an individual from providing a first aid procedure incidental to the individual's employment or volunteer duties;

(d) an intern or student trainee studying a course of athletic training at an accredited postsecondary institution from providing athletic training under qualified supervision as part of the intern or student trainee's course of study. The intern or student trainee shall use the title "athletic training student" while carrying out athletic training activities.

(e) a personal trainer from providing personal training services;

(f) a massage therapist from providing massage; or

(g) a coach, physical education teacher, athletic director, other school employee, or supervised volunteer from providing first aid, preventative care, or continuous followup care of athletes and athletic injuries in a school setting.

Section 7. Application and administration of topical medications. (1) A licensed athletic trainer may apply or administer topical medications by:

(a) direct application;

(b) iontophoresis, a process by which topical medications are applied through the use of electricity; or

(c) phonophoresis, a process by which topical medications are applied through the use of ultrasound.

(2) A licensed athletic trainer may apply or administer the following topical medications:

(a) bactericidal agents;

(b) debriding agents;

(c) anesthetic agents;

(d) anti-inflammatory agents;

(e) antispasmodic agents; and

(f) adrenocorticosteroids.

(3) Topical medications applied or administered by a licensed athletic trainer must be prescribed on a specific or standing basis by a licensed medical practitioner authorized to order or prescribe topical medications and must be purchased from a pharmacy certified under 37-7-321. Topical medications dispensed under this section must comply with packaging and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

(4) Appropriate recordkeeping is required of a licensed athletic trainer who applies or administers topical medications as authorized in this section.

Section 8. Violation — penalties. A person who knowingly violates any provision of [sections 2 through 8] is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $50 or more than $500, by imprisonment in the county jail for a term of not less than 30 days or more than 6 months, or by both fine and imprisonment.

Section 9. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 17, and the provisions of Title 2, chapter 15, part 17, apply to [section 1].

(2) [Sections 2 through 8] are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 2 through 8].

Approved May 3, 2007

CHAPTER NO. 389

[HB 668]

AN ACT ESTABLISHING A PROCEDURE FOR PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS AUTHORIZED TO REQUIRE THE SUBMISSION OF FINGERPRINTS BY LICENSE APPLICANTS PRIOR TO THE ISSUANCE OF A LICENSE; AMENDING SECTIONS 37-1-201 AND 37-1-307, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-1-201, MCA, is amended to read:

"37-1-201. Purpose. It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when ~~such~~ offenders are given the opportunity to secure employment or to engage in a meaningful occupation, while licensure must be conferred with prudence to protect the interests of the public. *The legislature finds that the process of licensure will be strengthened by instituting an effective mechanism for obtaining accurate public information regarding a license applicant's criminal background.*"

Section 2. Section 37-1-307, MCA, is amended to read:

"37-1-307. Board authority. (1) A board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas requiring the attendance of witnesses or the production of documents and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint and must be signed by a member of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) establish a screening panel to determine whether there is reasonable cause to believe that a licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings. A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(e) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

~~(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding the board's licensees and license applicants and regarding possible unlicensed practice.~~

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information, as defined in 44-5-103, regarding the board's licensees and license applicants and regarding possible unlicensed practice, but the board may not record or retain any confidential criminal justice information without complying with the provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5.

(3) A board may contact and request information from the department of justice, which is designated as a criminal justice agency within the meaning of 44-5-103, for the purpose of obtaining criminal history record information regarding the board's licensees and license applicants and regarding possible unlicensed practice.

(4) (a) A board that is statutorily authorized to obtain a criminal background check as a prerequisite to the issuance of a license shall require the applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(b) The applicant shall sign a release of information to the board and is responsible to the department of justice for the payment of all fees associated with the criminal background check.

(c) Upon completion of the criminal background check, the department of justice shall forward all criminal history record information, as defined in 44-5-103, in any jurisdiction to the board as authorized in 44-5-303.

(d) At the conclusion of any background check required by this section, the board must receive the criminal background check report but may not receive the fingerprint card of the applicant. Upon receipt of the criminal background check report, the department of justice shall promptly destroy the fingerprint card of the applicant.

[~~(3)~~*(5)* Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)"

Section 3. Applicability. [This act] applies to applications for licensure submitted on or after [the effective date of this act].

Approved May 3, 2007

CHAPTER NO. 390

[HB 687]

AN ACT EXTENDING INSURANCE AND HEALTH PLAN COVERAGE FOR WELL-CHILD CARE FROM AGE 2 TO AGE 7; AMENDING SECTIONS

2-18-704, 33-22-303, 33-22-512, 33-30-1014, 33-31-301, AND 33-35-306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-704, MCA, is amended to read:

"2-18-704. Mandatory provisions. (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions of a defined benefit plan provided by law or, in the case of the defined contribution plan provided in Title 19, chapter 3, part 21, a member with at least 5 years of service and who is at least age 50 while in covered employment to remain a member of the group until the member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)(a) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and subsequently terminates membership may not rejoin the group plan unless the person again serves as a legislator.

(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues to be an inactive vested member of the judges' retirement system as provided by 19-5-301. The judge shall notify the department of administration in writing within 90 days of the end of the judge's judicial service of the judge's choice to continue membership in the group plan.

(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or

(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended.

(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.

(5) A person electing to remain a member of the group under subsection (1), (2), (3), or (4) shall pay the full premium for coverage and for that of the person's covered dependents.

(6) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation.

(7) An insurance contract or plan issued under this part must include coverage for treatment of inborn errors of metabolism, as provided for in 33-22-131.

(8) An insurance contract or plan issued under this part must include substantially equivalent or greater coverage for outpatient self-management

training and education for the treatment of diabetes and certain diabetic equipment and supplies as provided in 33-22-129.

(9) (a) An insurance contract or plan issued under this part that provides coverage for an individual in a member's family must provide coverage for well-child care for children from the moment of birth through 7 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the contract or plan.

(b) Coverage for well-child care under subsection (9)(a) must include:

(i) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(ii) routine immunizations according to the schedule for immunization recommended by the immunization practice advisory committee of the U.S. department of health and human services.

(c) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit as provided for in this subsection (9).

(d) For purposes of this subsection (9):

(i) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics; and

(ii) "well-child care" means the services described in subsection (9)(b) and delivered by a physician or a health care professional supervised by a physician."

Section 2. Section 33-22-303, MCA, is amended to read:

"33-22-303. Coverage for well-child care. (1) Each medical expense policy of disability insurance or certificate issued under the policy that is delivered, issued for delivery, renewed, extended, or modified in this state by a disability insurer and that provides coverage for a family member of the insured or subscriber must provide coverage for well-child care for children from the moment of birth through ~~2~~ *7* years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the policy or certificate issued under the policy.

(2) Coverage for well-child care under subsection (1) must include:

(a) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(b) routine immunizations according to the schedule for immunizations recommended by the immunization practices advisory committee of the U.S. department of health and human services.

(3) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section.

(4) This section does not apply to disability income, specified disease, accident-only, medicare supplement, or hospital indemnity policies.

(5) For purposes of this section:

(a) "well-child care" means the services described in subsection (2) and delivered by a physician or a health care professional supervised by a physician; and

(b) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics.

(6) When a policy of disability insurance or a certificate issued under the policy provides coverage or benefits to a resident of this state, it is considered to be delivered in this state within the meaning of this section, whether the insurer that issued or delivered the policy or certificate is located inside or outside of this state."

Section 3. Section 33-22-512, MCA, is amended to read:

"33-22-512. Coverage for well-child care. (1) Each group disability policy or certificate of insurance that is delivered, issued for delivery, renewed, extended, or modified in this state by a disability insurer and that provides coverage for a family member of the insured or subscriber must provide coverage for well-child care for children from the moment of birth through ~~2~~ 7 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the policy or certificate issued under the policy.

(2) Coverage for well-child care under subsection (1) must include:

(a) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(b) routine immunizations according to the schedule for immunizations recommended by the immunization practices advisory committee of the U.S. department of health and human services.

(3) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section.

(4) This section does not apply to disability income, specified disease, accident-only, medicare supplement, or hospital indemnity policies or certificates.

(5) For purposes of this section:

(a) "well-child care" means the services described in subsection (2) and delivered by a physician or a health care professional supervised by a physician; and

(b) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics.

(6) When a group disability policy or certificate of insurance issued under the policy provides coverage or benefits to a resident of this state, it is considered to be delivered in this state within the meaning of this section, whether the insurer that issued or delivered the policy or certificate is located inside or outside of this state."

Section 4. Section 33-30-1014, MCA, is amended to read:

"33-30-1014. Coverage for well-child care. (1) Each disability insurance plan or group disability insurance plan that is delivered, issued for delivery,

renewed, extended, or modified in this state by a health service corporation and that provides coverage for a family member of the insured or subscriber must provide coverage for well-child care for children from the moment of birth through ~~2~~ 7 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the plan.

(2) Coverage for well-child care under subsection (1) must include:

(a) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(b) routine immunizations according to the schedule for immunizations recommended by the immunization practices advisory committee of the U.S. department of health and human services.

(3) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section.

(4) This section does not apply to disability income, specified disease, medicare supplement, or hospital indemnity policies.

(5) For purposes of this section:

(a) "well-child care" means the services described in subsection (2) and delivered at the intervals required in that subsection by a physician or a health care professional supervised by a physician; and

(b) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics.

(6) When a disability insurance plan or group disability insurance plan issued by a health service corporation provides coverage or benefits to a resident of this state, it is considered to be delivered in this state within the meaning of this section, whether the health service corporation that issued or delivered the policy or certificate is located inside or outside of this state."

Section 5. Section 33-31-301, MCA, is amended to read:

"33-31-301. (Temporary) Evidence of coverage — schedule of charges for health care services. (1) Each enrollee residing in this state is entitled to an evidence of coverage. The health maintenance organization shall issue the evidence of coverage, except that if the enrollee obtains coverage through an insurance policy issued by an insurer or a contract issued by a health service corporation, whether by option or otherwise, the insurer or the health service corporation shall issue the evidence of coverage.

(2) A health maintenance organization may not issue or deliver an enrollment form, an evidence of coverage, or an amendment to an approved enrollment form or evidence of coverage to a person in this state before a copy of the enrollment form, the evidence of coverage, or the amendment to the approved enrollment form or evidence of coverage is filed with and approved by the commissioner in accordance with 33-1-501.

(3) An evidence of coverage issued or delivered to a person residing in this state may not contain a provision or statement that is untrue, misleading, or deceptive as defined in 33-31-312(1). The evidence of coverage must contain:

(a) a clear and concise statement, if a contract, or a reasonably complete summary, if a certificate, of:

(i) the health care services and the insurance or other benefits, if any, to which the enrollee is entitled;

(ii) any limitations on the services, kinds of services, or benefits to be provided, including any deductible or copayment feature;

(iii) the location at which and the manner in which information is available as to how services may be obtained;

(iv) the total amount of payment for health care services and the indemnity or service benefits, if any, that the enrollee is obligated to pay with respect to individual contracts; and

(v) a clear and understandable description of the health maintenance organization's method for resolving enrollee complaints;

(b) definitions of geographical service area, emergency care, urgent care, out-of-area services, dependent, and primary provider if these terms or terms of similar meaning are used in the evidence of coverage and have an effect on the benefits covered by the plan. The definition of geographical service area need not be stated in the text of the evidence of coverage if the definition is adequately described in an attachment that is given to each enrollee along with the evidence of coverage.

(c) clear disclosure of each provision that limits benefits or access to service in the exclusions, limitations, and exceptions sections of the evidence of coverage. The exclusions, limitations, and exceptions that must be disclosed include but are not limited to:

(i) emergency and urgent care;

(ii) restrictions on the selection of primary or referral providers;

(iii) restrictions on changing providers during the contract period;

(iv) out-of-pocket costs, including copayments and deductibles;

(v) charges for missed appointments or other administrative sanctions;

(vi) restrictions on access to care if copayments or other charges are not paid; and

(vii) any restrictions on coverage for dependents who do not reside in the service area.

(d) clear disclosure of any benefits for home health care, skilled nursing care, kidney disease treatment, diabetes, maternity benefits for dependent children, alcoholism and other drug abuse, and nervous and mental disorders;

(e) except as provided in 33-22-262, a provision requiring immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of an enrollee or the enrollee's dependents;

(f) a provision providing coverage as required in 33-22-133;

(g) except as provided in 33-22-262, a provision requiring medical treatment and referral services to appropriate ancillary services for mental illness and for the abuse of or addiction to alcohol or drugs in accordance with the limits and coverage provided in Title 33, chapter 22, part 7; however:

(i) after the primary care physician refers an enrollee for treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction, the health maintenance organization may not limit the enrollee to a health maintenance organization provider for the treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction;

(ii) if an enrollee chooses a provider other than the health maintenance organization provider for treatment and referral services, the enrollee's designated provider shall limit treatment and services to the scope of the referral in order to receive payment from the health maintenance organization;

(iii) the amount paid by the health maintenance organization to the enrollee's designated provider may not exceed the amount paid by the health maintenance organization to one of its providers for equivalent treatment or services;

(iv) the provisions of this subsection (3)(g) do not apply to services for mental illness provided under the Montana medicaid program as established in Title 53, chapter 6;

(h) a provision requiring coverage for well-child care for children from the moment of birth through at least 7 years of age that is exempt from any deductibles and that includes:

(i) a history, a physical examination, developmental assessment and anticipatory guidance, as those terms are defined in 33-22-303, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(ii) routine immunizations according to the schedule recommended by the immunization practices advisory committee of the U.S. department of health and human services;

~~(h)~~*(i)* a provision as follows:

"Conformity With State Statutes: Any provision of this evidence of coverage that on its effective date is in conflict with the statutes of the state in which the insured resides on that date is amended to conform to the minimum requirements of those statutes."

~~(i)~~*(j)* a provision that the health maintenance organization shall issue, without evidence of insurability, to the enrollee, dependents, or family members continuing coverage on the enrollee, dependents, or family members:

(i) if the evidence of coverage or any portion of it on an enrollee, dependents, or family members covered under the evidence of coverage ceases because of termination of employment or termination of membership in the class or classes eligible for coverage under the policy or because the employer discontinues the business or the coverage;

(ii) if the enrollee had been enrolled in the health maintenance organization for a period of 3 months preceding the termination of group coverage; and

(iii) if the enrollee applied for continuing coverage within 31 days after the termination of group coverage. The conversion contract may not exclude, as a preexisting condition, any condition covered by the group contract from which the enrollee converts.

~~(j)~~*(k)* a provision that clearly describes the amount of money an enrollee shall pay to the health maintenance organization to be covered for basic health care services.

(4) A health maintenance organization may amend an enrollment form or an evidence of coverage in a separate document if the separate document is filed with and approved by the commissioner in accordance with 33-1-501 and issued to the enrollee.

(5) (a) Except as provided in 33-22-262, a health maintenance organization shall provide the same coverage for newborn infants, required by subsection (3)(e), as it provides for enrollees, except that for newborn infants, there may be no waiting or elimination periods. A health maintenance organization may not assess a deductible or reduce benefits applicable to the coverage for newborn infants unless the deductible or reduction in benefits is consistent with the deductible or reduction in benefits applicable to all covered persons.

(b) Except as provided in 33-22-262, a health maintenance organization may not issue or amend an evidence of coverage in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an enrollee or dependents from and after the moment of birth.

(c) If a health maintenance organization requires payment of a specific fee to provide coverage of a newborn infant beyond 31 days of the date of birth of the infant, the evidence of coverage may contain a provision that requires notification to the health maintenance organization, within 31 days after the date of birth, of the birth of an infant and payment of the required fee.

(6) The provisions of 33-1-501 govern the filing and approval of health maintenance organization forms.

(7) The commissioner may require a health maintenance organization to submit any relevant information considered necessary in determining whether to approve or disapprove a filing made pursuant to this section. (Terminates June 30, 2009—sec. 14, Ch. 325, L. 2003.)

33-31-301. (Effective July 1, 2009) Evidence of coverage — schedule of charges for health care services. (1) Each enrollee residing in this state is entitled to an evidence of coverage. The health maintenance organization shall issue the evidence of coverage, except that if the enrollee obtains coverage through an insurance policy issued by an insurer or a contract issued by a health service corporation, whether by option or otherwise, the insurer or the health service corporation shall issue the evidence of coverage.

(2) A health maintenance organization may not issue or deliver an enrollment form, an evidence of coverage, or an amendment to an approved enrollment form or evidence of coverage to a person in this state before a copy of the enrollment form, the evidence of coverage, or the amendment to the approved enrollment form or evidence of coverage is filed with and approved by the commissioner in accordance with 33-1-501.

(3) An evidence of coverage issued or delivered to a person resident in this state may not contain a provision or statement that is untrue, misleading, or deceptive as defined in 33-31-312(1). The evidence of coverage must contain:

(a) a clear and concise statement, if a contract, or a reasonably complete summary, if a certificate, of:

(i) the health care services and the insurance or other benefits, if any, to which the enrollee is entitled;

(ii) any limitations on the services, kinds of services, or benefits to be provided, including any deductible or copayment feature;

(iii) the location at which and the manner in which information is available as to how services may be obtained;

(iv) the total amount of payment for health care services and the indemnity or service benefits, if any, that the enrollee is obligated to pay with respect to individual contracts; and

(v) a clear and understandable description of the health maintenance organization's method for resolving enrollee complaints;

(b) definitions of geographical service area, emergency care, urgent care, out-of-area services, dependent, and primary provider if these terms or terms of similar meaning are used in the evidence of coverage and have an effect on the benefits covered by the plan. The definition of geographical service area need not be stated in the text of the evidence of coverage if the definition is adequately described in an attachment that is given to each enrollee along with the evidence of coverage.

(c) clear disclosure of each provision that limits benefits or access to service in the exclusions, limitations, and exceptions sections of the evidence of coverage. The exclusions, limitations, and exceptions that must be disclosed include but are not limited to:

(i) emergency and urgent care;

(ii) restrictions on the selection of primary or referral providers;

(iii) restrictions on changing providers during the contract period;

(iv) out-of-pocket costs, including copayments and deductibles;

(v) charges for missed appointments or other administrative sanctions;

(vi) restrictions on access to care if copayments or other charges are not paid; and

(vii) any restrictions on coverage for dependents who do not reside in the service area.

(d) clear disclosure of any benefits for home health care, skilled nursing care, kidney disease treatment, diabetes, maternity benefits for dependent children, alcoholism and other drug abuse, and nervous and mental disorders;

(e) a provision requiring immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of an enrollee or the enrollee's dependents;

(f) a provision providing coverage as required in 33-22-133;

(g) a provision requiring medical treatment and referral services to appropriate ancillary services for mental illness and for the abuse of or addiction to alcohol or drugs in accordance with the limits and coverage provided in Title 33, chapter 22, part 7; however:

(i) after the primary care physician refers an enrollee for treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction, the health maintenance organization may not limit the enrollee to a health maintenance organization provider for the treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction;

(ii) if an enrollee chooses a provider other than the health maintenance organization provider for treatment and referral services, the enrollee's designated provider shall limit treatment and services to the scope of the referral in order to receive payment from the health maintenance organization;

(iii) the amount paid by the health maintenance organization to the enrollee's designated provider may not exceed the amount paid by the health

maintenance organization to one of its providers for equivalent treatment or services;

(iv) the provisions of this subsection (3)(g) do not apply to services for mental illness provided under the Montana medicaid program as established in Title 53, chapter 6;

(h) a provision requiring coverage for well-child care for children from the moment of birth through at least 7 years of age, including:

(i) a history, a physical examination, developmental assessment and anticipatory guidance, as those terms are defined in 33-22-303, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(ii) routine immunizations according to the schedule recommended by the immunization practices advisory committee of the U.S. department of health and human services;

~~(h)~~*(i)* a provision as follows:

"Conformity With State Statutes: Any provision of this evidence of coverage that on its effective date is in conflict with the statutes of the state in which the insured resides on that date is amended to conform to the minimum requirements of those statutes."

~~(i)~~*(j)* a provision that the health maintenance organization shall issue, without evidence of insurability, to the enrollee, dependents, or family members continuing coverage on the enrollee, dependents, or family members:

(i) if the evidence of coverage or any portion of it on an enrollee, dependents, or family members covered under the evidence of coverage ceases because of termination of employment or termination of membership in the class or classes eligible for coverage under the policy or because the employer discontinues the business or the coverage;

(ii) if the enrollee had been enrolled in the health maintenance organization for a period of 3 months preceding the termination of group coverage; and

(iii) if the enrollee applied for continuing coverage within 31 days after the termination of group coverage. The conversion contract may not exclude, as a preexisting condition, any condition covered by the group contract from which the enrollee converts.

~~(j)~~*(k)* a provision that clearly describes the amount of money an enrollee shall pay to the health maintenance organization to be covered for basic health care services.

(4) A health maintenance organization may amend an enrollment form or an evidence of coverage in a separate document if the separate document is filed with and approved by the commissioner in accordance with 33-1-501 and issued to the enrollee.

(5) (a) A health maintenance organization shall provide the same coverage for newborn infants, required by subsection (3)(e), as it provides for enrollees, except that for newborn infants, there may be no waiting or elimination periods. A health maintenance organization may not assess a deductible or reduce benefits applicable to the coverage for newborn infants unless the deductible or reduction in benefits is consistent with the deductible or reduction in benefits applicable to all covered persons.

(b) A health maintenance organization may not issue or amend an evidence of coverage in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an enrollee or dependents from and after the moment of birth.

(c) If a health maintenance organization requires payment of a specific fee to provide coverage of a newborn infant beyond 31 days of the date of birth of the infant, the evidence of coverage may contain a provision that requires notification to the health maintenance organization, within 31 days after the date of birth, of the birth of an infant and payment of the required fee.

(6) The provisions of 33-1-501 govern the filing and approval of health maintenance organization forms.

(7) The commissioner may require a health maintenance organization to submit any relevant information considered necessary in determining whether to approve or disapprove a filing made pursuant to this section."

Section 6. Section 33-35-306, MCA, is amended to read:

"33-35-306. Application of insurance code to arrangements. (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions:

(a) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(b) Title 33, chapter 1, part 7;

(c) 33-3-308;

(d) Title 33, chapter 18, except 33-18-242;

(e) Title 33, chapter 19;

(f) 33-22-107, 33-22-131, 33-22-134, and 33-22-135; and

(g) *33-22-512,* 33-22-525 and 33-22-526.

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

Section 7. Effective date. [This act] is effective January 1, 2008.

Section 8. Applicability. [This act] applies to policies, certificates, evidence of coverage, and plans issued or renewed on or after January 1, 2008.

Approved May 3, 2007

CHAPTER NO. 391

[HB 831]

AN ACT REVISING WATER LAWS IN CLOSED BASINS; DEFINING TERMS IN WATER USE LAWS; AMENDING REQUIREMENTS FOR AN APPLICATION TO APPROPRIATE GROUND WATER IN A CLOSED BASIN; PROVIDING THAT CERTAIN APPLICATIONS TO APPROPRIATE SURFACE WATER ARE EXEMPT FROM CLOSED BASIN REQUIREMENTS; PROVIDING REQUIREMENTS FOR HYDROGEOLOGIC ASSESSMENTS, MITIGATION PLANS, AND AQUIFER RECHARGE

PLANS; PROVIDING MINIMUM WATER QUALITY STANDARDS FOR CERTAIN DISCHARGES OF EFFLUENT; REQUIRING THAT DATA BE SUBMITTED TO THE BUREAU OF MINES AND GEOLOGY; PROVIDING FOR RULEMAKING; PROVIDING FOR A CASE STUDY AND REQUIREMENTS AND A FEE FOR PARTICIPATION IN THE CASE STUDY; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 85-2-102, 85-2-302, 85-2-311, 85-2-329, 85-2-330, 85-2-335, 85-2-336, 85-2-340, 85-2-341, 85-2-342, 85-2-343, 85-2-344, AND 85-2-506, MCA; REPEALING SECTION 85-2-337, MCA; DIRECTING THE AMENDMENT OF ARM 36.12.101 AND 36.12.120; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, it is the policy of this state to encourage the wise use of the state's water resources by making them available for appropriation and to provide wise utilization, development, and conservation of the water of the state for the maximum benefit of its people with the least possible degradation of the state's natural aquatic ecosystems; and

WHEREAS, there has been confusion regarding ground water issues in closed basins and the Department of Natural Resources and Conservation needs guidance from the Legislature on how to proceed; and

WHEREAS, the basin closure laws were passed to protect senior appropriators while the state water adjudication is ongoing; and

WHEREAS, ground water development in closed basins should be able to proceed as long as the applicant collects the necessary scientific information to determine if there will be an adverse effect on a prior appropriator and takes the necessary actions to mitigate or prevent any adverse effects on a prior appropriator; and

WHEREAS, it is critical that the Legislature develop state water policies in a way that protects the prior appropriation doctrine while at the same time protecting the quality of Montana's water and the ability to appropriate water consistent with section 85-1-101, MCA, and Article IX, section 3, of the Montana Constitution; and

WHEREAS, augmentation is statutorily authorized for the Clark Fork River Basin only; and

WHEREAS, the Department of Natural Resources and Conservation has developed administrative rules and applied augmentation through these administrative rules to all basins even though not specifically statutorily authorized; and

WHEREAS, administrative rules and rulemaking must comply with section 2-4-305, MCA, and may not engraft material not contemplated by the Legislature; and

WHEREAS, this bill provides definitions and a new procedure for mitigation and aquifer recharge.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. (Temporary) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436; ~~or~~

(d) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408*;*

(e) a use of water for aquifer recharge or mitigation as provided in [sections 14 and 16]; or

(f) a use of water for an aquifer storage and recovery project as provided in [section 20].

(2) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(3) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

~~(2)~~*(4)* "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, ~~(including~~ stock water~~)~~, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436; ~~or~~

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408*;*

(e) a use of water for aquifer recharge or mitigation as provided in [sections 14 and 16]; or

(f) a use of water for an aquifer storage and recovery project as provided in [section 20].

~~(3)~~*(5)* "Certificate" means a certificate of water right issued by the department.

~~(4)~~*(6)* "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

~~(5)~~*(7)* "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

~~(6)~~*(8)* "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that

all of the necessary parts of the form requiring the information have been filled in with the required information.

~~(7)~~*(9)* "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

~~(8)~~*(10)* "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

~~(9)~~*(11)* "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

~~(10)~~*(12)* "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

~~(11)~~*(13)* "Ground water" means any water that is beneath the ground surface.

~~(12)~~*(14)* "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(15) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(16) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

~~(13)~~*(17)* "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(14)~~*(18)* "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

~~(15)~~*(19) (a)* "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

~~(16)~~*(20)* "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(17)~~*(21)* "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

~~(18)~~*(22)* "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(19)~~*(23)* "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(20)~~*(24)* "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(21)~~*(25)* "Water division" means a drainage basin as defined in 3-7-102.

~~(22)~~*(26)* "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(23)~~*(27)* "Water master" means a master as provided for in Title 3, chapter 7.

~~(24)~~*(28)* "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

~~(25)~~*(29)* "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)

85-2-102. (Effective July 1, 2009) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; ~~or~~

(c) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408*;*

(d) a use of water for aquifer recharge or mitigation as provided in [sections 14 and 16]; or

(e) a use of water for an aquifer storage and recovery project as provided in [section 20].

(2) "Aquifer recharge" means either controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(3) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

~~(2)~~*(4)* "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, ~~(including~~ stock water~~)~~, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; ~~or~~

(c) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408*;*

(d) a use of water for aquifer recharge or mitigation as provided in [sections 14 and 16]; or

(e) a use of water for an aquifer storage and recovery project as provided in [section 20].

~~(3)~~*(5)* "Certificate" means a certificate of water right issued by the department.

~~(4)~~*(6)* "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

~~(5)~~*(7)* "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

~~(6)~~*(8)* "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

~~(7)~~*(9)* "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

~~(8)~~*(10)* "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

~~(9)~~*(11)* "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

~~(10)~~*(12)* "Ground water" means any water that is beneath the ground surface.

~~(11)~~*(13)* "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(14) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(15) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

~~(12)~~*(16)* "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(13)~~*(17)* "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

~~(14)~~*(18) (a)* "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

~~(15)~~*(19)* "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(16)~~*(20)* "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

~~(17)~~*(21)* "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(18)~~*(22)* "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(19)~~*(23)* "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(20)~~*(24)* "Water division" means a drainage basin as defined in 3-7-102.

~~(21)~~*(25)* "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(22)~~*(26)* "Water master" means a master as provided for in Title 3, chapter 7.

~~(23)~~*(27)* "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

~~(24)~~*(28)* "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 2. Section 85-2-302, MCA, is amended to read:

"85-2-302. Application for permit. (1) Except as provided in 85-2-306 *and [section 21]*, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works except by applying for and receiving a permit from the department.

(2) The department shall adopt rules that are necessary to determine whether or not an application is correct and complete, based on the provisions applicable to issuance of a permit under this part. The rules must be adopted in compliance with Title 2, chapter 4.

(3) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.

(4) The applicant shall submit a correct and complete application. The determination of whether an application is correct and complete must be based on rules adopted under subsection (2) that are in effect at the time the application is submitted.

(5) The department shall notify the applicant of any defects in an application within 180 days. The defects must be identified by reference to the rules adopted under subsection (2). If the department does not notify the applicant of any defects within 180 days, the application must be treated as a correct and complete application.

(6) An application does not lose priority of filing because of defects if the application is corrected or completed within 30 days of the date of notification of the defects or within a further time as the department may allow, but not to exceed 90 days from the date of notification. If an application is made correct and complete after the mandated time period, but within 90 days of the date of

notification of the defects, the priority date of the application is the date the application is made correct and complete.

(7) An application not corrected or completed within 90 days from the date of notification of the defects is terminated."

Section 3. Section 85-2-311, MCA, is amended to read:

"85-2-311. Criteria for issuance of permit. (1) A permit may be issued under this part prior to the adjudication of existing water rights in a source of supply. In a permit proceeding under this part, there is no presumption that an applicant for a permit cannot meet the statutory criteria of this section prior to the adjudication of existing water rights pursuant to this chapter. In making a determination under this section, the department may not alter the terms and conditions of an existing water right or an issued certificate, permit, or state water reservation. Except as provided in subsections (3) and (4), the department shall issue a permit if the applicant proves by a preponderance of evidence that the following criteria are met:

(a) (i) there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate; and

(ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

(B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and

(C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

(b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that the applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use;

(f) the water quality of a prior appropriator will not be adversely affected;

(g) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and

(h) the ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(2) The applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not be met. For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

(3) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the proposed appropriation is a reasonable use. A finding must be based on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands, such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (4) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

(5) ~~To~~ *Subject to [section 14], to* meet the preponderance of evidence standard in this section, the applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the applicant, the department, the U.S. geological survey, or the U.S. natural resources conservation service and other specific field studies.

(6) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section.

(7) The department may adopt rules to implement the provisions of this section.

(8) For an application for ground water in a basin closed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344 or during the period of closure for any basin that is administratively closed pursuant to 85-2-319, the applicant shall comply with the provisions of [section 14] in addition to the requirements of this section."

Section 4. Section 85-2-329, MCA, is amended to read:

"85-2-329. Definitions. Unless the context requires otherwise, in 85-2-330 and this section, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

~~(2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and that is not immediately or directly connected to surface water.~~

~~(3)~~*(2)* "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the

water returns without delay to the source of supply, causing little or no disruption in stream conditions.

~~(4)~~*(3)* "Teton River basin" means the drainage area of the Teton River and its tributaries above the confluence of the Teton and Marias Rivers."

Section 5. Section 85-2-330, MCA, is amended to read:

"85-2-330. Basin closure — exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not ~~process or~~ grant an application for a permit to appropriate water or for a reservation to reserve water within the Teton River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water *if the applicant complies with the provisions of [section 14]*;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for*:*

(i) domestic *use from surface water or pursuant to 85-2-306*~~,~~*;* ~~municipal, or~~

(ii) stock use*; or*

(iii) use of surface water by or for a municipality;

(d) an application to store water during high spring flows; ~~or~~

(e) ~~emergency~~ temporary *emergency* appropriations as provided for in 85-2-113(3)*; or*

(f) an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:

(i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

(ii) aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

(iii) remedial actions taken pursuant to Title 75, chapter 10, part 7.

(3) A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(f) may not be used for dilution.

(4) A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b), (2)(c), (2)(e), or (2)(f)."

Section 6. Section 85-2-335, MCA, is amended to read:

"85-2-335. Definitions. Unless the context requires otherwise, in 85-2-335*,* ~~through~~ *85-2-336, and* 85-2-338, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302.

(2) "Upper Clark Fork River basin" means the drainage area of the Clark Fork River and its tributaries above Milltown dam."

Section 7. Section 85-2-336, MCA, is amended to read:

"85-2-336. Basin closure — exception. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not ~~process or~~ grant an application for a permit to appropriate water within the Upper Clark Fork River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water *if the applicant complies with the provisions of [section 14]*;

(b) ~~an application filed prior to January 1, 2000, for a permit to appropriate water to conduct response actions or remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or Title 75, chapter 10, part 7, at sites designated as of January 1, 1994. The total flow rates for all permits issued under this subsection (2)(b) may not exceed 10 cubic feet per second. A permit issued to conduct response actions or remedial actions may not be used for dilution and must be limited to a term not to exceed the necessary time to complete the response or remedial action, and the permit may not be transferred to any person for any purpose other than the designated response or remedial action~~ *an application for a permit to appropriate surface water to conduct aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387. A permit issued to conduct aquatic resource actions may not be used for dilution.*

(c) an application for a permit to appropriate water for stock use;

(d) an application to store water; or

(e) an application for power generation at existing hydroelectric dams. The department may not approve a permit for power generation if approval results in additional consumption of water.

(3) *A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b) or (2)(c).*

(4) Applications for state water reservations in the Upper Clark Fork River basin filed pursuant to 85-2-316 and pending as of May 1, 1991, have a priority date of May 1, 1991. The filing of a state water reservation application does not provide standing to object under 85-2-402.

~~(4)~~*(5)* The department may not process or approve applications for state water reservations in the Upper Clark Fork River basin filed pursuant to 85-2-316."

Section 8. Section 85-2-340, MCA, is amended to read:

"85-2-340. Definitions. Unless the context requires otherwise, in 85-2-341 and this section, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(2) "Ground water" ~~means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and that is not immediately or directly connected to surface water~~ *has the meaning provided in 85-2-102.*

(3) "Jefferson River basin" means the drainage area of the Jefferson River and its tributaries above the confluence of the Jefferson and Missouri Rivers.

(4) "Madison River basin" means the drainage area of the Madison River and its tributaries above the confluence of the Madison and Jefferson Rivers.

(5) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions."

Section 9. Section 85-2-341, MCA, is amended to read:

"85-2-341. Basin closure — exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not ~~process or~~ grant an application for a permit to appropriate water or for a state water reservation to reserve water within the Jefferson River basin or Madison River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water *if the applicant complies with the provisions of [section 14]*;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for*:*

(i) domestic *use from surface water or pursuant to 85-2-306*~~,~~*;* ~~municipal, or~~

(ii) stock use*; or*

(iii) use of surface water by or for a municipality;

(d) an application to store water during high spring flows; ~~or~~

(e) temporary emergency appropriations as provided for in 85-2-113(3)*; or*

(f) an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:

(i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

(ii) aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

(iii) remedial actions taken pursuant to Title 75, chapter 10, part 7.

(3) A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(f) may not be used for dilution.

(4) A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b), (2)(c), (2)(e), or (2)(f)."

Section 10. Section 85-2-342, MCA, is amended to read:

"85-2-342. Definitions. Unless the context requires otherwise, in 85-2-343 and this section, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

~~(2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and that is not immediately or directly connected to surface water.~~

~~(3)~~*(2)* "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

~~(4)~~*(3)* "Upper Missouri River basin" means the drainage area of the Missouri River and its tributaries above Morony dam."

Section 11. Section 85-2-343, MCA, is amended to read:

"85-2-343. Basin closure — exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not ~~process or~~ grant an application for a permit to appropriate water or for a reservation to reserve water within the upper Missouri River basin until the final decrees have been issued in accordance with part 2 of this chapter for all of the subbasins of the upper Missouri River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water *if the applicant complies with the provisions of [section 14]*;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for*:*

(i) domestic *use from surface water or pursuant to 85-2-306*~~,~~*;* ~~municipal, or~~

(ii) stock use*; or*

(iii) use of surface water by or for a municipality;

(d) an application to store water during high spring flows;

(e) an application for a permit to use water from the Muddy Creek drainage, which drains to the Sun River, if the proposed use of water will help control erosion in the Muddy Creek drainage; ~~or~~

(f) temporary emergency appropriations as provided for in 85-2-113(3)*; or*

(g) an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:

(i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

(ii) aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

(iii) remedial actions taken pursuant to Title 75, chapter 10, part 7.

(3) A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(g) may not be used for dilution.

(4) A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b), (2)(c), (2)(e), (2)(f), or (2)(g)."

Section 12. Section 85-2-344, MCA, is amended to read:

"85-2-344. Bitterroot River subbasin temporary closure — definitions — exceptions. (1) Unless the context requires otherwise, in this section, the following definitions apply:

(a) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(b) "Bitterroot River basin" means the drainage area of the Bitterroot River and its tributaries above the confluence of the Bitterroot River and Clark Fork of the Columbia River and designated as "Basin 76H".

(c) "Bitterroot River subbasin" means one of the following hydrologically related portions of the Bitterroot River basin:

(i) the mainstem subbasin, designated as "Subbasin 76HA";

(ii) the north end subbasin, designated as "Subbasin 76HB";

(iii) the east side subbasin, designated as "Subbasin 76HC";

(iv) the southeast subbasin, designated as "Subbasin 76HD";

(v) the south end subbasin, designated as "Subbasin 76HE";

(vi) the southwest subbasin, designated as "Subbasin 76HF";

(vii) the west central subbasin, designated as "Subbasin 76HG"; or

(viii) the northwest subbasin, designated as "Subbasin 76HH".

(2) As provided in 85-2-319, the department may not ~~process or~~ grant an application for a permit to appropriate water or for a state water reservation within a Bitterroot River subbasin until the closure for the basin is terminated pursuant to subsection (3) of this section, except for:

(a) an application for a permit to appropriate ground water *if the applicant complies with the provisions of [section 14]*;

(b) an application for a permit to appropriate water for ~~a municipal water supply~~ *use of surface water by or for a municipality*;

(c) temporary emergency appropriations pursuant to 85-2-113(3); ~~or~~

(d) an application to store water during high spring flow in an impoundment with a capacity of 50 acre-feet or more*; or*

(e) an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:

(i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

(ii) aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

(iii) remedial actions taken pursuant to Title 75, chapter 10, part 7.

(3) A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(e) may not be used for dilution.

(4) A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b), (2)(c), or (2)(e).

~~(3)~~*(5)* Each Bitterroot River subbasin is closed to new appropriations and new state water reservations until 2 years after all water rights in the subbasin arising under the laws of the state are subject to an enforceable and administrable decree as provided in 85-2-406(4)."

Section 13. Section 85-2-506, MCA, is amended to read:

"85-2-506. Controlled ground water areas — designation or modification. (1) The department may designate or modify controlled ground water areas as provided in this part.

(2) Designation or modification of an area of controlled ground water use may be proposed to the department on its own motion, by petition of a state or local public health agency for identified public health risks, or by petition signed by at least 20 or one-fourth of the users, ~~(~~whichever is the lesser number~~)~~, of ground water in a ground water area in which there are alleged to be facts showing *that*:

(a) ~~that~~ ground water withdrawals are in excess of recharge to the aquifer or aquifers within the ground water area;

(b) ~~that~~ excessive ground water withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the ground water area;

(c) ~~that~~ significant disputes regarding priority of rights, amounts of ground water in use by appropriators, or priority of type of use are in progress within the ground water area;

(d) ~~that~~ ground water levels or pressures in the area in question are declining or have declined excessively;

(e) ~~that~~ excessive ground water withdrawals would cause contaminant migration;

(f) ~~that~~ ground water withdrawals adversely affecting ground water quality within the ground water area are occurring or are likely to occur; or

(g) ~~that~~ water quality within the ground water area is not suited for a specific beneficial use defined by ~~85-2-102(2)(a)~~ *85-2-102(4)(a)*.

(3) When a proposal is made, the department shall fix a time and place for a hearing, which ~~time~~ may not be less than 90 days from the making of the proposal. The place for the hearing must be within or as close as practical to the controlled ground water area.

(4) The department shall publish a notice of the hearing, setting forth:

(a) the names of the petitioners;

(b) the description by legal subdivisions (section, township, range) of all lands included in or proposed to be included in the ground water area or subarea;

(c) the purpose of the hearing; and

(d) the time and place of the hearing where any interested person may appear, either in person or by attorney, file written objections to the granting of the proposal, and be fully heard.

(5) *(a)* The notice of hearing must be published at least once ~~in~~ each week for 3 successive weeks not less than 30 days before the date of the hearing in a newspaper of general circulation in the county or counties in which the ground water area or subarea is located. The department shall also cause a copy of the notice, together with a copy of the petition, to be served by mail, not less than 30 days before the hearing, upon*:*

(i) each well driller licensed in Montana whose address is within any county in which any part of the area in question is located; ~~upon~~

(ii) each person or public agency known from an examination of the records in the department's office to be a claimant or appropriator of ground water in the area in question ~~(claimant or appropriator meaning one who diverts, impounds, or withdraws ground water and not merely one who uses or obtains ground water from another who diverts, impounds, or withdraws ground water)~~; ~~upon~~

(iii) the bureau; and ~~upon~~

(iv) the mayor or presiding officer of the governing body of each incorporated municipality located in whole or in part within the proposed ground water area.

(b) The department may also serve notice upon any other person or state or federal agency that the department feels may be interested in or affected by the proposed designation or modification of a controlled ground water area. The petition need not be served on any petitioner. A copy of the notice, together with

a copy of the proposal, must be mailed to each person at the person's last-known address, and service is complete upon depositing it in the post office, postage prepaid, addressed to each person on whom it is to be served. Publication and mailing of the notice as prescribed in this section, when completed, is considered to be sufficient notice of the hearing to all interested persons.

(c) As used in subsection (5)(a), "claimant or appropriator" means a person who diverts, impounds, or withdraws ground water and not merely a person who uses or obtains ground water from another person who diverts, impounds, or withdraws ground water."

Section 14. Ground water appropriation right in closed basins. (1) An application for a ground water appropriation right in a basin closed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344 or administratively closed pursuant to 85-2-319 must be accompanied by a hydrogeologic assessment that has been conducted pursuant to [section 15] to predict whether the proposed appropriation right will result in a net depletion of surface water and must be accompanied by a plan as provided in [section 16], if necessary.

(2) If the hydrogeologic assessment conducted pursuant to [section 15] predicts that the proposed appropriation right will not result in a net depletion of surface water, the department shall proceed under the criteria provided in 85-2-311.

(3) (a) If the hydrogeologic assessment predicts that the proposed appropriation right will result in a net depletion of surface water, the applicant shall analyze whether the net depletion results in an adverse effect on a prior appropriator. If the applicant provides a correct and complete application, the department shall proceed to process the application as provided in [section 17].

(b) If the applicant has used the water for the purpose of conducting the hydrogeologic assessment, the applicant shall terminate the use of the water. Failure to terminate use of the water must result in a fine of not more than $1,000 for each day of the violation.

(4) If the hydrogeologic assessment predicts that there will be net depletion as provided in subsection (3)(a), the department may proceed to process the application pursuant to [section 17] if, in addition to other applicable criteria, the applicant complies with [section 16].

(5) For the purposes of [sections 14 through 16], the prediction of net depletion does not mean that an adverse effect on a prior appropriator will occur or if an adverse effect does occur that the entire amount of net depletion is the cause of the adverse effect. A determination of whether or not there is an adverse effect on a prior appropriator as the result of a new appropriation right is a determination that must be made by the department based on the amount, location, and duration of the amount of net depletion that causes the adverse effect relative to the historic beneficial use of the appropriation right that may be adversely affected.

(6) The priority date for an appropriation right that is granted to an entity whose permit application was returned after April 11, 2006, and before [the effective date of this act] because of the department's interpretation of a court decision is the date of the initial application to the department.

Section 15. Hydrogeologic assessment — definition — minimum requirements. (1) (a) For the purposes of [sections 14 through 16], "hydrogeologic assessment" means a report for the project for or through which water will be put to beneficial use, the point of diversion, and the place of use

that describes the geology, hydrogeologic environment, water quality with regard to the provisions of [sections 18 and 19], and predicted net depletion, if any, including the timing of any net depletion, for surface water within the area described in subsection (2)(a)(i) within the closed basins that are subject to an appropriation right, including but not limited to rivers, streams, irrigation canals, or drains that might be affected by the new appropriation right and any predicted water quality changes that may result.

(b) In predicting net depletion of surface water from a proposed use, consideration must be given, at a minimum, to:

(i) the actual amount diverted for like beneficial uses;

(ii) any amounts that will likely be lost in conveyance, if any, and whether any lost amounts are lost to the system through evaporation or other means or whether those amounts are returned to the system through percolation or other means; and

(iii) any return flows from the proposed use, including but not limited to any treated wastewater return flows if the treated wastewater that is considered effluent meets the requirements of [sections 18 and 19].

(2) (a) A hydrogeologic assessment that will be used to predict net depletion of surface water resulting from a new appropriation right must include hydrogeologic data or a model developed by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer that incorporates for the new appropriation:

(i) the area or estimated area of ground water that will be affected not to exceed the boundaries of the drainage subdivisions established by the office of water data coordination, United States geological survey, and used by the water court, unless the applicant chooses to expand the boundaries;

(ii) the geology in the area identified in subsection (2)(a)(i), including stratigraphy and structure;

(iii) the parameters of the aquifer system within the area identified in subsection (2)(a)(i) to include, at a minimum, estimates for:

(A) the lateral and vertical extent of the aquifer;

(B) whether the aquifer is confined or unconfined;

(C) the effective hydraulic conductivity of the aquifer;

(D) transmissivity and storage coefficient related to the aquifer; and

(E) the estimated flow direction or directions of ground water and the rate of movement;

(iv) the locations of surface waters within the area described in subsection (2)(a)(i) that are subject to an appropriation right, including but not limited to springs, creeks, streams, or rivers that may or may not show a net depletion;

(v) evidence of water availability; and

(vi) the locations of all wells or other sources of ground water of record within the area identified in subsection (2)(a)(i).

(b) A hydrogeologic assessment must also include a water quality report that includes:

(i) the location of existing documented hazards that could be affected or exacerbated by the appropriation right, such as areas of subsidence, along with a plan to mitigate any conditions or impacts;

(ii) other water quality information necessary to comply with [sections 18 and 19]; and

(iii) a description of any water treatment method that will be used at the time of any type of injection or introduction of water to the aquifer to ensure compliance with [sections 18 and 19] and the water quality laws under Title 75, chapter 5.

(3) The hydrogeologic assessment must include an analysis of whether the information required by subsection (2) predicts that there may be a net depletion of surface water in the area described in subsection (2)(a)(i) and the extent of the depletion, if any.

(4) The hydrogeologic assessment, the model if provided, the test well data, the monitoring well data, and other related information must be submitted to the department. The department shall submit this information to the bureau of mines and geology. The bureau of mines and geology shall ensure that information submitted pursuant to this section is entered into the ground water information center database as part of the ground water assessment program.

(5) An entity that has previously conducted some type of hydrogeologic assessment may submit the information from that assessment as the hydrogeologic assessment required by this section if the information meets the criteria and requirements of this section.

Section 16. Aquifer recharge or mitigation plans in closed basins — minimum requirements. (1) An applicant whose hydrogeologic assessment conducted pursuant to [section 15] predicts that there will be a net depletion of surface water shall offset the net depletion that results in the adverse effect through a mitigation plan or an aquifer recharge plan.

(2) A mitigation plan must include:

(a) where and how the water in the plan will be put to beneficial use;

(b) when and where, generally, water reallocated through exchange or substitution will be required;

(c) the amount of water reallocated through exchange or substitution that is required;

(d) how the proposed project or beneficial use for which the mitigation plan is required will be operated;

(e) evidence that an application for a change in appropriation right, if necessary, has been submitted;

(f) evidence of water availability; and

(g) evidence of how the mitigation plan will offset the required amount of net depletion of surface water in a manner that will offset an adverse effect on a prior appropriator.

(3) An aquifer recharge plan must include:

(a) evidence that the appropriate water quality related permits have been granted pursuant to Title 75, chapter 5, and pursuant to [sections 18 and 19];

(b) where and how the water in the plan will be put to beneficial use;

(c) when and where, generally, water reallocated through exchange or substitution will be required;

(d) the amount of water reallocated through exchange or substitution that is required;

(e) how the proposed project or beneficial use for which the aquifer recharge plan is required will be operated;

(f) evidence that an application for a change in appropriation right, if necessary, has been submitted;

(g) a description of the process by which water will be reintroduced to the aquifer;

(h) evidence of water availability; and

(i) evidence of how the aquifer recharge plan will offset the required amount of net depletion of surface water in a manner that will offset any adverse effect on a prior appropriator.

(4) The department may not require an applicant, through a mitigation plan or an aquifer recharge plan, to provide more water than the quantity needed to offset the adverse effects on a prior appropriator caused by the net depletion.

(5) An appropriation right that relies on a mitigation plan or aquifer recharge plan to offset net depletion of surface water that results in an adverse effect on a prior appropriator must be issued as a conditional permit that requires that the mitigation plan or aquifer recharge plan must be exercised when the appropriation right is exercised.

Section 17. Process for combining decisions on ground water permit applications in closed basins. (1) An applicant for a permit to appropriate ground water in a closed basin shall submit to the department a combined application consisting of a hydrogeologic assessment with an analysis of net depletion, a mitigation plan or aquifer recharge plan if required, an application for a beneficial water use permit or permits, and an application for a change in appropriation right or rights if necessary.

(2) The department shall review the application to determine if it is correct and complete under the process and requirements of 85-2-302.

(3) (a) Once an application has been determined to be correct and complete, the department shall prepare a notice and publish it as provided under 85-2-307.

(b) If no valid objection to the application is filed and the applicant proves that the criteria of 85-2-311 or 85-2-402, if necessary, have been satisfied, the application must be granted or approved in a modified form or upon terms, conditions, or limitations specified by the department.

(c) If no valid objection to the application is filed and the applicant has not proved that the criteria of 85-2-311 or 85-2-402, if necessary, have been satisfied, the application must be denied.

(d) If a valid objection to the application is filed, the department shall proceed to process the application pursuant to 85-2-308 through 85-2-311. If the applicant satisfies the criteria of 85-2-311 or 85-2-402, if necessary, and proves by a preponderance of the evidence that net depletion, if any, will not adversely affect a prior appropriator based on the applicant's mitigation plan or aquifer recharge plan, the department shall issue the permit.

Section 18. Department permit coordination — requirements for aquifer recharge plans. To ensure that the department and the department of environmental quality are coordinating their respective permitting activities:

(1) an applicant for a new appropriation right pursuant to [section 14] that involves aquifer recharge shall provide the department with a copy of a relevant discharge permit if necessary; and

(2) the department may not grant a new appropriation right pursuant to [section 14] that involves aquifer recharge until the discharge permit, if necessary, has been obtained and presented to the department.

Section 19. Water quality of return flows and discharges associated with aquifer recharge plan — minimum requirements. (1) A person who proposes to use sewage from a system requiring a water quality permit for the purposes of aquifer recharge pursuant to [section 16] or plans to use sewage from a system requiring a water quality permit as a return flow to minimize the amount of water necessary to offset adverse effects resulting from net depletion of surface water through an aquifer recharge plan pursuant to [section 16] must obtain a current permit pursuant to this chapter.

(2) The minimum treatment requirements for sewage systems subject to this section are the federal requirements provided for in 40 CFR 133, and the system must meet, at a minimum, the requirements of level two treatment for the removal of nitrogen in the effluent.

(3) In addition to the minimum treatment requirements of subsection (2), sewage systems subject to this section that are used for aquifer injection must meet the more stringent of either primary drinking water standards pursuant to Title 75, chapter 6, or the nondegradation requirements pursuant to 75-5-303 at the point of discharge.

(4) The appropriate interim legislative committee shall review drinking water standards and effluent treatment standards in other jurisdictions and recommend appropriate treatment standards for purposes of aquifer recharge and mitigation.

(5) For the purposes of this section, "aquifer injection" means the use of a well to inject water directly into an aquifer system without filtration through the geologic materials overlying the aquifer system for the purpose of aquifer recharge or for an aquifer storage and recovery project.

Section 20. Aquifer storage and recovery projects in closed basins. (1) An aquifer storage and recovery project may be authorized in a closed basin.

(2) In addition to the criteria provided in Title 85, chapter 2, part 3, and 85-2-402, an aquifer storage and recovery project must meet the requirements provided in [sections 14 through 19].

Section 21. Aquifer testing, test well, or monitoring well data submission — not beneficial use. (1) All aquifer testing data and other related information from test wells, monitoring wells, or other sources that is collected for the purpose of obtaining a new appropriation right or a change in appropriation right pursuant to [sections 14 through 16] must be submitted to the department and the bureau of mines and geology in a form prescribed by the department and the bureau of mines and geology. The bureau of mines and geology shall ensure that information submitted pursuant to this section is entered into the ground water information center database as part of the ground water assessment program.

(2) (a) Water testing or monitoring is not a beneficial use of water requiring the filing of a permit application.

(b) A permit is not required if the intent of a person is to conduct aquifer tests, water quality tests, water level monitoring, or other testing or monitoring of a water source.

Section 22. Rulemaking. The department may adopt rules to implement the provisions of [sections 14 through 18, 19, and 20]. The rules must be oriented toward the protection of existing rights from adverse effects from net depletions caused by new appropriation rights or changes in appropriation rights in closed basins and must be consistent with and not exceed the requirements of [sections 14 through 18, 19, and 20].

Section 23. Closed basin case study. (1) (a) The Montana bureau of mines and geology, provided for in 20-25-211, shall review, assess for scientific accuracy, and compile and summarize ground water studies that have been conducted in the last 20 years in closed basins or subbasins in Montana that may have a bearing on better understanding the water balance in these basins with respect to potential ground water withdrawal impacts on surface water. The bureau of mines and geology shall also study the extent to which ground water withdrawals may result in net depletion of surface water in a closed basin or in specific areas of a closed basin.

(b) After compilation of the information, the bureau of mines and geology shall present recommendations to the appropriate legislative interim committee regarding any additional studies that would help to assess the water balance in closed basins or subbasins with respect to potential ground water withdrawal impacts on surface waters.

(2) The bureau of mines and geology shall conduct a case study to gather and develop data to determine the adequacy of any additional recommended minimum standards and criteria for hydrogeologic assessments, as defined in [section 15], associated with ground water withdrawals and the range of impacts of those withdrawals on surface water and ground water resources. The department of natural resources and conservation shall coordinate with the bureau of mines and geology with regard to surface water monitoring and other elements of the case study as necessary.

(3) The case study must be conducted in basins closed pursuant to sections 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344. The bureau of mines and geology shall ensure that at each site involved in the case study the following, at a minimum, is accomplished to provide the necessary scientific data and information to policymakers:

(a) an appropriate number of monitoring wells are drilled or available to provide scientifically defensible data;

(b) aquifer testing and recovery testing is conducted at the site;

(c) water quality samples are collected from each pumping or primary well at the beginning of the case study and at the end of the case study;

(d) if information or data has already been collected for the site, the information is reviewed, analyzed, and verified by the bureau of mines and geology;

(e) if the site has an established system, that the established system is monitored under its current or planned operating conditions; and

(f) any other information is collected that the bureau of mines and geology determines is necessary to determine recommendations for additional minimum standards and criteria for hydrogeologic assessments, as defined in

[section 15], associated with ground water withdrawals and the range of impacts those withdrawals have on surface water and ground water resources.

(4) In addition to the requirements of subsection (3), the bureau of mines and geology shall develop a system to compile existing aquifer testing data, as well as data resulting from hydrogeologic assessments, as defined in [section 15], and monitoring activities.

(5) The department of natural resources and conservation shall coordinate with the bureau of mines and geology to provide surface water measurements, as appropriate, when a well located at a case study site is pumped.

(6) The bureau of mines and geology shall:

(a) provide updates to the appropriate legislative interim committee throughout the interim related to the progress of the review pursuant to subsection (1) and the case study pursuant to subsections (2) through (5), data trends, if any, and other information necessary to assist the legislative interim committee in developing any necessary policy recommendations;

(b) upon request, provide updates to the ground water assessment steering committee provided for in 2-15-1523; and

(c) submit a report to the appropriate legislative interim committee and the 61st legislature providing a detailed analysis of the results of the review and case study.

Section 24. Case study — requirements for participation — fee. (1)(a) Participants in the case study that are proposing a new ground water appropriation are subject to the requirements of [sections 14 through 21].

(b) Up to a maximum of 10 sites that are the result of a new appropriation or a change in appropriation right may be included in the case study provided for in [section 23]. If there are more than 10 entities wishing to participate in the case study, the bureau of mines and geology shall select participants to ensure that to the extent possible each closed basin is represented and as many different scenarios are represented as necessary to ensure a scientifically accurate analysis.

(c) If there are fewer than 10 entities wishing to participate or if there is a scenario that is not represented by case study participants that is necessary to ensure a scientifically accurate analysis, the bureau of mines and geology may request cooperation and participation from entities that hold appropriation rights for wells within closed basins.

(d) Entities that had an application pending with the department of natural resources and conservation on April 11, 2006, must be given the option to participate in the case study before the bureau accepts other requests for participation.

(2) The bureau of mines and geology, in cooperation with the appropriate legislative interim committee, shall notify each of the entities described in subsection (1)(d), in writing, of the opportunity to participate in the case study and the requirements for participation.

(3) To participate in the case study, a participant shall agree:

(a) that the use of a ground water well in accordance with an application submitted pursuant to [section 14] does not grant or give the participant an appropriation right;

(b) to allow the installation of monitoring wells and shall allow access for monitoring and review purposes;

(c) if monitoring or test wells exist at the site, to allow the bureau of mines and geology access to those wells for monitoring and review purposes;

(d) to allow for the measurement of pumping at the primary pumping well, including any plumbing requirements necessary to ensure an accurate analysis of pumping records and of the impacts, if any, resulting from pumping of the well;

(e) that the participant is responsible for costs associated with drilling the primary pumping well, maintenance associated with the well, and other costs reasonably related to the normal operation of a pumping well in the absence of the case study; and

(f) to pay a fee of $15.

Section 25. Appropriation. There is appropriated from the general fund $500,000 to the Montana bureau of mines and geology only for the biennium beginning July 1, 2007, for the purpose of conducting a case study in coordination with the department of natural resources and conservation to gather and develop data to determine minimum standards and criteria for hydrogeologic assessments, as defined in [section 15], associated with ground water withdrawals and the impacts of those withdrawals on surface water and ground water resources.

Section 26. Direction for amendment of rule. Pursuant to 2-4-412(2), the department shall:

(1) amend ARM 36.12.101 by striking subsection (8); and

(2) amend ARM 36.12.120 by striking subsections (6) through (10).

Section 27. Repealer. Section 85-2-337, MCA, is repealed.

Section 28. Codification instruction. (1) [Sections 14 through 18 and 20 through 22] are intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [sections 14 through 18 and 20 through 22].

(2) [Section 19] is intended to be codified as an integral part of Title 75, chapter 5, part 4, and the provisions of Title 75, chapter 5, part 4, apply to [section 19].

Section 29. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 30. Effective date. [This act] is effective on passage and approval.

Section 31. Applicability. [This act] applies to applications for an appropriation right in a closed basin filed on or after [the effective date of this act].

Approved May 3, 2007

CHAPTER NO. 392

[HB 840]

AN ACT ALLOWING FOR GENERIC SPECIALTY LICENSE PLATES FOR TRAILERS; ALLOWING FOR PERMANENT REGISTRATION USING CERTAIN SPECIALTY PLATES; AMENDING SECTIONS 61-3-332, 61-3-479, 61-3-481, AND 61-3-562, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-332, MCA, is amended to read:

"61-3-332. Standard license plates. (1) In addition to special license plates, collegiate license plates, generic specialty license plates, and fleet license plates authorized under this chapter, a separate series of standard license plates must be issued for motor vehicles, quadricycles, travel trailers, trailers, semitrailers, and pole trailers registered in this state or offered for sale by a vehicle dealer licensed in this state. Standard license plates issued to licensed vehicle dealers must be readily distinguishable from license plates issued to vehicles owned by other persons.

(2) (a) Except as provided in 61-3-479 and subsections (2)(b), (3)(c), and (3)(d) of this section, all standard license plates for motor vehicles, trailers, semitrailers, or pole trailers must be issued for a minimum period of 4 years, bear a distinctive marking, as determined by the department, and be furnished by the department. In years when standard license plates are not issued, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-562 and motor vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the motor vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered motor vehicle.

(3) (a) Subject to the provisions of this section, the department shall create a new design for standard license plates as provided in this section, and it shall manufacture the newly designed standard license plates for issuance after December 31, 2005, to replace at renewal, as required in 61-3-312, standard license plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2006, the department shall manufacture and issue new standard license plates after the existing plates have been used for a minimum period of 4 years.

(c) A motor vehicle that is registered for a 13-month to a 24-month period, as provided in 61-3-311 and 61-3-321(2), may display the license plate and plate design in effect at the time of registration for the entire registration period.

(d) A light vehicle described in subsection (2)(b) or a motor home that is permanently registered may display the license plate and plate design in effect at the time of registration for the entire period that the light vehicle or motor home is permanently registered.

(4) For ~~passenger~~ *trailers and* motor vehicles*,* ~~and trucks,~~ *other than motorcycles and quadricycles,* plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the

state of Montana must be used as a distinctive border on all license plates, and the word "Montana" must be placed on each license plate. All license plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers for standard license plates must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, generic specialty license plates, and fleet license plates, the distinctive registration number or letter-number combination assigned to the motor vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles, trailers, semitrailers, or pole trailers and motor vehicles, trailers, semitrailers, or pole trailers that are exempt from the registration fee as provided in 61-3-321, in addition to the markings provided in this section, standard license plates must bear the following distinctive markings:

(a) For motor vehicles, trailers, semitrailers, or pole trailers owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For motor vehicles, trailers, semitrailers, or pole trailers that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for motor vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the standard license plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles, trailers, semitrailers, or pole trailers of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these standard license plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the license plates requires it and a year number may not be displayed on the plates.

(7) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon,

39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(8) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a motor vehicle, trailer, semitrailer, or pole trailer owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the motor vehicle, trailer, semitrailer, or pole trailer, and must be removed upon sale or other disposition of the motor vehicle, trailer, semitrailer, or pole trailer.

(9) (a) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(b) If the motor vehicle to which the license plate is attached is permanently registered, the owner of the motor vehicle shall provide, upon request of a person authorized to enforce special parking laws or ordinances in this or any state, evidence of continued eligibility to use the license plate in the form of a valid special parking permit issued to or renewed by the vehicle owner under 49-4-304 and 49-4-305.

(c) A person with a permanent condition, as provided in 49-4-301(2)(b), who has been issued a special license plate upon written application, as provided in this subsection (9), is not required to reapply upon reregistration of the motor vehicle.

(10) The provisions of this section do not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 2. Section 61-3-479, MCA, is amended to read:

"61-3-479. Issuance of generic specialty license plates — qualifications. (1) (a) Except as provided in subsection (1)(b), the department shall issue a set of generic specialty license plates to a person who applies for a particular style of generic specialty license plates and pays the donation fee established by the plate sponsor and the administrative fee required in 61-3-480.

(b) If the sponsor of a generic specialty license plate is not listed on the county collection report published by the state and required under 15-1-504 as of the initial distribution date for the sale of the sponsor's plates, the department shall require the sponsor to collect the initial donation fee from, and issue a special certificate of registration to, a person who is eligible to receive the sponsor's generic specialty license plates. The person shall present the special certificate of registration upon application for the generic specialty license plates.

(2) A set of generic specialty license plates may be issued for any motor vehicle except ~~a trailer of any size,~~ a motorcycle~~,~~ or a quadricycle.

(3) (a) Except as provided in 61-3-472 through 61-3-481 and 61-3-562, a person who receives generic specialty license plates is subject to the same rules and laws as those that govern standard license plates.

(b) Except as provided in 61-3-472 through 61-3-481 and 61-3-562, the department is subject to the same rules and laws that govern the issuance of standard license plates.

(c) Generic specialty license plates issued under 61-3-472 through 61-3-481 are not subject to any maximum issuance or use limitation that may be imposed on standard license plates.

(4) A person may combine an application for a generic specialty license plate with an application for a license plate with a design bearing a representation of a wheelchair as the symbol of a person with a disability as provided in 61-3-332(9)."

Section 3. Section 61-3-481, MCA, is amended to read:

"61-3-481. Generic specialty license plates — restrictions on use. (1) Generic specialty license plates may be issued by the department in conjunction with the registration of any motor vehicle except ~~a trailer of any size,~~ a motorcycle~~,~~ or a quadricycle. The department may not issue generic specialty license plates without the motor vehicle having been registered.

(2) Generic specialty license plates may be used only as the official license plates for a motor vehicle."

Section 4. Section 61-3-562, MCA, is amended to read:

"61-3-562. Permanent registration — transfer of light vehicle ownership — rules. (1) (a) ~~Except as provided in subsection (1)(b), the~~ *The* owner of a light vehicle 11 years old or older subject to the registration fee, as provided in 61-3-321(2), may permanently register the light vehicle upon payment of a $87.50 registration fee, the applicable registration and license fees under 61-3-412, *if applicable, the administrative fee and the annual one-time only donation fee for a generic specialty license plate under 61-3-480,* and an amount equal to five times the applicable fees imposed for each of the following:

(i) the local option motor vehicle tax or flat fee on vehicles under 61-3-537; and

(ii) if applicable, renewal fees for personalized plates under 61-3-406.

(b) The following series of license plates may ~~not~~ *not* be used for purposes of permanent registration of a light vehicle:

(i) Montana national guard license plates issued under 61-3-458(2)(b);

(ii) reserve armed forces license plates issued under 61-3-458(2)(c);

(iii) amateur radio operator license plates issued under 61-3-422; *and*

(iv) collegiate license plates issued under 61-3-465~~; and~~.

~~(v) generic specialty license plates issued under 61-3-479.~~

(2) In addition to the fees described in subsection (1), an owner of a truck with a manufacturer's rated capacity of 1 ton or less that is permanently registered shall pay five times the applicable fees imposed under 61-10-201.

(3) The owner of a motor vehicle that is permanently registered under this section is not subject to additional registration fees or to other motor vehicle registration fees described in this section for as long as the owner owns the vehicle.

(4) The county treasurer shall once each month remit to the state the amounts collected under this section, other than the local option motor vehicle tax or flat fee, for the purposes of 61-3-321(2) and 61-10-201. The county treasurer shall retain the local option motor vehicle tax or flat fee.

(5) (a) The permanent registration of a light vehicle allowed by this section may not be transferred to a new owner. If the light vehicle is transferred to a new owner, the department shall cancel the light vehicle's permanent registration.

(b) Upon transfer of a light vehicle registered under this section to a new owner, the new owner shall apply for a certificate of title under 61-3-201 and 61-3-216 and register the light vehicle under 61-3-303."

Section 5. Effective date. [This act] is effective January 1, 2008.

Section 6. Applicability. [This act] applies to motor vehicles and trailers registered, and license plates that are issued or renewed, on or after [the effective date of this act].

Approved May 3, 2007

CHAPTER NO. 393

[SB 48]

AN ACT GRANTING TO A RELATIVE WHO IS A CARETAKER BUT NOT A PARENT OF A CHILD THE POWER TO APPROVE MEDICAL CARE FOR THE CHILD UNDER CERTAIN CONDITIONS; PROVIDING FOR A CARETAKER RELATIVE MEDICAL AUTHORIZATION AFFIDAVIT; PROVIDING FOR GOVERNMENTAL IMMUNITY; AMENDING SECTIONS 20-5-412 AND 20-5-420, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose — legislative intent — parental rights — definitions. (1) The legislature recognizes that the rights of parents to the custody and control of a child are based upon liberties secured by the United States and Montana constitutions and that a parent's rights to that custody and control of a child are therefore normally supreme to the interests of other persons. The legislature also recognizes a growing phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and care of their children to a grandparent or other relative for lengthy periods of time. Regardless of the purpose of the absence, a child willfully surrendered to a relative for an extended time period still has the same needs as a child in the care of its parents. In this situation, a caretaker relative assumes responsibilities for the child but has no legal right of control over the child, a situation that interferes in the caretaker relative's ability to perform routine functions of child rearing, including tending to the medical needs of the child. It is therefore the purpose of the legislature in these instances to protect the rights of a child granted by Article II, section 15, of the Montana constitution by granting a caretaker relative limited authority for a child left in the relative's care.

(2) It is the intent of the legislature that a caretaker relative given the responsibility of caring for a child with little or no warning and without any other provision having been made for the child's care, such as the appointment of a guardian or the provision of a power of attorney, be granted authority to consent to medical care for the child without superseding any parental rights regarding the child.

(3) [Section 2] and this section are not intended to affect the rights and responsibilities of a parent, legal guardian, or other custodian regarding the child, do not grant legal custody of the child to the caretaker relative, and do not grant authority to the caretaker relative to consent to the marriage or adoption of the child or to receive notice of a medical procedure, including abortion, not consented to by the relative, if notice is required by law, for the child except as expressly provided in this section.

(4) For the purposes of [section 2] and this section, the following definitions apply:

(a) "Caretaker relative" or "relative" means an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child.

(b) "Caretaker relative medical authorization affidavit" or "affidavit" means an affidavit completed in compliance with [section 2].

(c) "Health care provider" means a person who provides medical care.

(d) "Medical care" means care, by a health care provider for which parental consent is normally required, for the prevention, diagnosis, or treatment of a mental, physical, or dental injury or disease.

(e) "Parent" means a biological or adoptive parent or other legal guardian of a child.

Section 2. Caretaker relative medical authorization affidavit — use — immunity — format. (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child has the same authority as a custodial parent of the child to consent to medical care for the child for which parental consent is usually required if:

(a) in leaving the child with the caretaker relative, the parent expressed no definite time period in which the parent would return for the child;

(b) the child is residing with the caretaker relative on a full-time basis;

(c) the caretaker relative is unable to contact the parent following the voluntary leaving of the child with the relative or the parent refuses to regain custody of the child after a written request by the relative to do so;

(d) no adequate provision, such as the appointment of a guardian ad litem or execution of a power of attorney, has otherwise been made for the medical care of the child; and

(e) a caretaker relative medical authorization affidavit is completed in compliance with this section.

(2) An affidavit is effective only if it is signed by the caretaker relative, under oath, before a notary public. A clear photographic copy of an affidavit completed in compliance with this section is sufficient in any instance in which an original is required by a health care provider.

(3) Unless the rights of a parent have been judicially terminated or unless the ability to give legal consent for the child to receive medical care for which parental consent is usually required has been granted to the caretaker relative pursuant to 40-4-211 and 40-4-228, a decision by a parent of the child communicated to the health care provider regarding the health care of the child supersedes a conflicting decision by a caretaker relative made pursuant to an affidavit completed in compliance with this section. However, a decision by a parent does not supersede a decision by a relative made pursuant to an affidavit completed in compliance with this section if the decision by the parent endangers the life of the child. A health care provider may require reasonable proof of authenticity of a decision by a parent intended to supersede a decision by a caretaker relative.

(4) (a) A [public or] private health care provider or a [public or] private school official who acts in good faith reliance on a caretaker relative medical authorization affidavit completed in compliance with this section who has no actual knowledge of facts contrary to those indicated in the affidavit is not subject to civil liability or criminal prosecution or to a professional disciplinary procedure for an action that would have been proper if the facts had been as the health care provider believed them to be.

(b) This subsection (4) applies even if medical care is provided to a child against the wishes of a parent of that child if the health care provider rendering the service does not have actual knowledge of the parent's wishes.

(5) A health care provider who relies on an affidavit completed in compliance with this section has no obligation to make further inquiry or investigation.

(6) An affidavit completed in compliance with this section is effective for the earlier of:

(a) 6 months;

(b) until it has been revoked by the caretaker relative; or

(c) until the child no longer resides with the caretaker relative.

(7) If the child ceases to live with the caretaker relative or the caretaker relative revokes the affidavit, the caretaker relative shall provide written notice of that fact to all health care providers to whom the caretaker relative has given the affidavit or to whom the caretaker relative has caused the affidavit to be given.

(8) This section does not relieve a person from a violation of other law, and this section does not affect the rights of a child's parent except as provided in this section.

(9) A caretaker relative medical authorization affidavit is invalid unless it is written in substantially the following form and contains the warning provided for in paragraph 5 of the format below:

CARETAKER RELATIVE'S MEDICAL AUTHORIZATION AFFIDAVIT

Use of this affidavit is authorized by [this section].

1. INSTRUCTIONS: The completion and signing of the affidavit before a notary public are sufficient to authorize medical care for the named child. Please print clearly.

The child named below lives in my home, and I am 18 years of age or older.

a. Name of child:

b. Child's date of birth:

c. My name (caretaker relative):

d. My home address:

e. My relationship to the child (the caretaker relative must be an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the caretaker relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child):

2. I hereby certify that this affidavit is not being used for an unlawful purpose.

3. My date and year of birth:

4. Check the following if true (all must be checked for this affidavit to apply):

[ ] A parent of the child identified in paragraph 1a of this affidavit has left the child with me and has expressed no definite time period when the parent will return for the child.

[ ] The child is now residing with me on a full-time basis.

[ ] I am unable to locate or contact the parent of the child at this time to notify that parent of my intended authorization, or the parent refuses to regain custody of the child even though I have asked in writing that the parent do so.

[ ] No adequate provision, such as appointment of a guardian ad litem or execution of a power of attorney, has been made for medical care for the child.

5. WARNING: DO NOT SIGN THIS FORM IF ANY OF THE STATEMENTS ABOVE ARE INCORRECT, OR YOU WILL BE COMMITTING A CRIME PUNISHABLE BY A FINE, IMPRISONMENT, OR BOTH.

6. I declare under penalty of false swearing under the laws of Montana that the foregoing is true and correct.

Signed this ___ day of _____, 20__.

_____

(Signature of caretaker relative)

_____

(Signature, county, state, and seal of notary public)

7. NOTICES:

a. Completion of this affidavit does not affect the rights of the child's parent or legal guardian regarding the care, custody, and control of the child and does not mean that the caretaker relative has legal custody of the child.

b. A health care provider who relies on this affidavit has no obligation to make any further inquiry or investigation.

c. This affidavit is not valid for more than 6 months after the date on which it is signed by the caretaker relative.

8. ADDITIONAL INFORMATION:

a. TO CARETAKER RELATIVES:

If the child stops living with you, you shall notify anyone to whom you have given this affidavit, as well as anyone who has received the affidavit from someone else.

b. TO [PUBLIC AND] PRIVATE HEALTH CARE PROVIDERS AND [PUBLIC AND] PRIVATE SCHOOL OFFICIALS: A [public or] private health care provider or a [public or] private school official who acts in good faith reliance upon a caretaker relative medical authorization affidavit to provide medical care, without actual knowledge of facts contrary to those indicated in the affidavit, is not subject to criminal prosecution or civil liability to any person, or subject to any professional disciplinary action, for reliance on the affidavit if the form is completed in compliance with [this section].

Section 3. Section 20-5-412, MCA, is amended to read:

"20-5-412. Definition — parent-designated adult — administration of glucagon — training. (1) As used in 20-5-413 and this section, "parent-designated adult" means a school district employee, selected by a parent*, an individual who has executed a caretaker relative medical authorization affidavit pursuant to [section 2],* or *a* guardian of a diabetic student, who voluntarily agrees to administer glucagon to the student.

(2) A parent*, an individual who has executed a caretaker relative medical authorization affidavit pursuant to [section 2],* or *a* guardian of a diabetic student may designate an adult to administer glucagon to the student as provided in subsection (3). Written proof of the designation by a parent*, an individual who has executed a caretaker relative medical authorization affidavit pursuant to [section 2],* or *a* guardian and acceptance of the designation by the parent-designated adult must be filed with the school district.

(3) A parent-designated adult may administer glucagon to a diabetic student in an emergency situation. The glucagon must be provided by the parent*, an individual who has executed a caretaker relative medical authorization affidavit pursuant to [section 2],* or *a* guardian of the student.

(4) A parent-designated adult must be trained in recognizing hypoglycemia and the proper method of administering glucagon. Training must be provided by a health care professional, as defined in 33-36-103, or a recognized expert in diabetic care selected by the parent*, an individual who has executed a caretaker relative medical authorization affidavit pursuant to [section 2],* or *a* guardian. Written documentation of the training received by the parent-designated adult must be filed with the school district."

Section 4. Section 20-5-420, MCA, is amended to read:

"20-5-420. Self-administration of asthma medication. (1) As used in this section, the following definitions apply:

(a) "Anaphylaxis" means a systemic allergic reaction that can be fatal in a short time period and is also known as anaphylactic shock.

(b) "Asthma" means a chronic disorder or condition of the lungs that requires lifetime, ongoing, medical intervention.

(c) "Medication" means a medicine, including inhaled bronchodilators, inhaled corticosteroids, and autoinjectable epinephrine, prescribed by a licensed physician as defined in 37-3-102, a physician assistant who has been authorized to prescribe asthma medications as provided in 37-20-404, or an advanced practice registered nurse with prescriptive authority as provided in 37-8-202(5).

(d) "Self-administration" means a pupil's discretionary use of the asthma medication prescribed for the pupil.

(2) A school, whether public or nonpublic, shall permit the self-administration of medication by a pupil with asthma if the parents or guardians of the pupil provide to the school:

(a) written authorization, acknowledging and agreeing to the liability provisions in subsection (4), for the self-administration of medication;

(b) a written statement from the pupil's physician, physician assistant, or advanced practice registered nurse containing the following information:

(i) the name and purpose of the medication;

(ii) the prescribed dosage; and

(iii) the time or times at which or the special circumstances under which the medication is to be administered;

(c) documentation that the pupil has demonstrated to the health care practitioner and the school nurse, if available, the skill level necessary to administer the medication as prescribed; and

(d) documentation that the pupil's physician, physician assistant, or advanced practice registered nurse has formulated a written treatment plan for managing asthma or anaphylaxis episodes of the pupil and for medication use by the pupil during school hours.

(3) The information provided by the parents or guardians must be kept on file in the office of the school nurse or, in the absence of a school nurse, the school's administrator.

(4) The school district or nonpublic school and its employees and agents are not liable as a result of any injury arising from the self-administration of medication by the pupil unless an act or omission is the result of gross negligence, willful and wanton conduct, or an intentional tort. The parents or guardians of the pupil must be given a written notice and sign a statement acknowledging that the school district or nonpublic school may not incur liability as a result of any injury arising from the self-administration of medication by the pupil and that the parents or guardians shall indemnify and hold harmless the school district or nonpublic school and its employees and agents against any claims, except a claim based on an act or omission that is the result of gross negligence, willful and wanton conduct, or an intentional tort.

(5) The permission for self-administration of medication is effective for the school year for which it is granted and must be renewed each subsequent school year or, if the medication dosage, frequency of administration, or other conditions change, upon fulfillment of the requirements of this section.

(6) If the requirements of this section are fulfilled, a pupil with asthma may possess and use the pupil's medication:

(a) while in school;

(b) while at a school-sponsored activity;

(c) while under the supervision of school personnel;

(d) before or after normal school activities, such as while in before-school or after-school care on school-operated property; or

(e) while in transit to or from school or school-sponsored activities.

(7) If provided by the parent*, an individual who has executed a caretaker relative medical authorization affidavit pursuant to [section 2],* or *a* guardian and in accordance with documents provided by the pupil's physician, physician

assistant, or advanced practice registered nurse, backup medication must be kept at a pupil's school in a predetermined location or locations to which the pupil has access in the event of an asthma or anaphylaxis emergency.

(8) Youth correctional facilities are exempt from this section and shall adopt policies related to access and use of asthma medications."

Section 5. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 40, chapter 6, and the provisions of Title 40, chapter 6, apply to [sections 1 and 2].

Section 6. Two-thirds vote required — contingent voidness. Because [section 2(4)(a)] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage. If [this act] is not approved by at least two-thirds of the members of each house of the legislature, then the bracketed language in [section 2(4)(a)] and in the notice to health care providers and school officials in paragraph 8b of [section 2(10)] is void.

Section 7. Applicability. [This act] applies to a caretaker relative, as defined in [section 1], to whom a child is given by a parent after October 1, 2007, for care by the relative.

Approved May 3, 2007

CHAPTER NO. 394

[SB 71]

AN ACT REQUIRING A STATE AGENCY TO STATE IN ITS NOTICE OF PROPOSED RULEMAKING THE DATE AND MANNER IN WHICH IT GAVE NOTICE OF ITS INITIAL RULEMAKING EFFORTS TO THE PRIMARY SPONSOR OF THE IMPLEMENTED LEGISLATION; PROVIDING FOR THE LEGAL EFFECT OF THE LACK OF NOTICE TO A PRIMARY SPONSOR OF INTENDED RULEMAKING; AMENDING SECTION 2-4-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-302, MCA, is amended to read:

"2-4-302. Notice, hearing, and submission of views. (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasonable necessity for the intended action, and the time when, place where, and manner in which interested persons may present their views on the intended action. The reasonable necessity must be written in plain, easily understood language. If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

(a) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and

(b) the number of persons affected.

(2) (a) The notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312, and mailed within 3 days of publication to

the *primary* sponsor of the legislative bill that enacted *or amended* the section that is cited as implemented in the notice ~~if the notice is the initial proposal to implement the section~~, to interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the appropriate administrative rule review committee when the request has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection if it includes in the notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(b) The appropriate administrative rule review committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to the agencies that the committee oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The notice required by subsections (1) and (2)(a) must be published and mailed at least 30 days in advance of the agency's intended action. In addition to publishing and mailing the notice under subsection (2)(a), the agency shall post the notice on a state electronic access system or other electronic communications system available to the public.

(d) The agency shall also, at the time that its personnel begin to work on the substantive content and the wording of the initial rule proposal to implement one or more statutes, notify the *primary* sponsor of the legislative bill that enacted *or amended* the section. *The agency shall state, in the notice required by subsection (1), the date on which and the manner in which the primary sponsor was notified. If notice was sent to the primary sponsor by mail, the date to be used by the agency is the date on which the notice is mailed by the agency. If an agency fails to state the date on which and the manner in which notice was given to the primary sponsor, the filing of the notice of proposed rulemaking with the secretary of state is ineffective for the purposes of this part and the authorizing and implemented law for which the rule is purported to be noticed.*

(3) If a statute provides for a method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained in this section. However, the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate administrative rule review committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of a hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the "Notice of Function of Administrative Rule Review Committee" appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.

(8) For purposes of notifying sponsors under subsections (2)(a) and (2)(d) who are no longer members of the legislature, a former legislator who wishes to receive notice may keep the former legislator's name, address, and telephone number on file with the secretary of state. An agency proposing rules shall consult the register when providing sponsor notice."

Section 2. Coordination instruction. If Senate Bill No. 47 is passed and approved and if it includes a section that amends 2-4-302, then [section 1 of this act], amending 2-4-302, is void and 2-4-302 is amended to read as follows:

"2-4-302. Notice, hearing, and submission of views. (1) *(a)* Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its ~~intended~~ *proposed* action. The *proposal* notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasonable necessity for the ~~intended~~ *proposed* action, and the time when, place where, and manner in which interested persons may present their views on the ~~intended~~ *proposed* action. The reasonable necessity must be written in plain, easily understood language.

(b) The agency shall state in the proposal notice the date on which and the manner in which notification was given to the primary sponsor as required in subsection (2)(d). If the notification to the primary sponsor was given by mail, the date stated in the proposal notice must be the date on which the notification was mailed by the agency. If the proposal notice fails to state the date on which and the manner in which the primary sponsor was notified, the filing of the proposal notice under subsection (2)(a) is ineffective for the purposes of this part and for the purposes of the law that the agency cites in the proposal notice as the authority for the proposed action.

(c) If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

~~(a)~~*(i)* the cumulative amount for all persons of the proposed increase, decrease, or new amount; and

~~(b)~~*(ii)* the number of persons affected.

(2) (a) The *proposal* notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312~~, and mailed within~~. *Within* 3 days of publication, ~~to the sponsor of the legislative bill that enacted the section that is cited as implemented in the notice if the notice is the initial proposal to~~

~~implement the section~~ *a copy of the published proposal notice must be sent* to interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the appropriate administrative rule review committee when the request has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection if it includes in the *proposal* notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(b) The appropriate administrative rule review committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to the agencies that the committee oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The *proposal* notice required by ~~subsections~~ *subsection* (1) ~~and (2)(a)~~ must be published ~~and mailed~~ at least 30 days in advance of the agency's ~~intended~~ *proposed* action. ~~In addition to publishing and mailing the notice under subsection (2)(a), the~~ *The* agency shall post the *proposal* notice on a state electronic access system or other electronic communications system available to the public.

(d) ~~The~~ *(i) When an* agency ~~shall also, at the time that its personnel begin~~ *begins* to work on the substantive content and the wording of ~~the initial rule~~ *a* proposal ~~to implement one or more statutes that enacted the section~~ *notice for a rule that initially implements legislation, the agency shall notify the legislator who was the primary sponsor of the legislation. If the legislation affected more than one program, notice must be given to the sponsor pursuant to this subsection (2)(d) each time that a rule is being proposed to initially implement the legislation for a program.*

(ii) Within 3 days after a proposal notice covered under subsection (2)(d)(i) has been published as required in subsection (2)(a), a copy of the published notice must be sent to the primary sponsor notified under subsection (2)(d)(i).

(3) If a statute provides for a method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained in this section. However, the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate administrative rule review committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of a hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the "Notice of Function of Administrative Rule Review Committee" appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.

(8) For purposes of notifying *primary* sponsors under subsections (2)(a) and (2)(d) who are no longer members of the legislature, a former legislator who wishes to receive notice may keep the former legislator's name, address, and telephone number on file with the secretary of state. An agency proposing rules shall consult the register when providing sponsor notice."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to notices of proposed rulemaking filed with the secretary of state on or after [the effective date of this act].

Approved May 3, 2007

CHAPTER NO. 395

[SB 94]

AN ACT REMOVING THE REQUIREMENT THAT WHOLESALE AND RETAIL NONPRESCRIPTION DRUG MANUFACTURERS BE LICENSED AND REGULATED ENTITIES THROUGH THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AND AMENDING SECTIONS 50-57-101, 50-57-102, AND 50-57-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-57-101, MCA, is amended to read:

"50-57-101. Purpose. This chapter provides for the licensure and regulation of wholesale food establishments ~~and wholesale and retail nonprescription drug manufacturers~~ to prevent and eliminate conditions and practices that endanger public health."

Section 2. Section 50-57-102, MCA, is amended to read:

"50-57-102. Definitions. Unless the context clearly requires otherwise, in this chapter, the following definitions apply:

(1) "Consumer" means a person who:

(a) is a member of the public;

(b) takes possession of food ~~or nonprescription drugs~~;

(c) is not functioning in the capacity of an operator of an establishment; and

(d) does not offer the food ~~or nonprescription drugs~~ for resale.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Dietary supplement" means a product, other than a tobacco product, that is intended to supplement the diet and:

(a) is advertised only as a food supplement; and

(b) bears or contains one or more of the following ingredients:

(i) a vitamin;

(ii) a mineral;

(iii) an herb or other botanical substance;

(iv) an amino acid; or

(v) a dietary substance used to supplement the diet by increasing the total dietary intake or a concentrate, metabolite, constituent, extract, or a combination of any ingredients described in subsections (3)(b)(i) through (3)(b)(iv).

(4) "Establishment" means a wholesale food manufacturing establishment, wholesale food salvage establishment, wholesale food warehouse, wholesale ice manufacturer, *or* wholesale water bottler~~, wholesale nonprescription drug manufacturer, or retail nonprescription drug manufacturer~~.

(5) (a) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption. The term includes dietary supplements.

(b) The term does not include nonprescription drugs.

(6) "Local board of health" means a county, city, city-county, or district board of health.

(7) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board of health or the health officer's authorized representative.

~~(8) (a) "Nonprescription drug" means an article, other than food, that is available without a prescription from a health practitioner licensed by the department of labor and industry and that is:~~

~~(i) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of a disease in humans or animals;~~

~~(ii) intended to affect the structure or function of the body of humans or animals; or~~

~~(iii) intended for use as a component of any article specified in subsections (8)(a)(i) and (8)(a)(ii).~~

~~(b) The term does not include devices, as defined in 50-31-103.~~

~~(9) "Nonprescription drug manufacturer" means an entity engaged in the manufacturing, processing, preparing, or packaging of nonprescription drugs for sale or human consumption at retail or wholesale.~~

~~(10)~~*(8)* "Regulatory authority" means the department, the local board of health, the local health officer, or the local sanitarian.

~~(11)~~*(9)* "Retail" means the provision of food ~~or nonprescription drugs~~ directly to the consumer.

~~(12)~~*(10)* "Retail food establishment" means an establishment, as defined in 50-50-102, that provides food directly to the consumer.

~~(13)~~*(11)* (a) "Wholesale" means the sale or provision of food ~~or nonprescription drugs~~ to a retail food establishment or other person engaged in retail sales who sells or provides the ~~items~~ *food* directly to the consumer.

(b) The term does not include the sale or provision of food ~~or nonprescription drugs~~ at retail.

~~(14)~~*(12)* (a) "Wholesale food manufacturing establishment" means a facility and the facility's buildings or structures used to manufacture or prepare food for human consumption at wholesale.

(b) The term does not include:

(i) milk producers' facilities, milk pasteurization facilities, or milk product manufacturing plants;

(ii) slaughterhouses, meat packing plants, or meat depots; or

(iii) producers or harvesters of raw and unprocessed farm products.

~~(15)~~*(13)* "Wholesale food salvage establishment" means an entity that is engaged in reconditioning or by other means salvaging distressed food or that sells, buys, or distributes for human consumption any salvaged food. The term includes a salvage broker, a salvage operator, and a salvage warehouse.

~~(16)~~*(14)* (a) "Wholesale food warehouse" means a facility used to store food or cosmetics for distribution to retailers.

(b) The term includes a frozen food plant that is used to freeze, process, or store food, including any facility used in conjunction with the frozen food plant.

(c) The term does not include a wine, beer, or soft drink warehouse that is separate from facilities where brewing or drink manufacturing occurs.

~~(17)~~*(15)* (a) "Wholesale ice manufacturer" means an entity that produces ice for human consumption that is sold at wholesale in packaged form or in bulk form for food, drink, or culinary purposes.

(b) The term does not include:

(i) persons, hotels, restaurants, inns, caterers, food service contractors, or theaters that manufacture or furnish ice solely for their customers in a manner that is incidental to the production, sale, or dispensing of other goods and services; or

(ii) a retail food establishment that manufactures ice in packaged form for onsite retail sales to the consumer.

~~(18)~~*(16)* (a) "Wholesale water bottler" means an entity that is engaged in the production, packaging, manufacturing, or processing of drinking water, culinary bottled water, or water otherwise processed and packaged for human consumption that is sold at wholesale.

(b) The term does not include a facility that produces, packages, manufactures, or processes drinking water, culinary bottled water, or water otherwise processed and packaged for human consumption onsite for retail sale."

Section 3. Section 50-57-105, MCA, is amended to read:

"50-57-105. Diseased person not to handle food ~~or nonprescription drugs.~~ A person who has a communicable disease, as defined in 50-1-101, may not work in any establishment or in the handling or processing of food ~~or nonprescription drugs~~."

Approved May 3, 2007

CHAPTER NO. 396

[SB 131]

AN ACT REVISING LAND BANKING LAWS; EXTENDING THE TERMINATION DATE FOR THE SALE OF STATE TRUST LAND AND PURCHASE OF REPLACEMENT PROPERTY THROUGH THE LAND BANKING PROGRAM; DECREASING THE TIMEFRAMES FOR POSTING OF A BID BOND; REDUCING THE PERCENTAGE USED FOR DETERMINING A MINIMUM BID BOND; REDUCING THE NUMBER OF DAYS PRIOR TO A SALE THAT A LESSEE MAY CANCEL A LAND BANKING SALE; PROVIDING FOR PAYMENT OF ESTIMATED SALE PREPARATION COSTS; PROVIDING FOR A 60-YEAR ACCOUNTING PERIOD FOR FIGURING A REASONABLE ANNUAL RATE OF RETURN; AMENDING SECTIONS 77-2-363, 77-2-364, AND 77-2-366, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2-363, MCA, is amended to read:

"77-2-363. Land banking land sales and limitations — *sale preparation costs.* (1) The board may not cumulatively sell or dispose of more than 100,000 acres of state land. Seventy-five percent of the acreage cumulatively sold must be isolated parcels that do not have a legal right of access by the public. At any one time during the life of the land banking process, the board may not sell more than 20,000 acres of state land unless the board has acted to use the revenue from that land to make purchases pursuant to 77-2-364.

(2) (a) A person bidding to purchase state land offered for sale shall ~~45~~ *20* days prior to the day of auction deposit with the department a bid bond in the form of a certified check or cashier's check drawn on any Montana bank equal to at least ~~50%~~ *20%* of the minimum sale price specified by the department pursuant to 77-2-323(1) to guarantee the bidder's payment of the purchase price.

(b) If the current lessee of the land to be sold has initiated the sale as authorized by 77-2-364, the lessee may cancel the sale by giving notice to the department at least ~~30~~ *10* days prior to the day of the auction. When the sale is canceled by the lessee, the lessee shall pay the costs incurred by the department for the preparation of the sale*,* including any costs incurred for preparation of documents required by 75-1-201.

(c) The department shall retain the bid bond of the successful bidder and shall return the bid bonds of the unsuccessful bidders. If the successful bidder fails to comply with the terms of the sale for any reason, the successful bidder's bid bond must be forfeited and credited to the interest and income account of the proper trust.

(3) Except for a sale that is initiated by the lessee of the parcel of land proposed for sale, prior to the proposed sale of any parcel of state land under the

land banking process, the board shall give 60 days' notice of the proposed sale to the lessee of the parcel to allow the lessee sufficient time to determine whether the lessee wishes to propose an exchange of the land to the board.

(4) For a sale initiated by the board or the department, the lessee of the land must be afforded all the rights and privileges to match the high bid, as provided in 77-2-324.

(5) (a) When the lessee has initiated a sale of land under this section, the lessee shall remit to the department the estimated costs of preparing the parcel for sale, including but not limited to appraisals, cultural surveys, environmental review pursuant to Title 75, chapter 1, parts 1 through 3, and land surveys. Payment must be made within 10 days after the board has provided preliminary approval for the sale of the parcel.

(b) If the parcel is sold to the lessee, the funds remitted for the costs of the sale must be applied to the actual costs at closing. If the parcel is sold to a party other than the lessee, the funds remitted by the lessee must be refunded to the lessee and actual costs of preparing the parcel for sale must be assessed to the purchaser at closing."

Section 2. Section 77-2-364, MCA, is amended to read:

"77-2-364. Land banking purchases. (1) The board may select and purchase, lease, receive by donation, hold in trust, or in any manner acquire for and in the name of the state of Montana, in trust for the beneficiaries specified in sections 10 through 19 of The Enabling Act of Congress (approved February 22, 1889, 25 Stat. 676), as amended, any interest in real property and improvements, tracts, and leaseholds of land that the board considers proper in order to best provide prudent, maximum, long-term revenue for the beneficiaries.

(2) Sales of state land may be initiated only by the board, *by* the department, or at the request of a lessee, pursuant to 77-1-202, 77-1-301, 77-2-301, or 77-2-308. The board shall ensure that the full market value of the land sold is realized for each trust by using the appraisal, sale, advertising, and competitive bid procedures contained within 77-2-303, 77-2-321, 77-2-322, 77-2-323, and 77-2-324.

(3) When it is not inconsistent with the purpose of the trust, the board shall purchase land possessing legal access for all legal purposes.

(4) When purchasing land, easements, or improvements for the existing trusts, the board shall develop and apply appraisal and revenue projection procedures to ensure that the land or easements proposed for purchase or that the improvements proposed to be acquired are likely to produce more net revenue for the affected trust than the revenue that was produced from the land that was sold. The board may not purchase land, easements, or improvements pursuant to 77-2-361 through 77-2-367 unless it has first prudently determined that the land, easements, or improvements are likely to produce a greater or equal annual rate of return, as may be reasonably expected over a 20-year accounting period *for Class 1, 3, and 4 lands and over a 60-year accounting period for Class 2 lands, as described in 77-1-401*, with an acceptable level of risk for the affected trust, than the current annual rate of return from the state land that has been sold pursuant to 77-2-363. As guidance, the board shall use generally accepted accounting standards and the Uniform Appraisal Standards for Federal Land Acquisitions published by the U.S. department of justice and the appraisal institute.

(5) Prior to purchasing any land, easements, or improvements, the board shall determine that the financial risks and benefits of the purchase are prudent, financially productive investments that are consistent with the board's fiduciary duty as a reasonably prudent trustee of a perpetual trust. For the purposes of implementing 77-2-361 through 77-2-367, that duty requires the board to:

(a) discharge its duties with the care, skill, prudence, and diligence that a prudent person acting in a similar capacity with the same resources and familiar with similar matters should exercise in the conduct of an enterprise of similar character and aims;

(b) diversify the land holdings of each trust to minimize the risk of loss and maximize the sustained rate of return;

(c) discharge its duties and powers solely in the interest of and for the benefit of the trust managed;

(d) discharge its duties subject to the fiduciary standards set forth in 72-34-114; and

(e) maintain, as closely as possible, the existing land base of each trust, consistent with the state's fiduciary duty.

(6) Prior to purchasing a parcel of land in excess of 160 acres in any particular county, the board shall consult with the county commissioners of the county in which the parcel is located."

Section 3. Section 77-2-366, MCA, is amended to read:

"77-2-366. Land banking process — time limit — report to environmental quality council. (1) State land may not be sold through the land banking process pursuant to 77-2-361 through 77-2-367 after October 1, ~~2008~~ *2011*. Land banking purchases under 77-2-364 may continue after October 1, ~~2008~~ *2011*, until all the proceeds in the state land bank fund are expended or revert to the public school fund or the permanent fund of the respective trust pursuant to 77-2-362(2)(d).

(2) The department shall provide a report to the environmental quality council by July 1, 2008, that describes the results of the land banking program in detail. At a minimum, the report must summarize the sale and purchase transactions made through the program by type, location, acreage, value, and trust beneficiary. The environmental quality council shall make any recommendations that it determines necessary regarding the implementation of the state land banking process, including recommendations for legislation."

Section 4. Effective date. [This act] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 397

[SB 133]

AN ACT PROVIDING THAT INTERESTS IN UNMATURED LIFE INSURANCE CONTRACTS ARE EXEMPT FROM EXECUTION OF JUDGMENT; AMENDING SECTIONS 25-13-608 AND 25-13-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-13-608, MCA, is amended to read:

"25-13-608. Property exempt without limitation — exceptions. (1) A judgment debtor is entitled to exemption from execution of the following:

(a) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;

(b) benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation, except as provided in subsection (2);

(c) veterans' benefits, except as provided in subsection (2);

(d) disability or illness benefits, except as provided in subsection (2);

~~(e) except as provided in subsection (2), individual retirement accounts, as defined in 26 U.S.C. 408(a), to the extent of deductible contributions made before the suit resulting in judgment was filed and the earnings on those contributions, and Roth individual retirement accounts, as defined in 26 U.S.C. 408A, to the extent of qualified contributions made before the suit resulting in judgment was filed and the earnings on those contributions;~~

(e) except as provided in subsection (2), individual retirement accounts, as defined in 26 U.S.C. 408(a), to the extent of deductible contributions made before the suit resulting in judgment was filed and the earnings on those contributions, and Roth individual retirement accounts, as defined in 26 U.S.C. 408A, to the extent of qualified contributions made before the suit resulting in judgment was filed and the earnings on those contributions;

(f) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;

(g) maintenance and child support;

(h) a burial plot for the judgment debtor and the debtor's family;

~~(i) benefits or payments paid or payable from a retirement system or plan within Title 19, chapters 3, 5 through 9, and 13, as provided by 19-2-1004; and~~

~~(j) benefits or payments paid or payable from a retirement system or plan within Title 19, chapter 20, as provided by 19-20-706~~

(i) benefits or payments paid or payable from a retirement system or plan within Title 19, chapters 3, 5 through 9, and 13, as provided by 19-2-1004; and

(j) benefits or payments paid or payable from a retirement system or plan within Title 19, chapter 20, as provided by 19-20-706; and

(k) the judgment debtor's interest in any unmatured life insurance contracts owned by the judgment debtor.

(2) Veterans' and social security legislation benefits based upon remuneration for employment, disability benefits, and assets of individual retirement accounts are not exempt from execution if the debt for which execution is levied is for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse."

Section 2. Section 25-13-609, MCA, is amended to read:

"25-13-609. Personal property exempt subject to value limitations. A judgment debtor is entitled to exemption from execution of the following:

(1) the judgment debtor's interest, not to exceed $4,500 in aggregate value, to the extent of a value not exceeding $600 in any item of property, in household furnishings and goods, appliances, jewelry, wearing apparel, books, firearms and other sporting goods, animals, feed, crops, and musical instruments;

(2) the judgment debtor's interest, not to exceed $2,500 in value, in one motor vehicle; *and*

(3) the judgment debtor's interest, not to exceed $3,000 in aggregate value, in any implements, professional books, and tools, of the trade of the judgment debtor or a dependent of the judgment debtor~~; and~~

~~(4) the judgment debtor's interest, not to exceed $4,000 in value, in any unmatured life insurance contracts owned by the judgment debtor~~."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to executions of judgment in actions resulting in judgment filed on or after [the effective date of this act].

Approved May 3, 2007

CHAPTER NO. 398

[SB 146]

AN ACT GENERALLY REVISING THE JUVENILE DELINQUENCY INTERVENTION ACT AND RELATED PROVISIONS; CLARIFYING THE PURPOSE OF THE ACT; REVISING THE DUTIES OF THE DEPARTMENT OF CORRECTIONS, THE OFFICE OF COURT ADMINISTRATOR, THE COST CONTAINMENT REVIEW PANEL, THE DISTRICT COURT COUNCIL, AND YOUTH COURTS RELATING TO IMPLEMENTATION OF THE JUVENILE DELINQUENCY INTERVENTION PROGRAM; REQUIRING JUDICIAL DISTRICTS TO PARTICIPATE IN THE JUVENILE DELINQUENCY INTERVENTION PROGRAM; REVISING THE DEPARTMENT OF CORRECTIONS' RULEMAKING AUTHORITY; REQUIRING THE DISTRICT COURT COUNCIL TO ADOPT CERTAIN POLICIES AND PROCEDURES; REMOVING COUNTIES' OBLIGATION TO PAY CERTAIN COSTS RELATED TO JUVENILE OUT-OF-HOME PLACEMENTS, PROGRAMS, AND SERVICES; AMENDING SECTIONS 41-5-103, 41-5-112, 41-5-121, 41-5-124, 41-5-130, 41-5-131, 41-5-132, 41-5-1503, 41-5-1512, 41-5-1513, 41-5-1522, 41-5-1523, 41-5-2002, 41-5-2003, 41-5-2004, 41-5-2005, 41-5-2006, 41-5-2011, 52-5-109, AND 53-1-203, MCA; REPEALING SECTIONS 41-5-104 AND 41-5-123, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Restrictions on use of funds. (1) Funds available to a judicial district under 41-5-130, 41-5-132, or [section 20] may not be used to:

(a) pay salary, benefits, or training costs of a federal, state, or county employee;

(b) purchase items for a federal, state, or county agency that the agency would normally provide for its employees;

(c) support a program or service previously paid for by another source, except as provided in subsection (2); or

(d) construct or remodel a physical structure.

(2) Available funds may be used to support a program providing direct services to youth that was previously funded through grant money if the program's demonstrated outcomes resulted in a reduction in out-of-home placements.

(3) A judicial district shall comply with state procurement laws when expending available funds.

Section 2. Section 41-5-103, MCA, is amended to read:

"41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

(4) "Commit" means to transfer legal custody of a youth to the department or to the youth court.

(5) "Correctional facility" means a public or private, physically secure residential facility under contract with the department and operated solely for the purpose of housing adjudicated delinquent youth.

(6) "Cost containment ~~funds~~ *pool*" means funds ~~retained~~ *allocated* by the department under 41-5-132 for distribution by the cost containment review panel.

(7) "Cost containment review panel" means the panel established in 41-5-131.

(8) "Court", when used without further qualification, means the youth court of the district court.

(9) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to 41-5-206.

(10) *(a)* "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given. ~~but~~

(b) The term does not include a person who has only physical custody.

(11) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who has been placed on probation as a delinquent youth and who has violated any condition of probation.

(12) "Department" means the department of corrections provided for in 2-15-2301.

(13) (a) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed under ~~41-5-1512(1)(c) or~~ 41-5-1513(1)(b) or who are under parole supervision.

(b) Department records do not include information provided by the department to the department of public health and human services' management information system or information maintained by the youth court through the office of ~~the~~ court administrator.

(14) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;

(b) contempt of court or violation of a valid court order; or

(c) violation of a youth parole agreement.

(15) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(16) "Emergency placement" means placement of a youth in a youth care facility for less than 45 days to protect the youth when there is no alternative placement available.

(17) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

(18) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

(19) (a) "Formal youth court records" means information or data, either in written or electronic form, on file with the clerk of district court pertaining to a youth under the jurisdiction of the youth court and includes petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, and predispositional studies.

(b) The term does not include information provided by the youth court to the department of public health and human services' management information system.

(20) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

(21) "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

(22) "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian.

(23) (a) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility.

(b) The term does not include a jail.

(24) (a) "Informal youth court records" means information or data, either in written or electronic form, maintained by youth court probation offices pertaining to a youth under the jurisdiction of the youth court and includes reports of preliminary inquiries, youth assessment materials, medical records, school records, and supervision records of probationers.

(b) The term does not include information provided by the youth court to the department of public health and human services' management information system.

(25) (a) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

(b) The term does not include a colocated juvenile detention facility that complies with 28 CFR, part 31.

(26) "Judge", when used without further qualification, means the judge of the youth court.

(27) "Juvenile home arrest officer" means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

(28) "Law enforcement records" means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

(29) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

(30) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

(31) (a) "Out-of-home placement" means placement of a youth in a program, facility, or home, other than a custodial parent's home, for purposes other than preadjudicatory detention.

(b) The term does not include shelter care or emergency placement of less than 45 days.

(32) (a) "Parent" means the natural or adoptive parent.

(b) The term does not include:

(i) a person whose parental rights have been judicially terminated; or

(ii) the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

(33) "Probable cause hearing" means the hearing provided for in 41-5-332.

(34) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(35) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

(36) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

(37) "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(38) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(39) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(40) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-347.

(41) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

(42) "State youth correctional facility" means the Pine Hills youth correctional facility in Miles City or the Riverside youth correctional facility in Boulder.

(43) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

(44) "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection (44)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

(45) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(46) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1203.

(47) "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

(48) "Youth care facility" has the meaning provided in 52-2-602.

(49) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth or a youth in need of intervention and includes the youth court judge, probation officers, and assessment officers.

(50) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

(a) (i) operated, administered, and staffed separately and independently of a jail; or

(ii) a colocated secure detention facility that complies with 28 CFR, part 31; and

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

(51) "Youth in need of intervention" means a youth who is adjudicated as a youth and who:

(a) commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(i) violates any Montana municipal or state law regarding alcoholic beverages; or

(ii) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(b) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention."

Section 3. Section 41-5-112, MCA, is amended to read:

"41-5-112. Parental contributions account — allocation of proceeds. (1) There is a parental contributions account in the state special revenue fund.

(2) Contributions paid by the parents and guardians of youth under ~~41-3-446, 41-5-1501, or 41-5-1525~~ *this chapter* must be deposited in the account.

(3) All money in the account, except any amount required to be returned to federal ~~or county~~ sources, is allocated to the department ~~of public health and human services to carry out its duties under 52-1-103~~ *to offset the cost of out-of-home placements, programs, and services for youth under the jurisdiction of the youth court or department*."

Section 4. Section 41-5-121, MCA, is amended to read:

"41-5-121. Youth placement committees — composition. (1) In each judicial district, the youth court and the department shall establish a youth placement committee for the purposes of:

(a) recommending an appropriate placement of a youth ~~referred~~ *committed* to the youth court *under 41-5-1512 or 41-5-1513* or *committed to* the department under ~~41-5-1512 and~~ 41-5-1513; or

(b) recommending available community services or alternative placements whenever a change is required in the placement of a youth who is currently in the *legal* custody of the ~~department~~ *youth court* under 41-5-1512 or 41-5-1513 *or the department under 41-5-1513*. However, the committee may not substitute its judgment for that of the superintendent of a state youth correctional facility regarding the discharge of a youth from the facility *or the placement of a youth on parole under the department's jurisdiction*.

(2) (a) The committee consists of not less than five members and must include persons who are knowledgeable about the youth, treatment and placement options, and other resources appropriate to address the needs of the youth.

(b) The committee must include:

(i) a juvenile parole officer employed by the department;

(ii) a representative of the department of public health and human services;

(iii) the chief *juvenile* probation officer or the chief *juvenile* probation officer's designee~~, who~~. *The officer or the officer's designee* is the presiding officer of the committee~~;~~.

(iv) a mental health professional; and

(v) if an Indian youth is involved, a person, preferably an Indian, knowledgeable about Indian culture and Indian family matters.

(c) The committee may include:

(i) a representative of a school district located within the boundaries of the judicial district who has knowledge of and experience with youth;

(ii) the youth's parent or guardian;

(iii) a youth services provider; and

(iv) the youth's *juvenile* probation officer.

(3) The youth court judge shall appoint all members of the youth placement committee except the juvenile parole officer. The director of the department shall appoint the juvenile parole officer and shall, when making the appointment, take into consideration:

(a) the juvenile parole officer's qualifications;

(b) the costs involved in the juvenile parole officer's attendance at youth placement committee meetings; and

(c) the location of the juvenile parole officer's home in relation to the location of the youth placement committee.

(4) Committee members serve without compensation.

(5) ~~Notwithstanding the provisions of 41-5-123, the~~ *The* committee may be convened by *request of* the department *to the presiding officer* or *by* the *chief juvenile* probation officer ~~of the youth court~~.

(6) If a representative of the school district within the boundaries of which the youth is recommended to be placed and will be attending school is not included on the committee, the person who convened the committee shall inform the school district of the final placement decision for the youth.

(7) The department may not ~~disburse funds from the budget allocation accounts~~ *charge expenditures to the judicial district allocations* established pursuant to 41-5-130 unless the youth court and the department have established a youth placement committee as provided in this section."

Section 5. Section 41-5-124, MCA, is amended to read:

"41-5-124. Temporary and emergency placements — limit. ~~(1)~~ A temporary placement of a youth in a shelter care facility *for less than 45 days* or an emergency placement of a youth in a youth care facility is exempt from ~~the requirements of 41-5-123~~ *review by the appropriate youth placement committee.*

~~(2)~~ If a temporary or emergency placement of a youth continues for 45 or more days, the ~~department~~ *youth court* shall refer the placement of the youth to the appropriate youth placement committee for review. The committee shall make a recommendation for placement to the youth court ~~in accordance with 41-5-123~~."

Section 6. Section 41-5-130, MCA, is amended to read:

"41-5-130. ~~Participating and nonparticipating jurisdictions~~ *Department to administer juvenile placement funds — transfer of funds to conduct evaluations — department allocation — judicial district allocations — use of annual allocations — transfer of unexpended funds.* ~~(1) Each judicial district may elect to participate in the juvenile delinquency intervention program.~~ *(1) The department shall administer juvenile placement funds as appropriated by the legislature in accordance with this chapter. The department shall consult with the office of court administrator when developing its budget request for juvenile placement funds for submission to the budget director as provided in 17-7-112.*

(2) For each fiscal year, the department shall transfer $25,000 from the appropriated juvenile placement funds to the office of court administrator for evaluations of out-of-home placements, programs, and services as provided in 41-5-2003. The office shall deposit the funds in the youth court intervention and prevention account provided for in 41-5-2011.

(3) For each fiscal year, the department shall, after transferring funds under subsection (2) and allocating funds to the cost containment pool under 41-5-132, allocate 11% of the remaining appropriated juvenile placement funds for juvenile parole out-of-home placements, programs, and services.

(4) For each fiscal year, the department shall, after allocating funds under subsection (3), allocate the remaining appropriated juvenile placement funds to each judicial district according to a formula established by the cost containment review panel provided for in 41-5-131.

~~(2)~~*(5)* A ~~jurisdiction that elects to participate in the program~~ *judicial district* may expend funds from ~~a juvenile placement fund~~ *its annual allocation* for out-of-home placements or for other *programs or* services intended to reduce or prevent juvenile delinquency subject to ~~restrictions in this chapter and administrative rules adopted by the department~~ *the provisions of subsection (6).*

~~(3) A jurisdiction that does not elect to participate in the program may commit youth to the department for out-of-home placements pursuant to this chapter.~~

~~(4) A jurisdiction that has not previously participated in the program may elect to participate in the program prior to the start of a new biennium. Participation must be for a complete biennium. A jurisdiction may elect to~~

~~discontinue participation in future bienniums upon 3 months' written notice to the department prior to the beginning of the next biennium.~~

~~(5) A youth court that does not participate in the program may not expend any juvenile placement funds for placements or services unless approved by the department pursuant to 41-5-123.~~

~~(6) The department shall establish an account for each judicial district in order to administer a juvenile placement fund as appropriated by the legislature. The accounts must be used by the youth courts for funding out-of-home placements and for other services intended to reduce or prevent juvenile delinquency subject to restrictions in this chapter and administrative rules adopted by the department. At the end of a fiscal year, the balance in the accounts established under this subsection must be transferred to the youth intervention and prevention account established in 41-5-2011.~~

(6) (a) Except as provided in subsection (6)(b), a judicial district shall reserve at least 80% of its annual allocation for out-of-home placements and the remainder for programs or services.

(b) A judicial district may reserve up to 50% of its annual allocation for programs or services if:

(i) the programs or services have, based on demonstrated outcomes, reduced the number of placements in correctional facilities or higher cost residential placements; and

(ii) the judicial district would not require funding from the cost containment pool, provided for in 41-5-132, in the same fiscal year in which the annual allocation is made under this subsection (6)(b).

(7) A judicial district that intends to expend funds from its annual allocation on an out-of-home placement, program, or service for a person who is 18 years of age or older shall submit to the cost containment review panel a plan describing how the funds will be used. The cost containment review panel shall approve or disapprove the plan. If the plan is approved, the judicial district may expend funds from its annual allocation to implement the plan.

(8) At the end of each fiscal year, after all valid obligations have been paid or encumbered for payment, the department shall transfer any unexpended funds from the judicial districts' annual allocations provided for in this section to the office of court administrator for deposit into the youth court intervention and prevention account provided for in 41-5-2011."

Section 7. Section 41-5-131, MCA, is amended to read:

"41-5-131. Cost containment review panel — *duties*. (1) The department shall establish a cost containment review panel.

(2) *(a)* The *members of the* cost containment review panel ~~shall consist of the following members~~ *must be* appointed ~~by the department~~ *as follows*:

~~(a)~~*(i)* ~~two~~ *three* members ~~from~~ *appointed by* the *director of the* department of corrections;

(ii) three members appointed by the chief justice of the supreme court; and

~~(b)~~*(iii)* ~~a~~ *one* member ~~from~~ *who is a professional working in the field of children's mental health appointed by the director of* the department of public health and human services~~;~~.

~~(c) a representative from the field of mental health;~~

~~(d) a youth court judge;~~

~~(e) two chief juvenile probation officers;~~

~~(f) a county commissioner; and~~

~~(g) a representative of the youth justice council.~~

(b) Each appointing authority under subsection (2)(a) shall appoint one person to serve as the alternate for a member appointed by the authority who is unable to participate in a cost containment review panel meeting.

(3) Decisions of the cost containment review panel must be *made* by majority vote *of the members of the cost containment review panel or their alternates*.

~~(4) The cost containment review panel shall determine the distribution of funds allocated in 41-5-132.~~

~~(5) The cost containment review panel may evaluate the effectiveness of new or innovative programs for the treatment of troubled youth and make recommendations to the youth courts and the department.~~

~~(6) A youth court shall request funds from the cost containment review panel prior to exceeding its account allocation under 41-5-130. If a panel member referred to in subsections (2)(d) through (2)(g) is a resident of or is employed in the judicial district of a youth court requesting cost containment funds, the panel member may not serve as a panel member for purposes of a decision regarding disbursement of cost containment funds to the youth court and an alternate panel member must be appointed by the department for purposes of the decision.~~

(4) The cost containment review panel shall:

(a) establish the formula for the annual allocation to each judicial district as provided in 41-5-130;

(b) approve or disapprove plans for out-of-home placements, programs, or services for persons 18 years of age or older as provided in 41-5-130;

(c) recommend an amount to be allocated to the cost containment pool as provided in 41-5-132;

(d) approve requests by judicial districts for allocations from the cost containment pool as provided in 41-5-132;

(e) approve requests by the department for reimbursement from the cost containment pool as provided in 41-5-132;

(f) provide recommendations on the evaluation of out-of-home placements, programs, and services as provided in 41-5-2003;

(g) review plans submitted under [section 20] and recommend to the office of court administrator whether each plan should be approved; and

(h) adopt procedures for the operation of the cost containment review panel."

Section 8. Section 41-5-132, MCA, is amended to read:

"41-5-132. Cost containment ~~fund~~ *pool* — allocation of appropriated funds — ~~use of funds~~ *authorization of allocation from pool — transfer of unexpended funds.* (1) *(a)* The department ~~of corrections~~ shall establish a cost containment ~~fund for the purposes of 41-5-131 and~~ *pool. After considering the cost containment review panel's recommendation as provided for in subsection (1)(b), the department* shall allocate to the ~~fund~~ *cost containment pool at the beginning of each fiscal year* not less than $1 million ~~each fiscal year~~ from the

funds appropriated for ~~the~~ juvenile ~~placement budget for the fiscal biennium beginning July 1, 2001, to be used for the purposes of 41-5-131~~ *placements*.

~~(2)~~*(b)* ~~The department shall determine the amount of the cost containment fund at the beginning of each fiscal year.~~ The cost containment review panel shall submit *to the department* a recommended amount to be allocated to the cost containment ~~fund~~ *pool* at least 1 month prior to the start of ~~a new~~ *each* fiscal year. *The cost containment review panel shall establish a methodology for determining the recommended amount to be allocated to the cost containment pool.*

(2) According to criteria and procedures adopted by the cost containment review panel, the cost containment review panel may authorize an allocation from the cost containment pool to a judicial district that has exceeded its annual allocation under 41-5-130 for juvenile out-of-home placements, programs, and services. The judicial district shall request an allocation from the cost containment review panel before exceeding its annual allocation.

(3) (a) According to criteria and procedures established by the cost containment review panel, the cost containment review panel may authorize an allocation from the cost containment pool to the department for a request submitted under subsection (3)(b).

(b) The department may request at the end of the fiscal year that the cost containment review panel reimburse the department from the cost containment pool for costs incurred under 41-5-1504(3) for placing a youth found to be suffering from a mental disorder, including costs for transporting the youth. Before requesting reimbursement, the department shall expend its state youth correctional facility budgets for mental health placements and any parental contributions or federal funds, for which the department has spending authority, or private insurance payments received for treatment.

(4) In addition to any disbursement made by the cost containment review panel under subsection (2) or (3), the department may expend funds from the cost containment pool to reimburse cost containment review panel members or alternates for travel expenses, as provided in 2-18-501 through 2-18-503, and to pay the actual costs incurred in conducting a cost containment review panel meeting, excluding salary and benefits for employees providing support services to the cost containment review panel.

(5) The department shall transfer any amount remaining in the cost containment pool at the end of each fiscal year to the office of court administrator for deposit in the youth court intervention and prevention account provided for in 41-5-2011."

Section 9. Section 41-5-1503, MCA, is amended to read:

"41-5-1503. Medical or psychological evaluation of youth — urinalysis. (1) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-331. ~~The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (2). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.~~ *Except as provided in subsection (2), the youth court shall pay for the cost of the evaluation from its judicial district's allocation provided for in 41-5-130 or [section 20].*

(2) The youth court shall determine the financial ability of the youth's parents or guardians to pay the cost of an evaluation ordered by the court under subsection (1). If they are financially able, the court shall order the youth's parents or guardians to pay all or part of the cost of the evaluation.

(3) Subject to 41-5-1512(1)(o)(i), the youth court may not order an evaluation or placement of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is listed ~~under~~ *in* 41-5-206.

(4) An evaluation of a youth may not be performed at the Montana state hospital ~~unless the youth is transferred to the district court under 41-5-208 or 41-5-1605 or the jurisdiction of the youth court is terminated following the filing of an information in district court pursuant to 41-5-206~~.

(5) In a proceeding alleging a youth to be a delinquent youth, upon a finding of an offense related to use of alcohol or illegal drugs, the court may order the youth to undergo urinalysis for the purpose of determining whether the youth is using alcoholic beverages or illegal drugs."

Section 10. Section 41-5-1512, MCA, is amended to read:

"41-5-1512. Disposition of youth in need of intervention or youth who violate consent adjustments. (1) If a youth is found to be a youth in need of intervention or to have violated a consent adjustment, the youth court may enter its judgment making one or more of the following dispositions:

(a) place the youth on probation. The youth court shall retain jurisdiction in a disposition under this subsection.

(b) place the youth in a residence that ensures that the youth is accountable, that provides for rehabilitation, and that protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee.

(c) commit the youth to the ~~department in jurisdictions that do not participate in the juvenile delinquency intervention program or to the~~ youth court ~~in jurisdictions that participate in the juvenile delinquency intervention program~~ for the purposes of ~~funding~~ *placement in* a private, out-of-home~~, residential placement~~ *facility* subject to the conditions in 41-5-1522. In an order committing a youth to ~~the department or to~~ the youth court, the court shall determine whether continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home.

(d) order restitution for damages that result from the offense for which the youth is disposed by the youth or by the person ~~that~~ *who* contributed to the delinquency of the youth;

(e) require the performance of community service;

(f) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community;

(j) subject to the provisions of 41-5-1504, commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is found to be suffering from a mental disorder, as defined in 53-21-102, and meets the criteria in 53-21-126(1);

(k) place the youth under home arrest as provided in Title 46, chapter 18, part 10;

(l) order confiscation of the youth's driver's license, if the youth has one, by the probation officer for a specified period of time, not to exceed 90 days. The probation officer shall notify the department of justice of the confiscation and its duration. The department of justice may not enter the confiscation on the youth's driving record. The probation officer shall notify the department of justice when the confiscated driver's license has been returned to the youth. A youth's driver's license may be confiscated under this subsection more than once. The probation officer may, in the probation officer's discretion and with the concurrence of a parent or guardian, return a youth's confiscated driver's license before the termination of the time period for which it had been confiscated. The confiscation may not be used by an insurer as a factor in determining the premium or part of a premium to be paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth~~, nor~~ *and* may ~~it~~ *not* be used as grounds for denying coverage for an accident or other occurrence under an existing policy.

(m) order the youth to pay a contribution covering all or a part of the costs for ~~the~~ adjudication, disposition, *and* attorney fees for the costs of prosecuting or defending the youth~~,~~ *and* costs of detention, supervision, care, custody, and treatment of the youth, including the costs of counseling;

(n) order the youth to pay a contribution covering all or a part of the costs of a victim's counseling;

(o) defer imposition of sentence for up to 45 days for a placement evaluation at a suitable program or facility with the following conditions:

(i) The court may not order placement for evaluation at a youth correctional facility of a youth who has committed an offense that would not be a criminal offense if committed by an adult or a youth who has violated a consent adjustment.

(ii) The placement for evaluation must be on a space-available basis ~~at the county's expense, which is not reimbursable under part 19 of this chapter~~. *Except as provided in subsection (1)(o)(iii), the court shall pay the cost of the placement for evaluation from its judicial district's allocation provided for in 41-5-130 or [section 20].*

(iii) The court may require the youth's parents or guardians to pay a contribution covering all or a part of the costs of the evaluation if the court determines after an examination of financial ability that the parents or guardians are able to pay the contribution. Any remaining unpaid costs of evaluation are the financial responsibility of the judicial district of the court that ordered the evaluation.

(p) order placement of a youth in a youth assessment center for up to 10 days;

(q) order the youth to participate in mediation that is appropriate for the offense committed.

(2) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may *not* order a local government entity to pay for evaluation and in-state transportation of a youth.

(3) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the ~~account~~ *annual allocation* established for that district under 41-5-130 without approval from the cost containment review panel."

Section 11. Section 41-5-1513, MCA, is amended to read:

"41-5-1513. Disposition — delinquent youth — restrictions. (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-1512;

(b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age. The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b). The court may not place a youth adjudicated to be a delinquent youth in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless:

(i) the youth committed four or more misdemeanors in the prior 12 months;

(ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or a licensed clinical social worker has evaluated the youth and recommends placement in a state youth correctional facility; and

(iii) the court finds that the youth will present a danger to the public if the youth is not placed in a state youth correctional facility.

(c) require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a sexual offense or violent offense, as defined in 46-23-502, if committed by an adult, to register as a sexual or violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection.

(d) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

(e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a sex offense, the youth court may require completion of sex offender treatment before a youth is discharged.

(3) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may *not* order a local government entity to pay for evaluation and in-state transportation of a youth*, except as provided in 52-5-109.*

(4) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the ~~account~~ *annual allocation* established for that district under 41-5-130 without approval from the cost containment review panel."

Section 12. Section 41-5-1522, MCA, is amended to read:

"41-5-1522. Commitment to department — restrictions on placement. When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made ~~under 41-5-123~~ by the youth placement committee. Placement is subject to the following limitations:

(1) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the power of the department to enter into a parole agreement with the youth pursuant to 52-5-126.

(2) A youth may not be placed in or transferred to a state adult correctional facility or other facility used for the execution of sentences of adults convicted of crimes.

(3) The department may not place a youth in need of intervention, a youth adjudicated delinquent for commission of an act that would not be an offense if committed by an adult, or a youth who violates a consent adjustment in a state youth correctional facility."

Section 13. Section 41-5-1523, MCA, is amended to read:

"41-5-1523. Commitment to department *or youth court* — supervision. (1) A youth placed in a state youth correctional facility or other facility or program operated by the department or who signs a parole agreement under 52-5-126 must be supervised by the department.

(2) A youth ~~who is~~ placed in any private, out-of-home~~, residential placement~~ *facility* by the youth court ~~or the youth court's juvenile probation officer~~ must be supervised by ~~the~~ *a juvenile* probation officer of the youth court ~~having jurisdiction over the youth under 41-5-205, whether or not the youth is committed to the department for purposes of funding a private, out-of-home, residential placement~~.

(3) ~~Supervision by the youth probation officer includes but is~~ *Responsibilities of the juvenile probation officer relating to placement of the youth include but are* not limited to:

(a) submitting information and documentation necessary for the ~~person,~~ committee~~, or team~~ that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) *managing the youth's* case ~~management of the youth~~ while in a private, out-of-home~~, residential placement~~ *facility* and upon release until ~~discharged by the department~~ *supervision is terminated by the youth court*."

Section 14. Section 41-5-2002, MCA, is amended to read:

"41-5-2002. Purpose. The purposes of this part are to:

(1) provide an alternate method of funding juvenile ~~placement~~ *out-of-home placements, programs,* and services;

(2) increase the ability of ~~local government~~ *youth courts* to respond to juvenile delinquency through early intervention and expanded community alternatives; ~~and~~

(3) enhance the ability of ~~local government~~ *youth courts* to control costs*;*

(4) enhance community safety, hold youth accountable, and promote the competency development of youth;

(5) use local resources for the placement of troubled youth, when appropriate and available;

(6) reduce placements in out-of-state residential facilities and programs; and

(7) use state youth correctional facilities when appropriate."

Section 15. Section 41-5-2003, MCA, is amended to read:

"41-5-2003. Establishment of program — department duties — *office of court administrator duties.* (1) ~~(a)~~ There is a juvenile delinquency intervention program. *Each judicial district shall participate in the program.*

~~(b) Participation in the juvenile delinquency intervention program is voluntary.~~

~~(2) The department and the youth court shall monitor the youth court's account created under 41-5-130 to ensure that the youth court does not exceed its allocated account budget.~~

~~(3) Account funds not used by the youth court for placements must be distributed to participating youth courts in accordance with rules adopted by the department to be used for placement alternatives and early intervention alternatives.~~

(2) The department and the judicial district shall monitor the judicial district's annual allocation provided for in 41-5-130 to ensure that the judicial district does not exceed its allocation.

~~(4)~~*(3)* The department shall provide technical assistance to each ~~youth court~~ *judicial district* for the monitoring of ~~account funds and the evaluation and development of placement alternatives and effective intervention programming~~ *its annual allocation*.

~~(5)~~*(4)* The ~~department shall review and monitor~~ *office of court administrator shall assist* each youth court ~~to enable the development of~~ *in developing* placement alternatives ~~by the youth courts and the development of early intervention alternatives by the youth courts~~ *and community intervention and prevention programs and services*.

(5) (a) Each fiscal year, the office of court administrator shall select out-of-home placements, programs, and services to be evaluated for their effectiveness in achieving the purposes provided in 41-5-2002. The cost containment review panel shall provide recommendations to the office on out-of-home placements, programs, and services to be evaluated and on the scope of the evaluation. Before conducting any evaluation, the office shall obtain approval from the district court council established in 3-1-1602.

(b) The ~~department~~ *office* shall report ~~to the legislature on the results of its monitoring~~ *the results of any evaluation conducted under subsection (5)(a) each year to the department, cost containment review panel, district court council, and law and justice interim committee*."

Section 16. Section 41-5-2004, MCA, is amended to read:

"41-5-2004. Youth court duties. Each youth court shall:

(1) use available resources to develop alternatives for the placement of youth;

(2) use available resources for early intervention strategies for troubled youth;

(3) use a *validated* risk assessment instrument approved by the ~~department~~ *office of court administrator* for the measurement of risk ~~assessment~~ and *the* effectiveness of treatment or intervention *services* for youth ~~adjudicated~~ pursuant to 41-5-1512 or 41-5-1513;

(4) submit quarterly reports to the *office of court administrator and the* department documenting the use of ~~diversionary~~ *diversion* and prevention programs and the use of placement services; *and*

~~(5) participate in the cost containment review panel established under 41-5-131; and~~

~~(6)~~*(5)* provide the ~~department and the~~ legislative auditor with access to all records maintained by the youth court."

Section 17. Section 41-5-2005, MCA, is amended to read:

"41-5-2005. ~~Judicial districts participating in juvenile delinquency intervention program — youth~~ *Youth* placement committee to submit recommendation to ~~department~~ *youth court judge* — acceptance or rejection of recommendation by ~~department~~ *judge*. (1) *(a)* Prior to commitment of a youth to the *legal* custody of the youth court *under 41-5-1512 or 41-5-1513* or to the department ~~pursuant to 41-5-1512 or~~ *under* 41-5-1513, a youth placement committee must be convened. ~~The~~ *Except as provided in subsection (1)(b), the* committee shall submit in writing to the youth court judge its primary and alternative recommendations for placement of the youth.

(b) An alternative recommendation is unnecessary if the committee's recommendation is placement in a youth correctional facility.

(2) The committee shall first consider placement of the youth in a community-based facility or program and shall give priority to placement of the youth in a facility or program located in the state of Montana.

(3) If in-state alternatives for placement of the youth are inappropriate, the committee may recommend an out-of-state placement. The committee shall state in its recommendation the reasons why in-state services are not appropriate.

(4) The primary and alternative recommendations of the youth placement committee must be for similar facilities or programs. The youth court may require a youth placement committee to reevaluate a youth if the recommended placements are dissimilar.

(5) If the youth court rejects both of the committee's recommendations, it shall promptly notify the committee in writing of the reasons for rejecting the recommendations and shall make an appropriate placement for the youth.

(6) The youth court may not order a placement or change of placement that results in a deficit in the ~~account~~ *annual allocation* established for that district under 41-5-130 without approval from the cost containment review panel.

(7) The youth court shall evaluate the cost of the placement or change of placement and ensure that the placement or change of placement will not overspend the ~~budget~~ *annual* allocation provided by the department under 41-5-130.

~~(8) This section applies only to those judicial districts that elect to participate in the juvenile delinquency intervention program administered by the department.~~"

Section 18. Section 41-5-2006, MCA, is amended to read:

"41-5-2006. Rulemaking authority — *policies and procedures.* (1) The department shall adopt rules necessary ~~for the implementation of 41-5-130 through 41-5-132 and this part~~ *to perform its duties under this chapter*, including but not limited to *rules regarding*:

~~(a) defining and establishing criteria for early intervention regarding troubled youth and the development of community alternatives;~~

~~(b) evaluating each youth court to ensure that the court is using early intervention strategies and community alternatives and is effectively controlling costs for youth placements;~~

~~(c) distributing unused account funds to the youth courts;~~

~~(d) determining the allocation of funds to the accounts for the youth courts;~~

~~(e) determining the amount of funds to be withheld by the department as cost containment funds;~~

~~(f) monitoring and auditing each youth court to ensure that account funds are being used as required by law;~~

~~(g) distributing cost containment funds to youth courts;~~

~~(h) monitoring youth courts to promote consistency and uniformity in the placement of juvenile offenders;~~

~~(i) developing procedures for the operation of the cost containment review panel;~~

~~(j) developing one or more risk assessment tools; and~~

~~(k) developing procedures for removing youth with serious mental illness from the juvenile correctional system.~~

~~(2) It is the intent of the legislature that rules adopted by the department encourage the use of local, regional, and state resources for the placement of troubled youth.~~

(a) monitoring judicial districts' annual allocations provided for in 41-5-130;

(b) processing payments for out-of-home placements, programs, and services on behalf of the youth courts;

(c) determining the amount to be allocated to the cost containment pool as provided for in 41-5-132; and

(d) removing youth with a mental disorder, as defined in 53-21-102, from state youth correctional facilities.

(2) The district court council, established in 3-1-1602, shall adopt policies and procedures, subject to review by the supreme court, necessary for the youth courts and office of court administrator to perform their duties under this chapter, including but not limited to policies and procedures regarding:

(a) guidelines for evaluating out-of-home placements, programs, and services as provided in 41-5-2003;

(b) administration of the youth court intervention and prevention account provided for in 41-5-2011;

(c) monitoring of youth courts to promote consistency and uniformity in the placement of juveniles referred to the youth courts; and

(d) approval of one or more risk assessment tools to be used by the youth courts."

Section 19. Section 41-5-2011, MCA, is amended to read:

"41-5-2011. Youth court intervention and prevention account — statutory appropriation — administration. (1) There is a youth *court* intervention and prevention account in the state special revenue fund. ~~The money in the account must be used for the youth court intervention and prevention programs authorized in this part. All unexpended funds remaining at the end of a fiscal year in the accounts established under 41-5-130(6) must be transferred to the account established in this subsection.~~ *The office of court administrator shall deposit in the account the following funds transferred by the department:*

(a) funds transferred under 41-5-130(2) for evaluations of out-of-home placements, programs, and services;

(b) unexpended funds from the judicial districts' annual allocations as provided for in 41-5-130(8); and

(c) unexpended funds from the cost containment pool as provided for in 41-5-132.

(2) The youth *court* intervention and prevention account is statutorily appropriated, as provided in 17-7-502, to the supreme court ~~for the purposes of 41-5-2003(3)~~. The office of ~~the~~ court administrator shall administer the account in accordance with ~~rules adopted by the department of corrections~~ *[section 20]*."

Section 20. Allocation to judicial districts from youth court intervention and prevention account — judicial district plans — cost containment review panel review and recommendations — district court council and cost containment review panel policies and procedures. (1) (a) At the beginning of each fiscal year, the office of court administrator shall allocate from the youth court intervention and prevention account to each judicial district an amount equal to the unexpended funds from the judicial district's annual allocation for the previous fiscal year under 41-5-130.

(b) In addition to the amount allocated under subsection (1)(a), at the beginning of each fiscal year, the office of court administrator shall allocate from the youth court intervention and prevention account to all judicial districts the unexpended funds from the cost containment pool transferred from the previous fiscal year under 41-5-132. The office shall allocate the funds according to the formula that was used to determine the judicial districts' annual allocations for the previous fiscal year under 41-5-130.

(2) Upon approval of the youth court judge, a judicial district may submit a plan to the office of court administrator for approval to expend the amounts allocated to the judicial district under subsection (1) for one or more of the following purposes:

(a) to establish or expand community prevention and intervention programs and services for youth;

(b) to provide an alternative method for funding out-of-home placements; and

(c) to provide matching funds for federal money for intervention and prevention programs that provide direct services to youth.

(3) Two or more judicial districts may jointly submit a plan to combine any portion of the amounts allocated to the districts under subsection (1) to expend funds on a regional or statewide basis in accordance with subsection (2).

(4) The cost containment review panel provided for in 41-5-131 shall review each plan submitted to the office of court administrator. The cost containment review panel shall recommend to the office whether each plan should be approved. The office shall consider the cost containment review panel's recommendation before approving or disapproving a plan.

(5) The office of court administrator shall notify the judicial district, cost containment review panel, and department in writing as to whether a plan has been approved or disapproved. If the office disapproves a plan, the judicial district may submit a revised plan.

(6) (a) A judicial district shall expend the amounts allocated to the district under subsection (1) in accordance with an approved plan by the end of the fiscal year following the fiscal year in which the amounts were allocated under subsection (1).

(b) Any portion of the amounts allocated under subsection (1) not expended within the time provided for in subsection (6)(a) must be transferred to the general fund.

(7) (a) Except as provided in subsection (7)(b), the district court council, established in 3-1-1602, shall adopt policies and procedures, subject to review by the supreme court, for administering this section, including procedures for submitting plans to the office of court administrator and criteria to be used by the office in evaluating and approving the plans.

(b) The cost containment review panel shall adopt procedures for reviewing plans submitted to the office of court administrator and making recommendations to the office on plan approval.

Section 21. Section 52-5-109, MCA, is amended to read:

"52-5-109. ~~Commitment expenses — transportation~~ *Transportation* costs — arrangement for transportation. ~~(1) The expenses of committing a youth to the department or to the youth court must be borne by the committing youth court.~~

~~(2) (a) After adjudication, the costs of transporting a youth to and from an out-of-home placement within the state must be paid as follows:~~

~~(i) in a jurisdiction that does not participate in the juvenile delinquency intervention program, the county shall pay the costs;~~

~~(ii) in a jurisdiction that participates in the juvenile delinquency intervention program, the youth court shall pay the costs from the account established under 41-5-130 or out of county funds of the committing county.~~

~~(b) After adjudication, the costs of transporting a youth to and from an out-of-home placement in another state must be paid by the youth court and must be paid for out of the account established under 41-5-130, except that the department shall pay transportation costs in a case in which a youth is placed in an out-of-state correctional facility pursuant to 41-5-355.~~ *(1) Prior to adjudication:*

(a) for a youth placed in a facility, other than a state youth correctional facility or a detention facility, the judicial district of the youth court to which the youth has been referred shall pay the cost for transporting the youth to the facility and for any other transportation costs incurred while the youth is in the facility. The district shall pay these costs from its annual allocation provided for in 41-5-130.

(b) for a youth detained in a detention facility, the county of the youth court to which the youth has been referred shall pay the cost for transporting the youth to the facility and for any other transportation costs while the youth is in the facility.

(2) After adjudication:

(a) for a youth placed in a nonsecure facility within or outside the state, the judicial district of the youth court in which the youth was adjudicated shall pay the costs for transporting the youth to and from the facility from its annual allocation established under 41-5-130;

(b) for a youth committed to the department for placement in an in-state youth correctional facility, the county of the youth court in which the youth was adjudicated shall pay the cost for transporting the youth to the facility. The department shall pay the cost for transporting the youth after the youth is released from the facility or provide other arrangements for transporting the youth.

(c) for a youth placed in an out-of-state correctional facility pursuant to 41-5-355, the department shall pay the cost for transporting the youth to the facility and the cost for transporting the youth after the youth is released from the facility.

(3) The youth court probation office shall arrange for all transportation to and from an out-of-home placement except when the youth is under the parole supervision of the department *or when the department is responsible for transportation costs as provided for in subsections (2)(b) and (2)(c).*"

Section 22. Section 53-1-203, MCA, is amended to read:

"53-1-203. Powers and duties of department of corrections. (1) The department of corrections shall:

(a) adopt rules necessary to carry out the purposes of ~~41-5-123 through~~ 41-5-125, rules necessary for the siting, establishment, and expansion of prerelease centers, rules for the establishment and maintenance of residential methamphetamine treatment programs, and rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law. However, rules adopted by the department may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers

must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations to establish and maintain:

(i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for release into the community, providing an alternative placement for offenders who have violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs. This subsection does not affect the department's authority to operate and maintain prerelease centers.

(ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for persons convicted of possession of methamphetamine. The department shall issue a request for proposals using a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

(d) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed in correctional facilities or programs;

(f) encourage the establishment of programs at the local and state level for the rehabilitation and education of felony offenders;

(g) administer all state and federal funds allocated to the department for youth in need of intervention and delinquent youth, as defined in 41-5-103*, except as provided in [section 20]*;

(h) collect and disseminate information relating to youth ~~in need of intervention and delinquent youth~~ *who are committed to the department for placement in a state youth correctional facility*;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to

youth in need of intervention and delinquent youth in out-of-home care facilities;

(j) provide funding for ~~and place~~ youth ~~who are adjudicated to be delinquent or in need of intervention and~~ who are committed to the department *for placement in a state youth correctional facility*;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for delinquent youth committed to the department; and

(ii) coordinate and apply the principles of modern correctional administration to the facilities and programs administered by the department.

(2) The department and a private, nonprofit Montana corporation may not enter into a contract under subsection (1)(c) for a period that exceeds 20 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c). Prior to entering into a contract for a period of 10 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

(3) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for ~~youth in need of intervention and~~ delinquent youth in *state* youth correctional facilities *or on juvenile parole supervision*.

(4) The department may contract with Montana corporations to operate a day reporting program as an alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015. The department shall adopt by rule the requirements for a day reporting program, including but not limited to requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance with any conditions of probation, such as drug testing."

Section 23. Repealer. Sections 41-5-104 and 41-5-123, MCA, are repealed.

Section 24. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 41, chapter 5, part 1, and the provisions of Title 41, chapter 5, part 1, apply to [section 1].

(2) [Section 20] is intended to be codified as an integral part of Title 41, chapter 5, part 20, and the provisions of Title 41, chapter 5, part 20, apply to [section 20].

Section 25. Effective date. [This act] is effective June 30, 2007.

Approved May 3, 2007

CHAPTER NO. 399

[SB 157]

AN ACT GENERALLY REVISING INSURANCE LAWS ADMINISTERED BY THE STATE AUDITOR; REMOVING REDUNDANT REFERENCES FOR REVOKING OR REFUSING TO ISSUE AN INSURANCE CONSULTANT LICENSE; AMENDING SECTIONS 33-1-201, 33-1-311, 33-4-312, 33-17-211, 33-17-214, 33-17-232, 33-17-511, 33-17-1103, 33-18-235, 33-19-105, 33-20-1303, 33-20-1315, 33-22-121, 33-22-122, 33-22-513, 33-22-1517, 33-22-2001, 33-22-2002, 33-22-2004, 33-25-212, 33-25-214, 33-30-1015, 33-31-111, 33-31-311, 33-35-103, 33-35-306, 33-38-105, AND 50-4-703, MCA; REPEALING SECTIONS 33-17-506 AND 33-17-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-201, MCA, is amended to read:

"33-1-201. Definitions — insurance in general. For the purposes of this code, the following definitions apply unless the context requires otherwise:

(1) ~~An "alien~~ *"Alien* insurer" is ~~one~~ *an insurer* formed under the laws of any country other than the United States~~,~~ *or* its states, districts, territories, and commonwealths.

(2) ~~An "authorized~~ *"Authorized* insurer" is ~~one~~ *an insurer* duly authorized by ~~subsisting~~ *a* certificate of authority issued by the commissioner to transact insurance in this state.

(3) ~~A "domestic~~ *"Domestic* insurer" is ~~one~~ *an insurer* incorporated under the laws of this state.

(4) ~~A "foreign~~ *"Foreign* insurer" is ~~one~~ *an insurer* formed under the laws of any jurisdiction other than this state. Except ~~where~~ *when* distinguished by context, ~~foreign insurer~~ *the term* includes ~~also~~ an alien insurer.

(5) (a) "Insurance" is a contract ~~whereby~~ *through which* one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.

(b) Insurance does not include contracts for the installation, maintenance, and provision of inside telecommunications wiring to residential or business premises.

(6) "Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance. The term also includes a health service corporation in the provisions listed in 33-30-102.

(7) ~~A "resident~~ *"Resident* domestic insurer" is an insurer incorporated under the laws of this state and:

(a) if a mutual company, not less than one-half of the policyholders are ~~natural persons~~ *individuals* who are residents of this state; or

(b) if a stock insurer, not less than one-half of the shares are owned by ~~natural persons~~ *individuals* who are residents of this state and all of the directors and officers of the insurer are residents of this state.

(8) "State", when used ~~relating~~ *in relation* to jurisdiction, means a state, the District of Columbia, or a territory, commonwealth, or possession of the United States.

(9) "Transact", with respect to insurance, ~~includes any of the following~~ *means to*:

(a) ~~solicitation and inducement~~ *solicit*;

(b) ~~preliminary negotiations~~ *negotiate*;

(c) ~~effectuation of~~ *sell or effectuate* a contract of insurance; *or*

(d) ~~transaction of~~ *transact* matters subsequent to effectuation of the contract of insurance and arising out of it.

(10) ~~An "unauthorized~~ *"Unauthorized* insurer" is ~~one~~ *an insurer* not authorized by ~~subsisting~~ *a* certificate of authority issued by the commissioner to transact insurance in this state."

Section 2. Section 33-1-311, MCA, is amended to read:

"33-1-311. General powers and duties. (1) The commissioner shall enforce the applicable provisions of the laws of this state and shall execute the duties imposed on the commissioner by the laws of this state.

(2) The commissioner has the powers and authority expressly conferred upon the commissioner by or reasonably implied from the provisions of the laws of this state.

(3) The commissioner shall administer the department to ensure that the interests of insurance consumers are protected.

(4) The commissioner may conduct examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as the commissioner considers proper, to determine whether any person has violated any provision of the laws of this state or to secure information useful in the lawful administration of any provision. The cost of additional examinations and investigations must be borne by the state.

(5) The commissioner shall maintain as confidential any information or document received from:

(a) the national association of insurance commissioners; or

(b) an insurance department from another state ~~or~~*, a* federal agency*, or a foreign government* that treats the same information or document as confidential. The commissioner may provide information or documents, including information or documents that are confidential, to the national association of insurance commissioners, a state or federal law enforcement agency, a federal agency, *a foreign government,* or an insurance department in another state, if the recipient agrees to maintain the confidentiality of the information or documents.

(6) The department is a criminal justice agency as defined in 44-5-103."

Section 3. Section 33-4-312, MCA, is amended to read:

"33-4-312. Officers, ~~insurance producers~~ *agents*, and employees not licensed — exception for liability insurance. (1) Except as provided in subsection (2), ~~no insurance producer~~ *an agent* of an insurer is *not* required to obtain a license or authority from any public official to transact business for ~~such~~ *the* insurer~~, nor is the~~. *The* insurer or ~~any of~~ its officers, ~~insurance producers~~ *agents*, or employees *are not* required to pay any fee ~~or~~ *for a* license for the transaction of the business of the insurer, except as provided in this chapter.

(2) A farm mutual insurer that offers liability insurance is required to have an insurance producer licensed by the state of Montana to transact liability

insurance~~, and no~~. *A* person may ~~offer~~ *not sell*, solicit, *negotiate, or* take applications for, procure, or place for others liability insurance ~~by~~ *for* a farm mutual insurer unless ~~he or she~~ *that person* is licensed under Title 33, chapter 17."

Section 4. Section 33-17-211, MCA, is amended to read:

"33-17-211. General qualifications — application for license. (1) An individual applying for a license shall apply in a form approved by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for refusal, suspension, or revocation as set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each kind of insurance for which the individual has applied within 12 months of application;

(e) is a resident of this state or of another state that grants similar privileges to residents of this state. Licenses issued based upon Montana state residency terminate if the licensee relocates to another state.

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which the applicant applies to be licensed and is reasonably familiar with the provisions of this code that govern the applicant's operations as an insurance producer;

(h) if applying for a license as to life or disability insurance:

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state; and

(i) has completed a background examination pursuant to 33-17-220.

(2) A resident or nonresident business entity acting as an insurance producer is required to obtain an insurance producer's license. Application must be made in a form approved by the commissioner. To approve the application, the commissioner shall verify that:

(a) the business entity has paid the appropriate fee; and

(b) the business entity has designated an individual licensed insurance producer who is responsible for the business entity's compliance with the insurance laws of this state.

(3) A person acting as an insurance producer shall obtain a license. A person shall apply for a license in a form approved by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer to be responsible for the person's compliance with the insurance laws and rules of this state;

(d) each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation who is acting as an insurance producer in this state has obtained a license;

(e) (i) if the person is a partnership or corporation, the transaction of insurance business is within the purposes stated in the partnership agreement*,* ~~or~~ the articles of incorporation*, or other organizational documents*; and

(ii) if the person is a corporation, the secretary of state has issued a certificate of existence or authority under 35-1-1312 or filed articles of incorporation under 35-1-220.

(4) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance. The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement. The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in the association's name alone. The fee for the license is the same as that required by 33-2-708(1)(a). The commissioner may, after a hearing with notice to the association, revoke the license if the commissioner finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

(5) An insurance producer using an assumed business name shall register the name with the commissioner before using the name."

Section 5. Section 33-17-214, MCA, is amended to read:

"33-17-214. Issuance of license — insurance producer lines of authority — license data — lapse of license — change of address. (1) A person who has met the requirements of 33-17-211 and 33-17-212 must be issued a license~~,~~ unless that person has been denied a license pursuant to 33-17-1001.

(2) An insurance producer may receive a license qualifying the insurance producer in one or more of the following lines of authority:

(a) life insurance coverage on human lives, including benefits of endowment and annuities, and the coverage may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(b) accident and health or sickness insurance coverage providing for sickness, bodily injury, or accidental death, and the coverage may provide benefits for disability income;

(c) property insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) casualty insurance coverage against legal liability, including liability for death, injury, or disability or damage to real or personal property;

(e) variable life and variable annuity products insurance coverage provided under variable life insurance contracts and variable annuities;

(f) personal lines of property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(g) limited line credit insurance; or

(h) any other line of insurance permitted under Title 33.

(3) The license must state the name and address of the licensee, personal identification number, date of issuance, general conditions relative to expiration or termination, kind of insurance covered, and other information that the commissioner considers necessary.

(4) The license of a partnership, corporation, or association must also state the name of each individual authorized to exercise the license powers.

(5) Each license remains in effect, unless it is suspended, revoked, or terminated or the license lapses.

(6) *(a)* A person shall inform the commissioner in writing ~~of a change of address~~ within 30 days of ~~the change~~*:*

(i) a change of address;

(ii) the final disposition resulting in disciplinary action taken against or a conviction of the insurance producer in any state or federal jurisdiction or by another governmental agency in this state of:

(A) any administrative action related to transacting insurance;

(B) any action taken against any type of securities license; and

(C) any criminal action, excluding traffic violations.

(b) (i) As used in this subsection (6), "final disposition" includes but is not limited to a settlement agreement, consent order, plea agreement, sentence and judgment, or order.

(ii) The term does not include an action that is dismissed or that results in an acquittal, for which no report is necessary."

Section 6. Section 33-17-232, MCA, is amended to read:

"33-17-232. Rights of insurance producer following termination of appointment. (1) Following termination of ~~any such~~ *an* agency appointment ~~as to~~ *for* property, casualty, *title,* or surety insurance and subject to the terms of ~~any~~ *an* agreement between the insurance producer and the insurer, the insurance producer may continue to service and receive from the insurer commissions or other compensation relative to business written by ~~him~~ *the insurance producer* for the insurer during the existence of the appointment.

(2) This section does not apply ~~as~~ to*:*

(a) insurance producers of direct writing insurers*;* or

(b) insurance producers or insurers between whom the relationship of employer and employee exists."

Section 7. Section 33-17-511, MCA, is amended to read:

"33-17-511. Consideration for services only on written memorandum. A person licensed as an insurance consultant under this part

may not receive a fee for examining, appraising, reviewing, or evaluating an insurance policy, *a* bond, *an* annuity, or *a* pension or profit-sharing contract, plan, or program or for making recommendations or giving advice with regard to any of the above unless the compensation is based upon a written memorandum that includes the insurance consultant's Montana insurance license number ~~and~~, is signed by the party to be charged, and ~~specifying or clearly defining~~ *specifies or clearly defines services to be provided and* the amount or extent of the compensation. An insurance consultant shall retain a copy of every memorandum or contract for not less than 3 years after those services have been fully performed."

Section 8. Section 33-17-1103, MCA, is amended to read:

"33-17-1103. Accepting and paying commissions, fees, or consideration — ~~restriction~~. (1) An insurer or insurance producer may not pay, directly or indirectly, a commission, service fee, brokerage fee, or other valuable consideration to a person for services as an insurance producer unless the person performing the service holds a valid license with regard to the kind or kinds of insurance for which the service was rendered at the time the service was performed. A person not properly licensed in accordance with this chapter at the time the person performs the service as an insurance producer may not accept a commission, service fee, brokerage fee, or other valuable consideration for the service. This section does not prevent payment or receipt of renewal or other deferred commissions to or by a person entitled to receive the payment under this section.

(2) An insurance producer may not directly or indirectly share the insurance producer's commissions or other compensation received or to be received by the insurance producer on account of a transaction under the insurance producer's license with any person not also licensed under this chapter as to the same kind or kinds of insurance involved in the transactions. This provision does not affect payment of the regular salaries due *to* employees of the licensee, the distribution in regular course of business of compensation and profits among members or stockholders if the licensee is a partnership or corporation, or use of funds for family or personal purposes.

(3) ~~This section does not apply to those transactions with surplus lines insurance producers that are lawful under~~ *Surplus lines producers may share commissions with a property and casualty insurance producer pursuant to* 33-2-306."

Section 9. Section 33-18-235, MCA, is amended to read:

"33-18-235. Rulemaking authority. The commissioner ~~shall make~~ *may adopt* rules, under the Montana Administrative Procedure Act, necessary to implement 33-18-231 through 33-18-234."

Section 10. Section 33-19-105, MCA, is amended to read:

"33-19-105. Exemption based on federal standards for privacy of individually identifiable health information — notice to commissioner required — rules. (1) The obligations imposed under this chapter do not apply to a licensee that is a covered entity under the provisions of federal regulations that are part of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR, parts 160 and 164, standards for privacy of individually identifiable health information *or security standards for the protection of electronic health information* as to any use or disclosure of personal

information that is covered under the HIPAA privacy *and security* regulations, except for the following provisions:

(a) A notice of insurance information practices described as a notice of privacy practices for protected health information under HIPAA privacy regulations must be delivered annually, as provided for in 33-19-202(1).

(b) To the extent that an insurer collects, discloses, or uses personal information that is not covered under the HIPAA notice of privacy practices, a separate Montana specific notice must be delivered pursuant to the provisions of 33-19-202.

(c) A disclosure authorization remains valid for a period that does not exceed 24 months, as provided for in 33-19-206(2).

(d) The reasons for an adverse underwriting decision must be specified, as provided for in 33-19-303.

(e) Disclosure of underwriting information is required, as provided for in 33-19-308.

(2) The commissioner may adopt rules regarding the exceptions from the exemption provisions described in subsection (1), including additional exceptions that embody substantive provisions of this chapter but would not be preempted by HIPAA privacy regulations.

(3) If a licensee considers itself exempt from a provision of this chapter for the reason provided in subsection (1), the licensee shall give written notice to the commissioner of that exemption and a brief statement describing why the licensee is a HIPAA-covered entity.

(4) A licensee may claim an exemption only for those lines of business that are subject to HIPAA privacy regulations. All other lines of business are subject to this chapter.

(5) A ~~third-party administrator~~ *business associate, as defined in the HIPAA privacy regulations, 45 CFR 160.103,* that is a party to a valid business associate agreement required by HIPAA privacy regulations is exempt from the provisions of this chapter, but only as to the scope of that particular agreement. Any activity of the ~~third-party administrator~~ *business associate* that falls outside of the scope of that agreement is subject to the provisions of this chapter.

(6) The commissioner retains the authority to conduct complete market conduct examinations of the licensee as to the privacy policies and practices that are subject to state privacy laws.

(7) Beginning July 1, ~~2007~~ *2009*:

(a) if a licensee is subject to and in compliance with a federal regulation that is part of the federal health insurance portability and accountability privacy *and security* regulations, 45 CFR, parts 160 and 164, and the federal regulation with which the licensee complies is inconsistent with a provision of this chapter and not less protective of consumer privacy, the licensee is exempt from compliance with the inconsistent provision of this chapter;

(b) if a licensee considers itself exempt from a provision of this chapter for the reason provided in subsection (7)(a), the licensee shall give written notice to the commissioner of that exemption~~,~~ unless the requirements of this subsection (7) are preempted by HIPAA privacy regulations. The notice must include a statement of the reason for the claimed exemption."

Section 11. Section 33-20-1303, MCA, is amended to read:

"33-20-1303. License requirements. (1) A person may not act as or purport to be a viatical settlement provider unless licensed as a viatical settlement provider under this part.

(2) (a) Except as provided in subsection (2)(b) and (2)(c), ~~a person~~ *an individual* may not broker, solicit, or negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or otherwise act on behalf of a viator without first having obtained a license as a viatical settlement broker from the commissioner. An applicant for a viatical settlement broker's license shall:

(i) attend required viatical settlement broker training and pass a viatical settlement broker examination designated by the commissioner by rule; and

(ii) pay a fee for an original viatical settlement broker's license pursuant to 33-2-708. The fees for license renewal and lapsed license reinstatement for a viatical settlement broker's license are as provided in 33-2-708.

(b) A resident or nonresident insurance producer must be considered to meet the licensing requirements of a viatical settlement broker and must be permitted to operate as a viatical settlement broker if the insurance producer is licensed as an insurance producer with a life insurance line of authority in this state or in the insurance producer's home state and has been licensed for at least 1 year. In addition:

(i) not later than 30 days from the first day of operating as a viatical settlement broker, the insurance producer shall notify the commissioner, on a form or in a manner prescribed by the commissioner, that the insurance producer is acting as a viatical settlement broker and shall pay a fee pursuant to 33-2-708(1)(b)(viii). The notification must include an acknowledgment by the insurance producer that the insurance producer will operate as a viatical settlement broker in accordance with this part.

(ii) regardless of the manner in which the insurance producer is compensated, the insurance producer must be considered to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator.

(c) If requested by the commissioner, a life insurance producer acting as a viatical settlement broker under this subsection (2) who has previously complied with subsection (2)(b)(i) shall report to the commissioner when renewing a resident or nonresident life insurance producer's license regarding the life insurance producer's intent to continue to act as a viatical settlement broker. The statement regarding an intent to continue acting as a viatical settlement broker must be made on the life insurance producer's license renewal form. ~~A person~~ *An individual* who makes a statement pursuant to this subsection (2)(c) may not be charged an additional fee.

(d) The provisions of subsections (2)(a) and (2)(b) do not prohibit ~~a person~~ *an individual* licensed as an attorney, certified public accountant, or certified financial planner who is accredited by a nationally recognized accreditation agency, who is retained to represent the viator, and whose compensation is not paid directly or indirectly by the viatical settlement provider from negotiating viatical settlement contracts without having to obtain a license as a viatical settlement broker.

(3) Regardless of the manner in which a viatical settlement broker or insurance producer is compensated, the viatical settlement broker or insurance producer must be considered to represent only the viator and the viatical

settlement broker or insurance producer owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator.

(4) (a) ~~In order to~~ *To* obtain a license to transact business as a viatical settlement provider or as a viatical settlement broker, if required to obtain a viatical settlement broker's license under the provisions of subsection (2)(a), an applicant shall apply for the license in a form approved by the commissioner and shall pay the fee required for the application.

(b) The commissioner may request biographical, organizational, locational, financial, employment, and other information on the application form that the commissioner determines to be relevant to the evaluation of applications and to the granting of the license. The commissioner may require a statement of the business plan or plan of operation of the applicant. The commissioner shall require an applicant for a viatical settlement provider license to file with the application for the commissioner's approval a copy of the viatical settlement contract that the applicant intends to use in business under the license.

(c) If an applicant is a corporation, the corporation must be:

(i) incorporated or organized under the laws of this state; or

(ii) a foreign corporation authorized to transact business in this state.

(d) If the applicant is a partnership, the partnership must be organized under the laws of this state.

(5) (a) An individual licensed as a viatical settlement broker must meet the continuing education requirements in 33-17-1203.

(b) The hours of continuing education required under subsection ~~(4)(a)~~ *(5)(a)* must be in the subjects of life insurance, viaticals, or ethics.

(c) For an individual licensed as a viatical settlement broker, the 24-month period for meeting the continuing education requirements must correlate with the broker's license renewal period.

(d) The viatical settlement broker's license of an individual who fails to comply with this continuing education requirement and who has not been granted an extension of time to comply in accordance with ~~33-17-1203(3)~~ *33-17-1203(2)* must be terminated and promptly surrendered to the commissioner."

Section 12. Section 33-20-1315, MCA, is amended to read:

"33-20-1315. Rules — standards — bond. The commissioner may, in accordance with the provisions of 33-1-313, adopt rules for the purpose of carrying out this part. In addition, the commissioner:

(1) may establish standards for evaluating reasonableness of payments under viatical settlement contracts for insured ~~persons~~ *individuals* who are terminally ill or chronically ill. The authority includes but is not limited to regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy. For the purpose of the standards, the commissioner shall consider payments made in regional and national viatical settlement markets to the extent that this information is available, as well as model standards developed by the national association of insurance commissioners. When the insured is not terminally ill or chronically ill, the commissioner may not establish standards for evaluating the reasonableness of payments, except that a viatical settlement

provider shall pay an amount greater than the greater of the cash surrender value or the accelerated death benefit then available.

(2) shall require a bond or other mechanism for financial accountability of viatical settlement providers and viatical settlement brokers; and

(3) shall adopt rules to establish:

(a) trade practice standards for the purpose of regulating advertising and solicitation of viatical settlement contracts;

(b) fees that are commensurate with fees charged pursuant to 33-2-708; and

(c) the continuing education program provided for in ~~33-20-1303(4)~~ *33-20-1303(5)*."

Section 13. Section 33-22-121, MCA, is amended to read:

"33-22-121. Notice required for cancellation or refusal to renew. (1) An insurer may not cancel or refuse to renew a disability insurance policy *or certificate* until the insurer has mailed or delivered to the named insured and to the policyowner~~,~~ *or certificate holder, as appropriate* if they are not the same *as the named insured*, at the last-known ~~post office~~ address shown in the records of the company, one written notice in addition to any billing statement, stating the date the cancellation ~~or refusal to renew~~ will become effective, which may not be ~~less~~ *earlier* than:

(a) ~~30 days after the date of mailing or delivery of the notice of cancellation for nonpayment of premiums or a material misrepresentation contained in the application~~ *the beginning of the period for which premiums have not been paid in full if the notice of cancellation for nonpayment of premiums is mailed or delivered within 15 days after the due date of the missed premiums for that period;*

(b) the date of mailing or delivery of notice of cancellation for nonpayment of premiums if notice of cancellation for nonpayment of premiums is not mailed or delivered within 15 days after the premium due date for the applicable policy period; or

~~(b)~~*(c)* 90 days after the date of mailing or delivery of the notice of cancellation or refusal to renew for any reason other than nonpayment of premiums or a material misrepresentation contained in the application.

(2) An insurer shall give notice of cancellation at least 30 days in advance of cancellation for nonpayment of premiums or 90 days in advance of cancellation or refusal to renew for any reason other than nonpayment of premiums or a material misrepresentation contained in the application.

(3) An insurer may not cancel a disability insurance policy or a certificate based upon nonpayment of premiums if the premiums are paid in full within the 30-day notice period.

~~(2)~~*(4)* The notice requirements in ~~subsection~~ *subsections* (1) *and (2)* run concurrently with any grace period required by 33-22-206."

Section 14. Section 33-22-122, MCA, is amended to read:

"33-22-122. Contents of notice — proof — limitation on recovery — exemptions. (1) (a) The notice of cancellation must state:

(i) the amount of the premium, installment, or interest due on the policy *or certificate*;

(ii) the place where it must be paid; and

(iii) the name and address of the person or company to which the premium is payable.

(b) The notice must also state*:*

(i) that*,* unless the premium or other sums are paid to the company or its insurance producer, the policy *or certificate* ~~will lapse or be forfeited~~ *will be canceled; and*

(ii) the date, determined in accordance with 33-22-121, on which cancellation will become effective.

(2) "Policyowner" *or "certificate holder"*, as used in this section, means the owner of the policy *or certificate* or any other person designated as the person to receive premium notices, as shown by the records of the insurance company.

(3) ~~The affidavit of~~ *If* any responsible officer, clerk, or insurance producer of the insurance company authorized to mail the notice *states in an affidavit* that it is the standard practice of the company to mail to policyowners *or certificate holders* the notice required by this section*, the affidavit* is prima facie evidence that the notice has been ~~duly~~ given.

(4) An action may not be maintained to recover under a lapsed or forfeited policy *or certificate* on the ground that the insurance company failed to comply with this section unless the action is instituted within 2 years from the due date upon which default was made in paying the premium, installment, or interest for which lapse or forfeiture is claimed.

(5) Section 33-22-121 does not apply to:

(a) group ~~or group-type policies~~ *health plans*; or

(b) industrial life or industrial disability policies."

Section 15. Section 33-22-513, MCA, is amended to read:

"33-22-513. Limitation of eligibility on conversion. ~~A person~~ *An individual* who purchases a policy of insurance under 33-22-508 ceases to be eligible for a conversion policy if the ~~person~~ *individual* insured by the policy:

~~(1) becomes eligible for medicare part A and part B, pursuant to Title XVIII of the federal Social Security Act, 42 U.S.C. 1395;~~

~~(2)~~*(1)* fails to pay the premium on the policy purchased under 33-22-508; *or*

~~(3)~~*(2)* enrolls under another major medical disability insurance policy or plan, except that the ~~person~~ *individual* may maintain the conversion policy during any waiting period established under any new disability insurance policy or plan that the insured ~~person~~ *individual* purchases."

Section 16. Section 33-22-1517, MCA, is amended to read:

"33-22-1517. Limitations on eligibility. An individual who purchases a policy of insurance pursuant to 33-22-1516 is no longer eligible for insurance under an association plan or association portability plan and is subject to cancellation of enrollment if the individual:

(1) fails to pay the premium for the policy of insurance purchased pursuant to 33-22-1516;

(2) changes residence from Montana to another state;

(3) exceeds the lifetime maximum benefit provided in the plan; or

(4) enrolls under another disability insurance policy or plan for health service benefits *or because of the individual's age becomes eligible for medicare*

under Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395. However, the individual may maintain enrollment in the association plan or the association portability plan during a waiting period applicable to preexisting conditions under the other policy or plan. If the individual maintains the association plan or the association portability plan during the waiting period, the association plan or the association portability plan may coordinate the benefits with the individual's new policy or plan and the benefits of the association plan or the association portability plan are considered secondary to the benefits available under the individual's new policy or plan."

Section 17. Section 33-22-2001, MCA, is amended to read:

"33-22-2001. Establishment of small business health insurance pool — intent. (1) There is established ~~a nonprofit legal~~ *an* entity known as the small business health insurance pool, with participating membership consisting of all employer members of the purchasing pool.

(2) The small business health insurance pool is created as a voluntary purchasing pool pursuant to the provisions of 33-22-1815 through 33-22-1817.

(3) Subject to the conditions in 53-6-1201, the purchasing pool shall make group health plan coverage available effective January 1, 2006.

(4) It is the intent of the legislature that the board:

(a) establish criteria that will allow the greatest number of employees possible to be eligible for premium assistance payments by not permitting eligibility for premium assistance payments under this part to employees who continue ~~[to maintain enrollment in another]~~ *other* comprehensive health insurance coverage through a spouse, parent, or other person; and

(b) allow eligible small employers to determine the length of the waiting period that will apply to their employees as long as the waiting period:

(i) is not more than 12 months; and

(ii) applies to all ~~eligible~~ employees within that small group in the same manner.

(5) The legislative auditor shall conduct or have conducted, at least once each biennium covering the prior 2 fiscal years, a financial compliance audit of the board and the purchasing pool. The cost of the audit must be paid for by the purchasing pool as a direct cost not subject to the cap on administrative expenses."

Section 18. Section 33-22-2002, MCA, is amended to read:

"33-22-2002. Small business health insurance pool — definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of directors of the small business health insurance pool as provided for in 33-22-2003.

(2) "Dependent" has the meaning provided in 33-22-1803.

~~(3) "Eligible employee" has the meaning provided in 33-22-1803.~~

~~(4)~~*(3)* (a) "Eligible small employer" means an employer who is sponsoring or will sponsor a group health plan and who employed at least two but not more than nine employees during the preceding calendar year and who employs at least two but not more than nine employees on the first day of the plan year.

(b) The term includes small employers who obtain group health plan coverage through a qualified association health plan.

(4) "Employee" means an eligible employee as defined in 33-22-1803.

(5) "Group health plan" has the meaning provided in 33-22-140.

(6) "Premium" means the amount of money that a health insurance issuer charges to provide coverage under a group health plan.

(7) "Premium assistance payment" means a payment provided for in 33-22-2006 on behalf of ~~eligible~~ employees who qualify to be applied on a monthly basis to premiums paid for group health plan coverage through the purchasing pool or through qualified association health plans.

(8) "Premium incentive payment" means a payment provided for in 33-22-2007(1)(b) to eligible small employers who qualify under 33-22-2007 to be applied to premiums paid on a monthly basis for group health plan coverage obtained through the purchasing pool or through qualified association health plans.

(9) "Purchasing pool" means the small business health insurance pool.

(10) "Qualified association health plan" means a plan established by an association whose members consist of employers who sponsor group health plans for their employees and purchase that coverage through an association that qualifies as a bona fide association, as defined in 33-22-1803, or nonbona fide, as provided for in administrative rule. A qualified association health plan is subject to applicable employer group health insurance law and must receive approval from the commissioner to operate as a qualified association health plan for the purposes of this part.

(11) "Related employers" means persons having a relationship as described in section 267 of the Internal Revenue Code, 26 U.S.C. 267.

(12) "Tax credit" means a refundable tax credit as provided for in 33-22-2008.

(13) "Tax year" means the taxpayer's tax year for federal income tax purposes."

Section 19. Section 33-22-2004, MCA, is amended to read:

"33-22-2004. Powers and duties of board. (1) The board shall:

(a) establish an operating plan that includes but is not limited to administrative and accounting procedures for the operation of the purchasing pool and a schedule for premium incentive and premium assistance payments and that complies with the powers and duties provided for in this section;

(b) require employers and employees to reapply for premium incentive payments or premium assistance payments on an annual basis;

(c) upon reapplication, give priority to employers and their employees who are already receiving the premium incentive payments and premium assistance payments;

(d) upon reapplication, allow employers to retain eligibility to receive premium incentive payments and premium assistance payments on behalf of their ~~eligible~~ employees if the number of their employees goes over the maximum number, not to exceed nine employees, established by the commissioner in administrative rule;

(e) renew purchasing pool group health plan coverage for all employer groups, even if the employer group no longer receives or is eligible for a premium incentive payment;

(f) adopt a premium incentive payment amount that is the same for all registered eligible small employers who join the purchasing pool or obtain qualified association health plan coverage;

(g) adopt premium assistance payment amounts that, in combination with the premium incentive payments, are consistent with the amounts provided for in 33-22-2006 and 33-22-2008 or with the assistance of the department of public health and human services, adopt a premium assistance payment schedule that is equitably proportional to the income or wage level for ~~eligible~~ employees;

(h) establish criteria for determining which employees will be eligible for a premium assistance payment and the amount that the employees will receive from among those eligible small employer groups that have registered with the commissioner pursuant to 33-22-2008 and applied for coverage under the purchasing pool group health plan or qualified association health plan. However, to the extent that federal funds are used to make some premium assistance payments, criteria for those payments must be consistent with any waiver requirements determined by the department of public health and human services pursuant to 53-2-216. Eligibility for employees is not limited to the waiver eligibility groups.

(i) make appropriate changes to eligibility or other elements in the operating plan as needed to reach the goal of expending 90% of the funding dedicated to premium incentive payments and premium assistance payments during the current biennium;

(j) limit the total amount of premium incentive payments and premium assistance payments paid to the amount of available state, federal, and private funding;

(k) approve no more than six fully insured group health plans with different benefit levels that will be offered to employers participating in the purchasing pool;

(l) prepare appropriate specifications and bid forms and solicit bids from health insurance issuers authorized to do business in this state;

(m) contract with no more than three health insurance issuers to underwrite the group health plans that will be offered through the purchasing pool;

(n) request that the department of public health and human services seek a federal waiver for medicaid matching funds for premium assistance payments based on the department's analysis, as provided in 53-2-216, if it is in the best interests of the purchasing pool;

(o) comply with the participation requirements provided for in 33-22-1811;

(p) meet at least four times annually; and

(q) within 2 years after the purchasing pool is established and considered stable by the board, examine the possibility of offering an opportunity for individual sole proprietors without employees to purchase insurance from the purchasing pool without premium incentive payments, premium assistance payments, or tax credits.

(2) The board may:

(a) borrow money;

(b) enter into contracts with insurers, administrators, or other persons;

(c) hire employees to perform the administrative tasks of the purchasing pool;

(d) assess its members for costs associated with administration of the purchasing pool and request that the commissioner transfer funds or request that the department of public health and human services transfer funds from the special revenue account, as provided in 53-6-1201, for that purpose;

(e) set contribution levels for employers;

(f) request that funds be transferred from the funds appropriated for premium incentive payments and premium assistance payments to the general fund to offset tax credits if the number of eligible small employers seeking premium incentive payments and employees receiving premium assistance payments is insufficient to exhaust at least 90% of the appropriated funds for the premium incentive and assistance payments during a biennium;

(g) seek other federal, state, and private funding sources;

(h) accept all small employer groups who apply for coverage under the small business health insurance pool group health plan even if they are not eligible for any tax credit or premium incentive payment and have not been registered by the commissioner pursuant to 33-22-2008;

(i) receive from the commissioner's office or the department of public health and human services premium incentive payments on behalf of eligible small employers and premium assistance payments on behalf of ~~eligible~~ employees, collect the employer or employee premiums from the employer or employees, and make premium payments to insurers on behalf of the eligible small employers and employees;

(j) request the commissioner to direct more than 30% of the available funding for premium incentives and premium assistance payments to qualified association health plan coverage instead of purchasing pool coverage; and

(k) pay appropriate commissions to licensed insurance producers who market purchasing pool coverage."

Section 20. Section 33-25-212, MCA, is amended to read:

"33-25-212. Rates filed with commissioner. (1) ~~Every~~ *A* title insurer shall file with the commissioner a complete schedule of rates to be charged by it for title insurance as to property located in this state. The rates ~~shall~~ *must* be all-inclusive of the total charge for ~~such~~ insurance as specified in the policy and ~~shall~~ *must* be accompanied by supporting data.

(2) ~~No such~~ *A* rate ~~shall~~ *may not* be excessive, inadequate, or unreasonably discriminatory.

(3) ~~No~~ *A* title insurer ~~shall~~ *may not quote or* charge any rate for ~~such~~ *title* insurance other than the applicable rate previously filed by it with the commissioner."

Section 21. Section 33-25-214, MCA, is amended to read:

"33-25-214. Underwriting standards — record retention. (1) A title insurer may not issue a title insurance policy unless it, its title insurance producer, or an approved attorney has conducted a reasonable search and examination of the title and made a determination of insurability of title in accordance with sound underwriting practices. The title insurer or title insurance producer shall preserve and retain in its files evidence of the examination of title and determination of insurability. The title insurer or title insurance producer may keep original evidence or may establish in the regular course of business a system of recording, copying, or reproducing evidence by

any process that accurately and legibly reproduces, or forms a durable medium for reproducing, the contents of the original.

(2) Subsection (1) does not apply to:

(a) a title insurer assuming liability through a contract of reinsurance; or

(b) a title insurer acting as coinsurer if one of the other coinsuring title insurers has complied with subsection (1).

(3) Except as allowed by rules adopted by the commissioner, a title insurer or title insurance producer may not knowingly issue ~~an owner's~~ *any* title insurance ~~policy~~ *product* or commitment to insure unless all outstanding enforceable recorded liens or other interests against the property title to be insured are shown.

(4) An insurer issuing a policy in violation of this section is estopped, as a matter of law, to deny the validity of the policy as to any claim or demand of the insured arising under the policy."

Section 22. Section 33-30-1015, MCA, is amended to read:

"33-30-1015. Limitation of eligibility on conversion. A person who purchases a policy of insurance under 33-30-1007 ceases to be eligible for a conversion policy if the person insured by the policy:

~~(1) becomes eligible for medicare part A and part B, pursuant to Title XVIII of the federal Social Security Act, 42 U.S.C. 1395;~~

~~(2)~~*(1)* fails to pay the premium on the policy purchased under 33-30-1007; *or*

~~(3)~~*(2)* enrolls under another major medical disability insurance policy or plan, except that the person may maintain the conversion policy during any waiting period established under any new disability insurance policy or plan that the insured person purchases."

Section 23. Section 33-31-111, MCA, is amended to read:

"33-31-111. (Temporary) Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health

maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36, except as provided in 33-22-262; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Except as provided in 33-22-262, Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-422, 33-3-431, 33-15-308, *Title 33, chapter 17,* Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations. (Terminates June 30, 2009—sec. 14, Ch. 325, L. 2003.)

33-31-111. (Effective July 1, 2009) Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-422, 33-3-431, 33-15-308, *Title 33, chapter 17,* Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations."

Section 24. Section 33-31-311, MCA, is amended to read:

"33-31-311. Insurance producer license required ~~— application, issuance, renewal, fees — penalty~~. ~~(1)~~ An individual, partnership, or corporation may not act as or represent to the public that the individual, partnership, or corporation is an insurance producer ~~of~~ *for* a health maintenance organization unless the individual, partnership, or corporation is:

~~(a)~~*(1)* licensed as a disability insurance producer by the commissioner pursuant to *Title 33,* chapter 17, parts 1, 2, ~~and~~ 4*, and 10 through 12,* ~~of this title~~ or licensed as an insurance producer as provided in 33-30-311; and

~~(b)~~*(2)* appointed or authorized by the health maintenance organization *or other health insurance issuer* to *sell,* solicit*, or negotiate* health care service agreements on its behalf.

~~(2) Application, appointment, and qualification for a health maintenance organization insurance producer license, fees applicable to and the issuance of a health maintenance organization insurance producer license, and renewal of a health maintenance organization insurance producer license must be in accordance with the provisions of chapter 17 that apply to a disability insurance producer.~~

~~(3) An individual, partnership, or corporation that holds a disability insurance producer license on October 1, 1987, need not requalify by an examination to be licensed as a health maintenance organization insurance producer.~~

~~(4) The commissioner may, in accordance with 33-1-317, 33-17-411, and chapter 17, part 10, suspend, revoke, refuse to issue or renew a health maintenance organization insurance producer license or impose a fine upon the licensee.~~"

Section 25. Section 33-35-103, MCA, is amended to read:

"33-35-103. Definitions. As used in this chapter, unless ~~a contrary intent appears~~ *the context requires otherwise*, the following definitions apply:

(1) "Allowable benefit" means a benefit relating to medical, surgical, or hospital care in the event of sickness, accident, disability, or any combination of sickness, accident, or disability.

(2) (a) "Bona fide association" means an association of employers that has been in existence for a period of not less than 5 years prior to sponsoring a self-funded multiple employer welfare arrangement, during which time the association has engaged in substantial activities relating to the common interests of member employers, and that continues to engage in substantial activities in addition to sponsoring an arrangement.

(b) Notwithstanding subsection (2)(a), an association that was formed and began sponsoring an arrangement prior to October 1, 1995, is not subject to the requirement that the association be in existence for 5 years prior to sponsoring an arrangement.

(3) "Claims liability" means the total of all incurred and unpaid claims for allowable benefits under a self-funded multiple employer welfare arrangement that are not reimbursed or reimbursable by excess of loss insurance, subrogation, or other sources.

(4) *(a)* "Multiple employer welfare arrangement" means a multiple employer welfare arrangement as defined by 29 U.S.C. 1002.

(b) The term does not include an arrangement, plan, program, or interlocal agreement of or between political subdivisions of this state, including school districts, as provided in 33-1-102.

(5) "Reserves" means the excess of the assets of a self-funded multiple employer welfare arrangement minus the liabilities of the arrangement. The liabilities of a self-funded multiple employer welfare arrangement include the claims liability of the arrangement.

(6) "Self-funded multiple employer welfare arrangement" or "arrangement" means a multiple employer welfare arrangement that does not provide for payment of benefits under the arrangement solely through a policy or policies of insurance issued by one or more insurance companies ~~licensed~~ *with a certificate of authority* under this title."

Section 26. Section 33-35-306, MCA, is amended to read:

"33-35-306. Application of insurance code to arrangements. (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions:

(a) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(b) Title 33, chapter 1, part 7;

(c) 33-3-308;

(d) Title 33, chapter 18, except 33-18-242;

(e) Title 33, chapter 19;

(f) 33-22-107, 33-22-131, 33-22-134, ~~and~~ 33-22-135*, 33-22-141, and 33-22-142*; and

(g) 33-22-525 and 33-22-526.

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

Section 27. Section 33-38-105, MCA, is amended to read:

"33-38-105. Sale of medical care discount card by unregistered supplier prohibited — requirements for registration — list of authorized enrollers required — exceptions. (1) A medical care discount card supplier may not market, promote, sell, or distribute a medical care discount card in this state unless the supplier holds a certificate of registration as a supplier issued by the commissioner.

(2) An application to the commissioner for a certificate of registration must be accompanied by a nonrefundable application fee of $100. The commissioner shall issue the certificate unless the commissioner determines that the medical care discount card supplier or an officer or manager is not financially responsible, does not have adequate expertise or experience to operate a medical

care discount card business, or is not of good character or that the supplier or its affiliates or a business formerly owned or managed by the supplier or an officer or manager of the supplier has had a previous application for a certificate of registration denied, revoked, suspended, or terminated for cause or is under investigation for or has been found in violation of a statute or regulation in ~~another~~ *any* jurisdiction within the previous 5 years.

(3) A medical care discount card supplier shall renew its certificate of registration annually *by December 31*. The certificate is renewed upon payment by the supplier of a nonrefundable renewal fee of $100 and expires on the anniversary of its issuance if the renewal fee is not paid before that date. Once issued or renewed, the certificate continues in effect for 1 year unless suspended, revoked, or terminated. The commissioner shall deposit the fees required by this section with the state treasurer, to be credited to the general fund.

(4) A certificate of registration may be suspended or revoked if, after notice and hearing, the commissioner finds that the medical care discount card supplier has violated a provision of this part, that the supplier is not financially responsible or competent, or that the supplier or an affiliate or business formerly owned or managed by the supplier has had a certificate of registration denied or suspended for cause or has been found in violation of a statute or regulation in another jurisdiction.

(5) A medical care discount card supplier that violates the provisions of subsection (1) is subject to a civil penalty of not less than $5,000 or more than $25,000 for each violation. Each day of violation is considered to be a separate violation.

(6) A medical care discount card supplier that is a health insurance issuer is not required to obtain a certificate of registration in accordance with this section, except that affiliates, as defined in 33-2-1101, that are selling medical care discount cards in Montana shall obtain a certificate of registration.

(7) An administrator that is authorized to do business in this state and that provides medical care discount cards to Montana residents who are members of self-funded group health plans administered by that administrator is not required to obtain a certificate of registration pursuant to this section.

(8) ~~A person acting as a medical care discount card supplier on October 1, 2005, shall file a certificate of registration and a list of its authorized enrollers with the commissioner by that date.~~ A person commencing business as a *medical care discount card* supplier ~~after October 1, 2005,~~ shall file a certificate of registration and its list of authorized enrollers with the commissioner at least 30 days before commencing business as a supplier. After the initial filing of a list of its enrollers with the commissioner, a supplier shall file an updated list annually *by December 31*.

(9) This section does not excuse a medical care discount card supplier that is also an insurer from full compliance with the Montana Insurance Code."

Section 28. Section 50-4-703, MCA, is amended to read:

"50-4-703. Rulemaking authority. The commissioner and the attorney general ~~shall~~ *may* adopt rules to carry out this part, including rules that:

(1) specify the form and content of the written notice, required documents, and supplemental information;

(2) develop procedures under which proprietary business information and trade secrets are protected from public disclosure for the purposes of 50-4-708 to the extent allowed by law; and

(3) establish hearing and appeal procedures."

Section 29. Repealer. Sections 33-17-506 and 33-17-507, MCA, are repealed.

Section 30. Effective date. [This act] is effective on passage and approval.

Section 31. Retroactive applicability. (1) [Section 18] applies retroactively, within the meaning of 1-2-109, to notices of registration issued on or after July 1, 2005.

(2) For purposes of receiving a tax credit, [this act] and Chapter 595, Laws of 2005, apply retroactively, within the meaning of 1-2-109, to eligible premiums paid after December 31, 2005, by eligible small employers registered under 33-22-208.

Approved May 3, 2007

CHAPTER NO. 400

[SB 158]

AN ACT ALLOWING THE DEPARTMENT OF TRANSPORTATION TO ENTER INTO AGREEMENTS WITH AGENCIES OF OTHER STATES TO ALLOW RECIPROCAL REGISTRATION OF INTRASTATE AND INTERSTATE MOTOR CARRIERS, PRIVATE MOTOR CARRIERS, AND FREIGHT FORWARDER AND BROKER INDUSTRIES; SPECIFYING USE OF CERTAIN FEES IMPOSED ON MOTOR CARRIERS; AND AMENDING SECTION 61-3-708, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-708, MCA, is amended to read:

"61-3-708. Cooperative or reciprocal registration — filing of insurance — fee. (1) The department may enter into written agreements with agencies of other states to allow for the cooperative or reciprocal state registration of *intrastate,* interstate*,* or international motor carriers*, private motor carriers, and freight forwarder and broker industries* and *may* authorize the agency of a participating state to:

(a) issue interstate motor carrier registrations, stamps, and permits;

(b) accept filings of insurance, financial responsibility, and orders;

(c) collect and disburse fees;

(d) share and exchange information for audit, reporting, and enforcement purposes; and

(e) perform any other function that the department determines is justified to facilitate the cooperative or reciprocal registration.

(2) (a) The department may impose a fee set by rule on ~~an interstate or international motor carrier for the administration of~~ *a motor carrier or freight forwarder or broker industry registered under an agreement entered into as provided in* this section. The fee must be paid on each motor vehicle, trailer, semitrailer, or pole trailer operated by the motor carrier on the public highways

of this state. At the time of initial registration and in each succeeding year at a time set by the department, the motor carrier shall pay the fee to the department.

(b) The department shall remit the fee to the state treasurer for deposit in the ~~general fund~~ *state special revenue fund for use by the department for motor carrier safety assistance*."

Approved May 3, 2007

CHAPTER NO. 401

[SB 162]

AN ACT REVISING THE MONTANA GENETICS PROGRAM TO EXPAND THE GENETIC AND METABOLIC CONDITIONS FOR WHICH NEWBORNS ARE SCREENED AND TO ALLOW THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CONTRACT FOR FOLLOWUP SERVICES; AND AMENDING SECTIONS 50-19-203 AND 50-19-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-19-203, MCA, is amended to read:

"50-19-203. ~~Metabolic tests~~ *Newborn screening and followup for metabolic and genetic disorders.* (1) A person in charge of a facility ~~wherein~~ *in which* a child is born or ~~wherein~~ *a facility in which* a newborn ~~infant is cared for~~ *is provided care* or a person responsible for the registration of *the* birth of ~~an infant~~ *a newborn* shall ensure *that* each ~~infant~~ *newborn* is administered tests designed to detect inborn metabolic ~~errors~~ *and genetic disorders* as ~~shall be~~ required ~~to be administered~~ under rules adopted by the department.

(2) The tests ~~shall~~ *must* be done by an approved laboratory. An approved laboratory ~~shall~~ *must* be the laboratory of the department or a laboratory approved by the department.

(3) The department shall contract with one or more providers qualified to provide followup services, including counseling and education, for children and parents of children identified with metabolic or genetic disorders to ensure the availability of followup services."

Section 2. Section 50-19-211, MCA, is amended to read:

"50-19-211. Statewide genetics program established. (1) A combined, comprehensive statewide genetics program is established in the department to ~~offer testing, counseling, and education to parents and prospective parents. The program includes but is not limited to the following services~~ *ensure the availability of services that include but are not limited to*:

~~(a) followup programs for newborn testing, with emphasis on the counseling and education of women at risk for maternal phenylketonuria;~~

~~(b)~~*(a)* comprehensive clinical and self-supporting laboratory genetic services, including but not limited to cytogenetics, DNA, and special chemistry, to all areas of the state and all segments of the population;

~~(c)~~*(b)* ~~development of~~ counseling and testing programs for the diagnosis and management of genetic conditions ~~and metabolic disorders~~; and

~~(d)~~*(c)* ~~development and expansion of~~ educational programs for physicians, allied health professionals, and the public with respect to:

(i) the nature of genetic processes;

(ii) the inheritance patterns of genetic conditions; and

(iii) the means, methods, and facilities available to diagnose, counsel, and treat genetic conditions ~~and metabolic disorders~~.

(2) When the department contracts for genetics services under this section, it shall preferably contract with a single entity that is able to provide the combined, comprehensive program. The department and the contractor shall administer the contract in the most cost-effective means practicable."

Approved May 3, 2007

CHAPTER NO. 402

[SB 172]

AN ACT REVISING THE LOBBYING LAWS TO CLARIFY THE APPLICATION OF THE LAWS TO THE LEGISLATURE AND LEGISLATORS; AND AMENDING SECTIONS 5-7-102 AND 5-7-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-7-102, MCA, is amended to read:

"5-7-102. Definitions. The following definitions apply in this chapter:

(1) "Appointed state official" means an individual who is appointed:

(a) to public office in state government by the governor or the chief justice of the Montana supreme court and who is subject to confirmation by the Montana senate;

(b) by the board of regents of higher education to serve either as the commissioner of higher education or as the chief executive officer of a campus of the Montana university system; or

(c) by the board of trustees of a community college to serve as president.

(2) "Business" means:

(a) a holding or interest whose fair market value is greater than $1,000 in a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, self-employed person, holding company, joint-stock company, receivership, trust, or other entity or property held in anticipation of profit, but does not include nonprofit organizations; and

(b) present or past employment from which benefits, including retirement allowances, are received.

(3) "Commissioner" means the commissioner of political practices.

(4) "Docket" means the register of lobbyists and principals maintained by the commissioner pursuant to 5-7-201.

(5) "Elected federal official" means a person elected to a federal office, including but not limited to a member of the United States senate or house of representatives. The term includes an individual appointed to fill the unexpired term of an elected federal official and an individual who has been elected to a federal office but who has not yet been sworn in.

(6) "Elected local official" means an elected officer of a county, a consolidated government, an incorporated city or town, a school district, or a special district.

The term includes an individual appointed to fill the unexpired term of an elected local official and an individual who has been elected to a local office but who has not yet been sworn in.

(7) *(a)* "Elected state official" means an individual holding a state office filled by a statewide vote of all the electors of Montana or a state district office, including but not limited to public service commissioners and district court judges ~~but not including legislators for the purposes of this chapter~~. The term includes an individual appointed to fill the unexpired term of an elected state official and an individual who has been elected to a statewide office but who has not yet been sworn in.

(b) The term does not include a legislator.

(8) "Elected tribal official" means an elected member of a tribal council or other elected office filled by a vote of tribal members. The term includes an individual appointed to fill the unexpired term of an elected tribal official and an individual who has been elected to a tribal office but who has not yet been sworn in.

(9) "Individual" means a human being.

(10) "Legislator" means an individual holding public office as a representative or a senator in the Montana legislature. The term includes an individual who has been elected to the legislature but who has not yet been sworn in.

(11) (a) "Lobbying" means:

(i) the practice of promoting or opposing the introduction or enactment of legislation before the legislature or ~~the members of the legislature~~ *legislators*; and

(ii) the practice of promoting or opposing official action ~~by~~ *of* any public official *or the legislature*.

(b) The term does not include actions described in subsections (11)(a)(i) and (11)(a)(ii) when performed by ~~a legislator,~~ a public official, an elected local official, an elected federal official, or an elected tribal official while acting in an official governmental capacity.

(12) (a) "Lobbyist" means a person who engages in the practice of lobbying.

(b) Lobbyist does not include:

(i) an individual acting solely on the individual's own behalf;

(ii) an individual working for the same principal as a licensed lobbyist if the individual does not have personal contact involving lobbying with a public official *or the legislature* on behalf of the lobbyist's principal; or

(iii) an individual who receives payments from one or more persons that total less than the amount specified under 5-7-112 in a calendar year.

(c) Nothing in this chapter deprives an individual who is not a lobbyist of the constitutional right to communicate with public officials *or the legislature*.

(13) (a) "Payment" means distribution, transfer, loan, advance, deposit, gift, or other rendering made or to be made of money, property, or anything of value:

(i) to a lobbyist to influence legislation or official action by an elected local official*,* ~~or~~ a public official*, or the legislature*;

(ii) directly or indirectly to a lobbyist by a principal, such as salary, fee, compensation, or reimbursement for lobbying expenses; or

(iii) in support of or for assistance to a lobbyist or a lobbying activity, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist.

(b) The term does not include payments or reimbursements for:

(i) personal and necessary living expenses; or

(ii) travel expenses, unless a principal is otherwise required to report expenses pursuant to 5-7-208.

(14) "Person" means an individual, corporation, association, firm, partnership, state or local government or subdivision of state or local government, or other organization or group of persons.

(15) "Principal" means a person who employs a lobbyist or a person required to report pursuant to 5-7-208.

(16) *(a)* "Public official" means an elected state official or an appointed state official acting in an official capacity for state government *or a legislator*.

(b) The term does not include those acting in a judicial or quasi-judicial capacity or performing ministerial acts.

(17) "Unprofessional conduct" means:

(a) violating any of the provisions of this chapter;

(b) instigating action by a public official *or the legislature* for the purpose of obtaining employment;

(c) attempting to influence the action of a public official *or the legislature* on a measure pending or to be proposed by:

(i) promising financial support; or

(ii) making public any unsubstantiated charges of improper conduct on the part of a lobbyist, a principal, or a legislator; or

(d) attempting to knowingly deceive a public official *or the legislature* with regard to the pertinent facts of an official matter or attempting to knowingly misrepresent pertinent facts of an official matter to a public official *or the legislature*."

Section 2. Section 5-7-209, MCA, is amended to read:

"5-7-209. Payments prohibited unless reported — penalty for late filing, failure to report, or false statement. A principal may not make payments to influence official action by any public official *or the legislature* unless that principal files the reports required under this chapter. A principal who fails to file a required report within the time required by this chapter is subject to the penalties provided in 5-7-305 and 5-7-306(1). A principal who knowingly files a false, erroneous, or incomplete statement commits the offense of unsworn falsification to authorities."

Approved May 3, 2007

CHAPTER NO. 403

[SB 184]

AN ACT REVISING THE LAW GOVERNING CONSTRUCTION PROJECTS BY THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION; CLARIFYING PROJECTS THAT DO NOT NEED

ARCHITECTURAL AND ENGINEERING REVIEW; INCREASING THE AMOUNT OF CONSTRUCTION PROJECTS THAT DO NOT REQUIRE LEGISLATIVE CONSENT; AMENDING SECTIONS 18-2-102 AND 22-3-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-102, MCA, is amended to read:

"18-2-102. Authority to construct buildings. (1) Except as provided in *22-3-1003 and* subsection (2) *of this section*, a building costing more than $150,000 may not be constructed without the consent of the legislature. Legislative approval of repair and maintenance costs as part of an agency's operating budget constitutes the legislature's consent. When a building costing more than $150,000 is to be financed in a manner that does not require legislative appropriation of money, the consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building and is authorized to transfer funds and authority as necessary to accomplish the project. Transfers may not be made from the funds for an uncompleted capital project unless the project is under the supervision of the same agency.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in 20-25-302 if they are to be financed wholly from the revenue from the facility.

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money if the construction of the building will not result in any new programs.

(d) The department of military affairs, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money on federal land for the use or benefit of the state."

Section 2. Section 22-3-1003, MCA, is amended to read:

"22-3-1003. Powers of commission — contracts — rules. (1) (a) The Montana heritage preservation and development commission may contract with private organizations to assist in carrying out the purpose of 22-3-1001. The term of a contract may not exceed 20 years.

(b) The provisions of Title 18 may not be construed as prohibiting contracts under this section from being let by direct negotiation. The contracts may be entered into directly with a vendor and are not subject to state procurement laws.

(c) Architectural and engineering review and approval do not apply to the historic renovation projects *or projects at historic sites unless stated in specific state appropriations for construction permitted under the commission's jurisdiction.*

(d) The contracts must provide for the payment of prevailing wages.

(e) A contract for supplies or services, or both, may be negotiated in accordance with commission rules.

(f) Management activities must be undertaken to encourage the profitable operation of properties.

(g) Contracts may include the lease of property managed by the commission. Provisions for the renewal of a contract must be contained in the contract.

(2) (a) Except as provided in subsection (2)(b), the commission may not contract for the construction of a building, as defined in 18-2-101, in excess of ~~$200,000~~ *$300,000* without the consent of the legislature. Building construction must be in conformity with applicable guidelines developed by the national park service of the U.S. department of the interior, the Montana historical society, and the Montana department of fish, wildlife, and parks. *Funding for these projects must pass through directly to the commission.*

(b) The commission may contract for the preservation, stabilization, or maintenance of existing structures or buildings for an amount that exceeds ~~$200,000~~ *$300,000* without legislative consent if the commission determines that waiting for legislative consent would cause unnecessary damage to the structures or buildings or would result in a significant increase in cost to conduct those activities in the future.

(3) (a) Subject to subsection (3)(b), the commission, as part of a contract, shall require that a portion of any profit be reinvested in the property and that a portion be used to pay the administrative costs of the property and the commission.

(b) (i) Until the balance in the cultural and aesthetic trust reaches $7,750,000, the commission shall deposit the portion of profits not used for administrative costs and restoration of the properties in the cultural and aesthetic trust.

(ii) Once the balance in the cultural and aesthetic trust reaches $7,750,000, the commission shall deposit the portion of profits not used for administrative costs and restoration of the properties in the general fund.

(c) It is the intent of the 58th legislature that no general fund money be provided for the operations and maintenance of Virginia City and Nevada City beyond what has been appropriated by the 55th legislature.

(4) The commission may solicit funds from other sources, including the federal government, for the purchase, management, and operation of properties.

(5) (a) The commission may use volunteers to further the purposes of this part.

(b) The commission and volunteers stand in the relationship of employer and employee for purposes of and as those terms are defined in Title 39, chapter 71. The commission shall provide each volunteer with workers' compensation coverage, as provided in Title 39, chapter 71, during the course of the volunteer's assistance.

(6) Volunteers are not salaried employees and are not entitled to wages and benefits. The commission may, in its discretion, reimburse volunteers for their otherwise uncompensated out-of-pocket expenses, including but not limited to their expenditures for transportation, food, and lodging.

(7) The commission shall establish a subcommittee composed of an equal number of members of the Montana historical society board of trustees and commission members to review and recommend the sale of personal property from the former Bovey assets acquired by the 55th legislature. A recommendation to sell may be presented to the commission only if the

recommendation is supported by a majority of the members of the subcommittee.

(8) The commission shall adopt rules establishing a policy for making acquisitions and sales of real and personal property. With respect to each acquisition or sale, the policy must give consideration to:

(a) whether the property represents the state's culture and history;

(b) whether the property can become self-supporting;

(c) whether the property can contribute to the economic and social enrichment of the state;

(d) whether the property lends itself to programs to interpret Montana history;

(e) whether the acquisition or sale will create significant social and economic impacts to affected local governments and the state;

(f) whether the sale is supported by the director of the Montana historical society;

(g) whether the commission should include any preservation covenants in a proposed sale agreement for real property;

(h) whether the commission should incorporate any design review ordinances established by Virginia City into a proposed sale agreement for real property; and

(i) other matters that the commission considers necessary or appropriate.

(9) Except as provided in subsection (11), the proceeds of any sale under subsection (8) must be placed in the account established in 22-3-1004.

(10) Public notice and the opportunity for a hearing must be given in the geographical area of a proposed acquisition or sale of real property before a final decision to acquire or sell the property is made. The commission shall approve proposals for acquisition or sale of real property and recommend the approved proposal to the board of land commissioners.

(11) The commission, working with the board of investments, may establish trust funds to benefit historic properties. Interest from any trust fund established under this subsection must be used to preserve and manage assets owned by the commission. Funds from the sale of personal property from the Bovey assets must be placed in a trust fund, and interest from the trust fund must be used to manage and protect the remaining personal property.

(12) Prior to the convening of each regular session, the commission shall report to the governor and the legislature, as provided in 5-11-210, concerning financial activities during the prior biennium, including the acquisition or sale of any assets."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2007

CHAPTER NO. 404

[SB 192]

AN ACT CREATING THE OFFENSE OF CRIMINAL INVASION OF PERSONAL PRIVACY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Criminal invasion of personal privacy. (1) Except as provided in subsection (2), a person commits the offense of invasion of personal privacy if the person knowingly or purposely obtains or attempts to obtain personal or confidential information about an individual while posing as the individual. A person convicted under this section shall be incarcerated for a term not to exceed 1 year or fined an amount not to exceed $10,000, or both.

(2) Subsection (1) does not apply to a person who poses as another individual with the express consent of that other individual.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, and the provisions of Title 45 apply to [section 1].

Approved May 3, 2007

CHAPTER NO. 405

[SB 209]

AN ACT TRANSFERRING REGISTRATION AND OVERSIGHT OF PROCESS SERVERS AND LEVYING OFFICERS FROM THE CLERKS OF DISTRICT COURT TO THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; PROVIDING FOR A PROCESS SERVER TO BE ON THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; REQUIRING REGISTRATION OF PROCESS SERVERS WITH EXCEPTIONS; AMENDING SECTIONS 2-15-1781, 25-1-1101, 25-1-1104, 25-1-1107, 25-1-1111, 25-1-1112, 25-3-105, 25-3-201, 25-3-203, 25-3-204, 25-3-302, 37-60-101, 37-60-103, 37-60-105, 37-60-202, 37-60-301, 37-60-303, 37-60-304, AND 37-60-405, MCA; REPEALING SECTIONS 25-1-1103, 25-1-1105, AND 25-1-1106, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1781, MCA, is amended to read:

"2-15-1781. Board of private security patrol officers and investigators. (1) There is a board of private security patrol officers and investigators.

(2) The board consists of seven voting members appointed by the governor with the consent of the senate. The members shall represent:

(a) one contract security company, as defined by 37-60-101;

(b) one proprietary security organization, as defined by 37-60-101;

(c) one city police department;

(d) one county sheriff's office;

(e) one member of the public;

(f) one member of the peace officers' standards and training advisory council; and

(g) a licensed private investigator *or a registered process server*.

(3) Members of the board must be at least 25 years of age and have been residents of this state for more than 5 years.

(4) The appointed members of the board shall serve for a term of 3 years. The terms of board members must be staggered.

(5) The governor may remove a member for misconduct, incompetency, neglect of duty, or unprofessional or dishonorable conduct.

(6) A vacancy on the board must be filled in the same manner as the original appointment and may only be for the unexpired portion of the term.

(7) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 25-1-1101, MCA, is amended to read:

"25-1-1101. Registered process server — levying officer — *use of title reserved.* (1) ~~Any~~ *Except as provided in subsection (2), a* person who makes more than 10 services of process, as defined in 25-3-101, within this state during 1 calendar year ~~shall file a verified certificate of registration as a process server with the clerk of the district court of the county in which the person resides or in which the person's principal place of business is located. A registered process server may make service of process in any county in this state~~ *must be registered under Title 37, chapter 60. A process server who holds a valid certificate of registration from a clerk of court in this state as of July 1, 2007, shall present the registration certificate to the board, and the board shall exchange that registration certificate for a new certificate that expires on March 31, 2009.*

(2) This part does not apply to:

(a) a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of employment; or

(b) a licensed attorney.

(3) A registered process server may act as a levying officer under Title 25, chapter 13.

(4) A registered process server may make service of process in any county in this state.

(5) A person may not use the title of process server unless the person is registered as a process server under Title 37, chapter 60."

Section 3. Section 25-1-1104, MCA, is amended to read:

"25-1-1104. Handbook for process servers. (1) The department of labor and industry shall publish a handbook for process servers and levying officers.

(2) ~~Each person who applies to the clerk of the district court of any county for registration as a process server shall demonstrate that the person has passed~~ *The board of private security patrol officers and investigators, established in 2-15-1781, shall develop and administer* an examination *for applicants for registration as a process server* based on the handbook ~~and administered by the board of private security patrol officers and investigators provided for in 2-15-1781~~.

(3) The department of labor and industry may charge a reasonable examination fee to cover the costs of publishing the handbook and administering the examination provided for in this section."

Section 4. Section 25-1-1107, MCA, is amended to read:

"25-1-1107. Proof of service — requirements. A proof of service of process signed by a registered process server must ~~indicate the county in which~~

~~he is registered and the~~ *include the process server's registration* number ~~assigned to him under 25-1-1105~~."

Section 5. Section 25-1-1111, MCA, is amended to read:

"25-1-1111. Bond required — *levy limited.* (1) ~~The clerk of the district court may not accept a certificate of registration as a~~ *After completing the requirements in Title 37, chapter 60, for registration, a* process server ~~unless the certificate is accompanied by~~ *shall provide the board of private security patrol officers and investigators with proof of* a surety bond of $10,000 ~~per~~ *for an* individual or $100,000 ~~per~~ *for a* firm, conditioned upon compliance with this part ~~and~~, all laws governing service of process in this state*, and the requirements of Title 37, chapter 60. A clerk of court holding a surety bond for a process server under this section as of June 30, 2007, shall transfer the original bond and any supporting documentation to the board on July 1, 2007.*

(2) A levying officer may not levy on a judgment that exceeds the value of the bond."

Section 6. Section 25-1-1112, MCA, is amended to read:

"25-1-1112. Action on bond. (1) Any person who recovers damages for an injury caused by a service of process, made by a registered process server, that did not comply with the law governing service of process in this state may recover the amount of damages from the bond required under 25-1-1111.

(2) If there has been recovery against a registered process server's bond, the ~~registrant must~~ *registered process server shall* file a new bond within 30 days or reinstate the bond. If the bond has not been reinstated or filed within 30 days, the ~~county attorney~~ *board of private security patrol officers and investigators* ~~must~~ *shall* revoke the ~~registrant's certificate~~ *process server's registration within a timeframe established by rule*."

Section 7. Section 25-3-105, MCA, is amended to read:

"25-3-105. Person serving process — penalty for obstruction — *exception.* *(1)* A process server registered under ~~chapter 1, part 11~~ *Title 37, chapter 60*, a licensed attorney, or a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of the person's employment while serving process is a public servant for the purpose of determining the offense of obstructing a public servant as provided in 45-7-302.

(2) A person who obstructs a person serving process is guilty of obstruction of a public servant and is punishable as provided in 45-7-302.

(3) An unregistered person who serves 10 or fewer services of process in a calendar year, as provided in 25-1-1101(1), is not acting as a public servant."

Section 8. Section 25-3-201, MCA, is amended to read:

"25-3-201. Delivery of papers to officer. (1) *(a)* It is the duty of ~~the clerk of any district court, at the request of~~ a party in any civil action pending in ~~such~~ *a district* court or ~~his~~ *the party's* agent or attorney~~,~~ to forward by mail any process, summons, or other papers required in the cause~~; and it~~.

(b) It is the duty of the sheriff, registered process server, or other officer to whom ~~said~~ *the process, summons, or* papers *described in subsection (1)(a)* may be directed to receive the ~~same~~ *process, summons, or papers* at the place where ~~the same~~ *the documents* are directed. ~~When process in one county is intended for service in another, it is the duty of the clerk to forward the same in like manner.~~

(2) If the papers are delivered for service away from the county seat, all necessary copies ~~thereof~~ must be furnished for service.

(3) If ~~any~~ *a* sheriff, registered process server, or other officer refuses to receive ~~any~~ *a* summons or other process at the point where *it was* directed ~~to him~~ or *refuses* to serve the ~~same~~ *summons or process*, ~~he~~ *the sheriff, registered process server, or other officer* is guilty of a misdemeanor and upon conviction ~~thereof must~~ *shall* be fined ~~in any~~ *a* sum not exceeding $100."

Section 9. Section 25-3-203, MCA, is amended to read:

"25-3-203. Prepayment of cost of service. ~~In no case shall the~~ *An* officer or registered process server receiving papers for service *may not* be required to serve ~~the same~~ *papers for service* unless the person ~~in~~ *on* whose behalf the service is made or ~~his~~ *that person's* agent or attorney first ~~pay~~ *pays* the cost of the service upon a demand ~~therefor~~ by the officer or registered process server."

Section 10. Section 25-3-204, MCA, is amended to read:

"25-3-204. Officer to exhibit process. The officer or registered process server executing ~~such~~ *a service of* process ~~must~~ *shall display the service of process, all attached papers, and an identification card upon request by an interested party*~~, then and at all times subsequent so long as he retains it, upon request, show the same with all papers attached to any person interested therein~~ *at any time during execution of the service of process*."

Section 11. Section 25-3-302, MCA, is amended to read:

"25-3-302. Return prima facie evidence. The return of the sheriff or registered process server upon process or notices is prima facie evidence of the ~~facts in such return stated~~ *proof of the process or notices having been served as stated*."

Section 12. Section 37-60-101, MCA, is amended to read:

"37-60-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means any individual employed by a contract security company or a proprietary security organization to respond to security alarm system signals.

(2) "Armed carrier service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

(3) "Armed private investigator" means a private investigator who at any time wears, carries, possesses, or has access to a firearm in the performance of the individual's duties.

(4) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, carrier service guard, or alarm response runner and who at any time wears or carries a firearm in the performance of the individual's duties.

(5) "Armored car service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

(6) "Board" means the board of private security patrol officers and investigators provided for in 2-15-1781.

(7) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

(8) "Contract security company" means any person who installs or maintains a security alarm system, undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.

(9) "Department" means the department of labor and industry provided for in 2-15-1701.

(10) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration ~~whatsoever~~ conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes or wrongs committed or threatened against the United States or any state or territory of the United States.

(11) "Licensee" means a person licensed under this chapter.

(12) "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.

(13) "Person" includes any individual, firm, company, association, organization, partnership, and corporation.

(14) "Private investigator" means a person other than an insurance adjuster who for any consideration ~~whatsoever~~ makes or agrees to make any investigation with reference to:

(a) crimes or wrongs done or threatened against the United States or any state or territory of the United States;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for fires, libels, losses, accidents, or injury to persons or property; or

(e) securing evidence to be used before any court, board, officer, or investigating committee.

(15) "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property or the direction of the movements of the public in public areas.

(16) "Process server" means a person described in 25-1-1101(1).

~~(16)~~*(17)* "Proprietary security organization" means any person who employs a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

~~(17)~~*(18)* "Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable.

~~(18)~~*(19)* "Resident manager" means the person appointed to exercise direct supervision, control, charge, management, or operation of each branch office located in this state where the business of the licensee is conducted.

~~(19)~~*(20)* (a) "Security alarm system" means an assembly of equipment and devices or a single device, such as a solid state unit that plugs directly into a 110-volt AC line, designed to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a protected premises and to which signals police, private security guards, or alarm response runners are expected to respond.

(b) The term does not include alarm systems and alarm systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a premises.

~~(20)~~*(21)* "Street patrol service" means any contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares.

~~(21)~~*(22)* "Unarmed private investigator" means a private investigator who does not wear, carry, possess, or have access to a firearm in the performance of the individual's duties.

~~(22)~~*(23)* "Unarmed private security guard" means an individual who is employed by a contract security company or a proprietary security organization, whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, and who does not wear or carry a firearm in the performance of those duties."

Section 13. Section 37-60-103, MCA, is amended to read:

"37-60-103. Purpose. The purpose of this chapter is to increase the levels of integrity, competency, and performance of private security personnel ~~and~~*,* private investigators*, and process servers* in order to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by private security personnel ~~or~~*,* private investigators*, or process servers*."

Section 14. Section 37-60-105, MCA, is amended to read:

"37-60-105. Exemptions. ~~This~~ *(1) Except as provided in subsection (2), this* chapter does not apply to:

~~(1)~~ (a) any one person employed singly and exclusively by any one employer in connection with the affairs of ~~such~~ *that* employer only and ~~where~~ *when* there exists an employer-employee relationship and the employee is unarmed, does

not wear a uniform, and is guarding inside a structure ~~which~~ *that* at the time is not open to the public;

(b) a person:

(i) employed singly and exclusively by a retail merchant;

(ii) performing at least some ~~of his~~ work for the retail merchant as a private security guard; and

(iii) who has received training as a private security guard from the employer or at the employer's direction;

~~(2)~~*(c)* an officer or employee of the United States, ~~of America or~~ of this state, or *of* a political subdivision ~~thereof~~ *of the United States or this state* while ~~such~~ *the* officer or employee is engaged in the performance of ~~his~~ official duties;

~~(3)~~*(d)* a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit;

~~(4) (a)~~*(e)* an attorney at law ~~in~~ *while* performing ~~his~~ duties as an attorney at law;

~~(b)~~*(f)* a legal intern, paralegal, or legal assistant employed by one or more lawyers, law offices, governmental agencies, or other entities; or

~~(c)~~*(g)* a law student who is serving a legal internship;

~~(5)~~*(h)* a collection agency or finance company licensed to do business under the laws of this state, or an employee ~~thereof~~ *of a collection agency or finance company licensed in this state* while acting within the scope of ~~his~~ employment, while making an investigation incidental to the business of the agency or company, including an investigation of the location of a debtor or ~~his~~ *the debtor's* property ~~where~~ *when* the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent ~~thereof~~;

~~(6)~~*(i)* special agents employed by railroad companies, provided *that* the railroad company notifies the board that ~~such~~ *its* agents are operating in the state;

~~(7)~~*(j)* insurers and insurance producers and insurance brokers licensed by the state~~,~~ *while* performing duties in connection with insurance transacted by them;

~~(8)~~*(k)* an insurance adjuster, as defined ~~by~~ *in* 37-60-101~~(10)~~; or

~~(9)~~*(l)* an internal investigator or auditor~~,~~ while making an investigation incidental to the business of the agency or company by which ~~he~~ *the investigator or auditor* is singularly and regularly employed.

(2) (a) Except as provided in subsection (2)(b), persons listed as exempt in subsection (1) are not exempt for the purposes of acting as registered process servers.

(b) Subsection (2)(a) does not apply to attorneys or persons who make 10 or fewer services of process in a calendar year, as provided in 25-1-1101."

Section 15. Section 37-60-202, MCA, is amended to read:

"37-60-202. Rulemaking power. The board shall adopt and enforce rules:

(1) fixing the qualifications of resident managers, qualifying agents, licensees, ~~and~~ holders of identification cards, *and process servers,* in addition to

those prescribed in *Title 25, chapter 1, part 11, and in* this chapter, necessary to promote and protect the public welfare;

(2) establishing, in accordance with 37-1-134, application fees for original or renewal licenses and identification cards, and providing for refunding of any fees;

(3) (a) prohibiting the establishment of branch offices of any licensee, except a proprietary security organization, without approval by the board; and

(b) establishing qualification requirements and license fees for branch offices identified in subsection (3)(a);

(4) for the certification of private investigator and private security guard training programs, including the certification of firearms training programs;

(5) for the licensure of firearms instructors;

(6) for the approval of weapons;

(7) requiring the maintenance of records;

(8) requiring licensees*, except process servers,* to file an insurance policy with the board; and

(9) providing for the issuance of probationary identification cards for private investigators who do not meet the requirements for age, employment experience, and written examination."

Section 16. Section 37-60-301, MCA, is amended to read:

"37-60-301. License required — *process server registration required.* (1) *(a)* Except as provided in 37-60-105 and 37-60-315, it is unlawful for any person to act as or perform the duties, as defined in 37-60-101, of a contract security company or proprietary security organization, a private investigator, or a private security guard without having first obtained a license from the board. ~~Those persons licensed on April 18, 1983, shall retain their current licensure status and shall renew their licenses on the renewal date as prescribed by the department.~~

(b) Except as provided in 25-1-1101(2), it is unlawful for any person to act as or perform the duties of a process server for more than 10 services of process in a calendar year without being issued a certificate of registration by the board.

(2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that the person is licensed as a private investigator, a contract security company, a proprietary security organization, or a private security guard.

(3) A person appointed by the court as a confidential intermediary under 42-6-104 is not required to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential intermediary, as defined in 42-1-103, without meeting the requirements of 42-6-104.

(4) A person who knowingly engages an unlicensed private investigator, private security guard, or contract security company is guilty of a misdemeanor punishable under 37-60-411."

Section 17. Section 37-60-303, MCA, is amended to read:

"37-60-303. License *or registration* qualifications. (1) Except as provided in subsection (7)*(a)*, an applicant for licensure under this chapter *or an applicant for registration as a process server under this chapter* is subject to the

provisions of this section and shall submit evidence under oath that the applicant:

(a) is at least 18 years of age;

(b) is a citizen of the United States;

(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

(d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

(f) is of good moral character; and

(g) has complied with other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard shall:

(a) complete the training requirements of a private security guard training program certified by the board and provide, on a form prescribed by the board, written notice of satisfactory completion of the training; and

(b) fulfill other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that the applicant:

(a) is at least 21 years of age;

(b) has at least a high school education or the equivalent;

(c) has not been dishonorably discharged from any branch of the United States military service; and

(d) has fulfilled any other requirements as the board may by rule prescribe.

(4) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.

(5) An applicant *for a license as a private security patrol officer or private investigator* who will wear or carry a firearm in performance of the applicant's duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as the board may by rule prescribe.

(6) Except for an applicant subject to the provisions of subsection (7)*(a)*, the board shall require a background investigation of each applicant for licensure *or registration* under this chapter that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.

(7) (a) A firm, company, association, partnership, limited liability company, corporation, or other entity that intends to engage in business governed by the provisions of this chapter must be incorporated under the laws of this state or qualified to do business within this state and must be licensed by the board *or, if doing business as a process server, must be registered by the board*.

(b) Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (7)(a) who engage in duties

that are subject to the provisions of this part must be licensed pursuant to the requirements of this part *or, if doing business as a process server, must be registered by the board*."

Section 18. Section 37-60-304, MCA, is amended to read:

"37-60-304. Licenses *and registration* — application form and content. (1) ~~Except as provided in 37-60-303(7), an~~ *An* application for a license *or for a certificate of registration as a process server* must be submitted to the department and accompanied by the application fee set by the board.

(2) An application must be made under oath and must include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, a private investigator, or a private security guard *or registered as a process server*;

(e) one recent photograph of the applicant, of a type prescribed by the department, and one classifiable set of the applicant's fingerprints;

(f) a statement of the applicant's age and experience qualifications; and

(g) other information, evidence, statements, or documents as may be prescribed by the rules of the board.

(3) The board shall verify the statements in the application and the ~~applicant's~~ moral character *of each applicant other than an applicant under 37-60-303(7)(a).*

(4) The submittal of fingerprints is a prerequisite to the issuance of a license *or certificate of registration to an applicant, other than an applicant under 37-60-303(7)(a),* by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation."

Section 19. Section 37-60-405, MCA, is amended to read:

"37-60-405. Approval of weapons. The weapons to be carried by armed licensees or ~~identification card~~ holders *of identification cards as private security personnel or private investigators* must be approved by the board."

Section 20. Repealer. Sections 25-1-1103, 25-1-1105, and 25-1-1106, MCA, are repealed.

Section 21. Effective date. [This act] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 406

[SB 243]

AN ACT REVISING FISH AND GAME LAWS; PROVIDING FREE CLASS AAA RESIDENT COMBINATION SPORTS AND CLASS A RESIDENT FISHING LICENSES FOR CERTAIN MONTANA NATIONAL GUARD, FEDERAL RESERVE, AND ACTIVE DUTY PERSONNEL FOR UP TO 5 YEARS; ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO RECOUP THE COST OF ISSUING FREE LICENSES ON A

QUARTERLY BASIS; AMENDING SECTIONS 87-2-711 AND 87-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-711, MCA, is amended to read:

"87-2-711. Class AAA—combination sports license. (1) A resident, as defined by 87-2-102, who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued is entitled to:

(a) a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted to holders of Class A, A-1, A-3, and A-5 licenses and resident conservation licenses as prescribed in 87-2-202 upon payment of the sum of $70, plus the resident hunting access enhancement fee provided for in 87-2-202(3)(c), or, if the resident is a service member eligible for a combination sports license pursuant to 87-2-803(12), upon payment of ~~$29, plus~~ the resident hunting access enhancement fee provided for in 87-2-202(3)(c); or

(b) a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted in subsection (1)(a) and the additional rights granted to holders of a Class A-6 license upon payment of the sum of $85, plus the resident hunting access enhancement fee provided for in 87-2-202(3)(c).

(2) The department may furnish each holder of a combination sports license an appropriate decal."

Section 2. Section 87-2-803, MCA, is amended to read:

"87-2-803. Persons with disabilities — service members — definitions. (1) Persons with disabilities are entitled to fish and to hunt game birds, not including turkeys, with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule. A person who has purchased a conservation license and a resident fishing license or game bird license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the fishing license or game bird license previously purchased for that license year. A person who is certified as disabled pursuant to subsection (3) and who was issued a permit to hunt from a vehicle for license year 2000 or a subsequent license year is automatically entitled to a permit to hunt from a vehicle for subsequent license years if the criteria for obtaining a permit does not change.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase a Class A-3 deer A tag for $6.50 and a Class A-5 elk tag for $8. A person who has purchased a conservation license and a resident deer license or resident elk license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the deer license or elk license previously purchased and reissuance of the license for that license year at the rate established in this subsection.

(3) A person may be certified as disabled by the department and issued a permit to hunt from a vehicle, on a form prescribed by the department, if the person establishes one or more of the disabilities pursuant to subsection (9). The department shall adopt rules to establish a voluntary board or boards of review to resolve any disputes over whether a person meets the criteria established in subsection (9). Each board must have at least one Montana-licensed physician as a member.

(4) A person with a disability carrying a permit to hunt from a vehicle, referred to in this subsection as a permitholder, may hunt by shooting a firearm

from the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-101, except a state or federal highway, or may hunt by shooting a firearm from within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted. This subsection does not allow a permitholder to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner. A permitholder must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the permitholder by hunting a game animal that has been wounded by the permitholder when the permitholder is unable to pursue and kill the wounded game animal. Any vehicle from which a permitholder is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle, or as prescribed by the department.

(5) A veteran who meets the qualifications in subsection (9) as a result of a combat-connected injury may apply at a fish, wildlife, and parks office for a regular Class A-3 deer A tag, a Class A-4 deer B tag, a Class B-7 deer A tag, a Class B-8 deer B tag, and a special antelope license at one-half the license fee. Fifty licenses of each license type must be made available annually. Licenses issued to veterans under this part do not count against the number of special antelope licenses reserved for people with permanent disabilities, as provided in 87-2-706.

(6) (a) A resident of Montana who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of $10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure.

(b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses, in the manner provided in subsection (2), and must be accompanied by a companion, as provided in subsection (4).

(7) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.

(8) As used in this section, "disabled person", "person with a disability", or "disabled" means or refers to a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.

(9) A person is entitled to a permit to hunt from a vehicle if the person:

(a) is certified by a licensed physician to be dependent on an oxygen device or dependent on a wheelchair, crutch, or cane for mobility;

(b) is an amputee above the wrist or ankle; or

(c) is certified by a licensed physician to be unable to walk, unassisted, 600 yards over rough and broken ground while carrying 15 pounds within 1 hour and to be unable to handle and maneuver up to 25 pounds.

(10) Certification by a licensed physician under subsection (9) must be on a form provided by the department.

(11) A person who disagrees with a determination of eligibility for a permit to hunt from a vehicle may request a review by a voluntary board of review pursuant to subsection (3).

(12) (a) A Montana resident who is a member of the Montana national guard or the federal reserve as provided in 10 U.S.C. 10101 or who was otherwise engaged in active duty and who participated in a contingency operation as provided in 10 U.S.C. 101(a)(13) that required the member to serve at least ~~6~~ *2* months outside of the state, upon request and upon presentation of the documentation described in subsection (12)(b), must be issued a free resident wildlife conservation license or a Class AAA resident combination sports license, which may not include a bear license, ~~for $29, plus~~ *upon payment of* the resident hunting access enhancement fee provided for in 87-2-202(3)(c), in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in ~~the license year~~ *any of the 4 years* after the member's election. A member who participated in a contingency operation ~~between~~ *after* September 11, 2001, ~~and February 28, 2006,~~ that required the member to serve at least ~~6~~ *2* months outside of the state may make an election in ~~2006 or~~ 2007 *or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election* and be entitled to a free resident wildlife conservation license or a ~~$25~~ *free* Class AAA resident combination sports license in the year of election and ~~the license year~~ *in any of the 4 years* after the member's election.

(b) To be eligible for the free resident wildlife conservation license or ~~reduced-rate~~ *free* Class AAA resident combination sports license provided for in subsection (12)(a), an applicant shall, in addition to the written application and proof of residency required in 87-2-202(1), provide to any regional department office or to the department headquarters in Helena, by mail or in person, the member's DD form 214 verifying the member's release or discharge from active duty. The applicant is responsible for providing documentation showing that the applicant participated in a contingency operation as provided in 10 U.S.C. 101(a)(13).

(c) A Montana resident who meets the service qualifications of subsection (12)(a) and the documentation required in subsection (12)(b) is entitled to a free Class A resident fishing license in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election.

(d) The department's general license account must be reimbursed by a quarterly transfer of funds from the general fund to the general license account for costs associated with the free licenses granted pursuant to this subsection (12) during the preceding calendar quarter. Reimbursement costs must be designated as license revenue."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2007

CHAPTER NO. 407

[SB 253]

AN ACT ALLOWING CERTAIN BROADCAST CAMPAIGN ADVERTISING MATERIAL AND AN AFFIDAVIT ABOUT THE TRUTH OF THE CONTENT

TO BE FILED WITH THE COMMISSIONER OF POLITICAL PRACTICES; AUTHORIZING THE COUNTY ATTORNEY TO INVESTIGATE AND PROSECUTE ALLEGED FALSE SWEARING IN REGARD TO CERTAIN CAMPAIGN ADVERTISING MATERIAL THAT IS SWORN TO BE TRUTHFUL AND VERIFIABLE; INCREASING THE POTENTIAL FINE FOR FALSE SWEARING ABOUT THE ADVERTISING CONTENT; AND AMENDING SECTIONS 13-37-111, 13-37-113, 13-37-124, AND 45-7-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Voluntary filing of broadcast campaign materials — affidavit — penalty. (1) (a) A political committee not organized by or on behalf of a candidate may file with the commissioner of political practices a copy of a campaign script intended for broadcast advertising.

(b) The committee's authorized agent may sign an affidavit swearing that the content of the script is true and verifiable and may file supporting documentation.

(2) (a) Scripts and affidavits must be filed in the manner prescribed by the commissioner of political practices.

(b) The commissioner of political practices shall file the scripts, affidavits, and any documentation in a manner that allows for them to be readily inspected.

(3) (a) Any person who believes that the content of a script filed pursuant to this section is either untrue or unverifiable may bring the matter to the attention of the county attorney of the county in which the person is a resident.

(b) The county attorney may investigate the alleged falsification or unverifiability of the script and, if the county attorney determines that sufficient evidence exists to justify a criminal prosecution, shall file a cause of action.

(c) An allegation of violation of subsection (1) may not be filed with, investigated by, or prosecuted by the commissioner of political practices.

(4) A person filing an affidavit under this section is subject to the penalty for false swearing under 45-7-202, except that the fine may not exceed $5,000.

Section 2. Section 13-37-111, MCA, is amended to read:

"13-37-111. Investigative powers and duties — recusal. (1) ~~The~~ *Except as provided in [section 1], the* commissioner is responsible for investigating all of the alleged violations of the election laws contained in chapter 35 of this title or this chapter and in conjunction with the county attorneys is responsible for enforcing these election laws.

(2) The commissioner may:

(a) investigate all statements filed pursuant to the provisions of chapter 35 of this title or this chapter and shall investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant to the provisions of chapter 35 of this title or this chapter. Upon the submission of a written complaint by any individual, the commissioner shall investigate any other alleged violation of the provisions of chapter 35 of this title, this chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter.

(b) inspect any records, accounts, or books that must be kept pursuant to the provisions of chapter 35 of this title or this chapter that are held by any political

committee or candidate, as long as the inspection is made during reasonable office hours; and

(c) administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, bank account statements of a political committee or candidate, or other records that are relevant or material for the purpose of conducting any investigation pursuant to the provisions of chapter 35 of this title or this chapter.

(3) If the commissioner determines that considering a matter would give rise to the appearance of impropriety or a conflict of interest, the commissioner is recused from participating in the matter.

(4) (a) If the commissioner is recused pursuant to this section, the commissioner shall appoint a deputy, subject to subsection (4)(b).

(b) The deputy:

(i) may not be an employee of the office of the commissioner;

(ii) must have the same qualifications as specified for the commissioner in 13-37-107;

(iii) with respect to only the specific matter from which the commissioner is recused, has the same authority, duties, and responsibilities as the commissioner would have absent the recusal; and

(iv) may not exercise any powers of the office that are not specifically related to the matter for which the deputy is appointed.

(5) The appointment of the deputy is effectuated by a contract between the commissioner and the deputy. The contract must specify the deputy's term of appointment, which must be temporary, the matter assigned to the deputy, the date on which the matter assigned must be concluded by the deputy, and any other items relevant to the deputy's appointment, powers, or duties."

Section 3. Section 13-37-113, MCA, is amended to read:

"13-37-113. Hiring of attorneys — prosecutions. The commissioner may hire or retain attorneys who are properly licensed to practice before the supreme court of the state of Montana to prosecute violations of chapter 35 of this title or this chapter. Any attorney retained or hired shall exercise the powers of a special attorney general, and the attorney may prosecute, subject to the control and supervision of the commissioner and the provisions of *[section 1],* 13-37-124, and 13-37-125, any criminal or civil action arising out of a violation of any provision of chapter 35 of this title or this chapter. All prosecutions must be brought in the state district court for the county in which a violation has occurred or in the district court for Lewis and Clark County. The authority to prosecute as prescribed by this section includes the authority to:

(1) institute proceedings for the arrest of persons charged with or reasonably suspected of criminal violations of chapter 35 of this title or this chapter;

(2) attend and give advice to a grand jury when cases involving criminal violations of chapter 35 of this title or this chapter are presented;

(3) draw and file indictments, informations, and criminal complaints;

(4) prosecute all actions for the recovery of debts, fines, penalties, or forfeitures accruing to the state or county from persons convicted of violating chapter 35 of this title or this chapter; and

(5) do any other act necessary to successfully prosecute a violation of any provision of chapter 35 of this title or this chapter."

Section 4. Section 13-37-124, MCA, is amended to read:

"13-37-124. Consultation and cooperation with county attorney. (1) ~~Whenever~~ *Except as provided in [section 1], whenever* the commissioner determines that there appears to be sufficient evidence to justify a civil or criminal prosecution under chapter 35 of this title or this chapter, the commissioner shall notify the county attorney of the county in which the alleged violation occurred and shall arrange to transmit to the county attorney all information relevant to the alleged violation. If the county attorney fails to initiate the appropriate civil or criminal action within 30 days after receiving notification of the alleged violation, the commissioner may then initiate the appropriate legal action.

(2) A county attorney may, at any time prior to the expiration of the 30-day time period specified in subsection (1), waive the right to prosecute, and the waiver authorizes the commissioner to initiate the appropriate civil or criminal action.

(3) The provisions of subsection (1) do not apply to a situation in which the alleged violation has been committed by the county attorney of a county. In this instance, the commissioner is authorized to directly prosecute any alleged violation of chapter 35 of this title or this chapter.

(4) If a prosecution is undertaken by the commissioner, all court costs associated with the prosecution must be paid by the state of Montana, and all fines and forfeitures imposed pursuant to a prosecution by the commissioner, except those paid to or imposed by a justice's court, must be deposited in the state general fund."

Section 5. Section 45-7-202, MCA, is amended to read:

"45-7-202. False swearing. (1) A person commits the offense of false swearing if ~~he~~ *the person* knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of ~~such~~ a statement previously made when ~~he~~ *the person* does not believe the statement to be true and:

(a) the falsification occurs in an official proceeding;

(b) the falsification is purposely made to mislead a public servant in performing ~~his~~ *an* official function; or

(c) the statement is one ~~which~~ *that* is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(2) Subsections (4) through (7) of 45-7-201 apply to this section.

(3) ~~A~~ *Except as provided in [section 1], a* person convicted of false swearing shall be fined *an amount* not to exceed $500 or be imprisoned in the county jail for ~~any~~ *a* term not to exceed 6 months, or both."

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 13, chapter 35, part 2, and the provisions of Title 13, chapter 35, part 2, apply to [section 1].

Approved May 3, 2007

CHAPTER NO. 408

[SB 261]

AN ACT INCREASING THE ANNUAL PAYMENT BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO COUNTIES FOR JUNK VEHICLE COLLECTIONS; AMENDING SECTION 75-10-534, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-534, MCA, is amended to read:

"75-10-534. Department to pay approved county budget. The department shall pay to a county the amount of the approved junk vehicle collection and graveyard budget of the county. The yearly payment may not exceed ~~$1.25~~ *$1.40* for each motor vehicle under 8,001 pounds gross vehicle weight that is licensed in that county. However, for those counties that have fewer than 5,000 motor vehicles under 8,001 pounds gross vehicle weight, the department may pay up to ~~$6,250~~ *$7,500* if the county can justify this payment. Counties realizing revenue from the sale of junk vehicles shall return to the state junk vehicle program revenue account money equal to the salvage value of each vehicle sold. The salvage value of a vehicle must be the average contract value of a crushed ton of junk vehicles as determined by the statewide salvage bids received by the department during the current fiscal year. Any additional revenue realized from the sale of junk vehicles may be retained by the county for use in the county's junk vehicle program in addition to the approved junk vehicle collection and graveyard budget of the county."

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 409

[SB 293]

AN ACT ESTABLISHING A STATE POLICY FOR MANAGEMENT OF PUBLIC FOREST LANDS; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO SUPPORT RESTORATION AND SUSTAINABLE FOREST MANAGEMENT PRACTICES; REQUIRING PROMOTION OF FOREST MANAGEMENT ACTIVITIES WITHIN AND ADJACENT TO THE WILDLAND URBAN INTERFACE; AND GRANTING AUTHORITY TO INTERVENE IN LITIGATION OR APPEALS OF FEDERAL FOREST MANAGEMENT PROJECTS.

WHEREAS, Montana's public forests are important environmental, economic, and recreational resources; and

WHEREAS, fire suppression and lack of active management on some public forests has led to overstocked stands, unnatural distribution of tree species and age classes, and an increased susceptibility of forests to insect and disease epidemics and uncharacteristic wildfires that threaten Montana communities and watersheds; and

WHEREAS, two-thirds of the forests in Montana are managed by the federal government and include some of the most important environmental, economic, and recreational resources in the state; and

WHEREAS, innovative partnerships between traditional adversaries in federal forest management demonstrate that consensus-based solutions can be reached on landscape level projects on federal lands that integrate active forest management, restoration, and stewardship; and

WHEREAS, the Department of Natural Resources and Conservation is uniquely situated to provide expertise and guidance on the management of public forests in Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. Findings and policy. (1) The legislature finds that the sustainable management of public forests in Montana is vital to conserving the state's natural resources and their economic and ecological potential for the benefit of all Montanans.

(2) The legislature finds that public forests in Montana should be sustainably managed to maintain biodiversity, productivity, regeneration capacity, vitality, and potential to fulfill relevant ecological, economic, and social functions.

(3) The legislature finds that sustainable forest stewardship and management of Montana's public forests requires a balanced approach that ensures a stable timber supply, active restoration, healthy watersheds and fish and wildlife habitat, areas for natural processes, and allowances for multiple uses.

(4) The legislature declares that it is the policy of this state to promote the sustainable use of all public forests within the state through sound management and collaboration with local, state, and federal entities.

Section 2. Duties — authority. To implement the policy of [section 1], the department of natural resources and conservation shall:

(1) support sustainable forest management practices, including forest restoration, on public forests in Montana consistent with all applicable laws and administrative requirements;

(2) provide technical information and educational assistance to nonindustrial, private forest landowners;

(3) promote forest management activities within and adjacent to the wildland urban interface and promote the implementation of community wildfire protection plans;

(4) promote a viable forest and wood products industry and other businesses and individual activities that rely on public forest lands;

(5) represent the state's interest in the federal forest management planning and policy process, including establishing cooperative agency status with federal agencies;

(6) promote the development of an independent, long-term sustained yield calculation on Montana's federal forests;

(7) have the authority to intervene in litigation or appeals on federal forest management projects that comply with the policy in [section 1] and in which local and state interests are clearly involved;

(8) have the authority to enter into agreements with federal agencies to participate in forest management activities on federal lands; and

(9) participate in and facilitate collaboration between traditional forest interests in reaching consensus-based solutions on federal land management issues.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 76, chapter 13, and the provisions of Title 76, chapter 13, apply to [sections 1 and 2].

Approved May 3, 2007

CHAPTER NO. 410

[SB 314]

AN ACT REVISING THE WARM WATER GAME FISH SURCHARGE AND STAMP TO REQUIRE THAT A PERSON WHO DESIRES TO FISH IN CERTAIN DESIGNATED WATERS IN WHICH FISH FROM THE FORT PECK MULTISPECIES FISH HATCHERY ARE PLANTED MUST PURCHASE A WARM WATER GAME FISH STAMP; AMENDING SECTION 87-3-236, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-236, MCA, is amended to read:

"87-3-236. Warm water game fish surcharge and stamp — warm water game fish defined — accounts established — dedication of revenue to Fort Peck multispecies fish hatchery. (1) A person who is required to be licensed in order to fish in Montana and who desires to fish ~~for warm water game fish~~ in waters listed pursuant to subsection (9) shall, upon purchase of a Class A, Class B, Class B-4, Class B-5, or Class A-8 fishing license, pay a warm water game fish surcharge of $5. The surcharge is in addition to the license fee established for each class of license and entitles the holder to fish ~~for warm water game fish~~ *in the waters listed pursuant to subsection (9)* as authorized by the department. Payment of the surcharge must be indicated by placement of a warm water game fish stamp on the fishing license.

(2) A warm water game fish stamp is valid for the license year in which it is purchased.

(3) Revenue from the warm water game fish surcharge must be placed in the account created in subsection (5) and may be used only for the purposes set out in subsection (7).

(4) As used in this section, "warm water game fish" includes but is not limited to all species of the genera Stizostedion, Esox, Micropterus, and Lota and includes largemouth bass (Micropterus salmoides), smallmouth bass (Micropterus dolomieui), walleye (Stizostedion vitreum), sauger (Stizostedion canadense), black crappie (Pomoxis nigromaculatus), white crappie (Pomoxis annularis), channel catfish (Ictalurus punctatus), yellow perch (Perca flavescens), northern pike (Esox lucius), pallid sturgeon (Scaphirhynchus albus), paddlefish (Polyodon spathula), other warm water species classified as species of special concern, threatened, or endangered, chinook salmon (Oncorhynchus tshawytscha), and tiger muskellunge.

(5) There is an account into which must be deposited:

(a) all proceeds from the warm water game fish surcharge established in subsection (1); and

(b) money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the Fort Peck multispecies fish hatchery.

(6) The department shall administer the account within the state special revenue fund established in 17-2-102.

(7) Subject to the provisions of subsection (8), revenue collected under subsection (5) must be used by the department for the ~~construction,~~ operation, maintenance, and personnel costs of the Fort Peck multispecies fish hatchery established in 87-3-235, which may include ~~a cost-share agreement with the federal government for construction of the Fort Peck multispecies fish hatchery, and beginning October 1, 2005, for~~ the costs incurred in eradicating illegally introduced warm water species from Montana waters. No more than 15% of available revenue may be dedicated to eradication efforts.

(8) The department may not use any nonfederal funds for the hatchery authorized in 87-3-235 other than those in the account provided for in subsection (5). There is an account in the federal special revenue fund into which must be deposited all federal money received for purposes of the Fort Peck multispecies fish hatchery and from which the department may use funds for the hatchery authorized in 87-3-235.

(9) The department shall prepare a list of all waters into which fish from the Fort Peck multispecies fish hatchery will be planted. All waters listed in the ~~2005~~ Montana fishing regulations that require a warm water stamp and waters planted or waters that will be planted with fish from the Fort Peck multispecies fish hatchery must be permanently included on the list. The waters designated in the list are the only waters for which a warm water game fish stamp is required."

Section 2. Effective date. [This act] is effective March 1, 2008.

Approved May 3, 2007

CHAPTER NO. 411

[SB 321]

AN ACT PROVIDING FOR THE CREATION AND FUNCTIONS OF BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 56] may be cited as the "Business and Industrial Development Corporation Act".

Section 2. Definitions. In [sections 1 through 56], unless the context requires otherwise, the following definitions apply:

(1) "Affiliate", if used with respect to a nonnatural person, means a person who controls the nonnatural person, who is controlled by the nonnatural person, or who is controlled by a person who also controls the nonnatural person.

(2) "Associate", if used with respect to a licensee, means:

(a) a controlling person, director, or officer of the licensee;

(b) a director, officer, or partner of a person referred to in subsection (2)(a);

(c) a person who controls, is controlled by, or is under common control with a person referred to in subsection (2)(a), directly or indirectly through an intermediary;

(d) a close relative of a person referred to in subsection (2)(a);

(e) a person of which a person referred to in subsections (2)(a) through (2)(d) is a director or officer; or

(f) a person in which a person referred to in subsections (2)(a) through (2)(d) or a combination of the persons acting in concert owns or controls, directly or indirectly, a 20% or greater equity interest.

(3) "BIDCO" means a corporation that is licensed under [sections 1 through 56] to provide financial and management assistance to businesses.

(4) "Business" means a person who transacts or proposes to transact business on a regular and continual basis.

(5) "Close relative" means a parent, child, sibling, or spouse or a relative of the same degree through marriage.

(6) (a) "Control", if used with respect to a specific person, means the power to direct or cause the direction of, directly or indirectly through an intermediary, the management and policies of the person, through the ownership of voting interests, by contract other than a commercial contract for goods or nonmanagement services or by other means.

(b) A natural person is not considered to control another person solely because the natural person is a director, officer, or employee of the other person;

(c) A person is rebuttably presumed to control a corporation if the person directly or indirectly owns of record, holds beneficially with power to vote, or holds proxies with discretionary authority to vote 20% or more of the then-outstanding voting securities issued by a corporation.

(7) "Controlling person", if used with respect to a specific person, means a person who controls the specific person, directly or indirectly, through an intermediary.

(8) "Corporate name" means the name of a corporation in its articles of incorporation.

(9) "Department" means the department of administration, provided for in 2-15-1001.

(10) "Hold control" means to directly or indirectly own, of record or beneficially, 50% or more of a business's outstanding voting equity interests.

(11) "Insolvent" means not paying debts in the ordinary course of business, not paying debts as they become due, or liabilities exceeding assets.

(12) "Interests of the licensee" includes the interests of the shareholders of the licensee.

(13) "License" means a license issued under [sections 1 through 56].

(14) "Licensee" means a corporation that is licensed under [sections 1 through 56].

(15) "Officer" means:

(a) with respect to a corporation:

(i) a person appointed or designated as an officer of the corporation by or under applicable law or the corporation's articles of incorporation or bylaws; or

(ii) a person who performs with respect to the corporation the functions usually performed by an officer of a corporation; or

(b) with respect to a specific person other than a natural person or a corporation, a person who performs for the specific person the functions usually performed by an officer of a corporation for a corporation.

(16) "Order" means an approval, consent, authorization, exemption, denial, prohibition, or requirement applicable to a specific case and issued by the department, including a license condition and an agreement made by a person with the department under [sections 1 through 56].

(17) (a) "Person" means an individual, partnership, corporation, association, limited partnership, limited liability company, governmental subdivision, agency, or public or private organization of any character.

(b) When used with respect to acquiring control of or controlling a specific person, the term includes a combination of two or more persons acting in concert.

(18) "Principal shareholder" means a person who owns, directly or indirectly, of record or beneficially, securities representing 10% or more of the outstanding voting securities of a corporation.

(19) "Subject person" means:

(a) a controlling person, subsidiary, or affiliate of a licensee;

(b) a director, officer, or employee of a licensee or of a controlling person, subsidiary, or affiliate of a licensee;

(c) another person who participates in the conduct of the business of a licensee; or

(d) if used with respect to a licensee, a company or business of which the licensee holds control under [sections 23 through 25].

Section 3. Purposes. The purposes of [sections 1 through 56] are to:

(1) promote economic development by encouraging the formation of one or more BIDCOs to help meet the financing assistance and management assistance needs of businesses in the state;

(2) establish a system of licensing, regulation, and enforcement to enable a BIDCO to satisfy the eligibility requirements for participating in programs that further the purposes of the BIDCO;

(3) encourage capital sources to invest in and lend money to BIDCOs by providing for BIDCOs a system of licensing, regulation, and enforcement designed to prevent fraud, conflict of interest, and mismanagement and to promote competent management, accurate recordkeeping, and appropriate communication with shareholders; and

(4) safeguard the general reputation of BIDCOs in order to increase the confidence of prospective equity investors in and prospective debt sources for BIDCOs.

Section 4. Administration — rules — orders — declaratory rulings — judicial review. (1) The department shall administer [sections 1 through 56]. The department may issue orders and may adopt rules that, in the opinion of the department, are necessary to execute, enforce, and achieve the purposes of [sections 1 through 56].

(2) When the department issues an order or license under [sections 1 through 56], the department may impose conditions that the department determines are necessary to carry out the purposes of [sections 1 through 56].

(3) The department may provide to an interested person a declaratory ruling on a provision of [sections 1 through 56].

(4) A final order, decision, license, or other official act of the department under [sections 1 through 56] is subject to judicial review by a district court.

Section 5. Application procedure. When applying for a license, an applicant shall provide the information required by the department in the form required by the department. The information must include:

(1) information on the directors, officers, and controlling persons of the applicant;

(2) the applicant's business plan, including at least 10 years of detailed financial projections, and other relevant information; and

(3) any additional information considered relevant by the department.

Section 6. Requisite net worth. (1) In order to receive a license, an applicant shall demonstrate to the satisfaction of the department that the applicant has raised sufficient capital so that:

(a) the net worth of the BIDCO is expected to be adequate, in the context of its business plan, to support the BIDCO's management team and to achieve an appropriate spreading of the risk involved in the BIDCO's provisions of financing assistance; and

(b) the BIDCO has a reasonable promise of being a viable, ongoing BIDCO, satisfying the basic objectives of its business plan and achieving long-term financial success.

(2) The department may not establish a minimum net worth for a BIDCO under this section of less than $1.5 million.

Section 7. Criteria for directors, officers, and controlling persons. (1) A license may be issued only if the department determines that each director, officer, and controlling person of the applicant is:

(a) of good character and sound financial standing;

(b) competent to perform the director's, officer's, or controlling person's functions for the applicant; and

(c) when considered collectively with the other directors, officers, and controlling persons, adequate to manage the business of the applicant as a BIDCO.

(2) The department may determine that a director, officer, or controlling person of an applicant is not of good character. Bases that the department may use to make that determination include proof that the director, officer, or controlling person or a director or officer of a controlling person has:

(a) had an administrative sanction imposed under the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 through 3812, for an offense under 15 U.S.C. 645; or

(b) been convicted of or plead guilty or nolo contendere to a crime involving fraud or dishonesty, including a conviction for an offense under 15 U.S.C. 645.

Section 8. Determination of likelihood of future noncompliance. The department may determine that it is not reasonable to believe that an

applicant would comply with [sections 1 through 56] if licensed. Bases that the department may use to make that determination include proof that the applicant has been convicted of any felony or a misdemeanor involving fraud or dishonesty, including a conviction based on a guilty plea or plea of nolo contendere.

Section 9. Denial of application. If the department denies a license, the department shall provide the applicant with a written statement explaining the reasons for the denial.

Section 10. License — display — transfer or assignment — surrender. (1) A licensee shall post the license in a conspicuous place in the licensee's principal office.

(2) A licensee may not transfer or assign its license.

(3) Upon approval by a two-thirds vote of its board of directors and after complying with subsections (4) and (5), a licensee may apply to the department to have the department accept the surrender of the licensee's license. If the department determines that the requirements of subsections (4) and (5) have been satisfied, the department shall approve the application unless the department determines that the purpose of the application is to evade a current or prospective action by the department under [sections 41 through 50].

(4) Not less than 60 days before filing an application under subsection (3), a licensee shall notify all of its shareholders and creditors of its intention to file the application. Each creditor must be notified of the right to comment to the department. Each shareholder must be notified of the right to file with the licensee an objection to the proposed surrender of the license within the 60-day period and must be advised that, if the shareholder files an objection, the shareholder may also send a copy of the objection to the department.

(5) If shareholders representing 20% of the outstanding voting securities of the licensee file an objection with the licensee, the licensee may not proceed with the application unless the application is approved by a vote of shareholders representing two-thirds of the outstanding voting securities of the licensee.

Section 11. Corporate name and representation of status. (1) The corporate name of a licensee must include the word "BIDCO" or "Bidco" and must be distinguishable on the records of the department from the name of any other organized entity and from a reserved or registered name. A licensee may not transact business under a name other than its corporate name.

(2) Before being issued a license, a corporation that proposes to apply for a license or that applies for a license may perform, under a name that indicates that the corporation is a corporation licensed under [sections 1 through 56], the acts necessary to apply for and obtain a license and otherwise prepare to begin business as a licensee. The corporation may not represent that it is a licensee until after the license has been obtained.

Section 12. Misrepresentation. (1) Except as otherwise provided in [section 11], a person transacting business in the state who is not a licensee may not knowingly use a name or title that indicates that the person is a BIDCO or otherwise represent that the person is a BIDCO or a licensee.

(2) A licensee may not knowingly misrepresent the meaning or effect of its license.

Section 13. Board of directors. (1) The board of directors of a licensee must have at least seven directors.

(2) The board of directors shall hold at least one meeting each calendar quarter.

Section 14. Notice of officer and director changes. Within 30 days after each of the following events, the licensee shall notify the department in writing of the event and provide any additional information that the department requires:

(1) the death, resignation, or removal of a director or officer;

(2) the election of a director; or

(3) the appointment of an officer.

Section 15. Dividends. (1) A licensee may not pay or obligate itself to pay a cash dividend or dividend in kind to the licensee's shareholders unless the payment is consistent with a dividend policy that has been adopted by the licensee and approved by the department.

(2) When approving dividend policies under this section, the department shall consider the special characteristics of BIDCOs and the diverse range of dividend policies that are potentially appropriate for a BIDCO, without allowing the licensee to engage in unsafe or unsound acts that could threaten the viability of the licensee as an ongoing BIDCO by eroding its capital base.

(3) The department may at any time withdraw a previous approval of a dividend policy if the department determines that the withdrawal is necessary to prevent unsafe or unsound acts.

Section 16. Stock buyback. A licensee may not buy back or obligate itself to buy back a share of equity interest from a shareholder without the prior approval of the department.

Section 17. Offices. (1) A licensee shall maintain at least one office in this state.

(2) The location of each office of a licensee must be reasonably accessible to the public.

(3) A licensee shall post in a conspicuous place at each of the licensee's offices a sign that bears the corporate name of the licensee.

(4) If a licensee establishes, relocates, or closes an office, the licensee shall give the department written notice within 30 days of the event.

Section 18. Business of licensee — general powers. (1) A licensee may not engage in a business other than providing financing assistance and management assistance to businesses.

(2) In addition to the other powers provided by [sections 1 through 56] and the powers conferred on the licensee by the laws under which it is incorporated that are not inconsistent with [sections 1 through 56], a licensee may:

(a) borrow money and otherwise incur indebtedness for the licensee's purposes, including the issuing of corporate bonds, debentures, notes, and other evidence of indebtedness. A licensee's indebtedness may be secured or unsecured and may involve equity features, including provisions for conversion to stock and warrants to purchase stock.

(b) make contracts;

(c) incur and pay necessary and incidental operating expenses;

(d) purchase, receive, hold, lease, acquire, sell, convey, mortgage, pledge, or otherwise acquire or dispose of real or personal property and the rights and

privileges that are incidental and appurtenant to the transactions if the real or personal property is for the licensee's use in operating the licensee's business or if the real or personal property is acquired by the licensee from time to time in satisfaction of debts or the enforcement of obligations;

(e) make donations for charitable, educational, research, or similar purposes;

(f) provide financing assistance and management assistance to businesses and establish the terms and conditions of the assistance;

(g) implement a reasonable and prudent policy for conserving and investing the licensee's money before the money is used to provide financing assistance to businesses or to pay the expenses of the licensee; and

(h) exercise the incidental powers that are necessary, convenient, or reasonably related to providing financing assistance and management assistance to businesses.

Section 19. Financing assistance allowed — forms, terms, conditions. (1) The financing assistance that a licensee may provide includes:

(a) loans;

(b) purchase of debt instruments;

(c) straight equity investments including the purchase of common stock or preferred stock;

(d) debt with equity features, including warrants to purchase stock, convertible debentures, or receipt of a percentage of net income or sales;

(e) royalty-based financing;

(f) debt guarantees; and

(g) property leasing.

(2) A licensee may determine the form, terms, and conditions for the financing assistance that it will provide.

Section 20. Participation in government programs. (1) A licensee may participate in a federal, state, or local government program for which the licensee is eligible and that has as the program's function the provision or facilitation of financing assistance or management assistance to businesses.

(2) If a licensee participates in a program referred to in subsection (1), the licensee shall comply with the requirements of the program.

Section 21. Scope of management assistance. When providing management assistance, a licensee may provide management advice, management services, technical advice, and technical services.

Section 22. Limitation to purposes of business. Financing assistance and management assistance provided by a licensee to a business may be only for the business purposes of the business.

Section 23. Control of other businesses. (1) A licensee may not hold control of another business except as provided under [sections 24 and 25].

(2) In this section, "licensee" includes the licensee in concert with a director, officer, controlling person, or affiliate of the licensee.

Section 24. Control of assisted business. (1) A licensee that has provided financing assistance to a business may acquire and hold control of the

business to the extent that it becomes necessary to protect the licensee's interest as a creditor of or investor in the business.

(2) Unless the department approves a longer period, a licensee holding control of a business under this section shall divest itself of the control as soon as practicable or within 5 years after acquiring the interest, whichever is sooner.

(3) Within 30 days after a licensee exercises its authority to acquire and hold control of a business under this section, the licensee shall notify the department of the action. The notification must include the reasons why it is necessary for the licensee to acquire and hold control of the business and the length of time the licensee anticipates that it may be necessary to hold control of the business.

Section 25. Control of business providing financing assistance and management assistance or other businesses. (1) With the approval of the department, a licensee may acquire and hold control of another business that is engaged only in the business of providing financing assistance and management assistance to businesses.

(2) With the approval of the department, a licensee may acquire and hold control of a business not otherwise allowed under [sections 23 and 24] and this section.

(3) The department may not approve an application under subsection (2) unless the department determines that:

(a) the acquisition and control will not cause the amount of the licensee's investments in businesses covered by this section to exceed 15% of the assets of the licensee; and

(b) in the department's judgment the approval will promote the purposes of [sections 1 through 56].

(4) An approval under subsection (2) may not be for a period of more than 3 years unless the department determines that a longer period is necessary and consistent with the purposes of [sections 1 through 56].

Section 26. Business practice standards and reserve. (1) A licensee shall transact its business in a safe and sound manner and shall maintain itself in a safe and sound condition.

(2) Subject to subsection (3), in determining whether a licensee is transacting business in a safe and sound manner, the department may not consider the risk of providing financing assistance to a business, unless the department determines that the risk is great enough to demonstrate gross mismanagement when compared with the return that can be realistically expected.

(3) The department may:

(a) if the amount of the financing assistance is unduly large in relation to the total assets or the total shareholder equity of the licensee, determine that a licensee's financing assistance to a single business or group of affiliated businesses violates subsection (1) or constitutes an unsafe or unsound act;

(b) require that a licensee maintain a reserve in the amount of anticipated losses;

(c) require that a licensee have in effect a written financing assistance policy approved by the licensee's board of directors, including credit evaluation and other matters. The department may not require that a licensee adopt a financing assistance policy that contains standards that prevent the licensee

from exercising needed flexibility in evaluating and structuring financing assistance to businesses on an individual basis.

Section 27. Disclosure of potential conflict of interest — terms and conditions — examples. (1) A person shall disclose a potential conflict of interest that occurs in a transaction in the financing documents of the transaction or, if the transaction does not involve financing assistance, in another appropriate document if the person:

(a) participates in a decision of a licensee relating to the transaction; and

(b) knows of a potential conflict of interest involving the transaction.

(2) If a licensee provides financing assistance to a business or engages in another business transaction and if the assistance or transaction involves a potential conflict of interest, the terms and conditions under which the licensee provides the assistance or engages in the transaction may not be less favorable to the licensee than the terms and conditions that would be required by the licensee in the ordinary course of business if the assistance or transaction did not involve a potential conflict of interest.

(3) Licensee transactions that involve a potential conflict of interest include:

(a) providing financing assistance to a principal shareholder of the licensee, to a person controlled by a principal shareholder of the licensee, or to a director, officer, partner, relative, controlling person, or affiliate of a principal shareholder of the licensee;

(b) providing financing assistance to a business to which one or more of the following provides or plans to provide contemporaneous financing assistance:

(i) a principal shareholder of the licensee;

(ii) a director, officer, partner, relative, controlling person, or affiliate of a principal shareholder of a licensee;

(iii) an affiliate of a principal shareholder of a licensee; or

(iv) a person controlled by a principal shareholder of the licensee;

(c) providing financing assistance to a business that has or is expected to have a substantial business relationship with another business that has a director, officer, or controlling person who is also:

(i) a director, officer, or controlling person of the licensee; or

(ii) the spouse of a director, officer, or controlling person of the licensee;

(d) providing financing assistance to a business if the business or a director, officer, or controlling person of the business contemporaneously has lent or will lend money to an associate of the licensee;

(e) providing financing assistance for the purchase of property of an associate or principal shareholder of the licensee;

(f) selling or otherwise transferring an asset of the licensee to an associate or principal shareholder of the licensee.

(4) In this section, "relative" means a parent, child, sibling, spouse, grandparent, grandchild, nephew, niece, aunt, or uncle or a relative of the same degree through marriage.

Section 28. Acquiring control of licensee — application — determination. (1) A person may not acquire control of a licensee without the prior approval of the department.

(2) The department shall approve an application to acquire control of a licensee if the department determines that:

(a) the applicant and the directors and officers of the applicant are of good character and sound financial standing;

(b) it is reasonable to believe that the applicant will comply with [sections 1 through 56]; and

(c) the plans, if any, of the applicant to make a major change in the business, corporate structure, or management of the licensee are not detrimental to the safety and soundness of the licensee.

(3) If, after notice and a hearing, the department determines that the criteria for approval in subsection (2) have not been satisfied, the department shall deny the application.

(4) When the department is reviewing an application under this section, the department may determine that:

(a) an applicant or a director or officer of an applicant is not of good character if the person has been convicted of a crime involving fraud or dishonesty, including a conviction based on a guilty plea or plea of nolo contendere;

(b) an applicant's plan to make a major change in the management of a licensee is detrimental to the safety and soundness of the licensee if the plan provides for a person to become a director or officer of the licensee and the person has been convicted of a crime involving fraud or dishonesty, including a conviction based on a guilty plea or plea of nolo contendere.

(5) The conditions described in subsection (4) are not the only conditions upon which the department may determine that an applicant or a director or an officer of an applicant is not of good character or that an applicant's plan to make a major change in the management of a licensee is detrimental to the safety and soundness of the licensee.

Section 29. Merger — purchase — sale. (1) A licensee may not merge with another corporation unless the merger is approved by the department, and, if the licensee is not the surviving corporation, the surviving corporation is a licensee.

(2) A licensee may not purchase all or substantially all of the business of another person unless the purchase is approved by the department.

(3) A licensee may not sell all or substantially all of the licensee's business or of the business of an office of the licensee to another person unless the purchaser is a licensee and the sale is approved by the department.

(4) The department may not approve a merger, purchase, or sale under this section unless the department determines that:

(a) the merger, purchase, or sale will be safe and sound with respect to the acquiring licensee;

(b) upon consummation of the merger, purchase, or sale, it is reasonable to believe that the acquiring licensee will comply with [sections 1 through 56];

(c) the merger, purchase, or sale will not have a major detrimental effect on competition in the providing of financial assistance or management assistance to businesses or, if there will be a detrimental effect, the merger, purchase, or sale is necessary in the interests of the safety and soundness of a party to the merger, purchase, or sale or is otherwise, on balance, in the public interest.

Section 30. Investigations — powers — failure to comply or testify. (1) The department may investigate any matter, upon complaint or otherwise, if it appears that a person has engaged or offered to engage in any act or practice that is in violation of any provision of [sections 1 through 56] or any rule adopted or order issued by the department pursuant to [sections 1 through 56].

(2) The department may issue subpoenas to compel the attendance of any witnesses and the production of books, accounts, records, documents, and other evidence in any matter over which the department has jurisdiction, control, or supervision under [sections 1 through 56]. The department may administer an oath or affirmation to any person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by the subpoena, a judge of the district court of Lewis and Clark County or the county in which the licensee's premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of court shall issue the subpoena requiring the person to whom it is directed to appear at the time and place designated in the subpoena.

(4) If a person served with a court-ordered subpoena refuses to obey the subpoena or to give testimony or produce evidence as required by the subpoena, the department may proceed under the contempt provisions of Title 3, chapter 1, part 5.

(5) Failure to comply with the requirements of a court-ordered subpoena is punishable under 45-7-309.

Section 31. Fees — special revenue account. (1) A fee for filing an application with the department must be paid at the time the application is filed with the department and is not refundable. A person shall pay the department:

(a) $5,000 for filing an application for a license;

(b) $1,250 for filing an application for approval to acquire control of a licensee;

(c) $1,250 for filing an application for approval for a merger, purchase, or sale under [section 29]. If two or more applications relating to the same merger, purchase, or sale are filed, the fee for filing each application is the figure resulting from dividing $1,250 by the number of the applications.

(2) A licensee shall pay $2,500 each calendar year at a time established by the department.

(3) The department shall establish by rule a fee for the examination of a licensee or an affiliate or subsidiary of a licensee. The fee must be paid within 30 days after receiving a statement from the department. A fee established under this subsection must include:

(a) the proportionate part of the salaries and cost of employee benefits of the examiners while conducting the examination and while preparing the examination report; and

(b) the transportation costs and per diem costs of each examiner while away from the examiner's place of employment.

(4) Fees collected under this section must be deposited in the special revenue account established in subsection (5).

(5) There is a special revenue account to the credit of the department for use in administering [sections 1 through 56].

Section 32. Records and report requirements. (1) A licensee shall make and keep books, accounts, and other records in the form and manner, at the place, and for the period of time that the department establishes.

(2) A licensee, an affiliate of a licensee, and a subsidiary of a licensee shall file with the department the reports that the department requires. A report must be in the form and contain the information that the department requires.

(3) The department may require, by order, that a licensee include an asset on the licensee's books and records at a valuation that represents the current value of the asset.

(4) Not later than 90 days after the close of the calendar year, or a longer period if established by the department, a licensee shall file with the department an audit report containing:

(a) financial statements, including a balance sheet, statement of income or loss, statement of changes in capital accounts, and statement of changes in financial position for or as of the end of the calendar year, prepared with an audit by an independent certified public accountant in accordance with generally accepted accounting principles;

(b) a report, certificate, or opinion of the independent certified public accountant who performs the audit, stating that the financial statements were prepared in accordance with generally accepted accounting principles; and

(c) other information that the department may require.

Section 33. Records kept by others. (1) If a person other than a licensee makes or keeps all or part of the books, accounts, or other records of the licensee, [sections 1 through 56] apply to the person with respect to the books, accounts, and other records to the same extent as if the person were the licensee.

(2) If a person other than an affiliate or subsidiary of a licensee makes or keeps all or part of the books, accounts, or other records of the affiliate or subsidiary, [sections 1 through 56] apply to the person with respect to the books, accounts, and other records to the same extent as if the person were the affiliate or subsidiary.

(3) If the department considers it expedient, the department may require a licensee to obtain the approval of the department before permitting another person to make or keep all or part of the books, accounts, or other records of the licensee.

Section 34. Information on economic development effect. Each year, the department shall publish and provide to the legislature information on the effect of [sections 1 through 56] on promoting economic development in the state. The information must include aggregate statistics on:

(1) the number and dollar amount of the financing assistance made by licensees to businesses. The amounts must be organized into broad categories based on the types of industry involved. The North American Industry Classification System Manual may be used for the categories.

(2) the number and dollar amount of the financing assistance made by licensees to minority-owned businesses and to businesses owned by women; and

(3) estimates of the number of jobs created or retained.

Section 35. Examination of licensees and subsidiaries. (1) The department may at any time examine a licensee or an affiliate or subsidiary of a licensee. Licensure under [sections 1 through 56] constitutes implied consent to examination by the department.

(2) The department shall examine a licensee at least once during each calendar year.

(3) At the department's request, the following persons shall provide to the department the books, accounts, and records of a licensee or a licensee's affiliate or subsidiary and shall otherwise facilitate the department's examination of the licensee to the fullest extent possible:

(a) a director, officer, or employee of a licensee being examined by the department;

(b) a director, officer, or employee of an affiliate or subsidiary of a licensee being examined by the department;

(c) a person having custody of the books, accounts, or records of a licensee being examined by the department;

(d) a person having custody of the books, accounts, or records of an affiliate or subsidiary of a licensee being examined by the department.

(4) The department may retain a certified public accountant, attorney, appraiser, or other person to assist the department in the examination of a licensee or an affiliate or subsidiary of a licensee if the department determines that the assistance is necessary. Within 10 days after receipt of a statement from the department, the licensee being examined shall pay the fees of a person retained by the department under this subsection.

Section 36. Inspection or copying refusal. A person having custody of all or part of the books, accounts, or other records of a licensee may not knowingly refuse to allow the department, upon request, to inspect or make copies of the records.

Section 37. Restrictions on financing assistance. (1) A licensee may not directly or indirectly provide financing assistance to an associate of the licensee.

(2) A licensee may not directly or indirectly provide financing assistance to discharge or to free money for use in discharging part or all of an obligation to an associate of the licensee. This subsection does not apply to a transaction of an associate of a licensee in the normal course of the associate's business involving a line of credit or financing assistance with a term of not more than 5 years.

Section 38. Contemporaneous financing assistance. (1) If the terms on which a licensee provides financing assistance to a business are less favorable to the licensee than the terms on which an associate of the licensee provides financing assistance to the business, the licensee may not directly or indirectly provide the assistance to the business within 1 year before or after the associate provides assistance.

(2) If the financing assistance provided by the licensee's associate is of a different kind from the financing assistance provided by the licensee, the burden is on the licensee to prove that the terms on which the licensee provided the financing assistance were at least as favorable to the licensee as the terms on which the associate provided the assistance.

(3) This section does not apply:

(a) if the associate is a controlling person of the licensee and is also the only shareholder of the licensee;

(b) if the associate is an affiliate or subsidiary of the licensee; or

(c) to a transaction of an associate of a licensee in the normal course of the associate's business involving either a line of credit or financing assistance with a term of not more than 5 years.

Section 39. Compensation of associate. (1) An associate of a licensee may not directly or indirectly receive from a person to whom the licensee provides financing assistance:

(a) compensation in connection with the providing of the financing assistance; or

(b) other things of value for procuring, influencing, or attempting to procure or influence the licensee's action with respect to providing the financing assistance.

(2) This section does not apply to the receipt of fees by an associate of a licensee for bona fide services performed by the associate if:

(a) the associate, with the consent and knowledge of the person to whom the financing assistance is provided, is designated by the licensee to perform the services;

(b) the services are appropriate and necessary under the circumstances;

(c) the fees for the services are approved as reasonable by the licensee; and

(d) the fees for the services are collected by the licensee, and the licensee pays the associate.

Section 40. Exemptions. (1) If the department finds that the exemption is in the public interest and that the regulation of the person or transaction is not necessary for the purposes of [sections 1 through 56], the department may exempt a person or transaction from [sections 37 through 39] for the purposes of a particular transaction.

(2) The exemption may be unconditional or upon specified terms and conditions and for specified periods.

Section 41. Injunction — appointment of receiver. (1) If in the opinion of the department a person is using, has used, or is about to use any method, act, or practice that violates any provision of [sections 1 through 56] or any rule adopted or order issued by the department pursuant to [sections 1 through 56], the department, upon determining that proceeding would be in the public interest, may bring an action in the name of the state to restrain by temporary or permanent injunction or temporary restraining order the use of the unlawful method, act, or practice.

(2) The notice for an action pursuant to subsection (1) must state generally the relief sought and must be served at least 20 days before the hearing of the action in which the relief sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by 27-19-315.

(3) An action under this section may be brought in the district court of Lewis and Clark County.

(4) (a) A district court may issue a temporary or a permanent injunction or a temporary restraining order to restrain and prevent violations of [sections 1 through 56], and an injunction must be issued without bond to the department.

(b) If the department is successful in obtaining an injunction or a restraining order under this section, the department is entitled to reasonable attorney fees and costs.

(5) (a) In addition to all other means provided by law for the enforcement of a restraining order or an injunction, the district court of Lewis and Clark County may impound and appoint a receiver for the property and business of the defendant, including books, accounts, records, and documents pertaining to the property or business, or as much of the property or business as the court considers reasonably necessary to prevent violations of [sections 1 through 56].

(b) The receiver, when appointed and qualified, has the powers and duties conferred by the court that may include custody, collection, administration, winding up of business, and liquidation of the property and business.

Section 42. Cease and desist orders. (1) If it appears to the department that a person is engaged in or is about to engage in any act or practice constituting a violation of any provision of [sections 1 through 56] or any rule adopted or order issued by the department pursuant to [sections 1 through 56], the department may issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for hearing. The department may issue a temporary order pending the hearing that:

(a) remains in effect until 10 days after the hearings examiner issues proposed findings of fact and conclusions of law; or

(b) becomes final if the person to whom notice is addressed does not request a hearing within 10 days after receipt of the notice.

(2) A violation of an order issued pursuant to this section is subject to the penalty provisions of [sections 1 through 56].

Section 43. Penalties — license suspension and revocation — restitution. (1) If, after providing a 10-day written notice that includes a statement of alleged violations and a notice of an opportunity for a hearing as provided in Title 2, chapter 4, the department finds that any licensee or unlicensed person or any officer, director, partner, trustee, employee, or representative of the licensee or unlicensed person has violated any of the provisions of [sections 1 through 56], has failed to comply with the rules or orders adopted by the department, has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a license, the department may:

(a) impose a civil penalty not to exceed $1,000 for each violation or, in the case of a continuing violation, $1,000 a day;

(b) issue an order revoking or suspending the right of the licensee or person, directly or through an officer, director, partner, trustee, employee, or representative, to do business in this state as a licensee or to engage in the business of a BIDCO; or

(c) issue an order requiring restitution to borrowers and reimbursement of the department's cost in bringing the administrative action.

(2) All notices, hearing schedules, and orders must be mailed to the licensee or person by certified mail to the address for which the license was issued or, in the case of an unlicensed business, to the last-known address of record.

(3) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

(4) (a) The department may reinstate any suspended or revoked license if there is not a fact or condition existing at the time of reinstatement that would have justified the department refusing to originally issue the license.

(b) If a license has been revoked for cause, an application may not be made for issuance of a new license or the reinstatement of a revoked license for a period of 6 months from the date of revocation.

(5) All civil penalties collected under this section must be deposited in the general fund.

Section 44. Removal and suspension orders for certain acts. (1) The department may issue an order removing a subject person of a licensee from office with the licensee and prohibiting the subject person from further participation in any manner in the conduct of the business of the licensee if the department determines after notice and an opportunity for a hearing that:

(a) the person has violated [sections 1 through 56] or another applicable law, has engaged in an unsafe or unsound act with respect to the business of the licensee, or has engaged in an act that constitutes a breach of the person's fiduciary duty;

(b) the act, violation, or breach of fiduciary duty has caused or is likely to cause substantial financial loss or other damage to the licensee or has seriously prejudiced or is likely to seriously prejudice the interest of the licensee or the person has received financial gain by reason of the act, violation, or breach of fiduciary duty; and

(c) the act, violation, or breach of fiduciary duty involves dishonesty on the part of the person, demonstrates the person's gross negligence with respect to the business of the licensee, or demonstrates the person's wilfull disregard for the safety and soundness of the licensee.

(2) The department may issue an order removing a subject person of the licensee from office with the licensee and prohibiting the subject person from further participation in any manner in the conduct of the business of the licensee except with the prior consent of the department if, after notice and a hearing, the department determines that, by engaging or participating in an act with respect to a financial or other business institution that resulted in substantial financial loss or other damage, the subject person of a licensee demonstrated:

(a) dishonesty or a wilfull or continuing disregard for the safety and soundness of the financial or other business institution; and

(b) unfitness to continue as a subject person of the licensee or to participate in conducting the business of the licensee.

(3) The department may immediately issue an order suspending a subject person of a licensee from the person's office with the licensee and prohibiting the subject person from further participation in any manner in the conduct of the business of the licensee except with the consent of the department if the department determines that:

(a) the factors in subsection (1) or (2) are true with respect to the person; and

(b) an immediate order is necessary to protect the interests of the licensee or the public.

(4) In this section, when used with respect to a licensee, "office" means the position of director, officer, or employee of the licensee or of an affiliate or subsidiary of the licensee.

Section 45. Removal and suspension orders in cases of indictment or conviction. (1) If the department determines that a subject person of a licensee has been indicted by a grand jury or has been bound over for trial by a court for a crime involving dishonesty or breach of trust and that the continuation of the person as a subject person of the licensee may threaten the interests of the licensee or may threaten to impair public confidence in the licensee, the department may issue an order suspending the person from the person's office with the licensee and prohibiting the person from further participation in any manner in the conduct of the business of the licensee until the person's charge has been disposed of.

(2) If the department determines that a subject person or former subject person of a licensee to whom an order was issued under subsection (1) or another subject person of a licensee has been convicted of a crime involving dishonesty or breach of trust and that the continuation or resumption of the person as a subject person of the licensee may threaten the interests of the licensee, the department may issue an order suspending or removing the person from the person's office with the licensee and prohibiting the person from further participation in any manner in the conduct of the business of the licensee except with the prior consent of the department.

(3) The failure to convict a subject person who is charged with a crime involving dishonesty or breach of trust does not prevent the department from issuing an order to the person under another provision of [sections 1 through 56].

(4) In this section, "office" has the meaning provided in [section 44].

Section 46. Hearings on orders — recision and modification. (1) Within 30 days after an order is issued under [section 44(3) or 45], the licensee or subject person of a licensee to whom the order is directed may file with the department an application for a hearing on the order.

(2) After the hearing, the department shall affirm, modify, or rescind the order.

(3) A person to whom an order is issued under this section may apply to the department to modify or rescind the order. The department may not modify or rescind the order unless the department determines that it is in the public interest to do so and that it is reasonable to believe that the person will comply with [sections 1 through 56].

(4) The right of a licensee or subject person to whom an order is issued under [section 44(3) or 45] to an interlocutory review of the order is not affected by the failure of the licensee or subject person to apply to the department for a hearing on the order issued under this section.

Section 47. Disclosure to shareholders. If the department determines that the results of a department communication or order addressed to the licensee or to a subject person of the licensee should be disclosed to the licensee's shareholders, the department may require the licensee to make the disclosure in the form and manner determined by the department.

Section 48. Meetings of directors and shareholders called by department. (1) If the department considers it expedient, the department may call a meeting of the board of directors or of the shareholders of a licensee.

(2) The department shall send notification of the time, place, and purpose of the meeting not less than 5 days before the meeting to each director for a directors' meeting or to each shareholder for a shareholders' meeting, either by personal service or by certified mail sent to the person's last-known address as shown in the records of the department.

(3) The licensee shall pay the notice and meeting expenses for a meeting of directors or shareholders called under this section.

Section 49. Orders restricting additional financial assistance. (1) The department may issue an order directing a licensee to refrain from providing additional financing assistance to businesses if, in the opinion of the department, the order is necessary to protect the interests of the licensee or the public and if, after notice and an opportunity for a hearing, the department determines that:

(a) the licensee or a controlling person, subsidiary affiliate of the licensee has violated [sections 1 through 56] or another applicable law;

(b) the licensee is conducting the licensee's business in an unsafe and unsound manner;

(c) the licensee is in a condition that makes it unsafe or unsound for the licensee to transact business;

(d) the licensee has ceased to transact business as a BIDCO;

(e) the licensee is insolvent;

(f) the licensee has suspended payment of the licensee's obligations, has made an assignment for the benefit of the licensee's creditors, or has admitted in writing the licensee's inability to pay the licensee's debts as the debts become due;

(g) the licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under a bankruptcy, reorganization, insolvency, or moratorium law, an involuntary petition in bankruptcy against the person has not been dismissed in 90 days, or a person has applied for the relief under the law against a licensee and the relief has been granted or the licensee has by an affirmative act approved of or consented to the action; or

(h) a fact or condition exists that would have been grounds for denying the licensee a license if the fact or condition had existed when the licensee applied for the license.

(2) If the department determines that a factor in subsection (1) is true with respect to a licensee and that it is necessary for the protection of the interests of the licensee or the public that the department immediately prevent the licensee from providing additional financing assistance to businesses, the department may issue the order without a hearing.

(3) If the department consents, a licensee that has been the subject of an order under subsection (1) or (2) may resume providing financing assistance to businesses under the conditions that the department prescribes.

(4) A person to whom an order is issued under subsection (1) or (2) may apply to the department to modify or rescind the order. The department may not grant

the application unless the department determines that it is in the interest of the public to do so and that it is reasonable to believe that the person will comply with [sections 1 through 56].

Section 50. Taking possession of licensee. (1) If the department finds that a factor in [section 49] is true with respect to a licensee and that it is necessary for the protection of the interests of the licensee or of the public, the department may take immediate possession of the property and business of the licensee and appoint a conservator for the licensee.

(2) The department may appoint as conservator a competent and disinterested person. The department must be reimbursed out of the assets of the conservatorship for all money expended by the department in connection with the conservatorship. The expenses of the conservatorship paid for by the department must be paid out of the assets of the licensee. Payment of the expenses of the department takes priority over other payments from the assets and must be fully paid before a final distribution is made.

(3) Under the direction of the department, the conservator shall take possession of the books, records, and assets of the licensee and shall take other action that is necessary to conserve the assets of the licensee or to ensure payment of obligations of the licensee pending further disposition of the licensee's business.

(4) At an appropriate time, the department may terminate the conservatorship and permit the licensee to resume the transaction of the licensee's business subject to the terms, conditions, restrictions, and limitations that the department prescribes.

Section 51. Appeals. A final order of an administrative proceeding under [sections 42 through 45, 49, or 50] may be appealed to the district court.

Section 52. Application of law under which licensee incorporated. Except as otherwise provided in this section, the provisions of the law under which a licensee is incorporated apply to the licensee. If a provision of the licensee's incorporating law conflicts with a provision of [sections 1 through 56], [sections 1 through 56] control.

Section 53. Associates. (1) For purposes of [sections 27 and 37 through 39], a person who is an associate within 6 months before or after a licensee provides financing assistance must be considered to be an associate as of the date the licensee provides the assistance.

(2) If a licensee, in order to protect the licensee's interests, designates a person to serve as a director of, officer of, or in a management capacity of a business to which the licensee provides financial assistance, the person may not, on that account, be considered to be an associate under [sections 27 and 37 through 39]. This subsection does not apply if the person has, directly or indirectly, another financial interest in the business or if the person, at any time before the licensee provides the financing assistance, served as a director of, officer of, or in another capacity in the management of the business for a period of 30 days or more.

Section 54. Other licenses. A corporation that is licensed under [sections 1 through 56] may apply for and be issued a license under another law of the state, the federal government, or another state unless the transaction of business by the corporation as a licensee under the other license would violate [sections 1 through 56] or would be contrary to the purposes of [sections 1 through 56].

Section 55. Authority of department. The provisions of [sections 1 through 56] relating to conflicts of interest do not limit the authority of the department to determine that an act involves a conflict of interest and is therefore an unsafe or unsound act.

Section 56. Confidentiality. (1) The director and other employees of the department may not disclose information acquired by them in the discharge of their duties under [sections 1 through 56] except to the extent that disclosure of the information is required by law, other than the public records provisions of Title 2, chapter 6, or is required by court order.

(2) Notwithstanding subsection (1), the department may disclose information that is confidential under subsection (1) if the department determines that disclosure of the information is necessary to promote the public interest. This subsection does not authorize the disclosure of information acquired by the department in the course of an examination of a licensee.

(3) A BIDCO may provide to a current or prospective creditor or shareholder of the BIDCO a copy of an examination report on the BIDCO made by the department under [sections 1 through 56].

Section 57. Codification instruction. [Sections 1 through 56] are intended to be codified as an integral part of Title 32, and the provisions of Title 32 apply to [sections 1 through 56].

Approved May 3, 2007

CHAPTER NO. 412

[SB 324]

AN ACT REQUIRING AN AGENCY THAT REQUIRES AN AQUIFER TEST TO FORWARD COPIES OF THE TEST RESULTS TO THE BUREAU OF MINES AND GEOLOGY; REQUIRING A WELL DRILLER TO DESIGNATE THE LOCATION OF THE WELL BEING DRILLED USING TWO METHODS; DEFINING "AQUIFER TEST"; AND AMENDING SECTIONS 85-2-501 AND 85-2-516, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-501, MCA, is amended to read:

"85-2-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Aquifer" means any underground geological structure or formation ~~which~~ *that* is capable of yielding water or is capable of recharge.

(2) "Aquifer test" means stressing an aquifer by removing or adding water at a known rate or changing the pressure by a known quantity and measuring the resultant change in hydraulic head for the purpose of determining the aquifer's hydraulic properties near the tested well.

~~(2)~~*(3)* "Bureau" means the Montana state bureau of mines and geology provided for in 20-25-211.

~~(3)~~*(4)* "Ground water" means any water that is beneath the ground surface.

~~(4)~~*(5)* "Ground water area" means an area ~~which~~ *that*, as nearly as known facts permit, may be designated so as to enclose a single and distinct body of ground water, which ~~shall~~ *must* be described horizontally by surface description

in all cases and which may be limited vertically by describing known geological formations ~~should~~ *if* conditions dictate ~~this~~ *vertical limits* to be desirable."

Section 2. Section 85-2-516, MCA, is amended to read:

"85-2-516. Well logs. (1) Within 60 days after any well is completed, the driller shall file with the bureau a well log report.

(2) Except as provided in subsection (3), the well log report must be filed on a form specified by the department in consultation with the board of water well contractors provided for in 2-15-3307 and the bureau. *The driller shall provide a location for the well using at least two methods as specified on the form.*

(3) The bureau may allow submission of the well log report in an electronic format that is in accordance with the form specified as provided in subsection (2).

(4) The bureau may return the report for refiling if it is incomplete or incorrect."

Section 3. Aquifer tests. (1) Aquifer tests required by a state agency must be forwarded by the agency to the bureau.

(2) Except as provided in subsection (3), the aquifer test report must be filed on a form specified by the department in consultation with the department of environmental quality and the bureau.

(3) The bureau may allow submission of an aquifer test report in an electronic format if it meets the requirements for the form provided for in subsection (2).

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 85, chapter 2, part 5, and the provisions of Title 85, chapter 2, part 5, apply to [section 3].

Approved May 3, 2007

CHAPTER NO. 413

[SB 350]

AN ACT CREATING THE OFFENSE OF CRIMINAL DESTRUCTION OF OR TAMPERING WITH A COMMUNICATION DEVICE; AND PROVIDING PENALTIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Criminal destruction of or tampering with communication device. (1) A person commits the offense of criminal destruction of or tampering with a communication device if the person purposely or knowingly destroys or tampers with a telephone or other communication device to obstruct, prevent, or interfere with:

(a) the report to any law enforcement agency of any actual criminal offense;

(b) the report to any law enforcement agency of any actual bodily injury or property damage; or

(c) a request made to any governmental agency or to any hospital, doctor, or other medical provider for necessary ambulance or emergency medical assistance.

(2) A person destroys or tampers with a communication device by making the communication device unusable or inoperable, by interrupting its use, or by making it inaccessible.

(3) A person convicted of the offense of criminal destruction of or tampering with a communication device shall be fined an amount not to exceed $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 6, part 1, and the provisions of Title 45, chapter 6, part 1, apply to [section 1].

Approved May 3, 2007

CHAPTER NO. 414

[SB 354]

AN ACT DEFINING AND CLARIFYING THE OPERATION OF THE MEDICAID REIMBURSEMENT CONVERSION FACTOR FOR PHYSICIANS; AND ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT POLICY ADJUSTERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) "Conversion factor" means the average of the conversion factors used by the top five insurers or third-party administrators providing disability insurance to the most beneficiaries within the state in January 2007 who use the resource-based relative value scale to determine fees for covered services. This January 2007 conversion factor is applicable for state fiscal years 2008, 2009, 2010, 2011, 2012, and 2013. In state fiscal year 2014 and for each state fiscal year thereafter, the conversion factor is the average of the conversion factors used by the top five insurers or third-party administrators providing disability insurance to the most beneficiaries within the state who use the resource-based relative value scale to determine fees for covered services.

(2) "Department" means the department of public health and human services.

(3) "Medicaid" means the Montana medical assistance program established under Title 53, chapter 6.

(4) "Physician" has the meaning provided in 37-3-102.

(5) "Policy adjuster" means a factor by which the fee determined under [section 2] is multiplied to increase the fee paid by medicaid for certain categories of services.

(6) "Relative value unit" means a numerical value assigned in the resource-based relative value scale to each procedure code used to bill for services provided by a physician.

(7) "Resource-based relative value scale" means the medicare resource-based relative value scale contained in the physician's medicare fee schedule adopted by the centers for medicare and medicaid services of the U.S. department of health and human services.

Section 2. Physician services reimbursement. (1) The fee for a covered service provided by a physician under the medicaid program is determined by multiplying a percentage of the conversion factor times the relative value unit for that service times any applicable policy adjusters.

(2) (a) For state fiscal years 2008 and 2009, the percentage of the conversion factor will be determined by the appropriation of the 2007 legislature for physician reimbursement.

(b) For state fiscal year 2010, the 2009 percentage of the conversion factor will be increased by a minimum of 6%.

(c) For state fiscal year 2011, the 2010 percentage of the conversion factor will be increased by a minimum of 6%.

(d) For state fiscal year 2012, the 2011 percentage of the conversion factor will be increased by a minimum of 6%.

(e) For state fiscal year 2013, the 2012 percentage of the conversion factor will be increased by a minimum of 6%.

(f) For state fiscal year 2014 and for each state fiscal year thereafter, the percentage of the conversion factor will be equivalent, at a minimum, to state fiscal year 2013.

Section 3. Providing conversion factors to department. The top five insurers or third-party administrators shall provide their standard conversion factors to the department, which may be used only for the purpose of determining average conversion rates and which must remain confidential.

Section 4. Rulemaking — policy adjusters. The department may by rule adopt policy adjusters for certain categories of service. A policy adjuster may not be less than 1.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [sections 1 through 4].

Approved May 3, 2007

CHAPTER NO. 415

[SB 372]

AN ACT CREATING A RESIDENT WOLF LICENSE AND A NONRESIDENT WOLF LICENSE; PROVIDING FOR THE ANNUAL AUCTION OR LOTTERY OF A WOLF LICENSE AND A GRIZZLY BEAR LICENSE; ESTABLISHING RESTITUTION FOR THE ILLEGAL TAKING, KILLING, OR POSSESSION OF A WOLF; PROVIDING THAT A PERSON WHO IS RESPONSIBLE FOR THE DEATH OF A WOLF MAY NOT WASTE THE ANIMAL BY ABANDONING THE HEAD OR HIDE IN THE FIELD, EXCEPT A WOLF THAT IS KILLED WHILE ATTACKING, KILLING, OR THREATENING TO KILL A PERSON OR LIVESTOCK; AMENDING SECTIONS 87-1-111 AND 87-3-102, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Class E-1—resident wolf license. Except as otherwise provided in this chapter, a person who is a resident, as defined in 87-2-102, and who is 12 years of age or older or who will turn 12 years old before or during the

season for which the license is issued, upon payment of a fee of $19, may receive a Class E-1 license that entitles a holder who is 12 years of age or older to hunt a wolf and possess the carcass of the wolf as authorized by commission rules.

Section 2. Class E-2—nonresident wolf license. Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of $350, may receive a Class E-2 license that entitles a holder who is 12 years of age or older to hunt a wolf and possess the carcass of the wolf as authorized by commission rules.

Section 3. Auction or lottery of wolf license. (1) The commission may issue one wolf license each year through a competitive auction or lottery. The commission shall promulgate rules for the use of the license and conduct of the auction or lottery. A wildlife conservation organization may be authorized to conduct the license auction or lottery, in which case the authorized organization may retain up to 10% of the proceeds of the sale to cover reasonable auction or lottery expenses.

(2) All proceeds remaining from the auction or lottery, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the management of wolves.

Section 4. Auction or lottery of grizzly bear license. (1) The commission may issue one grizzly bear license each year through a competitive auction or lottery. The commission shall promulgate rules for the use of the license and conduct of the auction or lottery. A wildlife conservation organization may be authorized to conduct the license auction or lottery, in which case the authorized organization may retain up to 10% of the proceeds of the sale to cover reasonable auction or lottery expenses.

(2) All proceeds remaining from the auction or lottery, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the management of grizzly bears.

Section 5. Section 87-1-111, MCA, is amended to read:

"87-1-111. Restitution for illegal killing or possession of certain wildlife. (1) Except as provided in 87-1-115 and in addition to other penalties provided by law, a person convicted or forfeiting bond or bail upon a charge of the illegal taking, killing, or possession of a wild bird, mammal, or fish listed in this section shall reimburse the state for each bird, mammal, or fish according to the following schedule:

(a) bighorn sheep and endangered species, $2,000;

(b) elk, caribou, bald eagle, black bear, *wolf,* and moose, $1,000;

(c) mountain lion, lynx, wolverine, buffalo, golden eagle, osprey, falcon, antlered deer as defined by commission regulation, bull trout longer than 18 inches, and adult buck antelope as defined by commission regulation, $500;

(d) deer not included in subsection (1)(c), antelope not included in subsection (1)(c), fisher, raptor not included in subsection (1)(c), swan, bobcat, white sturgeon, river-dwelling grayling, and paddlefish, $300;

(e) fur-bearing animals, as defined in 87-2-101 and not listed in subsection (1)(c) or (1)(d), $100;

(f) game bird (except swan), $25;

(g) game fish, $10.

(2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-512, is not required for an order of restitution under this section."

Section 6. Section 87-3-102, MCA, is amended to read:

"87-3-102. Waste of fish or game. (1) A person who is responsible for the death of a mountain lion *or wolf, except as provided in 87-3-130,* commits the offense of waste of game if the person abandons the head or hide in the field.

(2) A person who is responsible for the death of a grizzly bear commits the offense of waste of game if the person abandons the head or hide or any parts required by department or commission regulation for scientific purposes. All parts of a grizzly bear required by department or commission regulation for scientific purposes must be delivered to an officer or employee of the department for inspection as soon as possible after removal, and the department shall return to the licensee any bone structure and skull within 1 year upon written request. The hide must be returned immediately.

(3) A person responsible for the death of any game animal, except a mountain lion *or wolf*, commits the offense of waste of game if the person purposely or knowingly:

(a) detaches or removes from the carcass only the head, hide, antlers, tusks, or teeth or any or all of these parts;

(b) wastes any part of any game animal, game bird, or game fish suitable for food by transporting, hanging, or storing the carcass in a manner that renders it unfit for human consumption; or

(c) abandons in the field the carcass of any game animal or any portion of the carcass suitable for food.

(4) A person in possession of a game animal or game animal parts, a game bird, or a game fish suitable for food commits the offense of waste of game if the person purposely or knowingly:

(a) transports, stores, or hangs the animal, bird, or fish in a manner that renders it unfit for human consumption; or

(b) disposes of or abandons any portion of a game animal, game bird, or game fish that is suitable for food.

(5) For the purposes of this section, the meat of a grizzly *bear* or a black bear that is found to be infected with trichinosis is not considered to be suitable for food.

(6) A person convicted of waste of game may be fined not less than $50 or more than $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. If the court imposes forfeiture of the person's license and privilege to hunt, fish, or trap, the department shall notify the person of the forfeiture and loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days of notification."

Section 7. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 87, chapter 2, part 5, and the provisions of Title 87, chapter 2, part 5, apply to [sections 1 and 2].

(2) [Sections 3 and 4] are intended to be codified as an integral part of Title 87, chapter 2, part 8, and the provisions of Title 87, chapter 2, part 8, apply to [sections 3 and 4].

Section 8. Effective dates — contingencies. (1) Except as provided in subsections (2) and (3), [this act] is effective on passage and approval.

(2) [Sections 1 through 3, 5, and 6] are effective upon notification by the U.S. fish and wildlife service to the department of fish, wildlife, and parks that the wolf has been formally removed from the federal threatened or endangered species list and upon removal of the wolf from the state endangered species list by the department of fish, wildlife, and parks.

(3) [Section 4] is effective upon notification by the U.S. fish and wildlife service to the department of fish, wildlife, and parks that the grizzly bear has been formally removed from the federal threatened or endangered species list.

Approved May 3, 2007

CHAPTER NO. 416

[SB 376]

AN ACT PROVIDING THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MAY ENTER INTO A CONTRACT WITH THE UNITED STATES FOR WATER HELD IN FEDERAL RESERVOIRS AS A MEANS OF PROTECTING THE STATE'S INTEREST IN THOSE WATERS; PROVIDING THAT THE STATE MAY CONTRACT FOR WATER FROM EXISTING FEDERAL RESERVOIRS IF WHEN THE WATER IS PUT TO BENEFICIAL USE, IT IS USED WITHIN THE BASIN IN WHICH THE RESERVOIR IS LOCATED; LIMITING THE AMOUNT OF WATER THAT CAN BE LEASED FROM THE STATE AS THE RESULT OF CONTRACTS FOR WATER FROM FEDERAL RESERVOIRS WHEN THE WATER WILL BE PUT TO BENEFICIAL USE IN A BASIN OTHER THAN THE BASIN WHERE THE FEDERAL RESERVOIR IS LOCATED; PROVIDING THAT THERE IS A LIMIT TO THE AMOUNT OF WATER FOR WHICH THE DEPARTMENT MAY CONTRACT FROM ANY FEDERAL RESERVOIR; AMENDING SECTION 85-2-141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-141, MCA, is amended to read:

"85-2-141. Water leasing program. (1) There is a water leasing program administered by the department on behalf of the state of Montana.

(2) The department may acquire rights to water needed for leasing under this program*:*

(a) through appropriation of water in its own name*;* ~~or~~

(b) by agreement with or purchase from another holder of water rights*; or*

(c) by contract with the United States for water held in federal reservoirs as a means of protecting the state's interest in those waters.

(3) Water for leasing under the water leasing program must be obtained from the following sources:

(a) any existing or future reservoir in a basin concerning which a temporary preliminary decree, a preliminary decree under 85-2-231, or a final decree under 85-2-234 has been entered;

(b) Fort Peck*, Tiber, Canyon Ferry, Hungry Horse, Koocanusa, or Yellowtail* reservoir, if ~~an agreement~~ *a contract* between the department and the federal government concerning the acquisition of water ~~and the sharing of revenue with the state~~ is in effect; *and*

~~(c) Tiber, Canyon Ferry, Hungry Horse, or Yellowtail reservoir if and as long as there is an agreement between the department and the federal government concerning the acquisition of water and sharing of revenue with the state from one or more of these reservoirs; and~~

~~(d)~~*(c)* any other existing or future federal reservoir:

(i) located in a basin concerning which a temporary preliminary decree, a preliminary decree under 85-2-231, or a final decree under 85-2-234 has been entered; and

(ii) for which and for so long as there is ~~an agreement~~ *a contract* between the department and the federal government concerning the acquisition of water ~~and the sharing of revenue with the state~~.

~~(4) Water may be leased for any beneficial use. The amount of water that can be leased under this program for all beneficial uses may not exceed 50,000 acre-feet.~~

(4) (a) Subject to subsections (4)(b) and (4)(c), the department may lease up to 1 million acre-feet of water from the reservoirs identified in subsection (3)(b) to water users for beneficial uses in Montana.

(b) The department may lease up to 50,000 acre-feet of water from the reservoirs identified in subsection (3)(b) to water users for beneficial uses outside Montana.

(c) The total amount of water leased under this subsection (4) may not exceed 1 million acre-feet.

~~(5)~~*(5)* The term of any lease may not exceed 50 years. A term may be extended up to another 50 years if the department again determines the desirability of leasing by applying the considerations in subsection ~~(7)~~ *(7)*. In making a redetermination, the department may require the completion of an environmental impact statement in accordance with subsection ~~(6)~~ *(6)*.

~~(6)~~*(6)* The department shall require the completion of an environmental impact statement under the provisions of Title 75, chapter 1, for lease applications that would result in the consumption of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more of water and for any other application for which an environmental impact statement is required by law. The department shall require the completion of an environmental impact statement whenever the cumulative effect of more than one application for a lease would constitute a probable significant environmental impact.

~~(7)~~*(7)* Upon application by a person to lease water, the department shall make an initial determination of whether it is desirable for the department to lease water to the applicant. The determination of desirability must be made solely on the following considerations:

(a) the content of the environmental impact statement, if required;

(b) whether there is sufficient water available under the water leasing program; and

(c) whether the criteria, except as to legislative approval, set forth in 85-2-311 have been satisfied.

~~(8)~~*(8)* The department shall for any *lease* agreement require commercially reasonable terms and conditions, which may include the requirement that up to 25% of the water to be leased be made available to a potential user for any beneficial use upon payment by the user of the costs of tapping into and removing water from the applicant's project. The department may differentiate in pricing, depending on the proposed beneficial use of the water.

~~(9)~~*(9)* The lease of water or the use of water under a lease does not constitute a permit, as provided in 85-2-102, and does not establish a right to appropriate water within the meaning of Title 85, chapter 2, part 3.

~~(10)~~*(10)* For purposes of the water leasing program established in this section, it is the intent of the legislature that the state act as a proprietor."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2007

CHAPTER NO. 417

[SB 379]

AN ACT CLARIFYING WHEN THE OFFICE OF STATE PUBLIC DEFENDER MAY BE APPOINTED AS COUNSEL IN POSTCONVICTION PROCEEDINGS; AMENDING SECTION 46-8-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-8-104, MCA, is amended to read:

"46-8-104. Assignment of counsel after trial — *definition.* *(1)* Any court of record may order the office of state public defender, provided for in 47-1-201, to assign counsel, subject to the provisions of the Montana Public Defender Act, Title 47, chapter 1, to ~~defend~~ *represent* any ~~defendant,~~ petitioner~~,~~ or appellant in any postconviction ~~criminal~~ action or proceeding *brought under Title 46, chapter 21,* if the ~~defendant,~~ petitioner~~,~~ or appellant ~~desires~~ *is eligible for the appointment of* counsel and ~~is unable to employ counsel~~*:*

(a) the district court determines that a hearing on the petition is required pursuant to 46-21-201;

(b) the state public defender's office requests appointment of a public defender and demonstrates good cause for the appointment;

(c) a statute specifically mandates the appointment of counsel;

(d) the petitioner or appellant is clearly entitled to counsel under either the United States or Montana constitution; or

(e) extraordinary circumstances exist that require the appointment of counsel to prevent a miscarriage of justice.

(2) An appointment of counsel made in the interests of justice, as provided in 46-21-201(2), may be made only when extraordinary circumstances exist.

(3) As used in this section, "extraordinary circumstances" includes those in which the petitioner or appellant does not have access to legal materials or has a physical or mental condition or limitation that prevents the petitioner or appellant from reading or writing English."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2007

CHAPTER NO. 418

[SB 403]

AN ACT INCREASING THE AMOUNT OF LAND INCLUDED IN THE DISABLED OR DECEASED VETERANS' RESIDENTIAL PROPERTY TAX EXEMPTION TO LAND NOT TO EXCEED 5 ACRES FROM A LOT; AMENDING SECTION 15-6-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-211, MCA, is amended to read:

"15-6-211. Certain disabled or deceased veterans' residences exempt. (1) A residence~~, including the lot~~ *and appurtenant land, not to exceed 5 acres,* on which it is built~~,~~ that is owned and occupied by a veteran or a veteran's spouse is exempt from property taxation if the veteran:

(a) was killed while on active duty or died as a result of a service-connected disability; or

(b) if living:

(i) was honorably discharged from active service in any branch of the armed services; and

(ii) is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability, as verified by official documentation from the U.S. department of veterans affairs.

(2) Property qualifying under subsection (1) is taxed at the rate provided in 15-6-134(2)(a) multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple	Percentage Multiplier
$0 - $30,000	$0 - $36,000	0%
$30,001 - $33,000	$36,001 - $39,000	20%
$33,001 - $36,000	$39,001 - $42,000	30%
$36,001 - $39,000	$42,001 - $45,000	50%

(3) The property tax exemption under this section remains in effect as long as the property is the primary residence owned and occupied by the veteran or, if the veteran is deceased, by the veteran's spouse and the spouse:

(a) is the owner and occupant of the house;

(b) is unmarried; and

(c) has obtained from the U.S. department of veterans affairs a letter indicating that the veteran was rated 100% disabled or was paid at the 100%

disabled rate by the U.S. department of veterans affairs for a service-connected disability at the time of death or that the veteran died while on active duty or as a result of a service-connected disability.

(4) Property qualifying under subsection (3) is taxed at the rate provided in 15-6-134(2)(a) multiplied by a percentage figure based on income and determined from the following table:

Income Surviving Spouse	Percentage Multiplier
$0 - $25,000	0%
$25,001 - $28,000	20%
$28,001 - $31,000	30%
$31,001 - $34,000	50%

(5) For the purposes of the exemption under this section, the income referred to in subsections (2) and (4) is the taxpayer's federal adjusted gross income, as reported on the latest federal income tax return.

(6) (a) The income levels contained in the tables in subsections (2) and (4) must be adjusted for inflation annually by the department. The adjustment to the income levels is determined by:

(i) multiplying the appropriate dollar amount from the table by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 2002; and

(ii) rounding the product obtained in subsection (6)(a)(i) to the nearest dollar amount.

(b) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2006.

Approved May 3, 2007

CHAPTER NO. 419

[SB 412]

AN ACT EXEMPTING CERTAIN UNIVERSITY PROJECTS THAT DO NOT INVOLVE STATE APPROPRIATIONS FROM CERTAIN STATE CONSTRUCTION AND CONTRACTING LAWS; AMENDING SECTIONS 18-2-102 AND 20-25-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Exemption from state construction and contract laws for certain university projects. (1) The board of regents may lease land or land and facilities to a private nonprofit foundation organized to solicit, manage, and administer nonstate funds, gifts, grants, donations, in-kind contributions, and revenue on behalf of a unit of the Montana university system for the purpose of

constructing or renovating athletic facilities. The terms, guaranties, and agreements relating to a facility subject to this subsection must be negotiated in the best interests of the state and must include guarantees that a commitment of state appropriations for design, construction, operations, or maintenance is not expressed or implied. The terms, guaranties, and agreements are subject to review and approval by the board of regents. After approval, the board of regents shall submit a report to the budget director certifying that the conditions of this subsection have been satisfied.

(2) The design and construction of projects pursuant to subsection (1) are not subject to the requirements of Title 18, chapters 2 and 8, except that:

(a) the department of administration shall execute the provisions of 18-2-103(1)(a) and (1)(e); and

(b) the provisions of Title 18, chapter 2, part 4, apply to all labor other than donated labor.

Section 2. Section 18-2-102, MCA, is amended to read:

"18-2-102. Authority to construct buildings. (1) Except as provided in subsection (2), a building costing more than $150,000 may not be constructed without the consent of the legislature. Legislative approval of repair and maintenance costs as part of an agency's operating budget constitutes the legislature's consent. When a building costing more than $150,000 is to be financed in a manner that does not require legislative appropriation of money, the consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building and is authorized to transfer funds and authority as necessary to accomplish the project. Transfers may not be made from the funds for an uncompleted capital project unless the project is under the supervision of the same agency.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in 20-25-302 if they are to be financed wholly from the revenue from the facility.

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money if the construction of the building will not result in any new programs.

(d) The regents of the Montana university system may authorize the construction of facilities as provided in [section 1].

~~(d)~~*(e)* The department of military affairs, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money on federal land for the use or benefit of the state."

Section 3. Section 20-25-308, MCA, is amended to read:

"20-25-308. Prohibition on transfer to foundation. In order to implement the provisions of Article VIII, section 12, of the Montana constitution, ownership of the following may not be transferred to a nonprofit corporation or foundation established for the benefit of a unit of the university system unless full market value is received for the transfer and laws applicable to the disposition of property are followed:

(1) money in the higher education funds provided for in 17-2-102;

(2) excess proceeds of money borrowed pursuant to 20-25-402; and

(3) *except as provided in [section 1],* real or personal property acquired with money listed in subsection (1) or proceeds listed in subsection (2)."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 25, and the provisions of Title 20, chapter 25, apply to [section 1].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2007

CHAPTER NO. 420

[SB 413]

AN ACT CLARIFYING REQUIREMENTS FOR THE DEPOSIT OF MONEY RECEIVED BY STATE AGENCIES; PROVIDING A PROCESS FOR A STATE AGENCY TO PROPOSE AND RECEIVE APPROVAL FOR A SPECIAL DEPOSIT SCHEDULE FOR MONEY COLLECTED BY THE AGENCY; AND AMENDING SECTIONS 15-1-232, 17-6-105, 23-1-105, 81-3-107, AND 87-1-601, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-232, MCA, is amended to read:

"15-1-232. Deposit of money. Money received by the department from the collection of taxes, fees, and debts is ~~not~~ subject to the timely deposit requirements of 17-6-105(6)~~. The department shall deposit all money within a reasonable time after receipt~~ *unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).*"

Section 2. Section 17-6-105, MCA, is amended to read:

"17-6-105. State treasurer as treasurer of state agencies — deposits of money. (1) The state treasurer is designated the treasurer of every state agency and institution.

(2) All state agencies ~~and institutions~~ shall deposit all money, credits, evidences of indebtedness, and securities either:

(a) in banks, building and loan associations, savings and loan associations, or credit unions located in the city or town in which the agencies ~~and institutions~~ are situated, if there is a qualified bank, building and loan association, savings and loan association, or credit union in the city or town as designated by the state treasurer with the approval of the board of investments; or

(b) with the state treasurer.

(3) Each bank, building and loan association, savings and loan association, or credit union shall pledge securities sufficient to cover 50% of the deposits at all times.

(4) The deposits must be made in the name of the state treasurer, must be subject to withdrawal at ~~his~~ *the treasurer's* option, and must draw interest as other state money, in accordance with the provisions of this part.

(5) ~~Nothing in this~~ *This* chapter ~~shall~~ *does not* impair or otherwise affect any covenant entered into pursuant to law by any agency ~~or institution~~ respecting the segregation, deposit, and investment of any ~~revenues~~ *revenue* or funds pledged for the payment and security of bonds or other obligations authorized to

be issued by the agency, and all the funds must be deposited and invested in accordance with the covenants notwithstanding any provision of this chapter.

(6) Except as otherwise provided by law *and subject to subsection (8)*, all money, credits, evidences of indebtedness, and securities received by a state agency ~~or institution~~ must be deposited ~~either~~ with the state treasurer or in a depository approved by the state treasurer each day when the accumulated amount of coin and currency requiring deposit exceeds ~~$100~~ *$200* or total collections exceed ~~$500~~ *$750*. All money, credits, evidences of indebtedness, and securities collected must be deposited at least weekly.

(7) ~~Notwithstanding any other provision of state law, when~~ *Whenever the department determines that* it is ~~determined to be~~ in the best financial interest of the state, the department may require any money received or collected by any agency ~~of the state~~ to be immediately deposited to the credit of the state treasurer.

(8) (a) An agency may propose a modified deposit schedule, including proposed internal controls, to the department that is different from the deposit schedule requirements of subsection (6). Upon receiving a proposal, the department shall transmit a copy of the proposal to the board of investments. The department shall review the proposal to ensure that deposits are made at least weekly, unless the requesting agency shows hardship due to peak processing times.

(b) (i) The department shall review the proposal to ensure adequate internal controls over amounts to be deposited.

(ii) The board of investments shall review the proposal to ensure that state assets and earnings on the assets are maximized.

(c) (i) If the department and the board of investments each approves of the proposal, the department shall notify the agency that the proposal is approved and the department and the agency may proceed to implement the proposal.

(ii) If the department or the board of investments disapproves the proposal, the department shall notify the agency that the proposal is disapproved.

(9) On or before September 15 immediately preceding a regular legislative session, the department shall submit to the legislative fiscal analyst and the legislative auditor a report detailing all active accounts for which a modified deposit schedule has been approved under subsection (8).

(10) For the purposes of this section, "agency" has the meaning provided in 17-1-104 and includes a contractor of an agency if the contractor collects at least $50,000 annually on behalf of the state from all sources."

Section 3. Section 23-1-105, MCA, is amended to read:

"23-1-105. Fees and charges. (1) The department may levy and collect reasonable fees or other charges for the use of privileges and conveniences that may be provided and to grant concessions that it considers advisable, except as provided in subsections (2) and (6). All money derived from the activities of the department, except as provided in subsection (5), must be deposited in the state treasury in a state special revenue fund to the credit of the department.

(2) Overnight camping fees established by the department under subsection (1) must be discounted 50% for a campsite rented by a person who is a resident of Montana, as defined in 87-2-102, and either 62 years of age or older or certified as disabled in accordance with rules adopted by the department.

(3) For a violation of any fee collection rule involving a vehicle, the registered owner of the vehicle at the time of the violation is personally responsible if an adult is not in the vehicle at the time the violation is discovered by an authorized officer. A defense that the vehicle was driven into the fee area by another person is not allowable unless it is shown that at that time, the vehicle was being used without the consent of the registered owner.

(4) Money received from the collection of fees and charges is ~~not~~ subject to the deposit requirements of 17-6-105*(6)*~~. The department shall deposit money collected under this section within a reasonable time after receipt~~ *unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).*

(5) There is a fund of the enterprise fund type, as defined in 17-2-102(2)(a), for the purpose of managing state park visitor services revenue. The fund is to be used by the department to serve the recreating public by providing for the obtaining of inventory through purchase, production, or donation and for the sale of educational, commemorative, and interpretive merchandise and other related goods and services at department sites and facilities. The fund consists of money from the sale of educational, commemorative, and interpretive merchandise and other related goods and services and from donations. Gross revenue from the sale of educational, commemorative, and interpretive merchandise and other related goods and services must be deposited in the fund. All interest and earnings on money deposited in the fund must be credited to the fund for use as provided in this subsection.

(6) In recognition of the fact that individuals support state parks through the payment of certain motor vehicle registration fees, persons who pay the fee provided for in 61-3-321(18)(a) may not be required to pay a day-use fee for access to state parks. Other fees for the use of state parks and fishing access sites, such as overnight camping fees, are still chargeable and may be collected by the department."

Section 4. Section 81-3-107, MCA, is amended to read:

"81-3-107. Fees for department — deposit requirements. (1) The department shall establish, charge, and collect a fee for recording a new mark or brand, for recording a mark or brand transfer, or for rerecording a mark or brand. The department shall establish and charge a fee for providing a certified copy of a record and a duplicate certificate. The department may upon request research mark or brand histories and may charge a fee of up to $50 for each mark or brand, based on time involved in research. All fees collected must be paid into the state special revenue fund for the use of the department. However, not more than 10% of the net rerecording fees after all expenses of rerecording are paid may be expended in any 1 year except in case of an emergency declared by the governor or the board.

(2) Money collected as fees under subsection (1) is ~~not~~ subject to the deposit requirements of 17-6-105*(6)* ~~but must be deposited by the department within a reasonable time after receipt~~ *unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).*"

Section 5. Section 87-1-601, MCA, is amended to read:

"87-1-601. Use of fish and game money. (1) (a) Except as provided in subsections (7) and (9), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from

appropriations or received by the department from any other state source must be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in Title 87 means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Except as provided in section 2(3), Chapter 560, Laws of 2005, money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department, except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is ~~not~~ subject to the deposit requirements of 17-6-105*(6)*. ~~The department shall deposit license drawing application money within a reasonable time after receipt~~ *unless*

the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(8) The department of revenue shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102.

(9) (a) The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in 10-3-801.

(b) Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

(c) Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.

(d) Any money deposited in the special revenue account in a fiscal year is available for reimbursement of search and rescue missions and to provide matching funds during the fiscal year when the money is deposited and during the following fiscal year. After this period, any money remaining in the special revenue account after the transfers provided for in this section must be transferred to the general license account of the department."

Approved May 3, 2007

CHAPTER NO. 421

[SB 424]

AN ACT ADOPTING THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT; PROVIDING GUIDANCE AND AUTHORITY TO CHARITABLE ORGANIZATIONS CONCERNING THE MANAGEMENT AND INVESTMENT OF FUNDS HELD BY THOSE ORGANIZATIONS; IMPOSING DUTIES ON THOSE WHO MANAGE AND INVEST CHARITABLE FUNDS; PROVIDING ADDITIONAL PROTECTIONS FOR CHARITIES AND THE INTERESTS OF DONORS; AMENDING SECTIONS 72-30-101, 72-30-102, 72-30-103, AND 72-30-207, MCA; AND REPEALING SECTIONS 72-30-201, 72-30-202, 72-30-203, 72-30-204, 72-30-205, AND 72-30-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-30-101, MCA, is amended to read:

"72-30-101. Short title. This chapter may be cited as the "Uniform *Prudent* Management of Institutional Funds Act"."

Section 2. Section 72-30-102, MCA, is amended to read:

"72-30-102. Definitions. In this chapter, the following definitions apply:

(1) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

~~(1)~~*(2) (a)* "Endowment fund" means an institutional fund or any part ~~thereof~~ *of the fund that, under the terms of a gift instrument, is* not wholly expendable by the institution on a current basis ~~under the terms of the applicable gift instrument~~.

(b) The term does not include assets that an institution designates as an endowment fund for its own use.

~~(2)~~*(3)* "Gift instrument" means a ~~will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document (~~ *record or records,* including ~~the terms of any~~ *an* institutional ~~solicitations~~ *solicitation,* ~~from which an institutional fund resulted)~~ under which property is *granted to,* transferred to, or held by an institution as an institutional fund.

~~(3) "Governing board" means the body responsible for the management of an institution or of an institutional fund.~~

~~(4) "Historic dollar value" means the aggregate fair value in dollars of:~~

~~(a) an endowment fund at the time it became an endowment fund;~~

~~(b) each subsequent donation to the fund at the time it is made; and~~

~~(c) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund.~~

~~(5)~~*(4)* "Institution" means*:*

(a) ~~an incorporated or unincorporated organization~~ *a person, other than an individual,* organized and operated exclusively for ~~educational, religious,~~ charitable~~, or other eleemosynary~~ purposes*;*

(b) ~~or~~ a *government or* governmental ~~organization~~ *subdivision, agency, or instrumentality,* to the extent that it holds funds exclusively for ~~any of these purposes~~ *a charitable purpose; and*

(c) a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

~~(6)~~*(5) (a)* "Institutional fund" means a fund held by an institution ~~for its exclusive use, benefit, or~~ *exclusively for charitable* purposes.

(b) ~~but~~ *The term* does not include:

(i) program-related assets;

~~(a)~~*(ii)* a fund held for an institution by a trustee that is not an institution; or

~~(b)~~*(iii)* a fund in which a beneficiary that is not an institution has an interest, other than ~~possible rights~~ *an interest* that could arise upon violation or failure of the purposes of the fund.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form."

Section 3. Section 72-30-103, MCA, is amended to read:

"72-30-103. Uniformity of *application and* construction. ~~This~~ *In applying and construing this* chapter, ~~shall be so applied and construed as to effectuate its general purpose to make uniform~~ *consideration must be given to the need to promote uniformity of* the law with respect to ~~the~~ *its* subject ~~of this chapter~~ *matter* among those states ~~which~~ *that* enact it."

Section 4. Section 72-30-207, MCA, is amended to read:

"72-30-207. Release *or modification* of restrictions ~~in gift instrument~~ *on management, investment, or purpose.* (1) ~~With the written consent of~~ *If* the donor *consents in a record*, ~~the governing board~~ *an institution* may release *or modify*, in whole or in part, a restriction ~~imposed by the applicable~~ *contained in a* gift instrument on the ~~use or~~ *management,* investment*, or purpose* of an institutional fund.

~~(2) If written consent of the donor cannot be obtained by reason of his death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the appropriate court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.~~

~~(3)~~ A release *or modification* ~~under this section~~ may not allow a fund to be used for ~~purposes~~ *a purpose* other than ~~the educational, religious,~~ *a* charitable~~, or other eleemosynary purposes~~ *purpose* of the institution ~~affected~~.

~~(4) This section does not limit the application of the doctrine of cy-pres.~~

(2) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(3) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard.

(4) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after notification to the attorney general, may release or modify the restriction, in whole or part, if:

(a) the institutional fund subject to the restriction has a total value of less than $25,000; or

(b) more than 20 years have elapsed since the fund was established; and

(c) the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument."

Section 5. Standard of conduct in managing and investing institutional fund. (1) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(2) In addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(3) In managing and investing an institutional fund, an institution:

(a) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(b) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(4) An institution may pool two or more institutional funds for purposes of management and investment.

(5) Except as otherwise provided by a gift instrument, the following rules apply:

(a) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(i) general economic conditions;

(ii) the possible effect of inflation or deflation;

(iii) the expected tax consequences, if any, of investment decisions or strategies;

(iv) the role that each investment or course of action plays within the overall investment portfolio of the fund;

(v) the expected total return from income and the appreciation of investments;

(vi) other resources of the institution;

(vii) the needs of the institution and the fund to make distributions and to preserve capital; and

(viii) an asset's special relationship or special value, if any, to the charitable purposes of the institution.

(b) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(c) Except as otherwise provided by law other than this chapter, an institution may invest in any kind of property or type of investment consistent with this section.

(d) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(e) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this chapter.

(f) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

Section 6. Appropriation for expenditure or accumulation of endowment fund — rules of construction. (1) Subject to the intent of a donor expressed in the gift instrument and to subsection (4), an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(a) the duration and preservation of the endowment fund;

(b) the purposes of the institution and the endowment fund;

(c) general economic conditions;

(d) the possible effect of inflation or deflation;

(e) the expected total return from income and the appreciation of investments;

(f) other resources of the institution; and

(g) the investment policy of the institution.

(2) To limit the authority to appropriate for expenditure or accumulate under subsection (1), a gift instrument must specifically state the limitation.

(3) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income", "interest", "dividends", or "rents, issues, or profits", or "to preserve the principal intact", or words of similar import:

(a) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(b) do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (1).

(4) The appropriation for expenditure in any year of an amount greater than 7% of the fair market value of an endowment fund, calculated on the basis of market values determined at least quarterly and averaged over a period of not less than 3 years immediately preceding the year in which the appropriation for expenditure was made, creates a rebuttable presumption of imprudence. For an endowment fund in existence for fewer than 3 years, the fair market value of the endowment fund must be calculated for the period the endowment fund has been in existence. This subsection does not:

(a) apply to an appropriation for expenditure permitted under law other than this chapter or by the gift instrument; or

(b) create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to 7% of the fair market value of the endowment fund.

Section 7. Delegation of management and investment functions. (1) Subject to any specific limitation set forth in a gift instrument or in law other than this chapter, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(a) selecting an agent;

(b) establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(c) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(2) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(3) An institution that complies with subsection (1) is not liable for the decisions or actions of an agent to which the function was delegated.

(4) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(5) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this state other than this chapter.

Section 8. Reviewing compliance. Compliance with this chapter is determined in light of the facts and circumstances existing at the time a decision is made or action is taken and not by hindsight.

Section 9. Application to existing institutional funds. This chapter applies to institutional funds existing on or established after [the effective date of this act]. As applied to institutional funds existing on [the effective date of this

act], this chapter governs only decisions made or actions taken on or after that date.

Section 10. Relation to Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101 of that act, 15 U.S.C. 7001(a), or authorize electronic delivery of any of the notices described in section 103 of that act, 15 U.S.C. 7003(b).

Section 11. Repealer. Sections 72-30-201, 72-30-202, 72-30-203, 72-30-204, 72-30-205, and 72-30-206, MCA, are repealed.

Section 12. Codification instruction. [Sections 5 through 10] are intended to be codified as an integral part of Title 72, chapter 30, and the provisions of Title 72, chapter 30, apply to [sections 5 through 10].

Approved May 3, 2007

CHAPTER NO. 422

[SB 431]

AN ACT REVISING THE REQUIREMENTS FOR FLOW-THROUGH HOT SPRINGS POOLS; AND AMENDING SECTION 50-53-115, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-53-115, MCA, is amended to read:

"50-53-115. Special requirements for flow-through hot springs pools. In addition to the other requirements of this chapter and rules promulgated under this chapter, flow-through hot springs pools must meet the following requirements:

(1) The temperature of the pool water must be 106 degrees F or less.

(2) The water must have sufficient clarity at all times so that a black disc, 6 inches in diameter, is readily visible when placed on a white field at the deepest point of the pool.

(3) The pool water must be maintained at a pH of no less than 7.2 and not greater than ~~8.5~~ *9.4*.

(4) The pool must provide sufficient water volume exchange to produce an 8-hour turnover of the entire volume of pool water to waste. In addition:

(a) the pool, and all surfaces that flow into the pool, must be drained, cleaned, and sanitized every 72 hours; or

(b) the pool must be disinfected, and a chlorine residual of 1 to 3 parts per million or a bromine residual of 3 to 6 parts per million must be maintained in the pool at all times.

(5) Signs must be prominently posted that specify pool rules and special health hazards associated with swimming or bathing in flow-through hot springs pools. The contents of the signs must be determined by department rule. The department, in developing rules under this section, shall consult with flow-through hot springs pool owners."

Approved May 3, 2007

CHAPTER NO. 423

[SB 446]

AN ACT GENERALLY REVISING THE LAWS RELATING TO REVIEW OF PUBLIC WATER AND SEWAGE SYSTEMS BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY; REMOVING INDUSTRIAL WASTE DISCHARGE SYSTEMS FROM DEPARTMENT REVIEW; REMOVING THE EXEMPTION FROM DEPARTMENT REVIEW OF PUBLIC SEWAGE SYSTEMS THAT HAVE WATER QUALITY DISCHARGE PERMITS; EXPRESSLY AUTHORIZING ADOPTION OF MANAGERIAL AND TECHNICAL CAPACITY RULES; AUTHORIZING THE ADOPTION OF SOURCE WATER PROTECTION REQUIREMENTS; ELIMINATING PROVISIONS THAT DUPLICATE PROVISIONS CONTAINED IN THE WATER QUALITY STATUTES; AND AMENDING SECTIONS 37-42-102, 75-6-102, 75-6-103, 75-6-104, 75-6-112, AND 75-6-120, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-42-102, MCA, is amended to read:

"37-42-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Certificate" means a certificate of competency issued by the department, stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(3) "Community water system" means a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.

(4) "Council" means the water and wastewater operators' advisory council provided for in 2-15-2105.

(5) "Department" means the department of environmental quality provided for in 2-15-3501.

(6) "Industrial waste" means any waste substance from the processes of business or industry or from the development of a natural resource, together with any sewage that may be present.

(7) "Industrial waste discharge system" means a system that discharges industrial waste into state waters.

~~(6)~~*(8)* "Nontransient noncommunity water system" means a public water system, as defined in 75-6-202, that is not a community system and that regularly serves at least 25 of the same persons for at least 6 months a year.

~~(7)~~*(9)* "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or wastewater treatment plant.

~~(8)~~*(10)* "State waters" means the term as defined in 75-6-102.

~~(9)~~*(11)* "Wastewater treatment plant" means a facility that:

(a) is designed to remove solids, bacteria, or other harmful constituents of sewage, industrial ~~wastes~~ *waste*, or other wastes; and

(b) is part of either an industrial waste discharge system or a public sewage system as defined in 75-6-102.

~~(10)~~*(12)* "Water distribution system" means that portion of the water supply system that conveys water from the water treatment plant or other supply source to the premises of the consumer and that is part of a community water system or a nontransient noncommunity water system.

~~(11)~~*(13)* "Water supply system" means a system of pipes, structures, and facilities through which water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and that is part of a community water system or a nontransient noncommunity water system.

~~(12)~~*(14)* "Water treatment plant" means that portion of the water supply system that alters either the physical, chemical, or bacteriological quality of the water and renders it safe and palatable for human use."

Section 2. Section 75-6-102, MCA, is amended to read:

"75-6-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Certified ~~wellhead~~ *source water* protection area" means an area certified by the department that ~~protects~~ *identifies* the surface and subsurface area surrounding a source of ~~ground~~ water for a public water supply system through which contaminants may move toward and reach the source of supply.

(3) "Community water system" means a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial ~~wastes~~ *waste*, or other ~~wastes~~ *waste* creating a hazard to human health.

(5) "Cross-connection" means a connection between a public water supply system and another water supply system, either public or private, or a wastewater or sewerline or other potential source of contamination so that a flow of water into or contamination of the public water supply system from the other source of water or contamination is possible.

(6) "Department" means the department of environmental quality provided for in 2-15-3501.

(7) "Drainage" means rainfall, surface, and subsoil water.

(8) "Industrial waste" means any waste substance from the processes of business or industry or from the development of a natural resource, together with any sewage that may be present.

~~(9) "Industrial waste discharge system" means a system that discharges industrial waste into state waters.~~

~~(10)~~*(9)* "Maximum contaminant level" means the maximum permissible level of a contaminant in water that is delivered to a user of a public water supply system.

~~(11) "Montana wellhead protection program" means a program administered by the department to certify wellhead protection areas and review wellhead protection ordinances.~~

~~(12)~~*(10)* "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(13)~~*(11)* "Person" means an individual, firm, partnership, company, association, corporation, city, town, local government entity, federal agency, or any other governmental or private entity, whether organized for profit or not.

~~(14)~~*(12) (a)* "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that which is permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of a liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) A discharge that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

~~(15)~~*(13)* "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that serves 15 or more families or 25 or more persons daily for any 60 or more days in a calendar year.

~~(16)~~*(14)* "Public water supply system" means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year.

~~(17)~~*(15)* "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations set forth in 40 CFR, parts 141 and 142.

~~(18)~~*(16)* "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with ground water infiltration and surface water present.

(17) "Source water protection program" means a program administered by the department to certify source water protection delineation and assessment reports and source water protection plans and to review source water protection ordinances.

~~(19)~~*(18)* "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

~~(20)~~*(19)* "Transient noncommunity water system" means a public water supply system that is not a community water system and that does not regularly serve at least 25 of the same persons for at least 6 months a year."

Section 3. Section 75-6-103, MCA, is amended to read:

"75-6-103. Duties of board. (1) The board has general supervision over all state waters that are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.

(2) The board shall, subject to the provisions of 75-6-116, adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees, as described in 75-6-108, for services rendered by the department;

(c) monitoring, recordkeeping, and reporting by persons who own or operate public water supply systems;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the siting, construction, operation, and modification of a public water supply system or public sewage system;

(f) the review of *the technical, managerial, and* financial ~~viability~~ *capacity* of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

(g) the collection and analysis of samples of water used for drinking or domestic purposes;

(h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part;

(i) administrative enforcement procedures and administrative penalties authorized under this part;

(j) standards and requirements for the review and approval of programs that may be voluntarily submitted by suppliers of public water supply systems to prevent water supply contamination from a cross-connection, including provisions to exempt cross-connections from the standards and requirements if all connected systems are department-approved public water supply systems; and

(k) any other requirement necessary for the protection of public health as described in this part.

(3) Board rules must provide for the following:

(a) a water supply or water distribution facility reviewed and approved by the department is not subject to changes in department design and construction criteria for a period of 36 months after written approval of the facility is issued by the department;

(b) except for facilities subject to permit requirements under Title 75, chapter 5, part 4, a system of water supply, drainage, wastewater, or sewage reviewed and approved under this section is not subject to changes in department design or construction criteria for a period of 36 months after written approval is issued by the department;

(c) plans and specifications for a portion of a facility or system subject to a 36-month limit on criteria changes pursuant to subsections (3)(a) and (3)(b), but not constructed within the 36-month timeframe, must be resubmitted for department review and approval before construction of that portion of the facility;

(d) the provisions of this subsection (3) may not limit an applicant's ability to alter a proposed project that is otherwise in conformance with applicable laws, rules, standards, and criteria.

(4) The board may issue orders necessary to fully implement the provisions of this part."

Section 4. Section 75-6-104, MCA, is amended to read:

"75-6-104. Duties of department. The department shall:

(1) upon its own initiative or complaint to the department, to the mayor or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2) have waters examined to determine their quality and the possibility that they may endanger public health;

(3) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the best method of ~~assuring~~ *ensuring* its quality;

(4) advise persons as to the best method of treating and disposing of their drainage, sewage, or wastewater with reference to the existing and future needs of other persons and to prevent pollution;

(5) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

(6) collect fees, as described in 75-6-108, for services and deposit the fees collected in the public drinking water special revenue fund established in 75-6-115;

(7) establish and maintain experiment stations and conduct experiments to study the best methods of treating water, drainage, wastewater, *and* sewage~~, and industrial waste~~ to prevent pollution, including investigation of methods used in other states;

(8) enter on premises at reasonable times to determine sources of pollution or danger to water supply systems and whether rules and standards of the board are being obeyed;

(9) enforce and administer the provisions of this part;

(10) establish a plan for the provision of safe drinking water under emergency circumstances;

(11) maintain an inventory of public water supply systems and establish a program for conducting sanitary surveys; and

(12) enter into agreements with local boards of health ~~wherever~~ *whenever* appropriate for the performance of surveys and inspections under the provisions of this part."

Section 5. Section 75-6-112, MCA, is amended to read:

"75-6-112. Prohibited acts. A person may not:

~~(1) discharge sewage, drainage, industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;~~

~~(2) discharge sewage, drainage, industrial waste, or other waste into state waters or on the banks of state waters or into an abandoned or operating water well unless the sewage, drainage, industrial waste, or other waste is treated as prescribed by the board;~~

~~(3)~~*(1)* commence or continue construction, alteration, extension, or operation of a system of water supply or water distribution that is ~~designed~~ *intended* to be *used as* a public water supply system or a system ~~of sewer, drainage, waste, or sewage disposal~~ that is ~~designed~~ *intended* to be *used as* a public sewage system ~~or industrial waste discharge system~~ before the person submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications~~. However, any facility reviewed by the department under Title 75, chapter 5, is not subject to the provisions of this section.~~

~~(4)~~*(2)* operate or maintain a public water supply system that exceeds a maximum contaminant level established by the board unless the person has been granted or has an application pending for a variance or exemption pursuant to this part;

~~(5)~~*(3)* violate any provision of this part or a rule adopted under this part; or

~~(6)~~*(4)* violate any condition or requirement of an approval issued pursuant to this part."

Section 6. Section 75-6-120, MCA, is amended to read:

"75-6-120. ~~Montana wellhead~~ *Wellhead and source water* protection ~~program~~ *programs* — voluntary petitions. (1) The federal Safe Drinking Water Act, including 42 U.S.C. 300h-7 *and 300j-13*, enables the department to administer ~~a~~ wellhead protection ~~program~~ *and source water assessment programs* that ~~involves~~ *involve delineation of the boundaries of the assessment areas from which a public water system receives supplies of drinking water,* certification of local ~~wellhead~~ *source water* protection areas*, assessment of source water susceptibility to regulated contaminants,* and review of ~~wellhead~~ *source water* protection area ordinances. In administering ~~this program~~ *these programs*, the department may perform only those functions provided for by the federal Safe Drinking Water Act and this section.

(2) A supplier of a public water supply system may voluntarily submit for department review and approval a petition to establish a ~~wellhead~~ *source water* protection program for the system.

(3) The department may certify a ~~wellhead~~ *source water* protection area upon:

(a) receipt of a petition by a supplier for a public water supply system; and

(b) making a determination that the ~~wellhead~~ *source water* protection area meets criteria and thresholds for certification established by the Montana ~~wellhead~~ *source water* protection program.

(4) (a) The governing body of the county in which a ~~wellhead~~ *source water* protection area or areas exist may adopt an ordinance to regulate, control, and prohibit conditions that threaten the quality of water used within the ~~wellhead~~ *source water* protection area or areas.

(b) Prior to adopting a ~~wellhead~~ *source water* protection area ordinance, the governing body shall confer with the supplier of the public water supply system and shall then submit the ordinance to the department for review and

verification that the ordinance is consistent with the requirements of this chapter.

(c) A ~~wellhead~~ *source water* protection area ordinance must be adopted using the procedures described in 7-5-103 through 7-5-107.

(5) (a) An ordinance adopted under subsection (4) is limited in applicability to the certified ~~wellhead~~ *source water* protection area or areas within the county.

(b) For a ~~wellhead~~ *source water* protection area that is located in two or more counties, the proposed ~~wellhead~~ *source water* protection area ordinance must be adopted by each county in order for the ordinance to be effective.

(6) A ~~wellhead~~ *source water* protection area ordinance adopted under this section may not conflict with and may not duplicate any other federal, state, or local law or regulation, including but not limited to zoning, fire codes, hazardous waste regulation under Title 75, chapter 10, part 4, or pesticide regulation under Title 80, chapter 8."

Approved May 3, 2007

CHAPTER NO. 424

[SB 447]

AN ACT REVISING VICTIMS' RIGHTS LAWS AS THEY RELATE TO ADULT OFFENDERS; PROVIDING THAT VICTIMS OF CRIMINAL OFFENSES MUST BE PROVIDED, UPON REQUEST, ONE FREE COPY OF CERTAIN DOCUMENTS FILED IN A CRIMINAL CASE; PROVIDING THAT A VICTIM HAS A RIGHT TO BE ACCOMPANIED BY A VICTIM ADVOCATE DURING INTERVIEWS; AND AMENDING SECTIONS 46-24-106 AND 46-24-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-24-106, MCA, is amended to read:

"46-24-106. Crime victims — family members — right to attend proceedings — exceptions — *right to receive documents — rights during interview.* (1) Except as provided in subsection (2), a victim of a criminal offense has the right to be present during any trial or hearing conducted by a court that pertains to the offense, including a court proceeding conducted under Title 41, chapter 5. A victim of a criminal offense may not be excluded from any trial or hearing based solely on the fact that the victim has been subpoenaed or required to testify as a witness in the trial or hearing.

(2) A judge may exclude a victim of a criminal offense from:

(a) a trial or hearing upon the finding of specific facts supporting exclusion or for disruptive behavior; or

(b) a portion of a proceeding under Title 41, chapter 5, that deals with sensitive personal matters of a youth or a youth's family and that does not directly relate to the act or alleged act committed against the victim.

(3) If a victim is excluded from a trial or hearing upon the finding of specific facts supporting exclusion, the victim must be allowed to address the court on the issue of exclusion prior to the findings.

(4) A family member of a victim may not be excluded from a trial or hearing based solely on the fact that the family member is subpoenaed or required to

testify as a witness in the trial or hearing unless there is a showing that the family member can give relevant testimony as to the guilt or innocence of the defendant or that the defendant's right to a fair trial would be jeopardized if the family member is not excluded.

(5) As used in this section, "victim" means:

(a) a person who suffers loss of property, bodily injury, or reasonable apprehension of bodily injury as a result of:

(i) the commission of an offense;

(ii) the good faith effort to prevent the commission of an offense; or

(iii) the good faith effort to apprehend a person reasonably suspected of committing an offense; or

(b) a member of the immediate family of a homicide victim.

(6) (a) Except as provided in subsection (6)(c), a victim of a criminal offense has the right to receive, upon request and at no cost to the victim, one copy of all public documents filed in the court file.

(b) If the victim is under 18 years of age, copies provided under subsection (6)(a) must be provided to the victim's parent or guardian instead of to the minor victim.

(c) Subsection (6)(a) does not apply to:

(i) trial transcripts;

(ii) trial exhibits;

(iii) court proceedings conducted under Title 41, chapter 5; or

(iv) documents the prosecutor determines would adversely affect the prosecution if released.

(7) A victim of a criminal offense has the right, upon request, to have a victim advocate present when the victim is interviewed about the offense."

Section 2. Section 46-24-201, MCA, is amended to read:

"46-24-201. Services to victims of crime. (1) Law enforcement personnel shall ensure that a victim of a crime receives emergency social and medical services as soon as possible and that the victim is given written notice, in the form supplied by the attorney general, of the following:

(a) the availability of crime victim compensation;

(b) access by the victim and the defendant to information about the case*, including the right to receive documents under 46-24-106*;

(c) the role of the victim in the criminal justice process, including what the victim can expect from the system, as well as what the system expects from the victim*, and including the right to be accompanied during interviews as provided in 46-24-106*; and

(d) stages in the criminal justice process of significance to a crime victim and the manner in which information about the stages may be obtained.

(2) In addition to the information supplied under subsection (1), law enforcement personnel shall provide the victim with written information on community-based victim treatment programs, including medical, housing, counseling, and emergency services available in the community.

(3) As soon as possible, law enforcement personnel shall give to the victim the following information:

(a) the name, office address, and telephone number of a law enforcement officer assigned to investigate the case; and

(b) the prosecuting attorney's name, office address, and telephone number."

Approved May 3, 2007

CHAPTER NO. 425

[SB 461]

AN ACT REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO RELEASE ALL OR A PORTION OF A BOND IF THE DEPARTMENT IS SATISFIED THAT RECLAMATION OF COAL AND URANIUM OPERATIONS HAS BEEN COMPLETED; CLARIFYING WRITTEN FINDINGS AND RECOMMENDATIONS; AND AMENDING SECTION 82-4-232, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-232, MCA, is amended to read:

"82-4-232. Area mining required — bond — alternative plan. (1) (a) Area strip mining, a method of operation that does not produce a bench or fill bench, is required where strip mining is proposed. The area of land affected must be backfilled and graded to the approximate original contour of the land. However:

(i) consistent with the adjacent unmined landscape elements, the operator may propose and the department may approve regraded topography gentler than premining topography in order to enhance the postmining land use and develop a postmining landscape that will provide greater moisture retention, greater stability, and reduced soil losses from runoff and erosion;

(ii) postmining slopes may not exceed the angle of repose or lesser slope as is necessary to achieve a long-term static safety factor of 1.3 or greater and to prevent slides;

(iii) permanent impoundments may be approved if they are suitable for the postmining land use and otherwise meet the requirements of this part, as provided by board rules; and

(iv) reclaimed topography must be suitable for the approved postmining land use.

(b) Spoil from the first cut is not required to be transported to the last cut if highwalls are eliminated, box cut spoils are graded to blend in with the surrounding terrain, and the approximate original contour of the land is achieved.

(c) When directed by the department, the operator shall construct in the final grading diversion ditches, depressions, or terraces that will accumulate or control the water runoff.

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure to accomplish the purpose of this part.

(3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil removal, storage, replacement, and reconstruction, and the operator must as a minimum be required to:

(a) *(i)* segregate the A horizon of the natural soil, except ~~where~~ *when* it can be shown that other available soil materials will create a final soil having a greater productive capacity; and

(ii) if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(b) *(i)* segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of ~~such~~ *the* horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that ~~which~~ *that* existed in the natural soil; and

(ii) if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by acid or toxic material;

(c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

(4) All available topsoil must be removed in a separate layer, guarded from erosion and pollution, and kept in ~~such~~ a condition *so* that it can sustain vegetation of at least the quality and variety it sustained prior to removal~~,~~. ~~provided that~~ *However,* the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material that is best able to support vegetation must be returned as the top layer.

(5) As determined by rules of the board, time limits must be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling must be completed before necessary equipment is moved from the operation.

(6) (a) The permittee may file an application with the department for the release of all or part of a performance bond. The application must contain a proposed public notice of the precise location of the land affected, the number of acres for which bond release is sought, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that the permittee has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality of the operation, notifying them of the permittee's intention to seek release from the bond.

(b) The department shall determine whether the application is administratively complete. An application is administratively complete if it includes:

(i) the location and acreage of the land for which bond release is sought;

(ii) the amount of bond release sought;

(iii) a description of the completed reclamation, including the date of performance;

(iv) a discussion of how the results of the completed reclamation satisfy the requirements of the approved reclamation plan; and

(v) information required by rules implementing this part.

(c) The department shall notify the applicant in writing of its determination no later than 60 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address. After an application for bond release has been determined to be administratively complete by the department, the permittee shall publish a public notice that has been approved as to form and content by the department at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the mining operation.

(d) Any person with a valid legal interest that might be adversely affected by the release of a bond or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to the operation may file written objections to the proposed release of bond to the department within 30 days after the last publication of the notice. If written objections are filed and a hearing is requested, the department shall hold a public hearing in the locality of the operation proposed for bond release or in Helena, at the option of the objector, within 30 days of the request for hearing. The department shall inform the interested parties of the time and place of the hearing. The date, time, and location of the public hearing must be advertised by the department in a newspaper of general circulation in the locality for 2 consecutive weeks. Within 30 days after the hearing, the department shall notify the permittee and the objector of its final decision.

(e) Without prejudice to the rights of the objector or the permittee or the responsibilities of the department pursuant to this section, the department may establish an informal conference to resolve written objections.

(f) For the purpose of the hearing under subsection (6)(d), the department may administer oaths, subpoena witnesses or written or printed materials, compel the attendance of witnesses or the production of materials, and take evidence, including but not limited to conducting inspections of the land affected and other operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the department.

(g) If the applicant significantly modifies the application after the application has been determined to be administratively complete, the department shall conduct a new review, including an administrative completeness determination. A significant modification includes but is not limited to:

(i) the notification of an additional property owner, local governmental body, planning agency, or sewage and water treatment authority of the permittee's intention to seek a bond release;

(ii) a material increase in the acreage for which a bond release is sought or in the amount of bond release sought; or

(iii) a material change in the reclamation for which a bond release is sought or the information used to evaluate the results of that reclamation.

(h) The department shall, within 30 days of determining that the application is administratively complete or as soon as weather permits, conduct an inspection and evaluation of the reclamation work involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of the pollution, and the estimated cost of abating the pollution.

(i) The department shall review each administratively complete application to determine the acceptability of the application. A complete application is acceptable if the application is in compliance with all of the applicable requirements of this part, the rules adopted under this part, and the permit.

(j) (i) The department shall notify the applicant in writing regarding the acceptability of the application no later than 60 days from the date of the inspection.

(ii) If the department determines that the application is not acceptable, it shall specify in the notice those items that the application must address.

(iii) If the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 60 days of the date of receipt as to whether the revised application is acceptable.

(iv) If the revision constitutes a significant modification, the department shall conduct a new review, beginning with an administrative completeness determination.

(v) A significant modification includes but is not limited to:

(A) the notification of an additional property owner, local governmental body, planning agency, or sewage and water treatment authority of the permittee's intention to seek a bond release;

(B) a material increase in the acreage for which a bond release is sought or the amount of bond release sought; or

(C) a material change in the reclamation for which a bond release is sought or the information used to evaluate the results of that reclamation.

(k) The department ~~may~~ *shall* release the bond in whole or in part if it is satisfied the reclamation covered by the bond or portion of the bond has been accomplished as required by this part according to the following schedule:

(i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded area in accordance with the approved reclamation plan, the department shall release 60% of the bond or collateral for the applicable permit area.

(ii) After revegetation has been established on the regraded lands in accordance with the approved reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing revegetation,

retain that amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent impoundment, the portion of bond may be released under this subsection (6)(k)(ii) if provisions for sound future maintenance by the operator or the landowner have been made with the department. Any part of the bond may not be released under this subsection (6)(k)(ii):

(A) as long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

(B) before soil productivity for prime farm lands to which the release would be applicable has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey.

(iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities, the department shall release the remaining portion of the bond, but not before the expiration of the period specified for responsibility and not until all reclamation requirements of this part are fully met.

(l) If the department disapproves the application for release of the bond or a portion of the bond, it shall ~~notify~~*:*

(i) provide to the permittee, ~~in writing, stating the reasons for disapproval and recommending~~ *detailed written findings demonstrating that the reclamation covered by the bond or a portion of the bond has not been accomplished as required by this part; and*

(ii) recommend corrective actions necessary to secure the release and allowing opportunity for a public hearing.

(m) When an application for total or partial bond release is filed with the department, it shall notify the municipality or county in which a prospecting or mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(7) All disturbed areas must be reclaimed in a timely manner to conditions that are capable of supporting the land uses that they were capable of supporting prior to any mining or to higher or better uses as approved pursuant to subsection (8).

(8) (a) An operator may propose a higher or better use as an alternative postmining land use. If the landowner is not the operator, the operator shall submit written documentation of the concurrence of the landowner or the land management agency with jurisdiction over the land. The department may approve the proposed alternative postmining land use only if it meets all of the following criteria:

(i) There is a reasonable likelihood for achievement of the alternative land use.

(ii) The alternative land use does not present any actual or probable hazard to the public health or safety or any threat of water diminution or pollution.

(iii) The alternative land use will not:

(A) be impractical or unreasonable;

(B) be inconsistent with applicable land use policies or plans;

(C) involve unreasonable delay in implementation; or

(D) cause or contribute to violation of federal, state, or local law.

(b) As used in this section, the term "landowner" includes a person who has sold the surface estate to the operator with an option to repurchase the surface estate after mining and reclamation are complete.

(9) The reclamation plan must incorporate appropriate wildlife habitat enhancement features that are integrated with cropland, grazing land, pastureland, land occasionally cut for hay, or other uses in order to enhance habitat diversity, with emphasis on big game animals, game birds, and threatened and endangered species that have been documented to live in the area of land affected, and to enhance wetlands and riparian areas along rivers and streams and bordering ponds and lakes. Incorporation of wildlife habitat enhancement features does not constitute a change in land use to fish and wildlife habitat and may not interfere with the designated land use.

(10) Facilities existing prior to mining, including but not limited to public roads, utility lines, railroads, or pipelines, may be replaced as part of the reclamation plan."

Section 2. Contingent voidness. (1) If the provisions of [this act] are disapproved by the United States secretary of the interior pursuant to 30 CFR 732.17, then [this act] is void.

(2) Within 15 days of the effective date of a disapproval pursuant to subsection (1), the department of environmental quality shall notify the code commissioner certifying that the disapproval has occurred.

Approved May 3, 2007

CHAPTER NO. 426

[SB 491]

AN ACT CHANGING THE NAME OF THE AFFORDABLE HOUSING REVOLVING LOAN ACCOUNT TO THE HOUSING MONTANA FUND; PROVIDING THAT MONEY IN THE HOUSING MONTANA FUND MAY BE USED FOR ACQUISITION OF LAND FOR HOUSING DEVELOPMENTS, LAND BANKING AND LAND TRUSTS, AND SHORT-TERM SITE-BASED HOUSING VOUCHERS FOR NEEDY INDIVIDUALS; ADDING STATE GOVERNMENT OR STATE AGENCIES AND PROGRAMS TO THE LIST OF ORGANIZATIONS ELIGIBLE FOR LOANS; AND AMENDING SECTIONS 90-6-107, 90-6-131, 90-6-132, 90-6-133, AND 90-6-134, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-107, MCA, is amended to read:

"90-6-107. Deposit and expenditure of funds. (1) There is a housing authority enterprise fund in the proprietary fund type as provided for in 17-2-102(2). All funds from the proceeds of bonds issued under this part, fees, and other money received by the board, money appropriated by the legislature for the use of the board in carrying out this part, and money made available from any other source for the use of the board must be deposited in the housing authority enterprise fund ~~except as otherwise provided by law~~. All funds deposited in the housing authority enterprise fund, except funds appropriated by the legislature for use of the board in payment of expenses incurred in

carrying out this part, are continuously appropriated to and may be expended by the board for the purposes authorized in this part.

(2) There is a capital reserve account in the housing authority enterprise fund provided for in subsection (1). The capital reserve account consists of the aggregate money retained by the board under existing agreements with bondholders as the minimum capital reserve requirement described in 90-6-119 for each bond issue sold by the board.

(3) Funds appropriated by the legislature for use of the board in payment of expenses incurred in carrying out this part must be deposited in the housing authority enterprise fund. Funds expended by the board under this subsection must be repaid by the board from the fees and charges collected under this part and from any other money available for repayment in accordance with this part."

Section 2. Section 90-6-131, MCA, is amended to read:

"90-6-131. Legislative declaration. (1) The legislature finds that *escalating land costs,* current economic conditions, federal housing policies, and declining resources at the federal, state, and local levels adversely affect the ability of low-income and moderate-income persons to obtain safe, decent, *accessible,* and affordable housing.

(2) The legislature further finds that the state will lose substantial sums allocated to it by the federal government for affordable housing for low-income and moderate-income households unless matching funds are provided.

(3) The legislature declares that it is in the public interest to establish a continuously renewable financial resource known as ~~an affordable housing revolving loan account~~ *the housing Montana fund* to assist low- and moderate-income citizens in meeting their basic housing needs. *Long-term affordability is the goal.*"

Section 3. Section 90-6-132, MCA, is amended to read:

"90-6-132. Definitions. ~~(1)~~ As used in 90-6-131 through 90-6-136, the following definitions apply:

(1) "Board" means the board of housing created in 2-15-1814.

(2) "Fund" means the housing Montana fund created in 90-6-133.

~~(2)~~*(3)* "Housing development" means the same as in 90-6-103.

~~(3) "Loan account" means the affordable housing revolving loan account created in 90-6-133.~~

(4) "Low-income" means households whose incomes do not exceed 80% of the median income in the area, as determined by the United States department of housing and urban development, with adjustments for smaller or larger families.

(5) "Moderate-income" means households whose incomes are between 81% and 95% of the median income for the area, as determined by the United States department of housing and urban development, with adjustments for smaller and larger families."

Section 4. Section 90-6-133, MCA, is amended to read:

"90-6-133. ~~Revolving loan account~~ *Housing Montana fund* — administration. (1) *(a)* There is ~~an affordable housing revolving loan account~~ *a housing Montana fund* in the housing authority enterprise fund provided for in

90-6-107. The money in the ~~loan account~~ *fund* is allocated to the board for the purpose of providing loans to eligible applicants.

(b) Money in the housing Montana fund must be disbursed as loans. Twenty percent of the money in the fund must be disbursed to rural areas based on population and 50% must be disbursed to assist people living on incomes of not more than 50% of the local median family income.

(2) (a) Except as provided in subsection (2)(b), ~~funds~~ *money* deposited in the ~~loan account~~ *fund* must be used for the program authorized in 90-6-134 and may not be used to pay the expenses of any other program or service administered by the board.

(b) Money transferred to the account pursuant to section 2, Chapter 502, Laws of 2001, may be used only for the purposes authorized by the temporary assistance for needy families block grant pursuant to Title IV of the Social Security Act, 42 U.S.C. 601, et seq.

(3) The board may determine the rate of interest to be charged for any loan made under the provisions of 90-6-131 through 90-6-136.

(4) The board may accept contributions, gifts, and grants for deposit into the ~~loan account~~ *fund*. The money must be used in accordance with the provisions of 90-6-134.

(5) The costs incurred by the board in administering the ~~loan account must~~ *fund may* be paid from the ~~loan account~~ *fund*.

(6) Interest and principal on loans from the ~~loan account~~ *fund* must be repaid to the ~~loan account~~ *fund*.

(7) Interest income generated by investment of the principal of the ~~loan account~~ *fund* is retained in the ~~loan account~~ *fund*."

Section 5. Section 90-6-134, MCA, is amended to read:

"90-6-134. Housing ~~loan program~~ *Montana fund* — loan capital restricted to interest on principal — eligible applicants. (1) The money in the ~~loan account~~ *housing Montana fund* must be used to provide financial assistance in the form of direct loans by the board to eligible applicants.

(2) After the initial principal is loaned to eligible applicants, the amount of loans made in a fiscal year is contingent on the repayment of loan principal and on the amount of interest income generated by the principal of the ~~loan account~~ *fund*.

(3) Money from the ~~loan account~~ *fund* must be used to provide:

(a) matching funds for public or private money available from other sources for the development of low-income and moderate-income housing;

(b) bridge financing necessary to make a low-income housing development or a moderate-income housing development financially feasible;

(c) acquisition of existing housing for the purpose of preservation of or conversion to low-income or moderate-income housing; ~~or~~

(d) preconstruction technical assistance to eligible recipients in rural areas and small cities and towns.*; or*

(e) acquisition of land for housing developments, land banking and land trusts, and short-term site-based housing vouchers for needy individuals.

(4) (a) Technical assistance under subsection (3)(d) may include but is not limited to:

(i) financial planning and packaging for housing developments and projects;

(ii) project design, architectural planning, and siting;

(iii) compliance with planning and permitting requirements; or

(iv) maximizing local government contributions to project development in the form of land donations, infrastructure improvements, zoning variances, or creative local planning.

(b) The board may contract with a nonprofit organization to provide this technical assistance.

(5) Money from the ~~loan account~~ *fund* may not be used to replace existing or available sources of funding for eligible activities.

(6) Organizations eligible for loans from the ~~loan account~~ *fund* are *state government or state agencies or programs,* local governments, tribal governments, local housing authorities, nonprofit community- or neighborhood-based organizations, regional or statewide nonprofit housing assistance organizations, or for-profit housing developers."

Approved May 3, 2007

CHAPTER NO. 427

[SB 492]

AN ACT PROVIDING AN ALTERNATIVE APPRAISAL METHOD FOR CERTAIN PURCHASES OF REAL PROPERTY OR CONSERVATION EASEMENTS BY A COUNTY; AMENDING SECTION 7-8-2202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-2202, MCA, is amended to read:

"7-8-2202. Appraisal required for certain purchases of real property or conservation easements. *(1)* Unless otherwise provided by law, a county may not purchase real property ~~in an amount in excess of $10,000~~ *in an amount in excess of $20,000* or a conservation easement using public funds ~~in an amount in excess of $40,000~~ *in an amount in excess of $80,000* unless ~~the value of the property or conservation easement has been previously estimated by~~ *the value of the property or conservation easement has been previously estimated by:*

(a) a disinterested certified general real estate appraiser selected by the county commission, county attorney, and landowner*; or*

(b) three disinterested citizens of the county appointed by the district judge.

(2) A county may not pay more than the ~~appraised~~ *appraised* value for the real property or conservation easement."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2007

CHAPTER NO. 428

[SB 523]

AN ACT PROVIDING THAT THE WORKERS' COMPENSATION COURT IS A COURT OF RECORD; AND AMENDING SECTION 3-1-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-102, MCA, is amended to read:

"3-1-102. Courts of record. The court of impeachment, the supreme court, the district courts, *the workers' compensation court,* the municipal courts, and the justices' courts of record are courts of record."

Approved May 3, 2007

CHAPTER NO. 429

[SB 540]

AN ACT ALLOWING POSSESSION OF AN ANTIQUE ILLEGAL GAMBLING DEVICE BY A LICENSED RETAIL BUSINESS ESTABLISHMENT FOR PURPOSES OF RESALE AND NOT FOR OPERATION; AMENDING SECTIONS 23-5-112, 23-5-152, AND 23-5-153, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-112, MCA, is amended to read:

"23-5-112. Definitions. Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. More than 75 numbers may not be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover one or more previously designated arrangements of numbers on the bingo card.

(5) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(6) "Card game table" or "table" means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

(7) "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

(8) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

(9) "Department" means the department of justice.

(10) "Distributor" means a person who:

(a) purchases or obtains from a licensed manufacturer, distributor, or route operator equipment of any kind for use in gambling activities; and

(b) sells the equipment to a licensed distributor, route operator, or operator.

(11) (a) "Gambling" or "gambling activity" means risking any money, credit, deposit, check, property, or other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise.

(b) The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(12) "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

(13) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(14) (a) "Gift enterprise" means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services.

(b) The term does not mean:

(i) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

(ii) a promotional game of chance; or

(iii) an amusement game regulated under Title 23, chapter 6.

(15) "Gross proceeds" means gross revenue received less prizes paid out.

(16) "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under Title 23, chapter 7, or under part 5 of this chapter or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise,

including a faro box, faro layout, roulette wheel, roulette table, ~~or~~ craps table, or ~~a~~ slot machine, except as provided in 23-5-153.

(17) "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, including craps, hazard, or chuck-a-luck, but not including activities authorized by 23-5-160;

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in Title 23, chapter 4, and parts 2, 5, and 8 of this chapter;

(d) credit gambling; and

(e) internet gambling.

(18) (a) "Internet gambling", by whatever name known, includes but is not limited to the conduct of any legal or illegal gambling enterprise through the use of communications technology that allows a person using money, paper checks, electronic checks, electronic transfers of money, credit cards, debit cards, or any other instrumentality to transmit to a computer information to assist in the placing of a bet or wager and corresponding information related to the display of the game, game outcomes, or other similar information.

(b) The term does not include the operation of a simulcast facility allowed by Title 23, chapter 4, or the state lottery provided for in Title 23, chapter 7. If all aspects of the gaming are conducted on Indian lands in conformity with federal statutes and with administrative regulations of the national Indian gaming commission, the term does not include class II gaming or class III gaming as defined by 25 U.S.C. 2703.

(19) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

(20) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

(21) "License" means a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab game seller, manufacturer of electronic live bingo or keno equipment, other manufacturer, distributor, or route operator that is issued to a person by the department.

(22) "Licensee" means a person who has received a license from the department.

(23) "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

(24) (a) "Lottery" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have paid or promised to pay

valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance.

(b) The term does not mean lotteries authorized under Title 23, chapter 7.

(25) "Manufacturer" means a person who:

(a) assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device and who sells the equipment directly to a licensed distributor, route operator, or operator; or

(b) possesses gambling devices or components of gambling devices for the purpose of testing them.

(26) "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established for purposes other than to conduct a gambling activity.

(27) "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public a gambling device or gambling enterprise authorized under parts 1 through 8 of this chapter.

(28) "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter.

(29) "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

(30) "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

(31) "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it. The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by the department that was manufactured or intended for use for purposes other than gambling.

(32) "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

(33) "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

(34) "Route operator" means a person who:

(a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in a gambling activity;

(b) leases the equipment to a licensed operator for use by the public; and

(c) may sell to a licensed operator equipment that had previously been authorized to be operated on a premises.

(35) "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of public health and human services.

(36) (a) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner.

(b) This definition does not apply to video gambling machines authorized under part 6 of this chapter.

(37) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

Section 2. Section 23-5-152, MCA, is amended to read:

"23-5-152. Possession of illegal gambling device or conducting illegal gambling enterprise prohibited — exceptions. (1) Except as provided in 23-5-153 and subsections (2) through ~~(5)~~ *(6)* of this section, it is a misdemeanor punishable under 23-5-161 for a person to purposely or knowingly:

(a) have in the person's possession or under the person's control or permit to be placed, maintained, or kept in any room, space, enclosure, or building owned, leased, or occupied by or under the person's management or control an illegal gambling device; or

(b) operate an illegal gambling enterprise.

(2) Subsection (1) does not apply to a public officer or to a person coming into possession of an illegal gambling device in or by reason of the performance of an official duty and holding it to be disposed of according to law.

(3) (a) The department may adopt rules to license persons to manufacture gambling devices that are not legal for public play in the state.

(b) A person may not manufacture an illegal gambling device without having obtained a license from the department. The department may charge an administrative fee for the license that is commensurate with the cost of issuing the license.

(4) (a) A person licensed under subsection (3) may conduct only those activities authorized under this subsection (4).

(b) A licensee may bring an illegal gambling device, including an illegal video gambling machine, into the state if:

(i) the illegal gambling device contains a component that will be used by the licensee to manufacture an illegal gambling device for export from the state; or

(ii) the illegal gambling device will be reconditioned, refurbished, repaired, tested, or otherwise substantially modified in preparation for export from the state; and

(iii) the illegal gambling device will be exported from the state; and

(iv) the licensee has notified the department and received authorization from the department to bring the illegal gambling device into the state. The licensee is subject to reporting requirements provided for in rules adopted under subsection (3)(a).

(c) A licensee may also bring an illegal video gambling machine into the state if:

(i) the illegal video gambling machine will be reconditioned, refurbished, repaired, or otherwise substantially modified for conversion to an authorized video gambling machine; and

(ii) the licensee has notified the department and has received authorization from the department to bring the illegal video gambling machine into the state. The licensee is subject to reporting requirements provided for in rules adopted under subsection (3)(a).

(5) An illegal gambling device may be possessed or located for display purposes only and not for operation:

(a) in a public or private museum; or

(b) in any other public place if the device has been made permanently inoperable for purposes of conducting a gambling activity.

(6) An antique illegal gambling device may be possessed by a licensed retail business establishment for purposes of resale and not for operation as provided in 23-5-153."

Section 3. Section 23-5-153, MCA, is amended to read:

"23-5-153. Possession and sale of antique ~~slot machines~~ *illegal gambling devices.* (1) For the purposes of this section, an antique ~~slot machine is a mechanically or electronically operated slot machine that at any present time is more than 25 years old.~~ *illegal gambling device is an illegal gambling device that at any present time is more than 25 years old.*

(2) Except as provided in *23-5-152(6) and* subsection (3) *of this section*, an antique ~~slot machine~~ *illegal gambling device* may be possessed, located, and operated only in a private residential dwelling.

(3) (a) An antique ~~slot machine~~ *illegal gambling device* may be possessed or located for purposes of display only and not for operation:

(i) in a *retail business establishment or* public or private museum; or

(ii) in any other public place if the ~~machine~~ *device* has been made permanently inoperable for purposes of conducting a gambling activity.

(b) A licensed manufacturer-distributor or a person licensed under subsection (4) may possess antique ~~slot machines~~ *illegal gambling devices* for purposes of commercially selling or otherwise supplying the ~~machines~~ *devices*.

(4) A person other than a licensed manufacturer-distributor may not sell more than three antique ~~slot machines~~ *illegal gambling devices* in a 12-month period without first obtaining from the department ~~an annual~~ *a* license for selling the ~~machines~~ *antique illegal gambling devices*. The fee for the license is $50 ~~a year~~*, and the license is valid for 3 years from the date that the license is issued*. The fee must be retained by the department for administrative purposes. The department may not issue a license under this subsection to a licensed operator.

(5) A person or entity legally possessing ~~a~~ *an antique* ~~slot machine~~ *illegal gambling device* under subsection (2) or (3) may sell or otherwise supply a ~~machine~~ *device* to another person or entity who may legally possess ~~a slot machine~~ *an illegal gambling device*.

(6) An antique ~~slot machine~~ *illegal gambling device* may not be operated for any commercial or charitable purpose."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to illegal gambling devices possessed by a licensed retail business establishment for purposes of resale and not for operation on or after December 31, 2006.

Approved May 3, 2007

CHAPTER NO. 430

[SB 542]

AN ACT REVISING PAYMENT OPTIONS FOR GROUP LIFE INSURANCE COVERAGE; AND AMENDING SECTIONS 33-20-1101, 33-20-1111, AND 33-20-1209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-20-1101, MCA, is amended to read:

"33-20-1101. Employee groups. (1) Subject to the requirements in subsections (2) through (5), the lives of a group of individuals may be insured under a policy issued to an employer or to the trustees of a fund established by an employer to insure employees of the employer for the benefit of persons other than the employer. The employer or trustees must be considered the policyholder.

(2) (a) The employees eligible for insurance under the policy must be all of the employees of the employer or all of any class or classes of the employer determined by conditions pertaining to their employment. The policy may provide that the term "employees" includes:

(i) the employees of one or more subsidiary corporations and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors, or partnerships if the business of the employer and of the employer's affiliated corporations, proprietors, or partnerships is under common control;

(ii) the individual proprietor or partners if the employer is an individual proprietor or a partnership; or

(iii) retired employees.

(b) A director of a corporate employer is not eligible for insurance under the policy unless the director is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director.

(c) An individual proprietor or partner is not eligible for insurance under the policy unless the individual proprietor or partner is actively engaged in and devotes a substantial part of working hours to the conduct of the business of the proprietor or partnership.

(3) *(a)* ~~The premium for the policy must be paid by the policyholder, either wholly from the employer's funds or funds contributed by the employer or partly from the employer's funds and from funds contributed by the insured employees. A policy may not be issued if the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 75% of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contribution.~~ *Payment of the premium for the insurance must be made by the policyholder from:*

(i) the employer's funds or funds contributed by the employer;

(ii) funds contributed by the insured employees or members; or

(iii) funds contributed by a combination of payors in subsections (3)(a)(i) and (3)(a)(ii).

(b) A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(4) The policy must cover at least two employees at date of issue.

(5) The amount of insurance under the policy must be based upon a plan precluding individual selection either by the employees or by the employer or trustees."

Section 2. Section 33-20-1111, MCA, is amended to read:

"33-20-1111. Dependents of employee and labor union groups — coverage. Any group life policy issued under 33-20-1101, 33-20-1102, or 33-20-1103 may be extended to insure the employees or members against loss due to the death of their spouses and minor children, or any class or classes ~~thereof~~ *of employees, members, spouses, or minor children*, subject to the following requirements:

(1) *(a)* The premium for the insurance ~~shall~~ *must* be paid by the policyholder~~,~~ ~~either~~ from*:*

(i) the employer's or union's funds or funds contributed by the employer or union*;* ~~or from~~

(ii) funds contributed by the insured employees or members~~,~~*;* or ~~from both~~

(iii) a combination of payors in subsections (1)(a)(i) and (1)(a)(ii). ~~If any part of the premium is to be derived from funds contributed by the insured employees or members, the insurance with respect to spouses and children may be placed in force only if at least 75% of the then eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, elect to make the required contribution.~~

(b) If no part of the premium is to be ~~derived~~ *paid* from funds contributed by the employees or members, all eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, must be insured with respect to their spouses and children.

(2) The amounts of insurance must be based upon some plan precluding individual selection either by the employees or members or by the policyholder, employer, or union.

(3) *(a)* Upon termination of the insurance with respect to the members of the family of any employee or member by reason of the employee's or member's termination of employment, termination of membership in the class or classes eligible for coverage under the policy, or death, the spouse is entitled to have issued by the insurer, without evidence of insurability, an individual policy of life insurance, without disability or other supplementary benefits, providing application for the individual policy ~~shall be~~ *is* made~~,~~ and the first premium *is* paid to the insurer~~,~~ within 31 days after ~~such~~ *the* termination, subject to the requirements of ~~subsections (1)(a), (1)(b), and (1)(c) of~~ 33-20-1209*(1)(a) through (1)(c)*.

(b) (i) If the group policy terminates or is amended ~~so as~~ to terminate the insurance of any class of employees or members and the employee or member is entitled to have issued an individual policy under 33-20-1210, the spouse is also entitled to have issued by the insurer an individual policy, subject to the conditions and limitations provided above.

(ii) If the spouse dies within the period during which ~~he~~ *the spouse* would have been entitled to have an individual policy issued in accordance with this provision, the amount of life insurance ~~which he~~ *that the spouse* would have been entitled to have issued under ~~such~~ *the* individual policy ~~shall~~ *must* be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium ~~therefor~~ *for the individual policy* has been made.

(4) Notwithstanding *the provisions in* 33-20-1208, only one certificate ~~need~~ *must* be issued for delivery to an insured person if a statement concerning any dependent's coverage is included in ~~such~~ *the* certificate."

Section 3. Section 33-20-1209, MCA, is amended to read:

"33-20-1209. Conversion on termination of eligibility. (1) The group life insurance policy or certificate must contain a provision that if the insurance or any portion of it on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, the person is entitled to have issued to the person by the insurer, without evidence of insurability, an individual policy of life insurance if the application for the individual policy is made and the first premium is paid to the insurer within 31 days after termination and provided that:

(a) the individual policy must, at the option of the person, be on any one of the forms, including but not limited to term insurance, if the group policy provides for term insurance, then customarily issued by the insurer at the age and for the amount applied for, and must offer benefits at least equal to those under the group coverage;

(b) the individual policy must, at the option of the insured, be in an amount not in excess of the amount of life insurance that ceases because of the termination, less the amount of any life insurance for which the person is

insured under any other group policy within 31 days after the termination, provided that any amount of insurance that has matured on or before the date of the termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, may not, for the purposes of this provision, be included in the amount that is considered to cease because of the termination; and

(c) the premium on the individual policy is the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk that the person belongs, and to the person's age attained on the effective date of the individual policy.

(2) A group insurer may meet the requirements of this section by contracting with another insurer to issue conversion policies as described in subsection (1). The conversion carrier must be authorized to act as an insurer in this state and shall submit the conversion policies to the commissioner.

(3) *(a) (i)* With the consent of the employer, a person covered under a group life insurance policy issued to an employer or to the trustees of a fund established by an employer under 33-20-1101 may continue the person's coverage under the group policy during the person's employment even if there has been a reduction of the person's regular work schedule to less than the minimum number of hours required for eligibility for membership. The premium charged for the continued coverage must be equal to that charged other members of the group.

(ii) The person's coverage under the group ~~will cease~~ *ceases* if the person subsequently becomes eligible for coverage under another group policy because of employment elsewhere.

(b) A group life insurance policy on which the payment of premiums is provided under 33-20-1101(3)(a)(ii) or (3)(a)(iii) may continue in effect for a person whose regular work schedule has been reduced to less than the minimum number of hours required for eligibility for membership. The premium charged for the continued coverage must be equal to that charged other members of the group, and the provisions of subsection (3)(a)(ii) of this section apply."

Approved May 3, 2007

CHAPTER NO. 431

[HB 6]

AN ACT REVISING AND IMPLEMENTING THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; MAKING PERMANENT REVISIONS TO THE USE OF THE RENEWABLE RESOURCE GRANT AND LOAN STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTION 85-1-604, MCA; REPEALING SECTION 11, CHAPTER 307, LAWS OF 2005; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations from renewable resource grant and loan program state special revenue account. (1) There is appropriated from the

renewable resource grant and loan program state special revenue account established in 85-1-604 to the department of natural resources and conservation up to:

(a) $100,000 to be used for emergency projects;

(b) $400,000 to be used for planning grants to be awarded by the department over the course of the biennium;

(c) $300,000 to be used for irrigation development grants to be awarded by the department over the course of the biennium; and

(d) $100,000 to be used for the development of a comprehensive irrigation report by the department.

(2) There is appropriated from the renewable resource grant and loan program state special revenue account established in 85-1-604 to the department of natural resources and conservation $5 million that is available in the renewable resource state special revenue account for grants to political subdivisions and local governments during the 2009 biennium. The funds in this section must be awarded by the department to the named entities for the described purposes and in the described grant amounts set out in subsection (3), subject to the conditions set forth in [sections 1 through 4] and the contingencies described in the renewable resource grant and loan program January 2007 report to the 60th legislature. The legislature, pursuant to 85-1-605, approves the grants listed in subsection (3), with grants to be made in the order indicated in the prioritized list of projects and activities. Funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted or used by higher-ranked projects must be provided for projects farther down the priority list that would not otherwise receive funding. Any projects that are funded by the reclamation and development grants program may not be funded under [sections 1 through 4].

(3) The following are the prioritized grant projects:

RENEWABLE RESOURCE GRANT AND LOAN PROGRAM

Applicant/Project	Grant Amount
Green Mountain Conservation District	
(Crow Creek Restoration Project)	$70,559
Twin Bridges, Town of	
(Twin Bridges Wastewater System Improvements)	$100,000
Fort Peck Tribes	
(Fort Peck D-4 Drain Water Conservation Improvements)	$100,000
North Powell Conservation District	
(Blackfoot Drought and Water Conservation Project)	$84,347
Bainville, Town of	
(Bainville Wastewater System Improvements)	$100,000
Petrolia Irrigation District	
(Petrolia Irrigation Rehabilitation Project)	$100,000
Montana Department of Natural Resources and Conservation	
(Ackley Lake Dam Rehabilitation)	$100,000

Cut Bank, City of	
(Cut Bank Water System Improvements)	$100,000
Whitehall, Town of	
(Whitehall Wastewater System Improvements)	$100,000
Montana Department of Natural Resources and Conservation	
(East Fork Siphon Replacement and Main Canal Lining Project)	$100,000
Loma County Water and Sewer District	
(Loma Water System Improvements)	$100,000
Panoramic Mountain River Heights County Water District	
(Panoramic Mountain River Heights Water System Improvements)	$100,000
Montana Department of Natural Resources and Conservation	
(Smith Creek Canal Seepage Abatement and Rehabilitation Project)	$100,000
Goodan-Keil County Water District	
(Goodan-Keil Water Improvement Project)	$100,000
Montana Department of Natural Resources and Conservation	
(Middle Creek Dam Automated Instrumentation)	$100,000
Polson, City of	
(Polson Water System Improvements)	$100,000
Hill County	
(Beaver Creek Dam Seepage Control Berm)	$100,000
Gallatin County, Hebgen Lake Estates RID 322	
(Hebgen Lake Wastewater System Improvements)	$100,000
Three Forks, City of	
(Three Forks Wastewater System Improvements)	$100,000
Mineral County Saltese Water and Sewer District	
(Saltese Wastewater System Improvements)	$100,000
Carbon Conservation District	
(Phase I Hydrogeology and Water Balance of the East/West Bench Aquifers)	$100,000
Fergus County Conservation District	
(Upper and Lower Carter Pond Dam Reconstruction)	$100,000
Brady County Water and Sewer District	
(Brady Wastewater System Improvements)	$100,000
Beaverhead Conservation District	
(Big Hole Ditch Improvement Project)	$100,000
Superior, Town of	
(Superior Water System Improvements)	$100,000

Sunny Meadows Missoula County Water and Sewer District	
(Sunny Meadows Water System Improvements)	$100,000
Tri County Water and Sewer District	
(Tri County Water System Improvements)	$100,000
Philipsburg, Town of	
(Philipsburg Wastewater System Improvements)	$100,000
Fort Peck Tribes	
(58 Main Structure Replacement for Water Management)	$100,000
Sanders County	
(Eliminating Failed Septic Systems in Sanders County)	$100,000
Malta Irrigation District	
(Dodson North Canal Regulating Reservoir)	$100,000
Red Lodge, City of	
(Red Lodge Water System Improvements)	$100,000
Elk Meadows Ranchettes County Water District	
(Elk Meadows Water System Improvements)	$100,000
RAE Water and Sewer District	
(RAE Water System Improvements)	$100,000
Stillwater Conservation District	
(Stillwater-Rosebud Watershed, Surface Water/Groundwater Interaction)	$100,000
East Bench Irrigation District	
(East Bench Irrigation District Canal Lining)	$100,000
Dayton Lake County Water and Sewer District	
(Dayton Wastewater System Improvements)	$100,000
Milk River Irrigation Project Joint Board of Control	
(Saint Mary Canal, Drop 3, Plunge Pool Concrete Repair)	$100,000
Yellowstone Conservation District	
(Modeling Aquifer Response to Urban Sprawl, West Billings Area)	$59,991
Ravalli County	
(Improved Resource Protection, Floodplain Hazard Mapping)	$100,000
North Valley County Water and Sewer District	
(North Valley County Water System Improvements)	$100,000
Sheridan, Town of	
(Sheridan Wastewater System Improvements)	$100,000
Neihart, Town of	
(Neihart Water System Improvements)	$100,000
Greenfields Irrigation District	
(Muddy Creek Wastewater and Erosion Reduction Project)	$100,000

Bynum Teton County Water and Sewer District	
(A New Source of Drinking Water for Bynum, Phase 1)	$100,000
Whitefish, City of	
(Whitefish Wastewater System Improvements)	$100,000
Power Teton County Water and Sewer District	
(Power Teton Water System Improvements)	$100,000
Sidney Water Users Irrigation District	
(Sidney Water Users Increasing Irrigation Efficiency Phase 2)	$100,000
Jordan, Town of	
(Jordan Wastewater System Improvements)	$100,000
Beaverhead County	
(Blacktail Deer Creek Flood Mitigation Project)	$100,000
Seeley Lake Missoula County Water District	
(Seeley Lake Water System Improvements)	$100,000
Manhattan, Town of	
(Manhattan Water System Improvements)	$100,000
Lewis and Clark County	
(Lewis and Clark Fairgrounds, Dunbar Area Water System Improvements)	$100,000
Columbia Falls, City of	
(Columbia Falls Wastewater System Improvements)	$100,000
Hamilton, City of	
(Hamilton Wastewater System Improvements)	$100,000
Hysham Irrigation District	
(Hysham Irrigation District Infrastructure Improvement)	$100,000
Shelby, City of	
(Shelby Water System Improvements)	$100,000
Montana Department of Natural Resources and Conservation	
(Community Tree Planting Grants)	$100,000
Ronan, City of	
(Ronan Wastewater System Improvements)	$100,000
Pondera County Conservation District	
(Marias River Watershed Baseline Assessment)	$100,000
Sheridan County	
(Raymond Dam Rehabilitation)	$100,000
Montana Department of Environmental Quality	
(Geothermal Assessment and Outreach Partnership)	$99,963
Thompson Falls, City of	
(Thompson Falls Water System Improvements)	$100,000

Missoula County Lolo RSID 901	
(Lolo Wastewater System Improvements, Phase 2)	$100,000
Chester Irrigation District	
(Chester Irrigation Project: Phase 2, Water Service Contract Application)	$100,000
Pinesdale, Town of	
(Pinesdale Water System Improvements)	$100,000
Ekalaka, Town of	
(Ekalaka Water and Wastewater System Improvements)	$100,000
Sweet Grass Conservation District	
(West Boulder Point of Diversion Rehabilitation Project)	$44,500
Livingston, City of	
(Glass Pulverizer for the City of Livingston)	$100,000
Montana State University	
(Channel Response Assessment for the Upper Blackfoot)	$100,000
Darby, Town of	
(Darby Water System Improvements)	$100,000
Sunburst, Town of	
(Sunburst Backup Water Supply Wells)	$99,236
Sunset Irrigation District	
(Gravity Flow Group Irrigation Pipelines)	$100,000
Geyser Judith Basin County Water and Sewer District	
(Geyser Water System Improvements)	$100,000
Black Eagle Water and Sewer District	
(Black Eagle Water System Improvements)	$100,000
Glacier County Conservation District	
(Marias River Bridge Road Stabilization)	$100,000
Buffalo Rapids Project, District 2	
(Open Lateral Conversion to Pipeline)	$100,000
Buffalo Rapids Project, District 1	
(Open Lateral 34.5 Conversion to Pipeline)	$100,000

(4) For grant projects for which the department of natural resources and conservation also has recommended a loan, the authorization for the loan is contained in [LC 125].

(5) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2009 biennium pursuant to 17-7-302.

Section 2. Conditions of grants. Disbursement of funds under [sections 1 through 4] for grants is subject to the following conditions that must be met by project sponsors:

(1) approval of a scope of work and budget for the project by the department of natural resources and conservation. Changes in the project scope of work or budget that reduce the public or natural resource benefits as presented in department reports and applicant testimony to the 60th legislature will result in the proportional reduction in grant amount.

(2) documented commitment of other funds required for project completion;

(3) satisfactory completion of conditions described in the recommendation section of the project narrative in the renewable resource grant and loan program project recommendations and biennium report submitted to the 60th legislature for the 2009 biennium or, in the case of emergency applications, conditions specified at the time of written notification of approved grant authority;

(4) execution of a grant agreement with the department; and

(5) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the grant as evidenced from the application to the department or from the proposal to the legislature.

Section 3. Conditions for grants. Notwithstanding the conditions described in [section 2], grant funds are disbursed in the order of priority listed in [section 1] as resource indemnity trust account interest income revenue is received. A project approved by [section 1] is not entitled to receive grant funds that are not collected and allocated to the renewable resource grant and loan program state special revenue account.

Section 4. Appropriations established. (1) For any entity of state government that receives a grant under [sections 1 through 3], an appropriation is established for the amount of the grant listed in [section 1(3)]. Grants to state entities from prior bienniums are reauthorized for completion of contract work.

(2) Any funds in excess of the amount appropriated for grants under [sections 1 through 3] are available for appropriation for authorized purposes from the renewable resource grant and loan program state special revenue account.

Section 5. Review of previously authorized grants. Recipients of renewable resource grants authorized by previous legislatures that have not completed startup conditions must be notified by the department of natural resources and conservation that the legislature, at the next regular session, will review renewable resource grants to determine if the commitment of the renewable resource grant should be withdrawn.

Section 6. Section 85-1-604, MCA, is amended to read:

"85-1-604. Renewable resource grant and loan program state special revenue account created — revenue allocated — limitations on appropriations from account. (1) There is a renewable resource grant and loan program state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent that they are required to be credited to the renewable resource loan debt service fund pursuant to 85-1-603, there must be paid into the renewable resource grant and loan program state special revenue account:

(a) the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(b) the excess of the coal severance tax proceeds allocated by 85-1-603 to the renewable resource loan debt service fund above debt service requirements as provided in and subject to the conditions of 85-1-619; and

(c) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests.

(3) Appropriations may be made from the renewable resource grant and loan program state special revenue account for:

(a) grants for designated projects and the activities authorized in 85-1-602(1)(a); and

(b) administrative expenses, including salaries and expenses for personnel and equipment, office space, and other expenses necessarily incurred in the administration of the grant and loan program. The expenses under this subsection (3)(b) may be funded before funding of projects.

(4) ~~For the biennium beginning July 1, 2005, appropriations~~ *Appropriations* may be made from the renewable resource grant and loan program state special revenue account for administrative expenses, including salaries and expenses for personnel and equipment, office space, and other expenses necessarily incurred in natural resource-related programs. ~~(Subsection (4) terminates June 30, 2007—sec. 11, Ch. 307, L. 2005.)~~"

Section 7. Repealer. Section 11, Chapter 307, Laws of 2005, is repealed.

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 10. Coordination instruction. If House Bill No. 116 is passed and approved, then the appropriations in [section 1 of this act] are appropriated from the natural resources projects state special revenue account established in [section 28] of House Bill No. 116 and the appropriation in [section 1 of this act] for the purpose of making grants to political subdivisions and local governments is increased by up to $0.5 million.

Section 11. Coordination instruction. If the funding in [this act] is increased sufficiently to fund all the grants in [section 1(3) of this act], then the renewable resource grant authorization in [section 1(6) of HB 512] is void, and the appropriation of proceeds of borrowed funds in [section 1(5) of HB 512] is reduced by $2.2 million.

Section 12. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 1] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 432

[HB 116]

AN ACT GENERALLY REVISING RESOURCE INDEMNITY TRUST AND GROUND WATER ASSESSMENT LAWS; ELIMINATING THE RECLAMATION AND DEVELOPMENT GRANTS ACCOUNT AND THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM STATE SPECIAL REVENUE ACCOUNT; CREATING THE NATURAL RESOURCES OPERATIONS STATE SPECIAL REVENUE ACCOUNT AND THE NATURAL RESOURCES PROJECTS STATE SPECIAL REVENUE ACCOUNT; REALLOCATING CERTAIN OIL AND GAS PRODUCTION TAXES AND METALLIFEROUS MINES TAXES INTO THE NEW SPECIAL REVENUE ACCOUNTS; REALLOCATING CERTAIN RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAXES; ELIMINATING CERTAIN STATUTORY APPROPRIATIONS; REALLOCATING CERTAIN RESOURCE INDEMNITY TRUST FUND INTEREST DISTRIBUTIONS; CLARIFYING THE USE OF THE RESOURCE INDEMNITY TRUST FUND; ELIMINATING THE CAP ON THE GROUND WATER ASSESSMENT SPECIAL REVENUE ACCOUNT; CLARIFYING THE USE OF THE WATER STORAGE STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 15-36-331, 15-37-117, 15-38-106, 15-38-202, 15-38-203, 17-5-702, 17-7-502, 19-5-404, 75-1-1101, 75-10-621, 75-10-704, 75-10-743, 80-7-823, 85-1-102, 85-1-603, 85-1-605, 85-1-606, 85-1-613, 85-1-614, 85-1-615, 85-1-616, 85-1-631, 85-2-905, 90-2-1103, 90-2-1111, AND 90-2-1121, MCA; REPEALING SECTIONS 85-1-604 AND 90-2-1104, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-331, MCA, is amended to read:

"15-36-331. Distribution of taxes. (1) (a) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalties collected under this part.

(b) For the purposes of distribution of oil and natural gas production taxes to county and school district taxing units under 15-36-332 and to the state, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) (a) The amount of oil and natural gas production taxes collected for the privilege and license tax pursuant to 82-11-131 must be deposited, in accordance with the provisions of 15-1-501, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(b) The amount of the tax for the oil, gas, and coal natural resource account established in 90-6-1001 must be deposited in the account.

(3) (a) For each tax year, the amount of oil and natural gas production taxes determined under subsection (1)(b) is allocated to each county according to the following schedule:

	~~2005~~	2006 and succeeding tax years
Big Horn	~~45.04%~~	45.05%

Blaine	~~58.11%~~	58.39%
Carbon	~~48.93%~~	48.27%
Chouteau	~~57.65%~~	58.14%
Custer	~~80.9%~~	69.53%
Daniels	~~49.98%~~	50.81%
Dawson	~~50.64%~~	47.79%
Fallon	~~41.15%~~	41.78%
Fergus	~~83.52%~~	69.18%
Garfield	~~48.81%~~	45.96%
Glacier	~~64.74%~~	58.83%
Golden Valley	~~57.41%~~	58.37%
Hill	~~65.33%~~	64.51%
Liberty	~~59.73%~~	57.94%
McCone	~~52.86%~~	49.92%
Musselshell	~~51.44%~~	48.64%
Petroleum	~~54.62%~~	48.04%
Phillips	~~53.78%~~	54.02%
Pondera	~~70.89%~~	54.26%
Powder River	~~62.17%~~	60.9%
Prairie	~~39.73%~~	40.38%
Richland	~~46.72%~~	47.47%
Roosevelt	~~46.06%~~	45.71%
Rosebud	~~38.69%~~	39.33%
Sheridan	~~47.54%~~	47.99%
Stillwater	~~54.35%~~	53.51%
Sweet Grass	~~60.24%~~	61.24%
Teton	~~48.4%~~	46.1%
Toole	~~57.14%~~	57.61%
Valley	~~54.22%~~	51.43%
Wibaux	~~48.68%~~	49.16%
Yellowstone	~~48.06%~~	46.74%
All other counties	~~50.15%~~	50.15%

(b) The oil and natural gas production taxes allocated to each county must be deposited in the state special revenue fund and transferred to each county for distribution, as provided in 15-36-332.

(4) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil and natural gas production taxes remaining after the distributions pursuant to subsections (2) and (3) as follows:

(a) for each fiscal year through the fiscal year ending June 30, 2011, to be distributed as follows:

(i) 1.23% to the coal bed methane protection account established in 76-15-904;

(ii) 1.45% to the natural resources projects state special revenue account established in [section 28];

~~(ii)~~*(iii)* ~~2.95%~~ *1.45%* to the ~~reclamation and development grants~~ *natural resources operations state* special revenue account established in ~~90-2-1104~~ *[section 27]*;

~~(iii)~~*(iv)* ~~2.95%~~ *2.99%* to the orphan share account established in 75-10-743;

~~(iv)~~*(v)* 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and

~~(v)~~*(vi)* all remaining proceeds to the state general fund;

(b) for fiscal years beginning after June 30, 2011, to be distributed as follows:

(i) 2.16% to the natural resources projects state special revenue account established in [section 28];

~~(i)~~*(ii)* ~~4.18%~~ *2.02%* to the ~~reclamation and development grants~~ *natural resources operations state* special revenue account established in ~~90-2-1104~~ *[section 27]*;

~~(ii)~~*(iii)* ~~2.95%~~ *2.95%* to the orphan share account established in 75-10-743;

~~(iii)~~*(iv)* 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and

~~(iv)~~*(v)* all remaining proceeds to the state general fund."

Section 2. Section 15-37-117, MCA, is amended to read:

"15-37-117. Disposition of metalliferous mines license taxes. (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501, be allocated as follows:

(a) to the credit of the general fund of the state, 57% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 2.5% of total collections each year;

(c) to the hard-rock mining reclamation debt service fund ~~created~~ *established* in 82-4-312, 8.5% of total collections each year;

(d) to the ~~reclamation and development grants program~~ *natural resources operations* state special revenue account *established in [section 27]*, 7% of total collections each year; and

(e) within 60 days of the date the tax is payable pursuant to 15-37-105, to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 37.5% to the county hard-rock mine trust account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(e)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for general planning functions or economic development activities as described in 7-6-2225(3)(c) through (3)(e);

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(e) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(e). The allocation to the county described by subsection (1)(e) is a statutory appropriation pursuant to 17-7-502."

Section 3. Section 15-38-106, MCA, is amended to read:

"15-38-106. (Temporary) Payment of tax — records — collection of taxes — refunds. (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before the due date of the annual statement established in 15-38-105, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501, deposit *the proceeds from the resource indemnity and ground water assessment tax* in the following order:

(a) annually in due course, from the proceeds of the tax to the CERCLA match debt service fund provided in 75-10-622, the amount necessary, as certified by the department of environmental quality, after crediting to the CERCLA match debt service fund amounts transferred from the CERCLA cost recovery account established under 75-10-631, to pay the principal of, premium, if any, and interest during the next fiscal year on bonds or notes issued pursuant to 75-10-623;

(b) $366,000 of the proceeds ~~of the resource indemnity and ground water assessment taxes~~ *from the tax* in the ground water assessment account established by 85-2-905;

(c) for the biennium beginning July 1, 2007, $150,000 of the proceeds from the tax in the water storage state special revenue account established in 85-1-631;

~~(c)~~*(d)* 50% of the remaining proceeds ~~in the reclamation and development grants account established by 90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects~~ *from the tax divided equally between the environmental quality protection fund established in 75-10-704 and the hazardous waste/CERCLA special revenue account established in 75-10-621*;

~~(d)~~*(e)* ~~$150,000 of the remaining proceeds of the resource indemnity and ground water assessment taxes in the natural resource workers' tuition~~

~~scholarship account established in 39-10-106 for the first fiscal year following July 1 immediately after the date that the governor certifies that the resource indemnity trust fund balance has reached $100 million and~~ for *each* ~~succeeding~~ fiscal ~~years~~ *year from the proceeds from the tax*, the amount required under 39-10-106(4);

~~(c)~~*(f)* all remaining proceeds *from the tax* in the ~~orphan share account established in 75-10-743~~ *natural resources projects state special revenue account, established in [section 28], for the purpose of making grants to be used for mineral development reclamation projects and renewable resource projects.*

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer. (Terminates June 30, 2007—sec. 10, Ch. 586, L. 2001.)

15-38-106. (Effective July 1, 2007) Payment of tax — records — collection of taxes — refunds. (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before the due date of the annual statement established in 15-38-105, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501, deposit *the proceeds from the resource indemnity and ground water assessment tax* in the following order:

(a) annually in due course, from the proceeds of the tax to the CERCLA match debt service fund provided in 75-10-622, the amount necessary, as certified by the department of environmental quality, after crediting to the CERCLA match debt service fund amounts transferred from the CERCLA cost recovery account established under 75-10-631, to pay the principal of, premium, if any, and interest during the next fiscal year on bonds or notes issued pursuant to 75-10-623;

(b) $366,000 of the proceeds *from the tax* in the ground water assessment account established by 85-2-905;

(c) for the biennium beginning July 1, 2007, $150,000 of the proceeds from the tax in the water storage state special revenue account established in 85-1-631;

~~(c)~~*(d)* 50% of the remaining proceeds ~~in the orphan share account~~ *from the tax divided equally between the environmental quality protection fund* established in ~~75-10-743~~ *75-10-704 and the hazardous waste/CERCLA special revenue account established in 75-10-621*; and

~~(d)~~*(e)* all remaining proceeds *from the tax* in the ~~reclamation and development grants~~ *natural resources projects state special revenue* account, established ~~by 90-2-1104~~ *in [section 28]*, for the purpose of making grants to be

used for mineral development reclamation projects *and renewable resource projects*.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

Section 4. Section 15-38-202, MCA, is amended to read:

"15-38-202. (Temporary) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund must be invested at the discretion of the board of investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches $100 million. After the fund balance reaches $100 million, all net earnings, excluding unrealized gains and losses, and all receipts may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

~~(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, to be deposited into the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs. Any amount of the appropriation in this subsection (2)(a)(i) that is not pledged to repay bonds issued prior to January 1, 1999, may be deposited in a permanent fund account, the income from which may be used for the purposes provided in this subsection.~~

~~(ii)~~*(i)* ~~$2~~ *$3.5* million to be deposited ~~into~~ *in* the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account, ~~created by 85-1-604~~ *established in [section 28]*, for the purpose of making grants;

~~(iii) for the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, $1.2 million and for fiscal years beginning on or after July 1, 2005, $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants;~~

~~(iv)~~*(ii)* ~~$300,000~~ *$300,000* to be deposited ~~into~~ *in* the ground water assessment account ~~created by~~ *established in* 85-2-905~~; and~~*;*

~~(v) for the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, $350,000 and for fiscal years beginning on or after July 1, 2005, $500,000 to the department of fish, wildlife, and parks for the purposes of 87-1-283. The future fisheries review panel shall approve and fund qualified mineral reclamation projects before other types of qualified projects.~~

(iii) $500,000 to the department of fish, wildlife, and parks for the purposes of 87-1-283. The future fisheries review panel shall approve and fund qualified mineral reclamation projects before other types of qualified projects.

(iv) $175,000 to be deposited in the environmental contingency account established in 75-1-1101.(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

~~(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;~~

~~(ii)~~*(i)* an amount not to exceed $50,000 to *be deposited in* the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

~~(iii)~~*(ii)* $500,000 to be deposited ~~into~~ *in* the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) ~~For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 25.5% and for fiscal years beginning on or after July 1, 2005, 30%~~ *Sixty-five percent* of the interest income of the resource indemnity trust fund must be allocated to the ~~renewable resource grant and loan program~~ *natural resources operations* state special revenue account created by ~~85-1-604~~ *established in [section 27].*

(ii) ~~For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 22% and for fiscal years beginning on or after July 1, 2005, 26%~~ *Twenty-six percent* of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

~~(iii) For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 45% and for fiscal years beginning on or after July 1, 2005, 35% of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.~~

~~(iv)~~*(iii)* ~~For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 7.5% and for fiscal years beginning on or after July 1, 2005, 9%~~ *Nine percent* of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session. (Terminates July 1, 2009—sec. 9, Ch. 529, L. 1999.)

15-38-202. (Effective July 1, 2009) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund must be invested at the discretion of the board of investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches $100 million. After the fund balance reaches $100 million, all net earnings, excluding unrealized gains and losses, and all receipts

may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

~~(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, to be deposited into the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs. Any amount of the appropriation in this subsection (2)(a)(i) that is not pledged to repay bonds issued prior to January 1, 1999, may be deposited in a permanent fund account, the income from which may be used for the purposes provided in this subsection.~~

~~(ii)~~*(i)* ~~$2~~ *$3.5* million to be deposited ~~into~~ *in* the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account, ~~created by 85-1-604~~ *established in [section 28]*, for the purpose of making grants;

~~(iii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants; and~~

~~(iv)~~*(ii)* ~~$300,000~~ *$300,000* to be deposited ~~into~~ *in* the ground water assessment account created by 85-2-905~~.~~*;*

(iii) $500,000 to the department of fish, wildlife, and parks for the purposes of 87-1-283. The future fisheries review panel shall approve and fund qualified mineral reclamation projects before other types of qualified projects.

(iv) $175,000 to be deposited in the environmental contingency account established in 75-1-1101.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

~~(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;~~

~~(ii)~~*(i)* an amount not to exceed $50,000 to *be deposited in* the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

~~(iii)~~*(ii)* $500,000 to be deposited ~~into~~ *in* the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) ~~Thirty~~ *Sixty-five* percent of the interest income of the resource indemnity trust fund must be allocated to the ~~renewable resource grant and loan program~~ *natural resources operations* state special revenue account ~~created by 85-1-604~~ *established in [section 27]*.

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

~~(iii) Thirty-five percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.~~

~~(iv)~~*(iii)* Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session. ~~(Terminates June 30, 2014—sec. 5, Ch. 497, L. 1999.)~~

~~**15-38-202. (Effective July 1, 2014) Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All money paid into the resource indemnity trust fund must be invested at the discretion of the board of investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches $100 million. After the fund balance reaches $100 million, all net earnings, excluding unrealized gains and losses, and all receipts may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than $100 million.~~

~~(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:~~

~~(i) $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;~~

~~(ii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants; and~~

~~(iii) $300,000 to be deposited into the ground water assessment account created by 85-2-905.~~

~~(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:~~

~~(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;~~

~~(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and~~

~~(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.~~

~~(c) The remainder of the interest income is allocated as follows:~~

~~(i) Thirty percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.~~

~~(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.~~

~~(iii) Thirty-five percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.~~

~~(iv) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.~~

~~(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session.~~"

Section 5. Section 15-38-203, MCA, is amended to read:

"15-38-203. ~~Purpose of fund usage — limitation on future use~~ *Use of funds.* ~~(1)~~*(1)* Any funds made available under this chapter must be used and expended to improve the total environment and rectify damage to the environment.

~~(2) It is the intent of the legislature that future appropriations from the resource indemnity trust interest not be made to fund general operating expenses of state agencies.~~

(2) Funding under this chapter must be prioritized so as to maximize the funds available for on-the-ground projects and programs in Montana communities that address the impacts of natural resource development and improve the total environment, while minimizing the use of the funds available under this chapter for the operations of state government."

Section 6. Section 17-5-702, MCA, is amended to read:

"17-5-702. Purpose and intent. (1) The purpose of the coal severance tax trust fund bond provisions of this part is to establish the authority to issue and sell coal severance tax bonds that have been approved by *an* act of the legislature for financing specific renewable resource projects in the state authorized by the legislature and to guarantee redemption of the bonds by revenue derived from the receipts from the coal severance tax imposed by Title 15, chapter 35, part 1, and ~~such~~ other money ~~as~~ *that* the legislature may from time to time determine.

(2) The legislature intends that projects to be financed by coal severance tax bonds include renewable resource projects as part of the program established in Title 85, chapter 1, part 6. The legislature further intends that the income from renewable resource projects in excess of the amount required for debt service and operation and maintenance of those projects and activities be deposited in the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account established in ~~85-1-604~~ *[section 28]*."

Section 7. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; ~~15-38-202;~~ 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; ~~82-11-161;~~ *82-11-161;* 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; ~~pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014;~~ pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 8. Section 19-5-404, MCA, is amended to read:

"19-5-404. State employer contribution. (1) Except as provided in subsection (2), the state shall pay as employer contributions 25.81% of the compensation paid to all of the employer's employees, except those properly excluded from membership.

(2) The state shall contribute monthly from the ~~renewable resource grant and loan program account in the state special revenue fund~~ *natural resources operations state special revenue account, established in [section 27],* to the judges' pension trust fund an amount equal to 25.81% of the compensation paid to the chief water court judge. The judiciary shall include in its budget and shall request for legislative appropriation an amount necessary to defray the state's portion of the costs of this section."

Section 9. Section 75-1-1101, MCA, is amended to read:

"75-1-1101. Environmental contingency account objectives. (1) There is an environmental contingency account within the state special revenue fund established in 17-2-102. The environmental contingency account is controlled by the governor.

(2) At the beginning of each ~~biennium,~~ *fiscal year,* $175,000 must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund ~~with the following exceptions:~~.

~~(a) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account equals or exceeds $750,000, allocation may not be made; and~~

~~(b) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account is less than $750,000, then an amount less than or equal to the difference between the unobligated cash balance and $750,000, but not to exceed $175,000, must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund.~~

(3) Funds are statutorily appropriated, as provided in 17-7-502, from the environmental contingency account upon the authorization of the governor to meet unanticipated public needs consistent with the following objectives:

(a) to support renewable resource development projects in communities that face an emergency or imminent need for the services or to prevent the physical failure of a project;

(b) to address imminent natural resource restoration and remediation needs that are anticipated to have significant adverse impacts to Montana's natural environment if not addressed in a timely manner;

~~(b)~~*(c)* to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent physical threat or during an emergency, not including:

(i) natural disasters adequately covered by other funding sources; or

(ii) fire *suppression*;

~~(c)~~*(d)* to respond to an emergency or imminent threat to persons, property, or the environment caused by mineral development;

~~(d)~~*(e)* to respond to an emergency or imminent threat to persons, property, or the environment caused by a hazardous material; and

~~(e)~~*(f)* to fund the environmental quality protection fund provided for in 75-10-704 or to take other necessary actions, including the construction of facilities, to respond to actual or potential threats to persons, property, or the environment caused by hazardous wastes or other hazardous materials.

(4) Interest *earned* from funds in the environmental contingency account ~~accrues to the general fund~~ *remains in the account.*

(5) The governor shall submit~~, as a part of the information required by 17-7-111,~~ *to the legislative finance committee* a complete *annual* financial report *by September 15 following the end of the fiscal year* on the environmental contingency account, including a description of all expenditures made since the preceding report."

Section 10. Section 75-10-621, MCA, is amended to read:

"75-10-621. Hazardous waste/CERCLA special revenue account. (1) There is a hazardous waste/CERCLA special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the hazardous waste/CERCLA account:

(a) proceeds from the resource indemnity and ground water assessment tax as provided by 15-38-106;

~~(a)~~*(b)* revenue obtained from the interest income of the resource indemnity trust fund under the provisions of 15-38-202, together with interest accruing on that revenue;

~~(b)~~*(c)* all proceeds of bonds or notes issued under 75-10-623 and all interest earned on proceeds of the bonds or notes; and

~~(c)~~*(d)* revenue from penalties or damages collected under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended in 1986 (CERCLA).

(3) Appropriations may be made from the hazardous waste/CERCLA account only for the following purposes and subject to the following conditions:

(a) not more than one-half of the interest income received for any biennium from the resource indemnity trust fund may be appropriated on a biennial basis for:

(i) implementation of the Montana Hazardous Waste Act, including regulation of underground storage tanks and the state share to obtain matching federal funds;

(ii) implementation of Title 75, chapter 10, part 6, pertaining to state assistance to and cooperation with the federal government for remedial action under CERCLA;

(iii) expenses of the department in administering and overseeing the implementation of Title 75, chapter 10, parts 4 and 6; and

(iv) state expenses relating to investigation and remedial action for any hazardous substance defined in 75-10-602; and

(b) to the extent funds are available after the appropriations in subsection (3)(a), the department may, as appropriate, seek authorization from the legislature or, when the legislature is not in session, through the budget amendment process provided for in Title 17, chapter 7, part 4, to spend funds for:

(i) state participation in remedial action under section 104 of CERCLA;

(ii) state costs for maintenance of sites at which remedial action under CERCLA has been completed; and

(iii) the state share to obtain matching federal funds for underground storage tank corrective action.

(4) For the purposes of subsection (3)(b), the legislature finds that a need for state special revenue to obtain matching federal funds for underground storage tank corrective action or for remedial action under section 104 of CERCLA constitutes a serious unforeseen and unanticipated circumstance for the purpose of meeting the definition of "emergency" in 17-7-102. The legislature further finds that the inability of the department to match the federal funds as the funds become available would seriously impair the functions of the department in carrying out its responsibilities under Title 75, chapter 10, parts 4 and 6.

(5) There is no dollar limit to the hazardous waste/CERCLA account. ~~Except as provided in subsection (6), unused~~ *Unused* balances remain in the account until appropriated by the legislature for the purposes specified in this section.

~~(6) (a) If funds are transferred from the orphan share fund to the hazardous waste/CERCLA account pursuant to 75-10-743(9), the department shall, subject to the limitations in subsections (6)(b) and (6)(c) of this section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year, transfer from the hazardous waste/CERCLA account to the orphan share fund the unencumbered amount remaining in the hazardous waste/CERCLA account at the end of the fiscal year that is in excess of the amount appropriated for the next fiscal year from the hazardous waste/CERCLA account.~~

~~(b) The total amount transferred pursuant to subsection (6)(a) may not exceed the total amount transferred to the hazardous waste/CERCLA account pursuant to 75-10-743(9).~~

~~(c) Subsection (6)(a) does not apply to the proceeds of bonds or notes sold pursuant to 75-10-623, to interest on the proceeds of those bonds or notes, or to appropriations of those proceeds or interest.~~"

Section 11. Section 75-10-704, MCA, is amended to read:

"75-10-704. Environmental quality protection fund. (1) There is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) ~~Except as provided in subsection (9), the~~ *The* fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) except as provided in subsection (7), establish and implement a system, including the preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds ~~appropriated~~ *allocated* to the fund by the legislature;

(d) proceeds from the resource indemnity and ground water assessment tax as authorized by 15-38-106;

~~(d)~~*(e)* funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

~~(e)~~*(f)* funds received from the interest income of the fund;

~~(f)~~*(g)* funds received from settlements pursuant to 75-10-719(7); and

~~(g)~~*(h)* funds received from the interest paid pursuant to 75-10-722.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) (a) There is established a state special revenue account for all funds donated or granted from private parties to remediate a specific release at a specific facility. There must be deposited into the account the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this account.

(b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

(c) If the balance of the fund created in this subsection (7), as determined by the department pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial contribution, all donated or granted funds, including any interest on those donated or granted funds, must be returned to the grantor.

(d) If the balance for a specific project is determined by the department to be sufficient to remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial action, using the funds donated under this subsection (7).

(e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(f) The department shall expend the funds in a manner that maximizes the application of the funds to physically remediating the specific release.

(8) (a) A person may donate in-kind services to remediate a specific release at a specific facility pursuant to subsection (7). A person who donates in-kind services is not liable under 75-10-715 solely as a result of the contribution of in-kind services.

(b) A person who donates in-kind services with respect to remediating a specific release at a specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss.

(c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is caused by conduct of the entity providing in-kind

services that is negligent or grossly negligent or that constitutes intentional misconduct.

(d) When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance, the person may not avoid that liability or responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions of subsection (7) and this subsection (8).

(e) Any donated in-kind services that are employed as part of a remedial action pursuant to this subsection (8) must be approved by the department as appropriate remedial action.

~~(9) (a) If funds are transferred from the orphan share fund to the environmental quality protection fund pursuant to 75-10-743(9), the department shall, subject to the limitation in subsection (9)(b) of this section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year, transfer from the environmental quality protection fund to the orphan share fund the unencumbered amount remaining in the environmental quality protection fund at the end of the fiscal year that is in excess of the amount appropriated for the next fiscal year from the environmental quality protection fund.~~

~~(b) The total transferred pursuant to subsection (9)(a) may not exceed the total amount transferred to the environmental quality protection fund pursuant to 75-10-743(9).~~"

Section 12. Section 75-10-743, MCA, is amended to read:

"75-10-743. Orphan share state special revenue account — reimbursement of claims — payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and, except as provided in subsections ~~(9) through (11)~~ *(9) and (10)*, must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-751 and to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

(a) all penalties assessed pursuant to 75-10-750(12);

~~(b) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;~~

~~(c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;~~

~~(d)~~*(b)* funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;

~~(e)~~*(c)* unencumbered funds remaining in the abandoned mines state special revenue account;

~~(f)~~*(d)* interest income on the account;

~~(g)~~*(e)* funds received from settlements pursuant to 75-10-719(7); and

~~(h)~~*(f)* funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the

department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in ~~subsection (7)~~ *subsections (6) and (7)*, claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) ~~Reimbursement~~ *Except as provided in subsection (6), reimbursement* from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of a petition provided for in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-751 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, the department's costs incurred in defending the orphan share must be paid from the orphan share fund in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-751 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

(c) A state agency that is liable for remedial action costs incurred has a claim against the orphan share fund and must be reimbursed as provided in subsection (3). The agency may submit a claim before or after remedial action is complete. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs. The agency may be reimbursed only after:

(i) its liability has been determined pursuant to 75-10-742 through 75-10-751 or by a court of competent jurisdiction;

(ii) it has received a notice letter pursuant to 75-10-711; and

(iii) the department has approved the costs.

(7) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(8) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process.

~~(9) For the biennium beginning July 1, 2005, and subject to the provisions of section 3, Chapter 355, Laws of 2005, the department may transfer funds from the orphan share fund to the environmental quality protection fund established in 75-10-704, the hazardous waste/CERCLA account established in 75-10-621, or both. The total amount transferred pursuant to this subsection may not exceed $600,000.~~

~~(10)~~*(9)* (a) For the biennium beginning July 1, 2005, up to $1.25 million may be used by the department to pay the costs incurred by the department in contracting for evaluating the extent of contamination and formulating final remediation alternatives for releases at the Kalispell pole and timber, reliance refinery company, and Yale oil corporation facility complex. If the department spends less than $1.25 million for those purposes, the remaining funds must be spent for remediation of the facility complex. The department may not seek recovery of the $1.25 million from potentially liable persons.

(b) The money spent pursuant to subsection ~~(10)(a)~~ *(9)(a)* must be credited against the amount owed by the state agency in a judgment or settlement agreement for payment of the remedial action costs at the facility for which the money was spent.

(c) The department shall consult with the noticed potentially liable persons regarding contractor selection and determination of the scope of the work for contract tasks. The department shall also provide the noticed potentially liable persons with contract performance updates and shall consult with the noticed potentially liable persons regarding expenses and progress on contract tasks.

(d) The department shall contract for the compilation, assessment, and summarization of the existing data pertaining to the complex described in subsection ~~(10)(a)~~ *(9)(a)*, for recommendations for and conducting of additional investigations and studies necessary to develop remediation alternatives, and for development and assessment of remediation alternatives.

(e) Unless the department is delayed by a challenge to a contracting action, multiple contractor selection processes, or other unanticipated circumstances, the activities authorized under subsection ~~(10)(a)~~ *(9)(a)* must meet the following schedule:

(i) Contracts for investigations and studies must be in place by August 31, 2005.

(ii) A summary of existing data must be prepared by December 31, 2005.

(iii) The contract or contract task order for investigations, studies, and development and evaluation of final remediation alternatives must be in place by April 30, 2006.

(iv) All intended field work must be completed by November 30, 2006, and to the extent that this field work indicates that followup is necessary, the followup field work must be completed as soon as possible or addressed in the report that must be submitted pursuant to subsection ~~(10)(g)~~ *(9)(g)*.

(v) The contractor shall submit evaluations of the extent of contamination by October 31, 2006.

(vi) The contractor shall submit final remediation alternatives by July 31, 2007.

(f) The department shall report to the environmental quality council quarterly during calendar years 2005, 2006, and 2007 regarding the progress being made to meet the requirements of subsection ~~(10)(e)~~ *(9)(e)*. The report must include information on expenditures.

(g) If investigations completed under this subsection ~~(10)~~ *(9)* indicate the need for additional information or for pilot tests and other related remedial action process activities, the department shall prepare a report identifying the rationale and estimated costs for additional work and present it to the environmental quality council during the spring of 2007.

(h) The department shall provide to the environmental quality council copies of investigations and reports completed pursuant to subsection ~~(10)(d)~~ *(9)(d)*.

~~(11)~~*(10)* (a) Beginning in the fiscal year that commences July 1, 2005, the department shall transfer from the orphan share account to the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 $1.2 million in each fiscal year until the board of investments makes the certification pursuant to subsection ~~(11)(b)~~ *(10)(b)* of this section.

(b) (i) The board of investments shall monitor the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 to determine when the amount of money in the long-term or perpetual water treatment permanent trust fund will be sufficient, with future earnings, to provide a fund balance of $19.3 million on January 1, 2018.

(ii) When the board of investments makes the determination pursuant to subsection ~~(11)(b)(i)~~ *(10)(b)(i)*, the board of investments shall notify the department and certify to the department the amount of money, if any, that must be transferred during the fiscal year in which the board of investments makes its determination pursuant to subsection ~~(11)(b)(i)~~ *(10)(b)(i)* in order to provide a fund balance of $19.3 million on January 1, 2018.

(iii) In the fiscal year that the board of investments makes its determination and notifies the department, the department shall transfer only the amount certified by the board of investments, if any, and may not make additional transfers during subsequent fiscal years.

(11) For the biennium beginning July 1, 2007, the department shall transfer from the orphan share fund:

(a) $600,000 to the hazardous waste/CERCLA account provided for in 75-10-621 to provide for a positive account balance;

(b) $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161 to provide for a positive account balance;

(c) $2 million to the environmental quality protection fund established in 75-10-704 to be used by the department to expedite the cleanup of the burlington northern Santa Fe Livingston site;

(d) $200,000 to the natural resources operations state special revenue account established in [section 27] to provide for a positive account balance; and

(e) $800,000 to the natural resources projects state special revenue account established in [section 28] to provide for a positive account balance."

Section 13. Section 80-7-823, MCA, is amended to read:

"80-7-823. Transfer of funds. ~~(1)~~ There is transferred $100,000 annually from the highway nonrestricted account, provided for in 15-70-125, to the noxious weed state special revenue account, provided for in 80-7-816, for the purposes provided in 80-7-705.

~~(2) There is a one-time transfer in fiscal year 2003 of up to $300,000 from the resource indemnity trust fund, as provided in 15-38-202, from the first money paid into the resource indemnity trust fund that exceeds $100 million for the purposes provided in 80-7-705.~~"

Section 14. Section 85-1-102, MCA, is amended to read:

"85-1-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department:

(a) for the purpose of protecting the department's properties and assets;

(b) to oversee the operation and maintenance of the projects;

(c) to administer contracts and receivables;

(d) to maintain project financial records;

(e) to provide technical assistance for operating, maintaining, and rehabilitating the projects; and

(f) to assist in securing funds for operating, maintaining, and rehabilitating the projects.

(2) "Cost of operation and maintenance" means the costs of operation, maintenance, and routine repairs and the costs incurred by the water users' association or the department in the distribution of water from the project, excluding the department's administrative costs.

(3) "Cost of works" means:

(a) the cost of construction, including any rehabilitation or alteration of the project;

(b) the cost of all lands, property, rights, easements, and franchises acquired that are considered necessary for the construction;

(c) the cost of all water rights acquired or exercised by the department in connection with the works;

(d) the cost of all machinery and equipment, financing charges, and interest prior to and during construction and for a period not exceeding 3 years after the completion of construction;

(e) the cost of engineering and legal services, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project;

(f) administrative expense; and

(g) other expenses that are necessary or incident to the financing authorized in this part and the construction of the works and the placing of the works in operation.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(5) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies, or associations that have any title or interest in any properties, rights, easements, or franchises to be acquired.

(6) (a) "Private person" means any individual, association, partnership, corporation, or other nongovernmental entity that is not eligible for loans and grants under 85-1-605.

(b) The term does not include a governmental entity, such as an agency, local government, or political subdivision of the state, the United States, or any agency of the United States, or any other governmental entity.

(7) "Project" means any one of the works defined in this section or any combination of works that are physically connected or jointly managed and operated as a single unit.

(8) "Public benefits" means those benefits that accrue from a water development project or activity to persons other than the private grant or loan recipient and that enhance the common well-being of the people of Montana. Public benefits include but are not limited to recreation, flood control, erosion reduction, agricultural flood damage reduction, water quality enhancement, sediment reduction, access to recreation opportunities, and wildlife conservation.

~~(9) "Renewable resource grant and loan program state special revenue account" means a separate account created by 85-1-604 within the state special revenue fund of the state treasury for the purposes of the renewable resource grant and loan program as set forth in 85-1-604.~~

~~(10)~~*(9)* "Renewable resource loan debt service fund" means a separate fund created by 85-1-603 within the debt service fund type of the state treasury, to be used as provided in 85-1-619.

~~(11)~~*(10)* "Renewable resource loan proceeds account" means a separate account created by 85-1-617 within the state special revenue fund of the state treasury to:

(a) finance loans under the provisions of the renewable resource grant and loan program to agencies, local governments, and political subdivisions of the state, to private persons, and to any other eligible recipients; and

(b) purchase liens and operate property, as provided in 85-1-615, from proceeds of bonds issued under part 6 of this chapter.

~~(12)~~*(11)* "Tribal government" means the officially recognized government of an Indian tribe, nation, or other organized group or community that is located in Montana, that exercises self-government powers, and that is recognized as eligible for those services that are provided by the United States to Indians because of their status as Indians.

~~(13)~~*(12)* "Water development activity" means an action or program to protect and enhance water-based recreation or to protect or enhance water resources for the benefit of agriculture, flood control, or other uses, including but not limited to the promotion of efficient use of water in agriculture, the improvement of water quality in agriculture and other nonpoint source uses, the protection and enhancement of water-based recreation, the control of erosion of streambanks and control of sedimentation in rivers and streams, and the provision of greater

local and state control of Montana's water resources. Water development activities may provide any combination of marketable and nonmarketable benefits.

~~(14)~~*(13)* "Water development project" means a project as defined in subsection (7), except that water development projects:

(a) are not limited to projects owned or operated by the department; and

(b) for purposes of the renewable resource grant and loan program, must include water development activities.

~~(15)~~*(14)* (a) "Works" means all property and rights, easements, and franchises relating to property and considered necessary or convenient for the operation of the works and all water rights acquired or exercised by the department in connection with those works.

(b) The term includes:

(i) all means of conserving and distributing water, including but not limited to reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines, and waterworks systems; and

(ii) all works for the conservation, development, storage, distribution, and utilization of water, including but not limited to works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, and supplying water for public, domestic, industrial, or other uses and for fire protection."

Section 15. Section 85-1-603, MCA, is amended to read:

"85-1-603. Renewable resource loan debt service fund created — coal severance tax allocated — renewable resource loan loss reserve fund created. (1) (a) There is created a renewable resource loan debt service fund within the debt service fund type established in 17-2-102.

(b) The state pledges and allocates and directs to be credited to the renewable resource loan debt service fund, as received:

(i) 0.95% of all money from time to time received from the coal severance tax collected under Title 15, chapter 35;

(ii) any principal and accrued interest under 85-1-613(5)(a) received in repayment of a loan made from the proceeds of bonds issued under 85-1-617;

(iii) all interest income earned on proceeds of renewable resource grant and loan program bonds;

(iv) revenue or money otherwise required to be paid into the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account pursuant to ~~85-1-604~~ *[section 28]*, as determined by the board of examiners in connection with the issuance of bonds pursuant to 85-1-617; and

(v) money received from the renewable resource loan loss reserve fund as the result of a loan loss.

(2) (a) There is a renewable resource loan loss reserve fund within the debt service fund type established in 17-2-102.

(b) The state pledges and allocates and directs to be credited to the renewable resource loan loss reserve fund all accrued interest under 85-1-613(5)(b) received in repayment of a loan made from the proceeds of bonds issued under 85-1-617.

(c) If the department determines that a loan loss has occurred on a loan made pursuant to this part, funds from the renewable resource loan loss reserve fund must be transferred to the renewable resource loan debt service fund in an amount equal to the amount that would otherwise be available for debt service under subsection (1)(b) as a result of the loan loss."

Section 16. Section 85-1-605, MCA, is amended to read:

"85-1-605. Grants, loans, and bonds for state, local, or tribal government assistance. (1) The department may recommend to the legislature that grants and loans be made from revenue deposited in the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account *established in [section 28]*, that loans be made from renewable resource bond proceeds deposited in the renewable resource loan proceeds account established in 85-1-617(5), and that coal severance tax bonds be authorized pursuant to Title 17, chapter 5, part 7, to provide financial assistance to a department, agency, board, commission, or other division of state government, to a city, county, or other political subdivision or local government body of the state, including an authority as defined in 75-6-304, or to a tribal government. The legislature may approve by appropriation or other appropriate means those grants and loans that it finds consistent with the policies and purposes of the program.

(2) Nothing in this part creates or expands the state's or a local government's authority to incur debt, and the legislature may authorize loans only to state and local government entities otherwise structured to incur debt.

(3) Loans may not be authorized except to a state, local, or tribal government entity that agrees to secure the authorized loan with its bond.

(4) In addition to implementing those projects approved by the legislature, the department may request up to 10% of the grant funds available and up to $10 million for loans from the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account *established in [section 28]* and the renewable resource loan proceeds account in any biennium to be used for emergencies. These emergency grant projects or loan projects, or both, may not be made because of the gross negligence of the state, local, or tribal government applicant, must be approved by the department, and must be defined as those projects otherwise eligible for either grant funding or loan funding, or both, that, if delayed until legislative approval can be obtained, will cause substantial damages or legal liability to the project sponsor. In allocating the funds, the department shall inform the legislative finance committee of the legislature.

(5) The grants and loans provided for by this section may be made for projects that enhance renewable resources in the state through conservation, development, management, or preservation; for assessing feasibility or planning; for implementing renewable resource projects; and for similar purposes approved by the legislature.

(6) Grant and loan agreements with tribal governments in Montana entered into under this part must contain, in addition to other appropriate terms and conditions, the following conditions:

(a) a requirement that in the event a dispute or claim arises under the agreement, state law will govern as to the interpretation and performance of the agreement and that any judicial proceeding concerning the terms of the

agreement will be brought in the district court of the first judicial district of the state of Montana;

(b) an express waiver of the tribal government's immunity from suit on any issue specifically arising from the transaction of a loan or grant; and

(c) an express waiver of any right to exhaust tribal remedies signed by the tribal government."

Section 17. Section 85-1-606, MCA, is amended to read:

"85-1-606. Grants and loans to private persons. (1) To encourage the construction and development of water-related projects, the department may make grants and loans to private persons from funds appropriated from the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account *established in [section 28]* and may make loans to private persons from the renewable resource loan proceeds account.

(2) The department shall publicize the statutes and rules governing grants and loans to private persons for water-related projects, set and publicize application deadlines, and accept applications for grants and loans.

(3) The department shall review, evaluate, and select the water-related projects for which grants or loans may be awarded."

Section 18. Section 85-1-613, MCA, is amended to read:

"85-1-613. (Temporary) Limits on loans. (1) A loan to a private person that is not a water users' association or ditch company organized and incorporated pursuant to Title 85, chapter 6, part 1, or Title 35, chapter 1, part 2, for a renewable resource grant and loan program project may not be made from the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account *established in [section 28]* or the renewable resource loan proceeds account if the loan exceeds the lesser of $400,000 or 80% of the fair market value of the security given for the project. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors that it considers important.

(2) A loan to a private person that is a water users' association or ditch company organized and incorporated pursuant to Title 35, chapter 1, part 2, or Title 85, chapter 6, part 1, may not be made from the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account *established in [section 28]* or the renewable resource loan proceeds account if the loan would exceed the lesser of $3 million or an amount representing the annual debt service on the loan that would exceed 80% of the annual net revenue of the system that would be pledged for payment of the loan. In determining the amount of annual net revenue that may be pledged for payment of the loan, annual expenses for operation and maintenance must be subtracted from the gross revenue of the system.

(3) A loan to the state, a local government, or a tribal government for a renewable resource grant and loan program project may not be made by the department from the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account *established in [section 28]* or renewable resource loan proceeds account if the loan exceeds the lesser of $200,000 or the project sponsor's remaining debt capacity.

(4) The period for repayment of loans may not exceed 30 years.

(5) The interest rate at which loans may be made under this part must be sufficient to:

(a) cover the bond debt service for a loan; and

(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs.

(6) A loan made under this part may not be used for the cost of operation and maintenance of a project. (Terminates June 30, 2007—sec. 2, Ch. 418, L. 2005.)

85-1-613. (Effective July 1, 2007) Limits on loans. (1) A loan to a private person that is not a water users' association or ditch company organized and incorporated pursuant to Title 85, chapter 6, part 1, or Title 35, chapter 1, part 2, for a renewable resource grant and loan program project may not be made from the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account *established in [section 28]* or the renewable resource loan proceeds account if the loan exceeds the lesser of $400,000 or 80% of the fair market value of the security given for the project. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors that it considers important.

(2) A loan to a private person that is a water users' association or ditch company organized and incorporated pursuant to Title 35, chapter 1, part 2, or Title 85, chapter 6, part 1, may not be made from the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account *established in [section 28]* or the renewable resource loan proceeds account if the loan would exceed the lesser of $300,000 or an amount representing the annual debt service on the loan that would exceed 80% of the annual net revenue of the system that would be pledged for payment of the loan. In determining the amount of annual net revenue that may be pledged for payment of the loan, annual expenses for operation and maintenance must be subtracted from the gross revenue of the system.

(3) A loan to the state, a local government, or a tribal government for a renewable resource grant and loan program project may not be made by the department from the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account *established in [section 28]* or renewable resource loan proceeds account if the loan exceeds the lesser of $200,000 or the project sponsor's remaining debt capacity.

(4) The period for repayment of loans may not exceed 30 years.

(5) The interest rate at which loans may be made under this part must be sufficient to:

(a) cover the bond debt service for a loan; and

(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs.

(6) A loan made under this part may not be used for the cost of operation and maintenance of a project."

Section 19. Section 85-1-614, MCA, is amended to read:

"85-1-614. Limits on grants from ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account. (1) The maximum grant awarded to a private person may not exceed the lesser of:

(a) 5% of the estimated total funds potentially available in the ~~renewable resource grant and loan~~ *natural resources projects* state special revenue account*, established in [section 28],* for public and private grants in the biennium in which the grant will be made; or

(b) 25% of the total project cost.

(2) This part does not limit the amount of grant funds that may be appropriated by the legislature to fund a state or local government project."

Section 20. Section 85-1-615, MCA, is amended to read:

"85-1-615. Security interests — purchase, operation, and resale of encumbered property. (1) The state has a lien upon a project constructed with money from the ~~renewable resource grant and loan~~ *natural resources projects* state special revenue account *established in [section 28]* or the renewable resource loan proceeds account for the amount of the loan and interest due the state. This lien may attach to any project facilities, equipment, easements, real property, shares of stock in a water users' association, revenue of a water users' association, accounts receivable of a water users' association, water purchase agreements, and property of any kind or nature owned by the debtor, including all water rights. The department shall file with the county clerk and recorder of each county in which a part of the project is located either a financing statement or a real estate mortgage covering the loan, its amount, terms, and a description of the security. The county clerk and recorder shall record and index the lien as other liens are required by law to be recorded and indexed. The lien is valid until paid in full or otherwise discharged. The lien must be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens.

(2) From the funds available under ~~85-1-604~~ *[section 27]* or 85-1-617, the state may:

(a) purchase a lien that is prior to the state's lien if:

(i) the director of the department determines that the loan is in default and the prospects for collecting the loan may be materially increased by purchasing the prior lien; and

(ii) the amount to be paid for the prior lien does not exceed the appraised value of the property;

(b) operate property that is subject to the state's lien if the director of the department determines that the loan is in default and that the prospects for collecting the loan may be materially increased by operating the property that is subject to the state's lien; or

(c) purchase a prior lien as provided in subsection (2)(a) and operate property as provided in subsection (2)(b).

(3) Any property acquired under the provisions of this section must be resold as expeditiously as possible to recover funds used under this section and funds loaned to the borrower."

Section 21. Section 85-1-616, MCA, is amended to read:

"85-1-616. Administration of loans and grants. The department shall:

(1) administer the loan and grant program established by this part;

(2) service loans made or contract and pay for the servicing of loans, including arrangements for obtaining security interests; and

(3) collect reasonable fees or charges for the servicing of loans, including arrangements for obtaining security interests. The fees and charges must be deposited in the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account established in ~~85-1-604~~ *[section 28]*."

Section 22. Section 85-1-631, MCA, is amended to read:

"85-1-631. Water storage state special revenue account created — revenues allocated — appropriations from account. (1) There is a water storage state special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the water storage state special revenue account*:*

(a) for the biennium beginning July 1, 2007, the proceeds of the resource indemnity and ground water assessment tax as provided in 15-38-106; and

(b) money allocated from the resource indemnity trust fund interest earnings pursuant to 15-38-202 and all revenue of the works and other money as provided in 85-1-332.

(3) All revenue provided from 85-1-332(1)(e) and (1)(f) deposited in the water storage state special revenue account must be appropriated solely for the construction, operation, ~~maintenance, and~~ rehabilitation*, expansion, maintenance, and modification* of ~~the works~~ *state-owned water storage projects*.

(4) Money that was not encumbered or expended from the water storage state special revenue account during the previous biennium must remain in the account.

(5) Deposits to the water storage state special revenue account ~~are to~~ *must* be placed in short-term investments and accrue interest, which must be deposited in the water storage state special revenue account.

(6) The purpose of the water storage state special revenue account is to provide money ~~for loans and grants~~ exclusively for~~:~~

~~(a) water storage projects, including the purchase or lease of property;~~

~~(b) planning, feasibility, and design studies; and~~

~~(c) other costs related to~~ construction, *operation,* rehabilitation, expansion, *maintenance,* and modification of *state-owned* water storage projects.

~~(7) The department shall administer this section as an integral part of the renewable resource grant and loan program, using, to the extent possible, the same procedures for soliciting, determining eligibility, and rating water storage project proposals and for administering grants and loans, subject to the same limitations, as applied to other renewable resource grants and loans.~~

~~(8) The following preferences must be considered in ranking proposals for water storage grants and loans:~~

~~(a) first preference is for the rehabilitation of water storage projects that resolve threats to life and property;~~

~~(b) second preference is for the improvement or expansion of existing water storage projects; and~~

~~(c) third preference is for the development of new water storage projects.~~"

Section 23. Section 85-2-905, MCA, is amended to read:

"85-2-905. Ground water assessment account. (1) There is a ground water assessment account within the special revenue fund established in

17-2-102. The Montana bureau of mines and geology is authorized to expend amounts from the account necessary to carry out the purposes of this part.

(2) The account may be used by the Montana bureau of mines and geology only to carry out the provisions of this part.

(3) Subject to the direction of the ground water assessment steering committee, the Montana bureau of mines and geology shall investigate opportunities for the participation and financial contribution of agencies of federal and local governments to accomplish the purposes of this part.

(4) There must be deposited in the account:

(a) at the beginning of each fiscal year, ~~$366,000 of~~ the proceeds from the resource indemnity and ground water assessment tax, as authorized by 15-38-106, and ~~$300,000 of~~ the interest earnings from the resource indemnity trust fund, as authorized by 15-38-202~~, unless at the beginning of the fiscal year the unobligated cash balance in the ground water assessment account:~~

~~(i) equals or exceeds $666,000, in which case an allocation may not be made and the proceeds must be deposited in the resource indemnity trust fund established by 15-38-201; or~~

~~(ii) is less than $666,000, in which case an amount equal to the difference between the unobligated cash balance and $666,000 must be allocated to the ground water assessment account and any remaining amount must be deposited in the resource indemnity trust fund established by 15-38-201~~;

(b) funds provided by state government agencies and by local governments to carry out the purposes of this part; *and*

~~(c) proceeds allocated to the account as provided in 15-38-106; and~~

~~(d)~~*(c)* funds provided by any other public or private sector organization or person in the form of gifts, grants, or contracts specifically designated to carry out the purposes of this part."

Section 24. Section 90-2-1103, MCA, is amended to read:

"90-2-1103. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(2) "Financially feasible" means that adequate funds are available to complete the project as approved.

(3) "Mineral" means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium, or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.

(4) "Mineral development" means exploration, extraction, processing, or other activity related to the production of a mineral.

(5) "Mitigation" means the act of rectifying an impact by repairing, rehabilitating, or restoring the affected environment; reducing or eliminating an impact over time by operations that preserve or maintain the environment; or compensating for an impact by replacing or providing substitute resources or habitats.

(6) "Project" means a planned and coordinated action or series of actions addressing an objective consistent with the policy and purpose of the

reclamation and development grants program. A project may consist of problem analysis, feasibility or design studies, environmental monitoring, remedial action plans or implementation, technology demonstration, research, construction or acquisition of capital facilities, or other related actions.

(7) "Public benefits" means those benefits that accrue to citizens as a group and enhance the common well-being of the people of Montana.

(8) "Public resources" means the natural resources of the state, including air, water, soil, minerals, vegetation, and fish and wildlife, and the economic, social, and cultural conditions of Montana citizens.

~~(9) "Reclamation and development grants account" means the reclamation and development grants special revenue account established in 90-2-1104.~~

~~(10)~~*(9)* "Technically feasible" means that a project or activity can be designed, constructed, operated, or carried out to accomplish its objectives, utilizing accepted engineering and other technical principles and concepts."

Section 25. Section 90-2-1111, MCA, is amended to read:

"90-2-1111. State and local grants. (1) Any department, agency, board, commission, or other division of state government or any city, county, or other political subdivision or tribal government within the state may apply, in accordance with the procedures established by the department, for a grant from the ~~reclamation and development grants~~ *natural resources projects state special revenue* account*, established in [section 28],* for a project that is consistent with the policy and purpose of the reclamation and development grants program.

(2) The department shall evaluate applications under the eligibility criteria provided in 90-2-1112 and the evaluation criteria provided in 90-2-1113.

(3) The department shall solicit and consider in its evaluation of applications the views of interested persons and public agencies.

(4) Based on its evaluation of eligible applications, the department shall recommend to the governor projects to receive grants from the ~~reclamation and development grants~~ *natural resources projects state special revenue* account *established in [section 28]*.

(5) The governor shall submit all proposals, with his recommended priorities, to the legislature by the first day of any regular legislative session. The legislature may approve by appropriation or other appropriate means grants for those projects it finds consistent with the policies and purposes of the reclamation and development grants program. The department shall administer and oversee the grants to approved projects and monitor the projects."

Section 26. Section 90-2-1121, MCA, is amended to read:

"90-2-1121. Prohibited compensation to public officers or employees — penalty. (1) An officer, attorney, or other employee of the department may not directly or indirectly be the beneficiary of or receive any fee, commission, gift, or other consideration in connection with any transaction or business under the reclamation and development grants program other than the salary, fee, or other compensation received as an officer, attorney, or employee.

(2) A person convicted of violating any provision of this section shall be punished by a fine not to exceed $2,000 plus the value of any consideration illegally received or by imprisonment for a term not to exceed 2 years, or both.

Any fines collected under this section must be deposited in the ~~reclamation and development grants~~ *natural resources projects state special revenue* account *established in [section 28]*."

Section 27. Natural resources operations state special revenue account created — revenue allocated — appropriations from account. (1) There is a natural resources operations state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent required to be credited to the renewable resource loan debt service fund pursuant to 85-1-603, there must be paid into the natural resources operations state special revenue account:

(a) the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(b) the metal mines license tax proceeds as provided in 15-37-117(1)(d);

(c) the oil and natural gas production tax as provided in 15-36-331; and

(d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests.

(3) Appropriations may be made from the natural resources operations state special revenue account for administrative expenses, including salaries and expenses for personnel and equipment, office space, and other expenses necessarily incurred in the administration of natural resources operations.

Section 28. Natural resources projects state special revenue account created — revenue allocated — limitations on appropriations from account. (1) There is a natural resources projects state special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the natural resources projects state special revenue account money allocated from:

(a) the interest income of the resource indemnity trust fund under the provisions of 15-38-202;

(b) the resource indemnity and ground water assessment tax under the provisions of 15-38-106;

(c) the oil and natural gas production tax as provided in 15-36-331; and

(d) the excess of the coal severance tax proceeds allocated by 85-1-603 to the renewable resource loan debt service fund above debt service requirements as provided in and subject to the conditions of 85-1-619.

(3) Appropriations may be made from the natural resources projects state special revenue account for grants and loans for designated projects and the activities authorized in 85-1-602 and 90-2-1102.

Section 29. Transfer of funds. (1) For the biennium beginning July 1, 2007, the department of administration shall transfer $500,000 from the general fund as follows:

(a) $346,145 to the orphan share fund as provided for in 75-10-743; and

(b) $153,855 to the environmental contingency account as provided for in 75-1-1101.

(2) At the beginning of fiscal year 2008, the department of natural resources and conservation shall transfer the ending fund balance in the renewable resource grant and loan program state special revenue account established in 85-1-604 and the reclamation and development grants state special revenue

account established in 90-2-1104 to the natural resources operations state special revenue account created in [section 27].

Section 30. Repealer. Sections 85-1-604 and 90-2-1104, MCA, are repealed.

Section 31. Codification instruction. [Sections 27 and 28] are intended to be codified as an integral part of Title 15, chapter 38, and the provisions of Title 15, chapter 38, apply to [sections 27 and 28].

Section 32. Effective date. [This act] is effective July 1, 2007.

Section 33. Termination. [Section 9] terminates June 30, 2009.

Approved May 8, 2007

CHAPTER NO. 433

[HB 304]

AN ACT CREATING THE WATER POLICY INTERIM COMMITTEE; PROVIDING FOR RESEARCH AND STUDY ON WATER-RELATED ISSUES; REQUIRING THAT CERTAIN WATER RIGHT REPORTS AND UPDATES BE PROVIDED TO THE WATER POLICY INTERIM COMMITTEE; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Water policy interim committee. (1) The water policy interim committee is subject to the provisions of 5-5-211 and the committee members appointed may be selected from the following standing committees:

(a) senate natural resources and energy;

(b) house natural resources;

(c) senate agriculture, livestock, and irrigation;

(d) house agriculture;

(e) senate local government; and

(f) house local government.

(2) The water policy interim committee shall conduct a detailed analysis and study of issues related to water quantity, water quality, and water use in Montana. The study must include the following issues at a minimum:

(a) surface water and ground water in closed basins and mitigation, augmentation, or aquifer recharge, including:

(i) review and summary of current Montana law related to mitigation, augmentation, or aquifer recharge;

(ii) analysis of other states' laws and rules related to mitigation, augmentation, or aquifer recharge and the other states' experiences with applying and using mitigation, augmentation, and aquifer recharge;

(iii) comparison of mitigation, augmentation, and aquifer recharge options and alternatives for applying the concepts in Montana water law;

(iv) analysis and determination of water quality testing requirements to ensure that the use of mitigation, augmentation, or aquifer recharge does not adversely affect ground water quality;

(v) analysis of data developed to determine the type and amount of research, data, and analysis necessary to develop a scientifically defensible hydrogeologic assessment to be used in making informed decisions with regard to mitigation, augmentation, or aquifer recharge activity in Montana;

(vi) appropriate monitoring requirements to determine the effectiveness of mitigation, augmentation, or aquifer recharge plans; and

(vii) other issues related to mitigation, augmentation, or aquifer recharge in Montana to facilitate continued economic development and growth while providing reasonable protections to senior appropriators and water quality of surface and ground water resources;

(b) methods for the management of water, particularly in closed basins, to ensure compliance with closed basin law, including:

(i) artificial recharge of ground water, including but not limited to alternatives such as aquifer storage and recovery;

(ii) identifying research necessary, if any, to determine alternatives and options for conducting water management through artificial recharge of ground water; and

(iii) conducting a water quality analysis associated with storage or introduction of surface water to ground water resources;

(c) determining an appropriate, accurate, and time-efficient process for coordinating water quality requirements with the water appropriations process by:

(i) determining how the department of environmental quality and the department of natural resources and conservation are issuing permits that affect ground water or surface water quality and whether or not the water appropriation process and the water quality process are coordinated;

(ii) ensuring that a detailed process is outlined that provides potential applicants with a clear process that must be followed to ensure that prior appropriators and water quality in both surface water and ground water are protected while allowing development in Montana; and

(iii) identifying the extent to which cumulative impacts are analyzed from a water quantity and a water quality perspective and whether or not the two findings are assessed jointly and determining the appropriate level of coordination;

(d) wells that are exempt from the permitting process pursuant to 85-2-306, including:

(i) a detailed reporting of the number of exempt wells currently in Montana and an estimate of the number of exempt wells expected to be developed by 2020;

(ii) a determination and summary of the types of beneficial uses to which water from exempt wells is applied;

(iii) a determination of the hydrogeologic analysis necessary to determine consumptive use on a per-acre or fraction of an acre basis and on a per-use basis;

(iv) an analysis of the amount of water reasonably necessary for the various beneficial uses and a comparison of this reasonable use standard with current statutory limits, including volume, flow rate, and other criteria that the committee determines are necessary to provide for accurate and adequate measurement of water use through exempt wells;

(v) options and alternatives for enforcing statutory limitations regarding exempt well usage; and

(vi) a determination of the necessity and reasons for providing a process that is exempt from the permitting process;

(e) an analysis of water marketing and water reallocation options available in Montana, including:

(i) leasing water rights, water banking, water trading, and water sales;

(ii) the lease-to-sale ratio of water rights in Montana;

(iii) the number of market purchases that have been completed in Montana;

(iv) the purposes for which water trades or sales have taken place;

(v) the feasibility of creating and operating a water bank in Montana; and

(vi) the administrative procedures and costs that would be necessary to establish and operate a water bank in Montana.

(3) The committee shall gather appropriate information that the committee determines is necessary to make sound and well-reasoned policy decisions to guide the management and use of Montana's ground water resource into the future, including but not limited to:

(a) identifying gaps in data necessary to determine appropriate locations to conduct artificial recharge of ground water; and

(b) presenting long-term goals and policy proposals for water management related to ground water resources.

(4) The committee shall prepare a report to submit to the 61st legislature that provides clear policy direction and necessary legislation to guide Montana's water policy and that ensures fair and reasonable use of Montana's water resource as demands on water increase while supplies remain the same or decrease.

Section 2. Appropriation. (1) There is appropriated $50,000 from the general fund for the biennium beginning July 1, 2007, to the water policy interim committee for the purpose of completing a water quantity and water quality policy analysis.

(2) There is appropriated $50,000 from the general fund for the biennium beginning July 1, 2007, to the Montana bureau of mines and geology for the purpose of collecting and compiling existing ground water and aquifer testing data for use by the committee.

Section 3. Effective date. [This act] is effective July 1, 2007.

Section 4. Termination. [This act] terminates June 30, 2009.

Approved May 8, 2007

CHAPTER NO. 434

[HB 353]

AN ACT PROVIDING FOR THE RECORDING AND TRANSCRIPTION BY A PEACE OFFICER OF A TELEPHONIC APPLICATION BY THE PEACE OFFICER FOR A SEARCH WARRANT; AND AMENDING SECTION 46-5-222, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-5-222, MCA, is amended to read:

"46-5-222. Search warrants issued by telephone. (1) Whenever ~~the~~ *an* application for a search warrant is made by telephone, the applicant shall, in addition to the requirements contained in 46-5-221, state reasons to justify immediate issuance of a search warrant.

(2) All testimony given over the telephone that is intended to support an application for a search warrant must be given on oath or affirmation and must identify the person testifying. For the purpose of this section, the judge is authorized to administer an oath or affirmation by telephone.

(3) *(a)* Sworn or affirmed testimony given over the telephone must be electronically recorded by the judge *or a peace officer* on a recording device in the custody of the judge *or peace officer* when the application is made.

(b) ~~The~~ *If the recording is made by the judge, the* recording must be retained in the court records and must be transcribed verbatim as soon as possible after the application is made. The recording must include the time and date it was recorded.

(c) If the recording is made by a peace officer, the recording must be transcribed verbatim as soon as possible after the application for the warrant is made. The recording must contain the time and date when it was recorded. The peace officer making the recording shall, as soon as possible, provide the judge with the original recording and a transcription of the recording so that the judge may expeditiously verify the accuracy of the transcription. The original recording must be retained in the court records. The peace officer making the recording shall secure a copy of the recording and transcription of the recording in the same manner as other evidence is secured.

(4) If the judge approves a warrant over the telephone, the peace officer serving the warrant shall sign the search warrant in the officer's own name and in the judge's name. The peace officer signing the judge's name shall initial the judge's name indicating the signature was authorized by the judge but signed by the officer.

(5) Any search warrant issued by telephone must be signed by the issuing judge or the judge's successor as soon as possible after it has been issued."

Approved May 8, 2007

CHAPTER NO. 435

[HB 357]

AN ACT REVISING LAWS PERTAINING TO BLIND VENDORS; PROVIDING FOR THE PLACEMENT OF VENDING MACHINES ON STATE HIGHWAYS BY BLIND VENDORS; AMENDING SECTION 60-5-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-5-110, MCA, is amended to read:

"60-5-110. Commercial enterprise or structure prohibited — ~~exception~~ *exceptions.* (1) Except as provided in 60-5-505 and ~~subsection~~ *subsections* (2) *and (3)* of this section, a commercial enterprise or structure may

not be operated on the publicly owned or leased right-of-way of a controlled-access highway or controlled-access facility.

(2) The department may, under the terms and conditions that it considers appropriate, install or allow others to install electronic communication equipment or electronic informational kiosks on the right-of-way of any state highway, including a controlled-access facility. The department may charge a fee for the use of the equipment or kiosk. The fees must be deposited in the nonrestricted highway state special revenue account to be used for highway purposes.

(3) (a) The department may, under terms and conditions that it considers appropriate, contract with a blind vendor certified pursuant to Title 18, chapter 5, part 4, for the installation of vending machines on the right-of-way of any state highway, including a controlled-access facility.

(b) A blind vendor installing a vending machine pursuant to this subsection (3) is subject to the applicable provisions of Title 18, chapter 5, part 4."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 8, 2007

CHAPTER NO. 436

[HB 406]

AN ACT EXPANDING ACCESS TO HEALTH CARE SERVICES BY ESTABLISHING A GRANT PROGRAM FOR COMMUNITY HEALTH CENTERS; CREATING AN ADVISORY GROUP; REQUIRING A REPORT TO THE LEGISLATURE; TRANSFERRING GENERAL FUND MONEY; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, approximately one-fifth of Montana's population has no public or private health insurance; and

WHEREAS, many Montanans who are uninsured or underinsured experience difficulty in accessing medical and dental services; and

WHEREAS, uninsured and underinsured people are more likely than those with adequate insurance to be hospitalized for conditions that could have been avoided, to be diagnosed with acute conditions resulting in higher rates of disability and death, or to postpone recommended tests or treatment.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 9] may be cited as the "Montana Community Health Center Support Act".

Section 2. Legislative intent and purpose. The legislature recognizes that the large number of uninsured and underinsured Montanans has a significant long-term human and economic impact on families, health care providers, and the state of Montana. It is the intent of the legislature through [sections 1 through 9] to enhance access to primary care and preventive care for Montana residents by strengthening and supporting Montana's community health centers.

Section 3. Definitions. As used in [sections 1 through 9], the following definitions apply:

(1) "Advisory group" means the community health centers advisory group provided for in [section 6].

(2) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.

(3) "Federally qualified community health center" means a facility providing primary and preventive medical, dental, mental health, and substance abuse services to medically underserved, disadvantaged, or hard-to-reach populations on a sliding-scale fee basis, operating under federal regulations, and receiving federal funds under the Public Health Service Act, 42 U.S.C. 254b.

(4) "Federally qualified health center lookalike" means a facility that meets all of the expectations established for the federally funded community health center program but does not receive federal operating funds under the Public Health Service Act, 42 U.S.C. 254b.

(5) "Preventive care" means comprehensive care that emphasizes prevention, early detection, and early treatment of conditions, including but not limited to routine physical examinations, health screenings, immunizations, and health education.

(6) "Primary care" means the type of medical care that provides a patient with a broad spectrum of preventive and curative health care services over a long period of time and that coordinates all of the care a patient receives.

(7) "Section 330 funds" means the federal funds commonly known by that name and awarded by the health resources and services administration of the U.S. department of health and human services to health centers that qualify for funding under the Public Health Service Act, 42 U.S.C. 254b.

Section 4. Program expenditures — report to legislature. (1) Subject to appropriation by the legislature, the department shall provide competitive grants in accordance with [section 5 and this section] to community or tribal boards operating as a nonprofit entity in accordance with the Public Health Service Act, 42 U.S.C. 254b, to increase access to primary care and preventive health services for uninsured, underinsured, low-income, or underserved Montanans.

(2) Grants must be made each year to accomplish any of the following goals:

(a) to create and support new nonfederally funded community health centers until federal funds are granted. Successful applicants for the state grants shall also apply for federally qualified health center lookalike status and federal community health center grants at the first available opportunity.

(b) to expand the medical, mental health, or dental services offered by existing federally qualified community health centers or other facilities that have received federally qualified health center lookalike status; and

(c) to provide one-time grants for capital expenditures to existing federally qualified community health centers and facilities with federally qualified health center lookalike status.

(3) The department shall contract with an entity that is able to:

(a) provide technical assistance to new and existing federally qualified community health centers in their efforts to apply for federal funds;

(b) assist new and existing centers in their efforts to expand services; and

(c) collect standardized data on the provision of services to low-income and uninsured Montanans.

(4) The department shall require the contractor to provide an annual report on the services it has provided, the data it has collected, and the status of applications for federal community health center funding.

(5) (a) The department shall provide regular interim reports on the status of the program and program expenditures to the legislative finance committee and the children, families, health, and human services interim committee.

(b) The department shall report to the legislature, as provided for in 5-11-210, the following information for each year of the biennium:

(i) the status of the expenditures made pursuant to [sections 1 through 9];

(ii) the number of people served by the expenditure of funds; and

(iii) the costs to the state of the services provided pursuant to [sections 1 through 9].

Section 5. Grants — application process — obligation of communities. (1) In order to receive funds under [section 4], a community or tribal board must submit a proposal to the department for:

(a) increasing access to health care services by:

(i) creating new primary care and preventive care services; and

(ii) developing sliding scale charge and billing systems; or

(b) expanding existing services by:

(i) increasing medical, dental, or mental health capacity;

(ii) purchasing equipment; or

(iii) renovating clinic facilities.

(2) A proposal funded under [sections 1 through 9] must ensure the board's commitment to attract federal funds for primary care services.

(3) Entities receiving a state grant to start up or expand services shall also seek section 330 funds for those services and may not receive state funding after federal funds are acquired.

Section 6. Advisory group. (1) There is a community health centers advisory group. The group consists of nine members appointed as follows:

(a) two members appointed by the governor;

(b) two members of the Montana house of representatives appointed by the speaker, each from a different political party;

(c) two members of the Montana senate appointed by the president, each from a different political party;

(d) one member designated by the Montana primary care association; and

(e) two executive employees of Montana federally qualified community health centers, each designated by the governor from a list of names provided by the Montana primary care association and one of whom must be a chief financial officer.

(2) Members must be appointed in a manner that achieves the geographic representation of all regions of the state, including urban and rural communities.

(3) Members are appointed for terms of 2 years and may be reappointed for two additional terms. A legislative member position is vacant if the person no longer serves in the legislature. The position of the member appointed by the

governor is vacant if that person is elected to the legislature. A vacancy must be filled in the manner of the original appointment.

(4) Legislative members of the advisory group are entitled to receive compensation and expenses as provided in 5-2-301 for each day spent on advisory group business. Other members are entitled to reimbursement for expenses, as provided in 2-18-501 through 2-18-503, while engaged in advisory group business.

(5) The advisory group is attached to the department of public health and human services for administrative purposes, and the department is responsible for the compensation of group members.

Section 7. Advisory group — purpose and role. (1) The purpose of the advisory group is to oversee the grant award process developed by the department.

(2) The advisory group will recommend to the department the projects that it considers appropriate for funding in accordance with the requirements of [sections 4 and 5]. The advisory group's recommendations are not binding on the department, but when a recommendation is not followed by the department, the department shall provide the reasons to the advisory group.

Section 8. Rulemaking authority. (1) The department shall adopt rules necessary for the administration of [sections 1 through 9].

(2) The rules may include but are not limited to:

(a) eligibility requirements for entities applying for grants;

(b) criteria for awarding grants; and

(c) reporting procedures for grant recipients.

(3) The rules establishing eligibility for state grants must reflect the national model established for federally qualified community health centers receiving section 330 funds as provided by the Public Health Service Act, 42 U.S.C. 254b.

Section 9. Community health center account. (1) There is a community health center account in the state special revenue fund to the credit of the department to provide grants for community health centers.

(2) Money appropriated by the legislature for community health centers must be deposited into the account.

(3) Money must be allocated from the account in accordance with the procedures outlined in [sections 4 and 5].

Section 10. Appropriation. (1) There is transferred $650,000 from the state general fund to the community health care special revenue account established in [section 9] for each year of the biennium beginning July 1, 2007. The money in the account is appropriated to the department of public health and human services to be allocated to communities for primary and preventive health care services in accordance with [sections 4 and 5].

(2) The appropriation in this section is one-time in nature and is not to be included in the base budget for the 2011 biennium budget.

Section 11. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 50, chapter 4, and the provisions of Title 50 apply to [sections 1 through 9].

Section 12. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 13. Effective date. [This act] is effective July 1, 2007.

Approved May 8, 2007

CHAPTER NO. 437

[HB 592]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF TRANSPORTATION TO ERECT SIGNS TO DIRECT MOTORISTS TO THE MONTANA VETERANS' MEMORIAL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation. The department of transportation, in coordination with local governing bodies, as appropriate, shall erect signs on public roadways near and in the city of Great Falls to direct motorists to the Montana veterans' memorial. The amount of $10,000 is appropriated to the department of transportation from the department of transportation state special revenue fund for the period including fiscal years 2007 and 2008 to erect the signs.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 8, 2007

CHAPTER NO. 438

[HB 715]

AN ACT REQUIRING A PORTION OF THE RESEARCH AND COMMERCIALIZATION EXPENDABLE TRUST BE USED FOR CLEAN COAL RESEARCH AND DEVELOPMENT PROJECTS OR RENEWABLE RESOURCE RESEARCH AND DEVELOPMENT PROJECTS; AMENDING SECTIONS 90-3-1002 AND 90-3-1003, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-3-1002, MCA, is amended to read:

"90-3-1002. Research and commercialization account. (1) There is a research and commercialization special revenue account within the state treasury. The purpose of the account is to establish a permanent source of funding for research and commercialization projects to be conducted at research and commercialization centers in the state and to pay the costs of administering those projects.

(2) The research and commercialization account must be invested by the board of investments. ~~Earnings~~ *Except as provided in 90-3-1003(5)(b), earnings* on the account must be deposited in the account for distribution pursuant to 90-3-1003(3)~~, (4),~~ *through (5)* and ~~(7)~~ *(8)*."

Section 2. Section 90-3-1003, MCA, is amended to read:

"90-3-1003. Research and commercialization account — use. (1) The research and commercialization account provided for in 90-3-1002 is statutorily appropriated, as provided in 17-7-502, to the board of research and commercialization technology, provided for in 2-15-1819, for the purposes provided in this section.

(2) The establishment of the account in 90-3-1002 is intended to enhance the economic growth opportunities for Montana and constitute a public purpose.

(3) The account may be used only for:

(a) loans that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana;

(b) grants that are to be used for production agriculture research and commercialization projects*, clean coal research and development projects, or renewable resource research and development projects* to be conducted at research and commercialization centers located in Montana;

(c) matching funds for grants from nonstate sources that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana; or

(d) administrative costs that are incurred by the board in carrying out the provisions of this part.

(4) At least 20% of the account funds approved for research and commercialization projects must be directed toward projects that enhance production agriculture.

(5) (a) At least 30% of the account funds approved for research and commercialization projects must be directed toward projects that enhance clean coal research and development or renewable resource research and development.

(b) If the board is not in receipt of a qualified application for a project to enhance clean coal research and development or renewable resource research and development, subsection (5)(a) does not apply.

~~(5)~~*(6)* An applicant for a grant shall provide matching funds from nonstate sources equal to 25% of total project costs. The requirement to provide matching funds is a qualifier, but not a criterion, for approval of a grant.

~~(6)~~*(7)* The board shall establish policies, procedures, and criteria that achieve the objectives in its research and commercialization strategic plan for the awarding of grants and loans. The criteria must include:

(a) the project's potential to diversify or add value to a traditional basic industry of the state's economy;

(b) whether the project shows promise for enhancing technology-based sectors of Montana's economy or promise for commercial development of discoveries;

(c) whether the project employs or otherwise takes advantage of existing research and commercialization strengths within the state's public university and private research establishment;

(d) whether the project involves a realistic and achievable research project design;

(e) whether the project develops or employs an innovative technology;

(f) verification that the project activity is located within the state;

(g) whether the project's research team possesses sufficient expertise in the appropriate technology area to complete the research objective of the project;

(h) verification that the project was awarded based on its scientific merits, following review by a recognized federal agency, philanthropic foundation, or other private funding source; and

(i) whether the project includes research opportunities for students.

~~(7)~~*(8)* The board shall direct the state treasurer to distribute funds for approved projects. Unallocated interest and earnings from the account must be retained in the account. Repayments of loans and any agreements authorizing the board to take a financial right to licensing or royalty fees paid in connection with the transfer of technology from a research and commercialization center to another nonstate organization or ownership of corporate stock in a private sector organization must be deposited in the account.

~~(8)~~*(9)* The board shall refer grant applications to external peer review groups. The board shall compile a list of persons willing to serve on peer review groups for purposes of this section. The peer review group shall review the application and make a recommendation to the board as to whether the application for a grant should be approved. The board shall review the recommendation of the peer review group and either approve or deny a grant application.

~~(9)~~*(10)* The board shall identify whether a grant or loan is to be used for basic research, applied research, or some combination of both. For the purposes of this section, "applied research" means research that is conducted to attain a specific benefit or solve a practical problem and "basic research" means research that is conducted to uncover the basic function or mechanism of a scientific question.

(11) For the purposes of this section:

(a) "clean coal research and development" means research and development of projects that would advance the efficiency, environmental performance, and cost-competitiveness of using coal as an energy source well beyond the current level of technology used in commercial service;

(b) "renewable resource research and development" means research and development that would advance:

(i) the use of any of the sources of energy listed in 69-8-1003(6) to produce electricity; and

(ii) the efficiency, environmental performance, and cost competitiveness of using renewable resources as an energy source well beyond the current level of technology used in commercial service."

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 5. Effective date. [This act] is effective July 1, 2007.

Approved May 8, 2007

CHAPTER NO. 439

[HB 729]

AN ACT REVISING ADVERTISING AND PUBLICATION REQUIREMENTS FOR BOARDS OF COUNTY COMMISSIONERS AND CERTAIN OTHER UNITS OF LOCAL GOVERNMENT; PROVIDING THAT A NEWSLETTER OR OTHER PUBLICATION PRODUCED BY A LOCAL GOVERNMENT IS NOT CONSIDERED A NEWSPAPER FOR COUNTY ADVERTISING PURPOSES; AND AMENDING SECTIONS 7-1-2121 AND 7-5-2411, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-2121, MCA, is amended to read:

"7-1-2121. Publication and content of notice — proof of publication. Unless otherwise specifically provided, whenever a local government unit other than a municipality is required to give notice by publication, the following applies:

(1) Publication must be in a newspaper meeting the qualifications of subsections (2) and (3), except that in a county where ~~no~~ *a* newspaper ~~meets~~ *does not meet* these qualifications, publication must be made in a qualified newspaper in an adjacent county. If there is no qualified newspaper in an adjacent county, publication must be made by posting the notice in three public places in the county, designated by resolution of the governing body.

(2) (a) The newspaper must ~~be~~:

(i) *be* of general circulation;

(ii) *be* published at least once a week; ~~and~~

(iii) *be* published in the county where the hearing or other action will take place*; and*

(iv) have, prior to July 1 of each year, submitted to the clerk and recorder a sworn statement that includes:

(A) circulation for the prior 12 months;

(B) a statement of net distribution;

(C) itemization of the circulation that is paid and that is free; and

(D) the method of distribution.

(b) A newspaper of general circulation does not include a newsletter or other document produced or published by the local government unit.

(3) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

(4) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

(5) The notice must be published twice, with at least 6 days separating each publication.

(6) The published notice must contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

(7) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

(8) Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice."

Section 2. Section 7-5-2411, MCA, is amended to read:

"7-5-2411. County printing contract. (1) The county commissioners shall contract for all advertising required by law and all printed forms required by the county. The advertising required by law must be awarded to a newspaper that:

(a) is published in the county;

(b) has general ~~bona fide and paid~~ circulation ~~with the second-class mailing privilege~~; ~~and~~

(c) has been published continuously at least once a week in the county for the 12 months preceding the awarding of the contract~~.~~*; and*

(d) prior to July 1 of each year, has submitted to the clerk and recorder a sworn statement that includes:

(i) circulation for the prior 12 months;

(ii) a statement of net distribution;

(iii) itemization of the circulation that is paid and that is free; and

(iv) the method of distribution.

(2) A newsletter or other document produced or published by the local government unit is not considered a newspaper that has general circulation as provided in subsection (1).

~~(2)~~*(3)* Contracts for printed forms and materials may be awarded on an annual basis or may be awarded for a specific printing job.

~~(3)~~*(4)* (a) The county clerk and recorder shall maintain a list of willing bidders for county printing and shall notify the printing establishments on the list of any call for bids.

(b) A printing establishment must be added to the county clerk and recorder's list when the clerk and recorder receives a written request from the printing establishment.

(c) The county clerk and recorder may delete the name of any printing establishment from the list if it has not submitted a bid during the previous 365 days."

Approved May 8, 2007

CHAPTER NO. 440

[HB 768]

AN ACT REVISING THE LAW RELATED TO OSTENSIBLE AGENCY; AND AMENDING SECTION 28-10-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 28-10-103, MCA, is amended to read:

"28-10-103. Actual versus ostensible agency — limitation. (1) An agency is either actual or ostensible. An agency is actual when the agent is really employed by the principal. An agency is ostensible when the principal intentionally or by want of ordinary care causes a third person to believe another to be the principal's agent when that person is not really employed by the principal.

(2) Except as provided in subsection (3), for purposes of a malpractice claim, as defined in 27-6-103, liability may not be imposed on a health care provider, as defined in 27-6-103, for an act or omission by a person or entity alleged to have been an ostensible agent of the health care provider at the time that the act or omission occurred.

(3) Subsection (2) is not applicable unless the health care provider has, by policy or practice, ensured that those persons providing independent professional services have insurance of a type and in the amount required by the rules and regulations of the medical staff, by the medical staff bylaws, or by other similar health care facility rules or regulations. *The insurance provided for in this subsection must be in effect for the period of time during which a medical malpractice action must be brought as provided in 27-2-205.*"

Approved May 8, 2007

CHAPTER NO. 441

[SB 41]

AN ACT PROVIDING THAT A CITY OR TOWN MAY NOT SERVE AS A PASS-THROUGH ENTITY BY USING ITS POWER OF EMINENT DOMAIN TO OBTAIN PROPERTY TO SELL, LEASE, OR PROVIDE TO A PRIVATE ENTITY FOR THE PURPOSES OF URBAN RENEWAL; PROVIDING THAT FOR THE PUBLIC USE OF URBAN RENEWAL, REDEVELOPMENT AND REHABILITATION OF PROPERTY THAT WAS OBTAINED THROUGH CONDEMNATION MAY BE USED ONLY FOR A PUBLIC USE; AMENDING SECTIONS 7-15-4204, 7-15-4206, 7-15-4258, AND 7-15-4259, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-4204, MCA, is amended to read:

"7-15-4204. Interpretation. *(1)* The powers conferred by part 43 and this part are for public uses ~~and purposes~~ for which public money may be expended and the power of eminent domain may be exercised as provided in Title 70, chapter 30. The legislature finds and declares that necessity in the public interest exists for the provisions enacted in part 43 and this part concerning urban renewal.

(2) A city or town may not serve as a pass-through entity by using its power of eminent domain, as provided in Title 70, chapter 30, to obtain property with the intent to sell, lease, or provide the property to a private entity."

Section 2. Section 7-15-4206, MCA, is amended to read:

"7-15-4206. Definitions. The following terms, wherever used or referred to in part 43 or this part, have the following meanings unless a different meaning is clearly indicated by the context:

(1) "Agency" or "urban renewal agency" means a public agency created by 7-15-4232.

(2) "Blighted area" means an area that is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime~~;~~*, that* substantially impairs or arrests the sound growth of the city or its environs~~;~~*, that* retards the provision of housing accommodations~~;~~, or *that* constitutes an economic or social liability or is detrimental or constitutes a menace to the public health, safety, welfare, and morals in its present condition and use, by reason of:

(a) the substantial physical dilapidation~~;~~*,* deterioration~~;~~*, age obsolescence, or* defective construction, material, and arrangement~~; or age obsolescence~~ of buildings or improvements, whether residential or nonresidential;

(b) inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality;

(c) inappropriate or mixed uses of land or buildings;

(d) high density of population and overcrowding;

(e) defective or inadequate street layout;

(f) faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

(g) excessive land coverage;

(h) unsanitary or unsafe conditions;

(i) deterioration of site;

(j) diversity of ownership;

(k) tax or special assessment delinquency exceeding the fair value of the land;

(l) defective or unusual conditions of title;

(m) improper subdivision or obsolete platting;

(n) the existence of conditions that endanger life or property by fire or other causes; or

(o) any combination of the factors listed in this subsection (2).

(3) "Bonds" means any bonds, notes, or debentures*, (*including refunding obligations*),* authorized to be issued pursuant to part 43 or this part.

(4) "Clerk" means the clerk or other official of the municipality who is the custodian of the official records of the municipality.

(5) "Federal government" means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(6) "Local governing body" means the council or other legislative body charged with governing the municipality.

(7) "Mayor" means the chief executive of a city or town.

(8) "Municipality" means any incorporated city or town in the state.

(9) "Neighborhood development program" means the yearly activities or undertakings of a municipality in an urban renewal area or areas if the municipality elects to undertake activities on an annual increment basis.

(10) "Obligee" means any bondholder or agent or trustee for any bondholder or lessor ~~demising~~ *conveying* to the municipality property used in connection with an urban renewal project or any assignee or assignees of the lessor's interest or any part of the interest and the federal government when it is a party to any contract with the municipality.

(11) "Person" means any individual, firm, partnership, corporation, company, association, joint-stock association, or school district and includes any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(12) "Public body" means the state or any municipality, township, board, commission, district, or ~~any~~ other subdivision or public body of the state.

(13) "Public officer" means any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or ~~to~~ other activities concerning dwellings in the municipality.

(14) "Public use" means:

(a) a public use enumerated in 70-30-102; or

(b) a project financed by the method provided for in 7-15-4288.

~~(14)~~*(15)* "Real property" means all lands, including improvements and fixtures on the land, all property of any nature appurtenant to the land or used in connection with the land, and every estate, interest, right, and use, legal or equitable, in the land, including terms for years and liens by way of judgment, mortgage, or otherwise.

~~(15)~~*(16)* "Redevelopment" may include:

(a) acquisition of a blighted area or portion of the area;

(b) demolition and removal of buildings and improvements;

(c) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part in accordance with the urban renewal plan; and

(d) making the land available for development or redevelopment by private enterprise or public agencies, ~~(~~including sale, initial leasing, or retention by the municipality itself~~)~~, at its fair value for uses in accordance with the urban renewal plan. *If the property is condemned pursuant to Title 70, chapter 30, the private enterprise or public agencies may not develop the condemned area in a way that is not for a public use.*

~~(16)~~*(17) (a)* "Rehabilitation" may include the restoration and renewal of a blighted area or portion of the area in accordance with an urban renewal plan by:

~~(a)~~*(i)* carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements;

~~(b)~~*(ii)* acquisition of real property and demolition or removal of buildings and improvements on the property when necessary to eliminate unhealthful,

unsanitary, or unsafe conditions~~;~~*,* to lessen density~~;~~*,* to reduce traffic hazards~~;~~*,* to eliminate obsolete or other uses detrimental to the public welfare~~;~~*,* to otherwise remove or prevent the spread of blight or deterioration~~;~~*,* or to provide land for needed public facilities;

~~(e)~~*(iii)* installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part; and

~~(d)~~*(iv) subject to 7-15-4259(4),* the disposition of any property acquired in the urban renewal area*,* ~~(~~including sale, initial leasing, or retention by the municipality itself~~)~~*,* at its fair value for uses in accordance with the urban renewal plan.

(b) Rehabilitation may not include the development of the condemned area in a way that is not for a public use if the property is condemned pursuant to Title 70, chapter 30.

~~(17)~~*(18)* "Urban renewal area" means a blighted area that the local governing body designates as appropriate for an urban renewal project or projects.

~~(18)~~*(19)* "Urban renewal plan" means a plan for one or more urban renewal areas or for an urban renewal project. The plan:

(a) must conform to the growth policy if one has been adopted pursuant to Title 76, chapter 1; and

(b) must be sufficiently complete to indicate, on a yearly basis or otherwise:

(i) any land acquisition, demolition, and removal of structures; redevelopment; improvements; and rehabilitation that is proposed to be carried out in the urban renewal area;

(ii) zoning and planning changes, if any, including changes to the growth policy if one has been adopted pursuant to Title 76, chapter 1;

(iii) land uses, maximum densities, building requirements; and

(iv) the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

~~(19)~~*(20) (a)* "Urban renewal project" may include undertakings or activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of blight and may involve redevelopment in an urban renewal area, rehabilitation or conservation in an urban renewal area, or any combination or part of redevelopment, rehabilitation, or conservation in accordance with an urban renewal plan.

(b) An urban renewal project may not include using property that was condemned pursuant to Title 70, chapter 30, for anything other than a public use."

Section 3. Section 7-15-4258, MCA, is amended to read:

"7-15-4258. Acquisition and administration of real and personal property. (1) A municipality may:

(a) acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain pursuant to Title 70, chapter 30, or otherwise any real property and personal property that may be necessary for the administration of the

provisions contained in part 43 and this part, together with any improvements on the real property;

(b) hold, improve, clear, or prepare for redevelopment property acquired pursuant to subsection (1)(a);

(c) dispose of real or personal property;

(d) insure or provide for the insurance of real or personal property or the operations of the municipality against any risks or hazards, including the power to pay premiums on any insurance; and

(e) enter into a development agreement with the owner of real property within an urban renewal area and undertake activities, including the acquisition, removal, or demolition of structures, improvements, or personal property located on the real property, to prepare the property for redevelopment.

(2) A development agreement entered into in accordance with subsection (1)(e) must contain provisions obligating the owner to redevelop the real property for a specified use consistent with the urban renewal plan and offering recourse to the municipality if the redevelopment is not completed as determined by the local governing body. The development agreement may not constitute the acquisition of an interest in real property by the municipality within the meaning of 7-15-4262 or 7-15-4263.

(3) ~~However,~~ *Except as provided in 7-15-4204(2), 7-15-4206, and 7-15-4259,* statutory provisions with respect to the acquisition, clearance, or disposition of property by public bodies may not restrict a municipality in the exercise of functions with respect to an urban renewal project.

(4) A municipality may not acquire real property for an urban renewal project or enter into a development agreement, as provided in subsection (1)(e), unless the local governing body has approved the urban renewal project plan in accordance with 7-15-4216(2) and 7-15-4217."

Section 4. Section 7-15-4259, MCA, is amended to read:

"7-15-4259. Exercise of power of eminent domain. (1) After the adoption by the local governing body of a resolution declaring that the acquisition of the real property described in the resolution is necessary for an urban renewal project under this part, a municipality may acquire by condemnation, as provided in Title 70, chapter 30, any interest in real property that it considers necessary for urban renewal.

(2) Condemnation for urban renewal of blighted areas is a public use, and property already devoted to any other public use or acquired by the owner or the owner's predecessor in interest by eminent domain may be condemned for the purposes of this part.

(3) The award of compensation for real property taken for an urban renewal project may not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction or proposed assembly, clearance, or reconstruction in the project area. An allowance may not be made for the improvements begun on real property after notice to the owner of the property of the institution of proceedings to condemn the property. Evidence is admissible bearing upon the unsanitary, unsafe, or substandard condition of the premises or the unlawful use of the premises.

(4) A city or town may not serve as a pass-through entity by using its power of eminent domain, as provided in Title 70, chapter 30, to obtain property with the intent to sell, lease, or provide the property to a private entity."

Section 5. Effective date. [This act] is effective on passage and approval.

Approved May 8, 2007

CHAPTER NO. 442

[SB 49]

AN ACT GRANTING TO A RELATIVE WHO IS A CARETAKER BUT NOT A PARENT OF A CHILD THE POWER TO ENROLL THE CHILD IN SCHOOL, DISCUSS CERTAIN SCHOOL-RELATED MATTERS, AND CONSENT TO SCHOOL-RELATED MEDICAL CARE UNDER CERTAIN CONDITIONS; PROVIDING FOR A CARETAKER RELATIVE EDUCATIONAL AUTHORIZATION AFFIDAVIT; PROVIDING FOR GOVERNMENTAL IMMUNITY; AMENDING SECTIONS 1-1-215, 20-5-321, 20-5-412, AND 20-5-420, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose — legislative intent — parental rights — definitions. (1) The legislature recognizes that the rights of parents to the custody and control of a child are based upon liberties secured by the United States and Montana constitutions and that a parent's rights to that custody and control of a child are therefore normally supreme to the interests of other persons. The legislature also recognizes a growing phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and care of their children to a grandparent or other relative for lengthy periods of time. Regardless of the purpose of the absence, a child willfully surrendered to a relative for an extended time period still has the same needs as a child in the care of its parents. In this situation, a caretaker relative assumes responsibilities for the child but has no legal right of control over the child, a situation that interferes in the caretaker relative's ability to perform routine functions of child rearing, including tending to the educational and educationally related medical needs of the child. It is therefore the purpose of the legislature in these instances to protect the rights of a child granted by Article II, section 15, of the Montana constitution by granting a caretaker relative limited authority for a child left in the relative's care.

(2) It is the intent of the legislature that a caretaker relative given the responsibility of caring for a child with little or no warning and without any other provision having been made for the child's care, such as the appointment of a guardian or the provision of a power of attorney, be granted authority to enroll the child in school, discuss with the school district the child's educational progress, and consent to an educational service and to medical care for the child related to an educational service without superseding any parental rights regarding the child.

(3) [Sections 2 and 3] and this section are not intended to affect the rights and responsibilities of a parent, legal guardian, or other custodian regarding the child, do not grant legal custody of the child to the caretaker relative, and do not grant authority to the caretaker relative to consent to the marriage or adoption of the child or to receive notice of a medical procedure, including abortion, not

consented to by the relative, if notice is required by law, for the child except as expressly provided in this section.

(4) For the purposes of [sections 2 and 3] and this section, the following definitions apply:

(a) "Caretaker relative" or "relative" means an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child.

(b) "Caretaker relative educational authorization affidavit" or "affidavit" means an affidavit completed in compliance with [section 3].

(c) "Health care provider" means a person who provides medical care.

(d) "Medical care" means care, by a health care provider for which parental consent is normally required, for the prevention, diagnosis, or treatment of a mental, physical, or dental injury or disease.

(e) "Parent" means a biological parent, adoptive parent, or other legal guardian of the child whose parental rights have not been terminated.

Section 2. Enrollment by caretaker relative — residency — affidavit. (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child may, in accordance with this section, enroll the child in school, using the rules of residence provided in 1-1-215, if:

(a) in leaving the child with the caretaker relative, the parent expressed no definite time period in which the parent would return for the child;

(b) the child is residing with the caretaker relative on a full-time basis;

(c) the caretaker relative is unable to contact either of the parents following the voluntary leaving of the child with the relative or the parent or parents whom the relative is able to contact refuse to regain custody of the child after a written or oral request by the relative to do so;

(d) no adequate provision, such as the appointment of a guardian ad litem or execution of a power of attorney, has otherwise been made for the educational needs of the child; and

(e) a caretaker relative educational authorization affidavit is completed in compliance with [section 3].

(2) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child may enroll the child in school unless the child's residency with the caretaker relative is primarily for the purpose of:

(a) attending a particular school; or

(b) participating in athletics at a particular school.

(3) If the child was subject to formal disciplinary action, including suspension or expulsion, at the child's previous school, the school in which the child is to be enrolled may require the child to comply with a behavior contract as a condition of enrollment.

(4) The school district may require additional reasonable evidence that the caretaker relative lives at the address provided in the affidavit.

Section 3. Caretaker relative educational authorization affidavit — use — immunity — format. (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child has the same authority as a custodial parent of the child to discuss with an educator the

educational progress of the child, consent to an educational service, and consent to medical care related to an educational service for the child for which parental consent is usually required if a caretaker relative educational authorization affidavit is completed in compliance with this section.

(2) An affidavit is effective only if it is signed by the caretaker relative, under oath, before a notary public. A clear photographic copy of an affidavit completed in compliance with this section is sufficient in any instance in which an original is required by a school official or health care provider.

(3) Unless parental rights have been judicially terminated or unless the ability to give legal consent for the child to receive an educational service and any medical care related to the educational service for which parental consent is usually required has been granted to the caretaker relative pursuant to 40-4-211 and 40-4-228, a decision by a parent of the child communicated to a school official, a health care provider, or both, regarding the child supersedes a conflicting decision by a caretaker relative made pursuant to an affidavit completed in compliance with this section. However, a decision by a parent does not supersede a decision by a relative pursuant to an affidavit completed in compliance with this section if the decision by the parent endangers the life of the child. A school official or health care provider may require reasonable proof of authenticity of a decision by a parent intended to supersede a decision by a caretaker relative.

(4) (a) A [public or] private entity or individual who acts in good faith reliance on a caretaker relative educational authorization affidavit completed in compliance with this section who has no actual knowledge of facts contrary to those indicated in the affidavit is not subject to civil liability or criminal prosecution or to a professional disciplinary procedure for an action that would have been proper if the facts had been as the entity or individual believed them to be.

(b) This subsection (4) applies even if an educational service or educationally related medical care, or both, are provided to a child against the wishes of a parent of that child if the person rendering the service does not have actual knowledge of the parent's wishes.

(5) A person who relies on an affidavit completed in compliance with this section has no obligation to make further inquiry or investigation.

(6) An affidavit completed in compliance with this section is effective for the earlier of:

(a) the end of the first school year after delivery of the affidavit to a school district;

(b) until it has been revoked by the caretaker relative; or

(c) until the child no longer resides with the caretaker relative.

(7) If the child ceases to live with the caretaker relative or the caretaker relative revokes the affidavit, the caretaker relative shall provide written notice of that fact to all persons to whom the caretaker relative has given the affidavit or to whom the caretaker relative has caused the affidavit to be given.

(8) This section does not relieve a person from a violation of other law, and this section does not affect the rights of a child's parent except as provided in this section.

(9) A caretaker relative educational authorization affidavit is invalid unless it is written in substantially the following form and contains the warning provided for in paragraph 5 of the format below:

CARETAKER RELATIVE'S

EDUCATIONAL AUTHORIZATION AFFIDAVIT

Use of this affidavit is authorized by [this section].

1. INSTRUCTIONS: The completion and signing of the affidavit before a notary public are sufficient to authorize educational enrollment and services and school-related medical care for the named child. Please print clearly.

The child named below lives in my home, and I am 18 years of age or older.

a. Name of child:

b. Child's date of birth:

c. My name (caretaker relative):

d. My home address:

e. My relationship to the child (the caretaker relative must be an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the caretaker relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child):

2. I hereby certify that this affidavit is not being used for the purpose of circumventing school residency laws, to take advantage of a particular academic program or athletic activity, to circumvent a disciplinary action of a previous school, or for an otherwise unlawful purpose.

3. My date and year of birth:

4. Check the following if true (all must be checked for this affidavit to apply):

[ ] A parent of the child identified in paragraph 1a of this affidavit has left the child with me and has expressed no definite time period when the parent will return for the child.

[ ] The child is now residing with me on a full-time basis.

[ ] I am unable to locate or contact the parents of the child at this time to notify the parents of my intended authorization, or the parents refuse to regain custody of the child even though I have asked in writing that the parents do so.

[ ] No adequate provision, such as appointment of a guardian ad litem or execution of a power of attorney, has been made for enrollment of the child in school, other educational services, or educationally related medical services.

5. WARNING: DO NOT SIGN THIS FORM IF ANY OF THE STATEMENTS ABOVE ARE INCORRECT, OR YOU WILL BE COMMITTING A CRIME PUNISHABLE BY A FINE, IMPRISONMENT, OR BOTH.

6. I declare under penalty of false swearing under the laws of Montana that the foregoing is true and correct.

Signed this __ day of _____, 20__.

_____

(Signature of caretaker relative)

_____

(Signature, county, state, and seal of notary public)

7. NOTICES:

a. Completion of this affidavit does not affect the rights of the child's parents or legal guardian regarding the care, custody, and control of the child and does not mean that the caretaker relative has legal custody of the child.

b. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.

c. This affidavit is not valid for more than 6 months after the date on which it is signed by the caretaker relative.

8. ADDITIONAL INFORMATION:

a. TO CARETAKER RELATIVES:

If the child stops living with you, you shall notify anyone to whom you have given this affidavit, as well as anyone who received the affidavit from someone else.

b. TO [PUBLIC AND] PRIVATE SCHOOL OFFICIALS AND [PUBLIC AND] PRIVATE HEALTH CARE PROVIDERS:

(1). A [public or] private school official [or a public school district official] may require additional reasonable evidence that the caretaker relative lives at the address provided in item 1d of the affidavit form.

(2). A [public or] private entity or individual who acts in good faith reliance upon a caretaker relative educational authorization affidavit to enroll a child in school or to provide educational services or educationally related medical care, or both, without actual knowledge of facts contrary to those indicated in the affidavit, is not subject to criminal prosecution or civil liability to any person, or subject to any professional disciplinary action, for reliance on an affidavit completed in compliance with [this section].

Section 4. Section 1-1-215, MCA, is amended to read:

"1-1-215. Residence — rules for determining. Every person has, in law, a residence. In determining the place of residence, the following rules are to be observed:

(1) It is the place where a person remains when not called elsewhere for labor or other special or temporary purpose and to which the person returns in seasons of repose.

(2) There may ~~only~~ be *only* one residence. If a person claims a residence within Montana for any purpose, then that location is the person's residence for all purposes unless there is a specific statutory exception.

(3) A residence cannot be lost until another is gained.

(4) The residence of ~~a minor's parents or, if one of them is deceased or they do not share the same residence, the residence of the parent having legal custody or, if neither parent has legal custody, the residence of the parent with whom the minor customarily resides is the residence of the~~ *an* unmarried minor~~. In~~ *is:*

(a) the residence of a minor's parents;

(b) if one of the parents is deceased or the parents do not share the same residence, the residence of the parent having legal custody;

(c) if neither parent has legal custody, the residence of the parent with whom the minor customarily resides; or

(d) if the conditions in [section 2] are met, the last-known residence of the parent with whom the minor normally resided immediately prior to residing with the caretaker relative.

(5) In the case of a controversy, the district court may declare which parental residence is the residence of an unmarried minor.

~~(5)~~*(6)* ~~The~~ *Except as provided in [sections 1 through 3], the* residence of an unmarried minor who has a parent living cannot be changed by either the minor's own act or that of the minor's guardian.

~~(6)~~*(7)* The residence can be changed only by the union of act and intent."

Section 5. Section 20-5-321, MCA, is amended to read:

"20-5-321. Attendance with mandatory approval — tuition and transportation. (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

(a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district and the resident district does not provide transportation; or

(b) (i) the child resides in a location where, because of geographic conditions between the child's home and the school that the child would attend within the district of residence, it is impractical to attend school in the district of residence, as determined by the county transportation committee based on the following criteria:

(A) the length of time that is in excess of the 1-hour limit for each bus trip for an elementary child as authorized under 20-10-121;

(B) whether distance traveled is greater than 40 miles one way from the child's home to school on a dirt road or greater than a total of 60 miles one way from the child's home to school in the district of residence over the shortest passable route; or

(C) whether the condition of the road or existence of a geographic barrier, such as a river or mountain pass, causes a hazard that prohibits safe travel between the home and school.

(ii) The decision of the county transportation committee is subject to appeal to the superintendent of public instruction, as provided in 20-3-107, but the decision must be considered as final for the purpose of the payment of tuition under 20-5-324(5)(a)(ii) until a decision is issued by the superintendent of public instruction. The superintendent of public instruction may review and rule upon a decision of the county transportation committee without an appeal being filed.

(c) the child is a member of a family that is required to send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided that the child resides more than 3 miles from an elementary school in the resident district or that the parent is required to move to the elementary district where the high school is located to enroll another child in high school. A child enrolled in an elementary school pursuant to this subsection (1)(c) may continue to attend the elementary school after the other child has left the high school.

(d) the child is under the protective care of a state agency or has been adjudicated to be a youth in need of intervention or a delinquent youth, as defined in 41-5-103; ~~or~~

(e) the child is required to attend school outside of the district of residence as the result of a placement in foster care or a group home licensed by the state*; or*

(f) the child is residing with a caretaker relative who wants to enroll the child pursuant to [section 2].

(2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an out-of-district attendance agreement in consultation with an appropriate official of the district that the child will attend.

(b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

(c) (i) The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity and may charge tuition for all students whose tuition is required to be paid by another type of entity. However, any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

(ii) As used in this subsection (2)(c), "entity" means a parent, a guardian, the trustees of the district of residence, or a state agency.

(3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district of attendance shall approve the out-of-district attendance agreement. The trustees of the district of attendance shall:

(a) notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days; and

(b) submit the agreement for a student attending under the provisions of subsection (1)(d) or (1)(e) to the superintendent of public instruction for approval for payment under 20-5-324.

(4) Unless the child is a child with a disability who resides in the district, the trustees of the district where the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find that, because of insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child."

Section 6. Section 20-5-412, MCA, is amended to read:

"20-5-412. Definition — parent-designated adult — administration of glucagon — training. (1) As used in 20-5-413 and this section, "parent-designated adult" means a school district employee, selected by a parent*, an individual who has executed a caretaker relative educational authorization affidavit pursuant to [section 3],* or *a* guardian of a diabetic student, who voluntarily agrees to administer glucagon to the student.

(2) A parent*, an individual who has executed a caretaker relative educational authorization affidavit pursuant to [section 3],* or *a* guardian of a diabetic student may designate an adult to administer glucagon to the student as provided in subsection (3). Written proof of the designation by a parent*, an individual who has executed a caretaker relative educational authorization*

affidavit pursuant to [section 3], or *a* guardian and acceptance of the designation by the parent-designated adult must be filed with the school district.

(3) A parent-designated adult may administer glucagon to a diabetic student in an emergency situation. The glucagon must be provided by the parent*, an individual who has executed a caretaker relative educational authorization affidavit pursuant to [section 3],* or *a* guardian of the student.

(4) A parent-designated adult must be trained in recognizing hypoglycemia and the proper method of administering glucagon. Training must be provided by a health care professional, as defined in 33-36-103, or a recognized expert in diabetic care selected by the parent*, an individual who has executed a caretaker relative educational authorization affidavit pursuant to [section 3],* or *a* guardian. Written documentation of the training received by the parent-designated adult must be filed with the school district."

Section 7. Section 20-5-420, MCA, is amended to read:

"20-5-420. Self-administration of asthma medication. (1) As used in this section, the following definitions apply:

(a) "Anaphylaxis" means a systemic allergic reaction that can be fatal in a short time period and is also known as anaphylactic shock.

(b) "Asthma" means a chronic disorder or condition of the lungs that requires lifetime, ongoing, medical intervention.

(c) "Medication" means a medicine, including inhaled bronchodilators, inhaled corticosteroids, and autoinjectable epinephrine, prescribed by a licensed physician as defined in 37-3-102, a physician assistant who has been authorized to prescribe asthma medications as provided in 37-20-404, or an advanced practice registered nurse with prescriptive authority as provided in 37-8-202(5).

(d) "Self-administration" means a pupil's discretionary use of the asthma medication prescribed for the pupil.

(2) A school, whether public or nonpublic, shall permit the self-administration of medication by a pupil with asthma if the parents or guardians of the pupil provide to the school:

(a) written authorization, acknowledging and agreeing to the liability provisions in subsection (4), for the self-administration of medication;

(b) a written statement from the pupil's physician, physician assistant, or advanced practice registered nurse containing the following information:

(i) the name and purpose of the medication;

(ii) the prescribed dosage; and

(iii) the time or times at which or the special circumstances under which the medication is to be administered;

(c) documentation that the pupil has demonstrated to the health care practitioner and the school nurse, if available, the skill level necessary to administer the medication as prescribed; and

(d) documentation that the pupil's physician, physician assistant, or advanced practice registered nurse has formulated a written treatment plan for managing asthma or anaphylaxis episodes of the pupil and for medication use by the pupil during school hours.

(3) The information provided by the parents or guardians must be kept on file in the office of the school nurse or, in the absence of a school nurse, the school's administrator.

(4) The school district or nonpublic school and its employees and agents are not liable as a result of any injury arising from the self-administration of medication by the pupil unless an act or omission is the result of gross negligence, willful and wanton conduct, or an intentional tort. The parents or guardians of the pupil must be given a written notice and sign a statement acknowledging that the school district or nonpublic school may not incur liability as a result of any injury arising from the self-administration of medication by the pupil and that the parents or guardians shall indemnify and hold harmless the school district or nonpublic school and its employees and agents against any claims, except a claim based on an act or omission that is the result of gross negligence, willful and wanton conduct, or an intentional tort.

(5) The permission for self-administration of medication is effective for the school year for which it is granted and must be renewed each subsequent school year or, if the medication dosage, frequency of administration, or other conditions change, upon fulfillment of the requirements of this section.

(6) If the requirements of this section are fulfilled, a pupil with asthma may possess and use the pupil's medication:

(a) while in school;

(b) while at a school-sponsored activity;

(c) while under the supervision of school personnel;

(d) before or after normal school activities, such as while in before-school or after-school care on school-operated property; or

(e) while in transit to or from school or school-sponsored activities.

(7) If provided by the parent*, an individual who has executed a caretaker relative educational authorization affidavit pursuant to [section 3],* or *a* guardian and in accordance with documents provided by the pupil's physician, physician assistant, or advanced practice registered nurse, backup medication must be kept at a pupil's school in a predetermined location or locations to which the pupil has access in the event of an asthma or anaphylaxis emergency.

(8) Youth correctional facilities are exempt from this section and shall adopt policies related to access and use of asthma medications."

Section 8. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 20, chapter 5, and the provisions of Title 20, chapter 5, apply to [sections 1 through 3].

Section 9. Two-thirds vote required — contingent voidness. Because [section 3(4)(a)] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage. If [this act] is not approved by at least two-thirds of the members of each house of the legislature, then the bracketed language in [section 3(4)(a)] and the bracketed language in the notice to school officials and health care providers in part 8b of [section 3(9)] is void.

Section 10. Effective date. [This act] is effective July 1, 2007.

Section 11. Applicability. [This act] applies to a caretaker relative to whom a minor is given by a parent on or after July 1, 2007, for care by the relative.

Approved May 8, 2007

CHAPTER NO. 443

[SB 51]

AN ACT REVISING GROWTH POLICY AND SUBDIVISION LAWS; REQUIRING GROWTH POLICIES TO EVALUATE THE POTENTIAL FOR FIRE AND WILDLAND FIRE; INCLUDING FIRE AND WILDLAND FIRE AMONG THE NATURAL HAZARDS THAT LOCAL SUBDIVISION REGULATIONS ARE REQUIRED TO REASONABLY ADDRESS; REQUIRING SUBDIVISION REGULATIONS TO IDENTIFY AREAS UNSUITABLE FOR DEVELOPMENT UNLESS CERTAIN MITIGATION MEASURES ARE TAKEN, INCLUDING USE OF CONSTRUCTION TECHNIQUES PROVIDED IN DEPARTMENT OF LABOR AND INDUSTRY ADMINISTRATIVE RULES; PROHIBITING A GOVERNING BODY FROM INCLUDING CERTAIN BUILDING REGULATIONS IN SUBDIVISION REGULATIONS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT RULES THAT IDENTIFY CONSTRUCTION TECHNIQUES TO MITIGATE FIRE HAZARDS; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES TO ADDRESS DEVELOPMENT IN THE WILDLAND-URBAN INTERFACE; AMENDING SECTIONS 76-1-601, 76-3-501, 76-3-504, AND 76-13-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-1-601, MCA, is amended to read:

"76-1-601. Growth policy — contents. (1) A growth policy may cover all or part of the jurisdictional area.

(2) ~~A growth policy must include the elements listed in subsection (3) by October 1, 2006.~~ The extent to which a growth policy addresses the elements of a growth policy that are listed in subsection (3) is at the full discretion of the governing body.

(3) A growth policy must include:

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;

(vii) natural resources; and

(viii) other characteristics and features proposed by the planning board and adopted by the governing bodies;

(c) projected trends for the life of the growth policy for each of the following elements:

(i) land use;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) natural resources; and

(vii) other elements proposed by the planning board and adopted by the governing bodies;

(d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (3)(a);

(e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;

(f) an implementation strategy that includes:

(i) a timetable for implementing the growth policy;

(ii) a list of conditions that will lead to a revision of the growth policy; and

(iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;

(g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:

(i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;

(ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located within the county's boundaries on matters related to the growth policy;

(h) a statement explaining how the governing bodies will:

(i) define the criteria in 76-3-608(3)(a); and

(ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a); ~~and~~

(i) a statement explaining how public hearings regarding proposed subdivisions will be conducted*; and*

(j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or not there is a need to:

(i) delineate the wildland-urban interface; and

(ii) adopt regulations requiring:

(A) defensible space around structures;

(B) adequate ingress and egress to and from structures and developments to facilitate fire suppression activities; and

(C) adequate water supply for fire protection.

(4) A growth policy may:

(a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.

(b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;

(c) address the criteria in 76-3-608(3)(a);

(d) evaluate the effect of subdivision on the criteria in 76-3-608(3)(a);

(e) describe zoning regulations that will be implemented to address the criteria in 76-3-608(3)(a); and

(f) identify geographic areas where the governing body intends to authorize an exemption from review of the criteria in 76-3-608(3)(a) for proposed subdivisions pursuant to 76-3-608.

(5) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter."

Section 2. Section 76-3-501, MCA, is amended to read:

"76-3-501. Local subdivision regulations. The governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for:

(1) the orderly development of their jurisdictional areas;

(2) the coordination of roads within subdivided land with other roads, both existing and planned;

(3) the dedication of land for roadways and for public utility easements;

(4) the improvement of roads;

(5) the provision of adequate open spaces for travel, light, air, and recreation;

(6) the provision of adequate transportation, water, and drainage;

(7) subject to the provisions of 76-3-511, the regulation of sanitary facilities;

(8) the avoidance or minimization of congestion; and

(9) the avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard*, including but not limited to fire and wildland fire,* or the lack of water, drainage, access, transportation, or other public services or that would necessitate an excessive expenditure of public funds for the supply of the services."

Section 3. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations — contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in 76-3-210, 76-3-509, or 76-3-609, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. ~~and~~ *The regulations must* prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques~~;~~ *or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in [section 5].*

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) allows a subdivider to meet with the agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

(3) The governing body may establish deadlines for submittal of subdivision applications."

Section 4. Section 76-13-109, MCA, is amended to read:

"76-13-109. Rules. *(1)* The department may adopt ~~and enforce~~ reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of this part and part 2.

(2) By October 1, 2009, the department shall adopt rules addressing development within the wildland-urban interface, including but not limited to:

(a) best practices for development within the wildland-urban interface;

(b) criteria for providing grant and loan assistance to local government entities to encourage adoption of best practices for development within the wildland-urban interface; and

(c) identification of enforcement mechanisms."

Section 5. Purpose — rulemaking. (1) The purpose of [sections 5 and 6] is to provide specific rulemaking authority to the department of labor and industry for the purposes of 76-3-504(1)(e).

(2) By October 1, 2009, the department shall adopt rules identifying appropriate construction techniques that may be used by a local government in mitigation of identified fire hazards pursuant to 76-3-504(1)(e). Rules adopted under this section may not be construed to be part of the state building code as provided in 50-60-203. The adoption, amendment, or repeal of a rule under this section is of significant public interest for the purposes of 2-3-103.

Section 6. Enforcement. Rules promulgated under [section 5] may be enforced only as provided in Title 76, chapter 3, part 5. The powers and duties for enforcement provided in 76-3-501 apply to rules adopted under [section 5] and do not apply to or include any rules adopted under Title 50, chapter 60, parts 1 through 8.

Section 7. Codification instruction. [Sections 5 and 6] are intended to be codified as an integral part of Title 50, chapter 60, and the provisions of Title 50, chapter 60, apply to [sections 5 and 6].

Section 8. Effective date — applicability. [This act] is effective on passage and approval and applies on or after October 1, 2009.

Approved May 8, 2007

CHAPTER NO. 444

[SB 69]

AN ACT INCREASING THE ALLOCATION OF COAL SEVERANCE TAX TRUST FUNDS AVAILABLE FOR THE VALUE-ADDED LOAN PROGRAM, THE INFRASTRUCTURE LOAN PROGRAM, AND THE MONTANA ECONOMIC DEVELOPMENT LOAN PROGRAM; AMENDING SECTIONS 17-6-305 AND 17-6-311, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-305, MCA, is amended to read:

"17-6-305. Investment of ~~up to twenty-five percent of~~ coal tax trust fund in Montana economy — report by board. (1) Subject to the provisions of 17-6-201(1), the board shall endeavor to invest ~~up to~~ 25% of the permanent coal tax trust fund established in 17-6-203(6) in the Montana economy, with special emphasis on investments in new or expanding locally owned enterprises. Investments made pursuant to this section do not include investments made pursuant to 17-6-309(2). For purposes of calculating the 25% of the permanent coal tax trust fund, the board shall include all funds listed in 17-5-703(1). The portion of the permanent coal tax trust fund contained in portfolios formerly administered by the Montana board of science and technology development is included in the 25% of the trust fund allocated to the board for in-state investment under this section. *This subsection does not prohibit the board from investing more than 25% of the permanent coal tax trust fund in the Montana economy if it is prudent to do so and the investments will benefit the Montana economy.*

(2) In determining the probable income to be derived from investment of this revenue, the long-term benefit to the Montana economy must be considered.

(3) The legislature may provide additional procedures to implement this section.

(4) The board shall include a report on the investments made under this section as a part of the information required by 17-7-111."

Section 2. Section 17-6-311, MCA, is amended to read:

"17-6-311. Limitation on size of investments. (1) Except as provided in subsection (2) and this subsection, an investment may not be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of which exceeds 10% of the permanent coal tax trust fund. If an investment results in any one business enterprise or person incurring a debt in excess of 6% of the permanent coal tax trust fund, at least 30% of the debt incurred for the project or enterprise for the coal tax investment that was made to the business enterprise or person must be held by a commercial lender. This subsection does not:

(a) apply to a loan made pursuant to 17-6-317;

(b) limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2);

(c) apply to the purchase of debentures issued by a capital company. However, the total amount of debentures purchased by the board may not exceed 1% of the Montana permanent coal tax trust fund at the time of purchase.

(2) The total amount of loans made pursuant to 17-6-309(2) ~~or 17-6-317~~ may not exceed ~~$50~~ *$80* million, *the total amount of loans made pursuant to 17-6-317 may not exceed $70 million,* and a single loan may not be less than $250,000. Except for a loan made pursuant to 17-6-317, a loan may not exceed $16,666 for each job that is estimated to be created. In determining the size of a loan made pursuant to 17-6-309(2), the board shall consider:

(a) the estimated number of jobs to be created by the project within a 4-year period from the time that the loan is made and the impact of the jobs on the state and the community where the project will be located;

(b) the long-term effect of corporate and personal income taxes estimated to be paid by the business and its employees;

(c) the current and projected ability of the community to provide necessary infrastructure for economic and community development purposes;

(d) the amount of increased salaries, wages, and business incomes of existing jobholders and businesses; and

(e) other matters that the board considers necessary."

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved May 8, 2007

CHAPTER NO. 445

[SB 100]

AN ACT REVISING THE LAW RELATING TO OUTFITTING WITHOUT A LICENSE; DEFINING "OUTFITTING"; REVISING PENALTIES AND PROVIDING FOR ADDITIONAL SENTENCING CONDITIONS THAT MAY

BE APPLIED FOR VIOLATIONS; AMENDING SECTION 37-47-344, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Outfitting without license — penalties — disposition of fines. (1) A person commits the offense of outfitting without a license if the person purposely or knowingly engages in outfitting while not licensed pursuant to Title 37, chapter 47, or purposely or knowingly violates a licensing rule adopted under Title 37, chapter 47. A violation of this subsection is punishable by a fine of not less than $200 or more than $1,000, imprisonment in the county jail for up to 1 year, or both.

(2) A person or entity that represents to any other person, any entity, or the public that the person or entity is an outfitter and who commits the offense of outfitting without a license, as provided in subsection (1), for any portion of 5 or more days for consideration within 1 calendar year for any person or for consideration valued in excess of $5,000 is punishable by a fine of not more than $50,000, imprisonment in the state prison for up to 5 years, or both.

(3) (a) In addition to the penalties set out in subsection (1), a person who is convicted of violating subsection (1) loses all hunting, fishing, and trapping licenses and permits and shall forfeit all hunting, fishing, and trapping license privileges in this state for a period set by the court.

(b) In addition to the penalties provided in subsection (2), a person who is convicted of violating subsection (2) loses all hunting, fishing, and trapping licenses and permits and shall forfeit all hunting, fishing, and trapping license privileges in this state for a minimum of 5 years.

(c) The department shall notify the person of any loss of privileges as imposed by the court, and the person shall surrender all licenses and permits, as ordered by the court, within 10 days of notification.

(d) A sentencing court that imposes a period of license revocation pursuant to subsection (3)(a) or (3)(b) shall consider and may impose any of the following conditions during the period of revocation:

(i) prohibiting the offender from participating in any hunting, fishing, or trapping endeavor as a hunter, angler, trapper, scout, guide, observer, or assistant;

(ii) prohibiting the offender from brokering or participating in any lease of property for hunting, fishing, or trapping, either personally or through an agent or representative;

(iii) prohibiting the offender from participating in any seminar or show that is designed to promote hunting, fishing, or trapping;

(iv) prohibiting the offender from purchasing or possessing any hunting, fishing, or trapping permits; and

(v) any other reasonable condition or restriction that is related to the crime committed or that is considered necessary for the rehabilitation of the offender or for the protection of the citizens or wildlife of this state.

(4) A person convicted of outfitting without a license shall reimburse the full amount of any fees received to the person to whom illegal outfitting services were provided.

(5) As used in this section, "consideration" is defined as remuneration given in exchange for outfitting services supplied predicated on a business

relationship between parties. This does not include reimbursement for shared trip expenses.

(6) (a) As used in this section, "outfitting" means providing hunting or fishing services for consideration, including any saddle or pack animal, facilities, camping equipment, personal service, or vehicle, watercraft, or other conveyance for any person to hunt, fish, trap, capture, take, kill, or pursue any game, including fish. The term includes accompanying that person, either part or all of the way, on an expedition for any of these purposes or supervision of a licensed guide or professional guide in accompanying that person.

(b) The term does not include the provision of the services listed in subsection (6)(a) by a person on real property that the person owns for the primary pursuit of bona fide agricultural interests.

Section 2. Section 37-47-344, MCA, is amended to read:

"37-47-344. Penalties — disposition of fines. (1) A person who violates any provision of this chapter or rule adopted under this chapter is guilty of a misdemeanor and is punishable*, unless otherwise specified,* by a fine not exceeding $500.

~~(2) A person who represents to the public that the person is an outfitter or who purposely engages in outfitting without a license as required by this chapter is guilty of a misdemeanor and is punishable by a fine of not less than $200 and not more than $1,000, up to 1 year in the county jail, or both. Each day of violation is a separate offense. In addition, the person must be assessed and pay to the board the amount of all costs incurred by the board in investigating and preparing the case for trial and all prosecution costs, including but not limited to witness, transportation, and per diem expenses.~~

~~(3)~~*(2)* Fifty percent of all fines paid under this section must be deposited in the general fund of the county in which the conviction is obtained, and 50% must be deposited in the state special revenue fund for the use of the board in enforcing this chapter. All investigation, preparation, and trial costs paid under this section must be deposited in the state special revenue fund for the use of the board in enforcing the provisions of this chapter. The board may reimburse other agencies for costs reasonably incurred in the enforcement of this chapter.

~~(4) A person convicted of engaging in outfitting without a license shall reimburse the full amount of any fees received to the person to whom illegal outfitter services were provided.~~"

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 3, part 1, and the provisions of Title 87, chapter 3, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2007.

Approved May 8, 2007

CHAPTER NO. 446

[SB 104]

AN ACT SPECIFYING THE TIME WITHIN WHICH A PROSECUTION FOR CERTAIN SEX OFFENSES MAY BE COMMENCED WHEN THE IDENTITY OF THE SUSPECT WHO IS CHARGED WITH THE OFFENSE IS

ESTABLISHED BY DNA EVIDENCE; AND AMENDING SECTION 45-1-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-1-205, MCA, is amended to read:

"45-1-205. General time limitations. (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) ~~A~~ *Except as provided in subsection (9), a* prosecution for a felony offense under 45-5-502, 45-5-503, or 45-5-507(4) may be commenced within 10 years after it is committed, except that it may be commenced within 10 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred. A prosecution for a misdemeanor offense under those provisions may be commenced within 1 year after the offense is committed, except that it may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(c) ~~A~~ *Except as provided in subsection (9), a* prosecution under 45-5-504, 45-5-505, 45-5-507(1), (2), (3), or (5), 45-5-625, or 45-5-627 may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(2) Except as provided in subsection (7)(b) or as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The periods prescribed in subsection (2) are extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination of the minority or incompetency;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations of the laws regulating the activities of outfitters and guides under Title 37, chapter 47, and prosecution must be brought within 3 years after an offense is committed.

(7) (a) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years following the date of the theft, whether or not the offender is in possession of or otherwise exerting unauthorized control over the property at the time the prosecution is commenced. After the 5-year period ends, a prosecution may be commenced at any time if the offender is still in possession of or otherwise exerting unauthorized control over the property, except that the prosecution must be commenced within 1 year after the investigating officer discovers that the offender still possesses or is otherwise exerting unauthorized control over the property.

(8) A prosecution is commenced either when an indictment is found or an information or complaint is filed.

(9) If after a time period prescribed in subsection (1)(b) or (1)(c) has expired a suspect is conclusively identified by DNA testing, a prosecution may be commenced within 1 year after a suspect is conclusively identified by DNA testing."

Approved May 8, 2007

CHAPTER NO. 447

[SB 121]

AN ACT PROHIBITING THE SALE AND RESTRICTING THE DISCLOSURE AND USE OF TAX RETURN INFORMATION BY A TAX RETURN PREPARER; PROVIDING RULEMAKING AUTHORITY; PROHIBITING THE DEPARTMENT OF REVENUE FROM PROVIDING INDIVIDUAL INCOME TAX RETURN PREPARATION SERVICES; ALLOWING THE DEPARTMENT OF REVENUE TO PROVIDE FOR THE FILING OF ELECTRONIC INDIVIDUAL INCOME TAX FORMS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Prohibition on sales — restrictions on certain disclosures and uses. (1) (a) Subject to subsection (1)(b), a tax return preparer may not sell, receive any consideration for, or otherwise disclose tax return information for the benefit of the tax return preparer or of any persons controlling, controlled by, or under common control of the tax return preparer.

(b) The provisions of this section do not prevent the bona fide sale of a tax return preparation, accounting, or law practice in the ordinary course of business.

(2) A tax return preparer may not disclose return information to a tax return preparer located outside of the state unless:

(a) (i) the taxpayer has requested the disclosure; or

(ii) disclosure is required in connection with an internal audit;

(b) the tax return preparer located outside of the state agrees:

(i) not to sell or receive any consideration for the tax return information; and

(ii) not to otherwise disclose the tax return information for its benefit or for the benefit of any person controlling, controlled by, or under common control with it; and

(c) the local tax return preparer indemnifies the taxpayer for the damages provided for in subsection (3)(d) for any sale or disclosure by the tax return preparer located outside the state in violation of subsection (2)(b).

(3) (a) A person whose tax return information is or will be used or disclosed in violation of subsection (1) or (2) may bring an action to enjoin the violation and for the recovery of damages.

(b) An action under this section may be brought in Montana district court in the county where the plaintiff resides or maintains its principal place of business or in the Montana first judicial district.

(c) If the court finds that the defendant is violating or has violated any of the provisions of subsection (1) or (2), the court shall enjoin the defendant. It is not necessary to allege or prove actual damages to the plaintiff.

(d) In addition to injunctive relief, the plaintiff is entitled to recover from the defendant in an amount that is the greater of three times the amount of actual damages sustained by the plaintiff or up to $10,000.

(e) In any action brought under this section, the court may award the prevailing party reasonable attorney fees incurred in prosecuting or defending the action. A person who brings an action on the person's own behalf without an attorney may receive equivalent fees at the judge's discretion.

(4) A tax return preparer may disclose or use return information:

(a) for quality or peer reviews;

(b) when authorized to do so by Montana law;

(c) when required to do so by federal or state law; or

(d) pursuant to a court subpoena or administrative summons.

(5) As used in this section, the following definitions apply:

(a) (i) "Return information" includes a taxpayer's identity, the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, or any other data received by, recorded by, prepared by, furnished to, or collected by the department with respect to a return or with respect to the determination of the existence or possible existence of liability or the amount of a liability of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition or any offense.

(ii) The term does not include data in a form that cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer.

(b) "Tax return preparer" means:

(i) any person who:

(A) is engaged in the business of preparing tax returns;

(B) is engaged in the business of providing services in connection with the preparation of tax returns;

(C) prepares or assists in preparing or presents to the public that the person prepares or assists in preparing a tax return for compensation;

(D) develops software used to prepare or file tax returns; or

(E) is an electronic return originator; and

(ii) an individual who, as a part of that individual's duties or employment with a person described in subsection (5)(b)(i), performs services relating to:

(A) the preparation or filing of or the provision of services in connection with the preparation or filing of a tax return; or

(B) the development of software used to prepare or file tax returns.

Section 2. Prohibition on tax return preparation services — filing electronic returns. The department may not provide electronic individual income tax preparation services. However, the department may provide for the filing of electronic individual income tax forms that include mathematical computations of line items on the electronic forms. The department is encouraged to increase the use of electronic tax filing. This section does not affect the department's responsibilities to provide taxpayer services under 15-1-222.

Section 3. Rulemaking authority. The department may adopt rules to administer and enforce the provisions of [sections 1 and 2].

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 15, chapter 1, part 1, and the provisions of Title 15, chapter 1, part 1, apply to [sections 1 through 3].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved May 8, 2007

CHAPTER NO. 448

[SB 128]

AN ACT ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CHANGE WATER RIGHTS THAT IT HOLDS IN FEE SIMPLE TO INSTREAM FLOW PURPOSES TO PROTECT, MAINTAIN, OR ENHANCE STREAMFLOW TO BENEFIT FISHERY RESOURCES; REPEALING THE TERMINATION DATE ON LEASING OF WATER RIGHTS BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR INSTREAM FLOW PURPOSES; PROVIDING ADDITIONAL CRITERIA THAT MUST BE MET AND PROCEDURES THAT MUST BE FOLLOWED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CHANGE AN APPROPRIATION RIGHT OR LEASED WATER RIGHT TO INSTREAM FLOW PURPOSES TO ENSURE THAT A CHANGE IN APPROPRIATION RIGHT WILL NOT ADVERSELY AFFECT OTHER WATER RIGHT HOLDERS; AMENDING SECTIONS 85-2-102, 85-2-308, 85-2-402, 85-2-419, 85-2-436, 85-2-602, AND 87-1-257, MCA; REPEALING SECTIONS 85-2-437 AND 85-2-438, MCA, SECTION 11, CHAPTER 658, LAWS OF 1989, SECTIONS 4 AND 7, CHAPTER 740, LAWS OF 1991, AND SECTIONS 5, 6, 7, AND 9, CHAPTER 123, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. ~~(Temporary)~~ Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to ~~lease water~~ *change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource* in accordance with 85-2-436; or

(d) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks *through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource* pursuant to ~~a lease authorized under~~ 85-2-436; or

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(10) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(11) "Ground water" means any water that is beneath the ground surface.

(12) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(13) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(14) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(15) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(16) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(17) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(18) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(19) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(20) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(21) "Water division" means a drainage basin as defined in 3-7-102.

(22) "Water judge" means a judge as provided for in Title 3, chapter 7.

(23) "Water master" means a master as provided for in Title 3, chapter 7.

(24) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(25) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. ~~(Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)~~

~~85-2-102. (Effective July 1, 2009) Definitions.~~ ~~Unless the context requires otherwise, in this chapter, the following definitions apply:~~

~~(1) "Appropriate" means:~~

~~(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;~~

~~(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or~~

~~(c) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408.~~

~~(2) "Beneficial use", unless otherwise provided, means:~~

~~(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;~~

~~(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; or~~

~~(c) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408.~~

~~(3) "Certificate" means a certificate of water right issued by the department.~~

~~(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.~~

~~(5) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.~~

~~(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.~~

~~(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.~~

~~(8) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.~~

~~(9) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.~~

~~(10) "Ground water" means any water that is beneath the ground surface.~~

~~(11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.~~

~~(12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.~~

~~(13) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.~~

~~(14) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.~~

~~(15) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.~~

~~(16) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.~~

~~(17) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.~~

~~(18) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.~~

~~(19) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.~~

~~(20) "Water division" means a drainage basin as defined in 3-7-102.~~

~~(21) "Water judge" means a judge as provided for in Title 3, chapter 7.~~

~~(22) "Water master" means a master as provided for in Title 3, chapter 7.~~

~~(23) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.~~

~~(24) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.~~"

Section 2. Section 85-2-308, MCA, is amended to read:

"85-2-308. Objections. (1) (a) An objection to an application under this chapter must be filed by the date specified by the department under 85-2-307(2).

(b) The objection to an application for a permit must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-311 are not met.

(2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-402 *and 85-2-436, if applicable,* are not met.

(3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.

(4) For an application for a reservation of water, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-316 are not met.

(5) An objector to an application under this chapter shall file a correct and complete objection on a form prescribed by the department within the time period stated on the public notice associated with the application. In order to assist both applicants and objectors, the department shall adopt rules in accordance with this chapter delineating the components of a correct and complete objection. For instream flow water rights for fish, wildlife, and recreation, the rules must require the objector to describe the reach or portion of the reach of the stream or river subject to the instream flow water right and the beneficial use that is adversely affected and to identify the point or points where the instream flow water right is measured and monitored. The department shall

notify the objector of any defects in an objection. An objection not corrected or completed within 15 days from the date of notification of the defects is terminated.

(6) An objection is valid if the objector has standing pursuant to subsection (3), has filed a correct and complete objection within the prescribed time period, and has stated the applicable information required under this section and rules of the department."

Section 3. Section 85-2-402, MCA, is amended to read:

"85-2-402. ~~(Temporary)~~ Changes in appropriation rights. (1) The right to make a change *in appropriation right* subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change *in appropriation right* proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), (15), and (16)~~,~~ *and, if applicable, subject to subsection (17),* the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a ~~lease authorization~~ *change in appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource* pursuant to 85-2-436 or a temporary change in appropriation right authorization to maintain or enhance streamflows to benefit the fishery resource pursuant to 85-2-408, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a ~~lease authorization~~ *change in appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource* pursuant to 85-2-436 or a temporary change in appropriation right authorization pursuant to 85-2-408, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must

contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change *in appropriation right* is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change *in appropriation right* in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change *in appropriation right*. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change *in appropriation right* might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change *in appropriation right*. The department may extend time limits specified in the change *in appropriation right* approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change *in appropriation right* approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change *in appropriation right* approval

should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change *in appropriation right* approval.

(11) The original of a change *in appropriation right* approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change *in appropriation right* approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change *in appropriation right* pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict ~~such~~ a change *in appropriation right*;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year for all other wells;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well

within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this section.

(17) The department shall accept and process an application for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource pursuant to 85-2-436 and this section.
~~(Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)~~

85-2-402. (Effective July 1, 2009) Changes in appropriation rights. ~~(1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.~~

~~(2) Except as provided in subsections (4) through (6), (15), and (16), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:~~

~~(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.~~

~~(b) Except for a temporary change in appropriation right authorization to maintain or enhance streamflows to benefit the fishery resource pursuant to 85-2-408, the proposed means of diversion, construction, and operation of the appropriation works are adequate.~~

~~(c) The proposed use of water is a beneficial use.~~

~~(d) Except for a temporary change in appropriation right authorization pursuant to 85-2-408, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.~~

~~(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.~~

~~(f) The water quality of an appropriator will not be adversely affected.~~

~~(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.~~

~~(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.~~

~~(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:~~

~~(a) the criteria in subsection (2) are met; and~~

~~(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:~~

~~(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;~~

~~(ii) the benefits to the applicant and the state;~~

~~(iii) the effects on the quantity and quality of water for existing uses in the source of supply;~~

~~(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;~~

~~(v) the effects on private property rights by any creation of or contribution to saline seep; and~~

~~(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.~~

~~(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:~~

~~(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and~~

~~(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.~~

~~(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:~~

~~(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:~~

~~(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;~~

~~(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and~~

~~(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.~~

~~(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:~~

~~(i) whether there are present or projected water shortages within the state of Montana;~~

~~(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;~~

~~(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and~~

~~(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.~~

~~(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.~~

~~(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the~~

~~department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change might adversely affect the rights of other persons.~~

~~(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).~~

~~(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.~~

~~(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.~~

~~(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.~~

~~(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.~~

~~(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.~~

~~(14) The department may adopt rules to implement the provisions of this section.~~

~~(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:~~

~~(i) the appropriation right is for:~~

~~(A) ground water outside the boundaries of a controlled ground water area; or~~

~~(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change;~~

~~(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;~~

~~(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:~~

~~(A) 450 gallons a minute for a municipal well; or~~

~~(B) 35 gallons a minute and 10 acre-feet a year for all other wells;~~

~~(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and~~

~~(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).~~

~~(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.~~

~~(ii) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.~~

~~(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.~~

~~(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:~~

~~(A) cease appropriation of water from the replacement well pending approval by the department; and~~

~~(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).~~

~~(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.~~

~~(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.~~

~~(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).~~

~~(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:~~

~~(i) withdraws water from the same ground water source as the original well; and~~

~~(ii) is required by a state or federal agency.~~

~~(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.~~

~~(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion.~~

~~(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this section.~~"

Section 4. Section 85-2-419, MCA, is amended to read:

"85-2-419. Salvaged water. It is the declared policy of the state in 85-1-101 to encourage the conservation and full use of water. Consistent with this policy, holders of appropriation rights who salvage water may retain the right to the salvaged water for beneficial use. Except for a short-term lease pursuant to 85-2-410, any use of the right to salvaged water for any purpose or in any place other than that associated with the original appropriation right must be approved by the department as a change in appropriation right in accordance with 85-2-402 *and 85-2-436, if applicable*. Sale of the right to salvaged water must also be in accordance with 85-2-403, and the lease of the right to salvaged water must be in accordance with 85-2-408, 85-2-410, or 85-2-436."

Section 5. Section 85-2-436, MCA, is amended to read:

"85-2-436. ~~(Temporary) Water leasing study~~ *Instream flow to protect, maintain, or enhance streamflows to benefit fishery resource — change in appropriation rights by department of fish, wildlife, and parks until June 30, 2019.* ~~(1) The department of fish, wildlife, and parks and the department, in consultation with the environmental quality council, shall conduct and coordinate a study that, at a minimum:~~

~~(a) provides the following data for each designated stream reach and each pilot lease entered into under subsection (2):~~

~~(i) the length of the stream reach and how it is determined;~~

~~(ii) technical methods and data used to determine critical streamflow or volume needed to preserve fisheries;~~

~~(iii) legal standards and technical data used to determine and substantiate the amount of water available for instream flows through leasing of existing rights;~~

~~(iv) contractual parameters, conditions, and other steps taken to ensure that each lease in no way harms other appropriators, particularly if the stream is one that experiences natural dewatering; and~~

~~(v) methods and technical means used to monitor use of water under each lease;~~

~~(b) based on the data provided under subsection (1)(a), develops a complete model of a water lease and lease authorization that includes a step-by-step explanation of the process from initiation to completion.~~

(1) The department of fish, wildlife, and parks may change an appropriation right, which it either holds in fee simple or leases, to an instream flow purpose of use and a defined place of use to protect, maintain, or enhance streamflows to benefit the fishery resource.

(2) The change in purpose of use or place of use must meet all the criteria and process of 85-2-307 through 85-2-309, 85-2-401, and 85-2-402 and the additional criteria and process in subsection (3) of this section to protect the rights of other appropriators from adverse impacts.

~~(2) (a) For purposes of undertaking the study described in subsection (1) and as authorized by law, the department of fish, wildlife, and parks and the department may engage in the activities described in this subsection (2). For purposes of this study, this section is the exclusive means by which the~~

~~department of fish, wildlife, and parks may seek to change an appropriation right to an instream flow purpose.~~

~~(b)~~*(3) (a)* The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of *protecting,* maintaining, or enhancing streamflows ~~for the~~ *to* benefit ~~of fisheries in stream reaches determined eligible by the department pursuant to 85-2-437~~ *the fishery resource*.

~~(c)~~*(b)* Upon receipt of a correct and complete application for a ~~lease~~ *change in purpose of use or place of use* from the department of fish, wildlife, and parks, the department shall publish notice of the application as provided in 85-2-307. Parties who believe that they may be adversely affected by the proposed ~~lease~~ *change in appropriation right* may file an objection as provided in 85-2-308. A ~~lease~~ *change in appropriation right* may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a ~~lease~~ *change* of an existing *appropriation* right for the purpose of *protecting,* maintaining, or enhancing streamflows ~~for the~~ *to* benefit ~~of fisheries~~ *the fishery resource* if the applicant submits a correct and complete application and meets the requirements of 85-2-402.

~~(d)~~*(c)* The application for a ~~lease~~ *change in appropriation right* authorization must include specific information on the length and location of the stream reach in which the streamflow ~~must~~ *is to* be *protected,* maintained, or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

~~(e)~~*(d)* The maximum quantity of water that may be ~~leased~~ *changed to instream flow* is the amount historically diverted ~~by the lessor~~. However, only the amount historically consumed, or a smaller amount if specified by the department in the ~~lease~~ *change in appropriation right* authorization, may be used to *protect,* maintain, or enhance streamflows below the ~~lessor's~~ point of diversion *that existed prior to the change in appropriation right*.

~~(f)~~*(e)* ~~The lease~~ *A lease for instream flow purposes* may ~~not~~ be ~~issued~~ *entered* for a term of ~~more than~~ *up to* 10 years, ~~but it may be renewed once for up to 10 years,~~ except that a lease of water made available from the development of a water conservation or storage project ~~is restricted to~~ *may be for* a term equal to the expected life of the project but ~~to~~ not more than 30 years. *All leases may be renewed an indefinite number of times but not for more than 10 years for each term*. Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow ~~30~~ *90* days for submission of new evidence of adverse effects to other water rights. A ~~lease~~ *change in appropriation right* authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection ~~(2)(j)~~ *(3)(i)* submits evidence of adverse effects to the appropriator's rights that has not been considered previously. If new evidence is submitted, a ~~lease~~ *change in appropriation right* authorization must be obtained according to the requirements of 85-2-402.

~~(g)~~*(f)* ~~During the term of the lease, the~~ *The* department may modify or revoke the ~~lease~~ *change in appropriation right* authorization *up to 10 years after it is approved* if an appropriator other than an appropriator described in subsection ~~(2)(j)~~ *(3)(i) submits new evidence not available at the time the change in appropriation right was approved that* proves by a preponderance of evidence that the appropriator's water right is adversely affected.

~~(h)~~*(g)* The priority of appropriation for a lease *or change in appropriation right* under this section is the same as the priority of appropriation of the right that is ~~leased~~ *changed to an instream flow purpose*.

~~(i)~~*(h)* Neither a change in appropriation right nor any other authorization is required for the reversion of ~~the~~ *a leased* appropriation right to the lessor's previous use.

~~(j)~~*(i)* A person issued a water use permit with a priority of appropriation after the date of filing of an application for a ~~lease~~ *change in appropriation right* authorization under this section may not object to the exercise of the ~~lease~~ *changed water right* according to its terms or the reversion of ~~the~~ *a leased* appropriation right to the lessor according to the lessor's previous use.

~~(k)~~*(j)* The department of fish, wildlife, and parks shall pay all costs associated with installing devices or providing personnel to measure streamflows according to the measuring plan ~~submitted~~ *required* under this section.

~~(3) (a)~~*(4) (a)* The department of fish, wildlife, and parks shall complete and submit to the department, commission, and environmental quality council ~~an annual study~~ *a biennial* progress report by December 1 of ~~each year~~ *odd-numbered years*. This report must include ~~the applicable information listed in subsection (1) for each lease, a summary of stream reach designation activity under 85-2-437, and a summary of leasing activity on all designated streams. If the department of fish, wildlife, and parks has not leased additional water rights under this section by December 1 of any year, the department of fish, wildlife, and parks shall provide compelling justification for that fact in the study progress report~~ *a summary of all appropriation rights changed to an instream flow purpose in the last 2 years.*

(b) For each change in appropriation right to an instream flow purpose, the report must include a copy of the change authorization issued by the department and must address:

(i) the length of the stream reach and how it is determined;

(ii) critical streamflow or volume needed to protect, maintain, or enhance streamflow to benefit the fishery resource;

(iii) the amount of water available for instream flow as a result of the change in appropriation right;

(iv) contractual parameters, conditions, and other steps taken to ensure that each change in appropriation right does not harm other appropriators, particularly if the stream is one that experiences natural dewatering; and

(v) methods used to monitor use of water under each change in appropriation right.

~~(b) A final study report must be adopted by the department and commission and submitted to the environmental quality council, which shall complete the final report by December 1, 2008.~~

~~(4)~~*(5)* This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired.

(6) (a) From [the effective date of this act] through June 30, 2019, the department of fish, wildlife, and parks may change, pursuant to this section, the appropriation rights that it holds in fee simple to instream flow purposes on no more than 12 stream reaches.

(b) After June 30, 2019, the department may not change the appropriation rights that it holds in fee simple to instream flow purposes on any stream reaches.

(7) After June 30, 2019, the department may not enter into any new lease agreements pursuant to this section or renew any leases that expire after that date. ~~(Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)~~"

Section 6. Section 85-2-602, MCA, is amended to read:

"85-2-602. Definitions. Unless the context clearly requires otherwise, in this part the following definitions apply:

(1) (a) "Application" means an application for a permit under part 3 of this chapter to appropriate surface water from any source of supply within the basin for either or both of the following purposes:

(i) a reservoir with a total planned capacity of 14,000 acre-feet or more; or

(ii) for a flow rate greater than 20 cubic feet of water per second.

(b) The term also includes an application for approval under 85-2-402 *and 85-2-436, if applicable,* to change the purpose of use.

(2) "Basin" means the Yellowstone River basin.

(3) "Reservation" means a reservation of water provided for by 85-2-316."

Section 7. Section 87-1-257, MCA, is amended to read:

"87-1-257. River restoration program. (1) The department shall administer a river restoration program.

(2) The program may consist of physical projects to improve rivers and their associated lands in order to conserve and enhance fish and wildlife habitat, including but not limited to ~~the~~ *a change in appropriation right or* leasing of water rights under 85-2-436.

(3) The department shall work cooperatively with individuals, conservation districts, and state, local, private, tribal, and federal organizations to achieve the goals of the program and may contract with private organizations to implement specific river restoration projects.

(4) The department shall present projects to the local conservation district for review and recommendations and obtain any applicable permits.

(5) The department shall receive the consent of the landowner or lessee of any associated lands before initiating physical projects on these lands.

(6) A project conducted under the program may not restrict or interfere with the exercise of any water right."

Section 8. Repealer. (1) Sections 85-2-437 and 85-2-438, MCA, are repealed.

(2) Section 11, Chapter 658, Laws of 1989, sections 4 and 7, Chapter 740, Laws of 1991, and sections 5, 6, 7, and 9, Chapter 123, Laws of 1999, are repealed.

Section 9. Effective date. [This act] is effective on passage and approval.

Approved May 8, 2007

CHAPTER NO. 449

[SB 130]

AN ACT GENERALLY REVISING LAWS RELATING TO FIRES; REVISING LAWS GOVERNING THE DEPARTMENT OF JUSTICE'S FIRE PREVENTION AND INVESTIGATION SECTION AND LAWS REFERENCING AND GOVERNING LOCAL GOVERNMENTAL FIRE AGENCIES; STANDARDIZING USAGE OF THE TERM "GOVERNMENTAL FIRE AGENCY"; CLARIFYING THAT A CHIEF OF A GOVERNMENTAL FIRE AGENCY MAY RECEIVE CONFIDENTIAL CRIMINAL JUSTICE INFORMATION; ELIMINATING RESTRICTIONS ON PAY FOR SPECIAL FIRE INSPECTORS; CLARIFYING THE PENALTY FOR SETTING OR LEAVING A FIRE THAT CAUSES DAMAGE AND INCREASING THE MINIMUM FINE; ELIMINATING DUPLICATE PROVISIONS PROHIBITING CERTAIN CAMPFIRES AND THROWING LIGHTED MATERIAL; REQUIRING FIRE INCIDENT REPORTS TO BE FILED WITH THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 2-7-501, 2-15-1519, 2-15-2005, 7-6-204, 18-8-202, 25-13-613, 39-71-118, 40-6-402, 44-5-103, 44-5-303, 46-18-261, 50-3-101, 50-3-102, 50-3-106, 50-5-215, 50-19-403, 50-37-107, 50-37-108, 50-37-109, 50-60-202, 50-61-102, 50-61-114, 50-61-115, 50-61-121, 50-62-101, 50-62-102, 50-62-103, 50-62-112, 50-63-102, 50-63-103, 50-63-202, 50-63-203, 50-63-401, 50-63-402, 50-63-404, 50-78-102, 52-2-733, 52-2-734, 52-4-205, 53-20-307, 61-8-102, 61-8-364, 61-9-402, AND 75-10-725, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-7-501, MCA, is amended to read:

"2-7-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Audit" means a financial audit and includes financial statement and financial-related audits as defined by government auditing standards as established by the U.S. comptroller general.

(2) "Board" means the Montana board of public accountants provided for in 2-15-1756.

(3) "Department" means the department of administration.

(4) (a) "Financial assistance" means assistance provided by a federal, state, or local government entity to a local government entity or subrecipient to carry out a program. Financial assistance may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance. Financial assistance includes awards received directly from federal and state agencies or indirectly when subrecipients receive funds identified as federal or state funds by recipients. The granting agency is responsible for identifying the source of funds awarded to recipients. The recipient is responsible for identifying the source of funds awarded to subrecipients.

(b) Financial assistance does not include direct federal, state, or local government cash assistance to individuals.

(5) "Financial report" means a presentation of financial statements, including applicable supplemental notes and supplemental schedules, that are prepared in a format published by the department using the Budgetary Accounting and Reporting System for Montana Cities, Towns, and Counties

Manual and that reflect a current financial position and the operating results for the 1-year reporting period.

(6) "Independent auditor" means:

(a) a federal, state, or local government auditor who meets the standards specified in the government auditing standards; or

(b) a licensed accountant who meets the standards in subsection (6)(a).

(7) (a) "Local government entity" means a county, city, district, or public corporation that:

(i) has the power to raise revenue or receive, disburse, or expend local, state, or federal government revenue for the purpose of serving the general public;

(ii) is governed by a board, commission, or individual elected or appointed by the public or representatives of the public; and

(iii) receives local, state, or federal financial assistance.

(b) Local government entities include but are not limited to:

(i) airport authority districts;

(ii) cemetery districts;

(iii) counties;

(iv) county housing authorities;

(v) county road improvement districts;

(vi) county sewer districts;

(vii) county water districts;

(viii) county weed management districts;

(ix) drainage districts;

(x) fire ~~department relief associations~~ *companies*;

(xi) fire districts;

(xii) fire service areas;

~~(xii)~~*(xiii)* hospital districts;

~~(xiii)~~*(xiv)* incorporated cities or towns;

~~(xiv)~~*(xv)* irrigation districts;

~~(xv)~~*(xvi)* mosquito districts;

(xvii) municipal fire departments;

~~(xvi)~~*(xviii)* municipal housing authority districts;

~~(xvii)~~*(xix)* port authorities;

~~(xviii)~~*(xx)* solid waste management districts;

~~(xix)~~*(xxi)* rural improvement districts;

~~(xx)~~*(xxii)* school districts, including a district's extracurricular funds;

~~(xxi)~~*(xxiii)* soil conservation districts;

~~(xxii)~~*(xxiv)* special education or other cooperatives;

~~(xxiii)~~*(xxv)* television districts;

~~(xxiv)~~*(xxvi)* urban transportation districts;

~~(xxv)~~*(xxvii)* water conservancy districts; and

~~(xxvi)~~*(xxviii)* other miscellaneous and special districts.

(8) "Revenues" means all receipts of a local government entity from any source excluding the proceeds from bond issuances."

Section 2. Section 2-15-1519, MCA, is amended to read:

"2-15-1519. Fire services training advisory council. (1) The board of regents shall appoint a fire services training advisory council to work with the director of the fire services training school. The membership of the council ~~shall~~ *must* include the following:

(a) a fire chief;

(b) a volunteer firefighter;

(c) a paid firefighter;

(d) a fire service instructor;

(e) a person involved in fire prevention;

(f) a representative of the insurance industry; and

(g) a professional educator.

(2) The board shall solicit and consider the recommendations of appropriate organizations and associations of fire service personnel in making appointments under subsection (1).

(3) Members shall serve for 4-year terms and may be removed for cause. If a vacancy occurs, a member must be appointed to fill the unexpired term. A member may be reappointed.

(4) A representative of the state fire prevention and investigation ~~program~~ *section* of the department of justice, a fire control officer designated by the director of the department of natural resources and conservation, and the director of the fire services training school are ex officio members of the council."

Section 3. Section 2-15-2005, MCA, is amended to read:

"2-15-2005. State fire prevention and investigation ~~program~~ *section* — advisory council. (1) There is a state fire prevention and investigation ~~program~~ *section* in the department of justice and under the supervision and control of the attorney general.

(2) A person appointed to administer the fire prevention and investigation ~~program~~ *section* shall represent the state of Montana as the state fire marshal and must be a person qualified by experience, training, and high professional competence in matters of fire service and safety.

(3) The attorney general shall create a fire prevention and investigation advisory council in accordance with procedures provided in 2-15-122."

Section 4. Section 7-6-204, MCA, is amended to read:

"7-6-204. Crediting of interest — exceptions. (1) Interest paid and collected on deposits or investments must be credited to the general fund of the county, city, or town to whose credit the funds are deposited unless otherwise provided:

(a) by law;

(b) by terms of a gift, grant, or donation; or

(c) by subsections (2) and (3).

(2) Subject to subsection (1), interest paid and collected on the deposits or investments of the funds of a volunteer fire district or department organized in an unincorporated area under Title 7, chapter 33, part 21 or 23, *or of a fire service area or county fire department* must be credited to the account of that fire district*, service area,* or department.

(3) Subject to subsection (1), interest paid and collected on the deposits or investments of any fund separately created and accounted for by a county, city, or town may be credited to the separately created fund proportionately to each fund's participation in the deposit or investment."

Section 5. Section 18-8-202, MCA, is amended to read:

"18-8-202. Definitions. Unless the context clearly indicates otherwise, in this part, the following definitions apply:

(1) "Agency" means a state agency, local agency, or special district.

(2) "Architectural, engineering, and land surveying" means services rendered by a person, other than as an employee of an agency, contracting to perform activities within the scope of the general definition of professional practice and licensed for the respective practice as an architect pursuant to Title 37, chapter 65, or an engineer or land surveyor pursuant to Title 37, chapter 67.

(3) "Licensed professional" or "licensed architect, professional engineer, professional land surveyor" means a person providing professional services who is not an employee of the agency for which the services are provided.

(4) "Local agency" means a city, town, county, special district, municipal corporation, agency, port district or authority, airport authority, political subdivision of any type, or any other entity or authority of local government, in corporate form or otherwise.

(5) "Person" means an individual, organization, group, association, partnership, firm, joint venture, or corporation.

(6) "Special district" means a unit of local government, other than a city, town, or county, authorized by law to perform a single function or a limited number of functions, including but not limited to water districts, irrigation districts, fire districts, *fire service areas,* school districts, community college districts, hospital districts, sewer districts, and transportation districts.

(7) "State agency" means a department, agency, commission, bureau, office, or other entity or authority of state government."

Section 6. Section 25-13-613, MCA, is amended to read:

"25-13-613. Property necessary to carry out governmental functions. (1) In addition to the property mentioned in 25-13-609(1), ~~there shall be~~ *the following property is* exempt ~~to~~ *from* all judgment debtors ~~the following property~~:

(a) all ~~fire engines, hooks, and ladders, with the cart, trucks, and carriages, hose, buckets, implements, and apparatus thereto appertaining, and all furniture and uniforms of any fire company or department organized under any laws of this state~~ *necessary firefighting equipment and facilities of a governmental fire agency organized under Title 7, chapter 33*;

(b) all arms, uniforms, and accouterments required by law to be kept by any person and one gun to be selected by the debtor;

(c) all courthouses, jails, public offices, and buildings, lots, grounds, and personal property~~,~~ *and* the fixtures, furniture, books, papers, and

appurtenances belonging and pertaining to the courthouse, jail, and public offices belonging to any county of this state; and

(d) all cemeteries, public squares, parks, and places, public buildings, town halls, public markets, buildings for the use of fire departments and military organizations, and the lots and grounds ~~thereto belonging and appertaining~~ owned or held by any town or incorporated city or dedicated by ~~such~~ *a* city or town to health, ornament, or public use or for the use of any fire or military company organized under the laws of the state.

(2) ~~No article, however, or species of~~ *The* property ~~mentioned~~ *listed* in this section is *not* exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage lien ~~thereon~~ *on the property*, and ~~no~~ *a* person *who is* not a ~~bona fide~~ resident of this state ~~shall have the benefit of~~ *is not entitled to* these exemptions."

Section 7. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined. (1) As used in this chapter, the term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon

the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-1-301;

(g) a ~~person who is an enrolled member of a volunteer fire department, as described in 7-33-4109,~~ *volunteer firefighter as described in 7-33-4109* or a person who provides ambulance services under Title 7, chapter 34, part 1; and

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. *The person* is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may ~~only~~ be *only* for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(d) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a ~~fire company organized and funded by a county, a rural fire district, or a fire service area~~ *governmental fire agency organized under Title 7, chapter 33, except 7-33-4109.*

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than $900 a month and not more than 1 1/2 times the state's average weekly wage.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (6)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than $200 a week and not more than 1 1/2 times the state's average weekly wage.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the state's average weekly wage.

(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d)."

Section 8. Section 40-6-402, MCA, is amended to read:

"40-6-402. Definitions. As used in this part, the following definitions apply:

(1) "Child-placing agency" means an agency licensed under Title 52, chapter 8, part 1.

(2) "Court" means a court of record in a competent jurisdiction and, in Montana, means a district court or a tribal court.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Emergency services provider" means:

(a) a uniformed or otherwise identifiable employee of a fire department, hospital, or law enforcement agency when the individual is on duty inside the premises of the fire department, hospital, or law enforcement agency; or

(b) any law enforcement officer, as defined in 7-32-201, who is in uniform or is otherwise identifiable.

(5) "Fire department" means a ~~fire department organized by a city, town, or city-county consolidated local government~~ *governmental fire agency organized* under Title 7, chapter 33.

(6) "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

(7) "Guardian ad litem" means a person appointed to represent a newborn under Title 41, chapter 3.

(8) "Hospital" has the meaning provided in 50-5-101.

(9) "Law enforcement agency" means a police department, a sheriff's office, a detention center as defined in 7-32-2241, or a correctional institution as defined in 45-2-101.

(10) "Newborn" means an infant who a physician reasonably believes to be no more than 30 days old.

(11) "Surrender" means to leave a newborn with an emergency services provider without expressing an intent to return for the newborn."

Section 9. Section 44-5-103, MCA, is amended to read:

"44-5-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.

(2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.

(3) "Confidential criminal justice information" means:

(a) criminal investigative information;

(b) criminal intelligence information;

(c) fingerprints and photographs;

(d) criminal justice information or records made confidential by law; and

(e) any other criminal justice information not clearly defined as public criminal justice information.

(4) (a) "Criminal history record information" means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising ~~therefrom~~ *from complaints, indictments, or informations*; sentences; correctional status; and release. It includes identification information, such as fingerprint records or photographs, unless the information is obtained for purposes other than the administration of criminal justice.

(b) Criminal history record information does not include:

(i) records of traffic offenses maintained by the department of justice; or

(ii) court records.

(5) (a) "Criminal intelligence information" means information associated with an identifiable individual, group, organization, or event compiled by a criminal justice agency:

(i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential criminal operation, or producing an estimate of future major criminal activities; or

(ii) in relation to the reliability of information, including information derived from reports of informants or investigators or from any type of surveillance.

(b) Criminal intelligence information does not include information relating to political surveillance or criminal investigative information.

(6) (a) "Criminal investigative information" means information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance.

(b) The term does not include criminal intelligence information.

(7) "Criminal justice agency" means:

(a) any court with criminal jurisdiction;

(b) any federal, state, or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice, including a *governmental* fire agency *organized under Title 7, chapter 33,* or *a* fire marshal ~~that~~ *who* conducts criminal investigations of fires;

(c) any local government agency not included under subsection (7)(b) that performs as its principal function the administration of criminal justice pursuant to an ordinance or local executive order; or

(d) any agency of a foreign nation that has been designated by that nation's law or chief executive officer to perform as its principal function the

administration of criminal justice and that has been approved for the receipt of criminal justice information by the Montana attorney general, who may consult with the United States department of justice.

(8) (a) "Criminal justice information" means information relating to criminal justice collected, processed, or preserved by a criminal justice agency.

(b) The term does not include the administrative records of a criminal justice agency.

(9) "Criminal justice information system" means a system, automated or manual, operated by foreign, federal, regional, state, or local governments or governmental organizations for collecting, processing, preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

(10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have terminated and describing the nature of the termination or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or *if* criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(b) Particular dispositions include but are not limited to:

(i) conviction at trial or on a plea of guilty;

(ii) acquittal;

(iii) acquittal by reason of mental disease or defect;

(iv) acquittal by reason of mental incompetence;

(v) the sentence imposed, including all conditions attached to the sentence by the sentencing judge;

(vi) deferred imposition of sentence with any conditions of deferral;

(vii) nolle prosequi;

(viii) a nolo contendere plea;

(ix) deferred prosecution or diversion;

(x) bond forfeiture;

(xi) death;

(xii) release as a result of a successful collateral attack;

(xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action for determination of mental incompetence or mental illness;

(xiv) a finding of civil incompetence or mental illness;

(xv) exercise of executive clemency;

(xvi) correctional placement on probation or parole or release; or

(xvii) revocation of probation or parole.

(c) A single arrest of an individual may result in more than one disposition.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice

agency that maintains the information. It includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Fingerprints" means the recorded friction ridge skin of the fingers, palms, or soles of the feet.

(13) "Public criminal justice information" means:

(a) information made public by law;

(b) information of court records and proceedings;

(c) information of convictions, deferred sentences, and deferred prosecutions;

(d) information of postconviction proceedings and status;

(e) information originated by a criminal justice agency, including:

(i) initial offense reports;

(ii) initial arrest records;

(iii) bail records; and

(iv) daily jail occupancy rosters;

(f) information considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or

(g) statistical information.

(14) "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(15) "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable."

Section 10. Section 44-5-303, MCA, is amended to read:

"44-5-303. Dissemination of confidential criminal justice information — procedure for dissemination through court. (1) Except as provided in subsections (2) through (4), dissemination of confidential criminal justice information is restricted to criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure. Permissible dissemination of confidential criminal justice information under this subsection includes receiving investigative information from and sharing investigative information with a ~~fire service~~ *chief of a governmental fire* agency *organized under Title 7, chapter 33,* or fire marshal concerning the criminal investigation of a fire.

(2) If the prosecutor determines that dissemination of confidential criminal justice information would not jeopardize a pending investigation or other criminal proceeding, the information may be disseminated to a victim of the offense by the prosecutor or by the investigating law enforcement agency after consultation with the prosecutor.

(3) Unless otherwise ordered by a court, a person or criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of the information with the originating agency.

Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

(4) The county attorney or the county attorney's designee is authorized to receive confidential criminal justice information for the purpose of cooperating with local fetal, infant, and child mortality review teams. The county attorney or the county attorney's designee may, in that person's discretion, disclose information determined necessary to the goals of the review team. The review team and the county attorney or the designee shall maintain the confidentiality of the information.

(5) (a) If a prosecutor receives a written request for release of confidential criminal justice information relating to a criminal investigation that has been terminated by declination of prosecution or relating to a criminal prosecution that has been completed by entry of judgment, dismissal, or acquittal, the prosecutor may file a declaratory judgment action with the district court pursuant to the provisions of the Uniform Declaratory Judgments Act, Title 27, chapter 8, for release of the information. The prosecutor shall:

(i) file the action in the name of the city or county that the prosecutor represents and describe the city's or county's interest;

(ii) list as defendants anyone known to the prosecutor who has requested the confidential criminal justice information and anyone affected by release of the information;

(iii) request that the prosecutor be allowed to deposit the investigative file and any edited version of the file with the court pursuant to the provisions of Title 27, chapter 8;

(iv) request the court to:

(A) conduct an in camera review of the confidential criminal justice information to determine whether the demands of individual privacy do not clearly exceed the merits of public disclosure; and

(B) order the release to the requesting party defendant of whatever portion of the investigative information or edited version of the information the court determines appropriate.

(b) In making an order authorizing the release of information under subsection (5)(a), the court shall make a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure and authorize, upon payment of reasonable reproduction costs, the release of appropriate portions of the edited or complete confidential criminal justice information to persons who request the information.

(c) In an action filed for the court-ordered release of confidential criminal justice information under subsection (5)(a), the parties shall bear their respective costs and attorney fees.

(6) The procedures set forth in subsection (5) are not an exclusive remedy. A person or organization may file any action for dissemination of information that the person or organization considers appropriate and permissible."

Section 11. Section 46-18-261, MCA, is amended to read:

"46-18-261. Recovery of suppression and investigation expenses for fires caused by arson. (1) A person convicted of arson, negligent arson, or solicitation of or conspiracy to commit arson or negligent arson may be ordered, as part of the sentence, to reimburse law enforcement *agencies,* ~~and firefighting~~

governmental fire agencies *organized under Title 7, chapter 33, and the state* for the cost of suppressing and investigating a fire that occurred during the commission of the crime.

(2) The court may order a person doing a presentence investigation and report to include documentation of the costs of suppressing and investigating the fire and of the defendant's ability to pay and may receive evidence concerning the matters at the time of sentencing.

(3) The court shall specify the amount, method, and time of payment, which may include but is not limited to installment payments. The court may order a probation officer or other appropriate officer attached to or working closely with the court in the administration of justice to supervise payment and report any default to the court.

(4) Upon petition by the offender and after a hearing, the payment may be modified. Agencies receiving payment at that time must be notified of and allowed to participate in the hearing.

(5) This section does not limit the right of a law enforcement *agency* or ~~firefighting~~ *governmental fire* agency to recover from the offender in a civil action, but the findings in the sentencing hearing and the fact that payment of costs was part of the sentence are inadmissible in and have no legal effect on the merits of a civil action. Costs paid by the offender must be deducted from a recovery awarded in a civil action."

Section 12. Section 50-3-101, MCA, is amended to read:

"50-3-101. Definitions. In this chapter, "department" means the department of justice and "fire prevention and investigation ~~program~~ *section*" means the state fire prevention and investigation ~~program~~ *section* of the department of justice provided for in 2-15-2005."

Section 13. Section 50-3-102, MCA, is amended to read:

"50-3-102. Powers and duties of department regarding state fire prevention and investigation — rules. (1) For the purpose of reducing the state's fire loss, the department shall:

(a) inspect each unit of the Montana university system and other state buildings, including state institutions, as often as duties allow, but no more frequently than once each year unless requested by the commissioner of higher education for buildings in the university system, by the department of corrections or the department of public health and human services for state institutions, or by the department of administration for all other state buildings. A copy of the inspection report for units of the university system must be given to the commissioner of higher education, a copy of the inspection report for state institutions must be given to the department of corrections and the department of public health and human services, and a copy of the inspection report for all other state buildings must be given to the department of administration. The department of justice shall advise the commissioner of higher education and the directors of the departments of corrections, public health and human services, and administration concerning fire prevention, fire protection, and public safety when it distributes the reports.

(b) inspect public, business, or industrial buildings, as provided in chapter 61, and require conformance to law and rules promulgated under the provisions of this chapter;

(c) assist local ~~fire and law enforcement authorities in arson~~ *governmental fire agencies organized under Title 7, chapter 33, in fire* investigations and may initiate or supervise these investigations when, in its judgment, the initiation or supervision is necessary;

(d) provide fire prevention and fire protection information to public officials and the general public;

(e) serve as the state entity primarily responsible for promoting fire safety at the state level;

(f) encourage coordination of all services and agencies in fire prevention matters to reduce duplication and fill voids in services; and

(g) establish rules concerning responsibilities and procedures to be followed when there is a threat of explosive material in a building housing state offices.

(2) The department may adopt rules necessary for safeguarding life and property from the hazards of fire and carrying into effect the fire prevention laws of this state *if the rules do not conflict with building regulations adopted by the department of labor and industry*.

(3) The department shall adopt rules based on nationally recognized standards necessary for safeguarding life and property from the hazards associated with the manufacture, transportation, storage, sale, and use of explosive materials.

(4) If necessary to safeguard life and property under rules promulgated pursuant to this section, the department may maintain an action to enjoin the use of all or a portion of ~~a~~ *an existing* building or restrain a specific activity until there is compliance with the rules.

(5) Except for statements of witnesses given during an investigation, information that may be held in confidence under 50-63-403, and criminal justice information subject to restrictions on dissemination in accordance with Title 44, chapter 5, all records maintained by the department must be open at all times to public inspection."

Section 14. Section 50-3-106, MCA, is amended to read:

"50-3-106. Appointment of special fire inspectors. ~~(1)~~ Special fire inspectors may be appointed to perform any ~~function~~ *inspection* of the fire prevention and investigation ~~program~~ *section*.

~~(2) When performing these duties or attending a training course approved by the department, special fire inspectors may be paid at a rate not to exceed $56 a day plus travel expenses as provided for in 2-18-501 through 2-18-503, as amended.~~"

Section 15. Section 50-5-215, MCA, is amended to read:

"50-5-215. Standards for adult foster care homes. The department may adopt rules establishing standards for the licensing of adult foster care homes. The standards must provide for the safety and comfort of the residents and may be adopted by the department only after receiving the advice and recommendations of the state fire prevention and investigation ~~program~~ *section* of the department of justice in relation to fire and safety requirements for adult foster care homes."

Section 16. Section 50-19-403, MCA, is amended to read:

"50-19-403. Local fetal, infant, and child mortality review team. (1) A local fetal, infant, and child mortality review team must be approved by the department of public health and human services. Approval may be given if:

(a) the county health department, a tribal health department, if the tribal government agrees, or both are represented on the team and the plan provided for in subsection (1)(d) includes the roles of the county health department, tribal health department, or both;

(b) a lead person has been designated for the purposes of management of the review team;

(c) at least five of the individuals listed in subsection (2) have agreed to serve on the review team; and

(d) a plan has been developed by the team that includes, at a minimum, operating policies of the review team covering collection and destruction of information obtained pursuant to 44-5-303(4) or 50-19-402(2).

(2) If a local fetal, infant, and child mortality review team is established, the team must be multidisciplinary and may include only:

(a) the county attorney or a designee;

(b) a law enforcement officer;

(c) the medical examiner or coroner for the jurisdiction;

(d) a physician;

(e) a school district representative;

(f) a representative of the local health department;

(g) a representative from a tribal health department, appointed by the tribal government;

(h) a representative from a neighboring county or tribal government if there is an agreement to review deaths for that county or tribe;

(i) a representative of the department of public health and human services;

(j) a forensic pathologist;

(k) a pediatrician;

(l) a family practice physician;

(m) an obstetrician;

(n) a nurse practitioner;

(o) a public health nurse;

(p) a mental health professional;

(q) a local trauma coordinator;

(r) a representative of the bureau of Indian affairs or the Indian health service, or both, who is located within the county; and

(s) representatives of the following:

(i) local emergency medical services;

(ii) a local hospital;

(iii) a local hospital medical records department;

(iv) a local *governmental* fire ~~department~~ *agency organized under Title 7, chapter 33*; and

(v) the local registrar.

(3) The designated lead person for the team shall submit membership lists to the department of public health and human services annually."

Section 17. Section 50-37-107, MCA, is amended to read:

"50-37-107. Supervised public display of fireworks authorized. (1) The state fire prevention and investigation ~~program~~ *section* of the department of justice or the governing body of a city, town, or county may, under reasonable rules adopted by them, grant permits for supervised public displays of fireworks to be held by municipalities, fair associations, amusement parks, and other organizations or groups of individuals.

(2) Each display ~~shall~~ *must*:

(a) be handled by a competent operator, who must be approved by the state fire prevention and investigation ~~program~~ *section* or the governing body of the city, town, or county in which the display is to be held; and

(b) be located, discharged, or fired as, in the opinion of the state fire prevention and investigation ~~program~~ *section* or the chief of the ~~fire department~~ *local governmental fire agency organized under Title 7, chapter 33,* or other officer designated by the governing body of the city, town, or county after proper inspection, not to be hazardous to persons or property.

(3) Application for permits ~~shall~~ *must* be made in writing at least 15 days prior to the date of the display.

(4) After the privilege has been granted, sales, possession, use, and distribution of fireworks for the display are lawful for that purpose only.

(5) ~~No~~ *A* permit granted under this section is *not* transferable."

Section 18. Section 50-37-108, MCA, is amended to read:

"50-37-108. General liability insurance required for public display. The state fire prevention and investigation ~~program~~ *section* or the governing body of the city, town, or county shall require a person planning a public display of fireworks to provide proof of general liability insurance in a reasonable amount as determined by rules adopted by the department of justice."

Section 19. Section 50-37-109, MCA, is amended to read:

"50-37-109. Confiscation. A representative of the state fire prevention and investigation ~~program~~ *section* or any sheriff, police officer, ~~or~~ constable*, officer of a governmental fire agency organized under Title 7, chapter 33, or firewarden* shall seize, take, remove, or cause to be removed at the expense of the owner all stocks of fireworks or combustibles offered or exposed for sale, stored, or held in violation of this chapter."

Section 20. Section 50-60-202, MCA, is amended to read:

"50-60-202. Department to be sole state agency to promulgate building regulations — exception. ~~No~~ *The department is the only* state agency ~~except the department~~ *that* may promulgate building regulations as defined in 50-60-101, except the department of justice may promulgate regulations relating to use of buildings and installation of equipment. The state fire prevention and investigation ~~program~~ *section* of the department of justice shall review building plans and regulations for conformity with rules promulgated by the department."

Section 21. Section 50-61-102, MCA, is amended to read:

"50-61-102. Department of justice to administer chapter. (1) The department of justice has general charge and supervision of the enforcement of this chapter, and the officers enumerated in 50-61-114 shall act under its general charge and supervision, shall assist the department in giving effect to this chapter, and are subject to its direction and the rules adopted under 50-3-102 and 50-3-103 for the enforcement of 50-61-120, ~~and~~ 50-61-121, and this chapter.

(2) Upon its approval of a fire code and a plan for enforcement of the code filed by a municipality~~, district, or fire service area~~ *or other governmental fire agency organized under Title 7, chapter 33*, the department may ~~certify~~ *approve* a municipal~~, district, or fire service area~~ *or governmental fire agency* fire inspection program for local enforcement."

Section 22. Section 50-61-114, MCA, is amended to read:

"50-61-114. Fire chief and fire inspector to make inspections. For the purpose of examining the premises for violations of this chapter and rules adopted under 50-3-103 for the enforcement of this chapter, the chief *or fire inspector* of the ~~fire department of each municipality, district, or fire service area~~ *governmental fire agency organized under Title 7, chapter 33*, when a fire inspection program is established, or a fire inspector of the department of justice, when a fire inspection program does not exist:

(1) shall enter into school buildings at least once each 18 months; and

(2) may enter into all other buildings and upon all other premises within the jurisdiction, according to priority schedules established by the department for conducting inspections of buildings and premises."

Section 23. Section 50-61-115, MCA, is amended to read:

"50-61-115. Notice of violations. (1) When a building is found that is not in compliance with fire safety rules promulgated by the department of justice, the person making the inspection or the department shall serve a written notice upon the party whose duty it is to maintain the safety of the building.

(2) The notice must specify the time within which the defective conditions must be remedied~~, which may not be more than 90 days~~.

(3) The notice is served if delivered to the person to be notified, if left with any adult person at the usual residence or place of business of the person to be notified, or if deposited in the post office directed to the last-known address of the person to be notified. Whenever buildings are managed and controlled by a board of trustees, board of commissioners, or other governing body, the notice is served if delivered to the president, secretary, or treasurer of the board of trustees, board of commissioners, or other governing body."

Section 24. Section 50-61-121, MCA, is amended to read:

"50-61-121. Restrictions on storage of smokeless powder and small arms primers. (1) A retail establishment may stock up to 400 pounds of smokeless powder on the premises of a building with a sprinkler system or 200 pounds on the premises of a building without a sprinkler system if storage of this stock conforms to the following conditions:

(a) no more than 20 pounds are on display in a customer service area;

(b) the storage area is clearly posted as off limits to customers;

(c) the storage area is clearly posted prohibiting smoking or any open flame or sparks; and

(d) the storage area is a room designed and constructed to restrict smoke travel that is separate from the customer service area, that has a self-closing entrance door, and that conforms to one of the following:

(i) It is constructed of material sufficient to achieve a 1-hour fire resistant-rated barrier between the storage area and the customer service area. The smokeless powder must be stored in cabinets made of wood or equivalent material that is at least 1 inch thick, and each cabinet must contain no more than 200 pounds of smokeless powder. Cabinets must be separated by 25 feet.

(ii) It is protected by a fire suppression sprinkler system approved by the state fire prevention and investigation ~~program~~ *section* of the department of justice or a ~~fire marshal of the local jurisdiction~~ *chief of a governmental fire agency organized under Title 7, chapter 33, or the chief's designee*, and the storage area has cabinets as provided for in subsection (1)(d)(i).

(iii) Smokeless powder stock is contained in a cabinet with casters and constructed of wood at least 1 inch thick that is covered on all sides with 5/8-inch sheetrock.

(2) A retail establishment may stock up to 250,000 small arms primers if storage of this stock conforms to the following conditions:

(a) no more than 20,000 primers in a building with a sprinkler system or 10,000 primers in a building without a sprinkler system are on display in a customer service area;

(b) the storage area must conform to the conditions imposed in subsections (1)(a) through (1)(d), except that no more than 125,000 small arms primers may be stored in one cabinet, and the minimum required separation between cabinets is 15 feet; and

(c) small arms primers are retained in packaging approved by the U.S. department of transportation."

Section 25. Section 50-62-101, MCA, is amended to read:

"50-62-101. Entering of buildings for purpose of examination authorized. ~~The officers~~ *An officer* of the state fire prevention and investigation ~~program~~ *section* of the department of justice or the chief *or chief's designee* of ~~the fire department of each municipality or district~~ *a governmental fire agency organized under Title 7, chapter 33,* where a fire ~~department~~ *agency* is established at all reasonable hours may, as authorized by law, enter into all buildings and upon all premises within ~~his~~ *the officer's, chief's, or designee's* jurisdiction for the purpose of determining whether the building or premises conforms to laws and rules relating to fire hazards and fire safety."

Section 26. Section 50-62-102, MCA, is amended to read:

"50-62-102. Structures or conditions creating fire hazard a public nuisance — order to remedy. (1) If any building or other structure ~~that for want of proper repair; by reason of age, dilapidated condition, defective or poorly installed wiring and equipment, defective chimneys, defective gas connections, defective heating apparatus, or the existence of any combustible materials, flammable conditions, or other fire hazards; or for any other cause or reason~~ is especially liable to fire *for reasons including but not limited to lack of proper repair, age, dilapidated condition, defective or poorly installed wiring and equipment, defective chimneys, defective gas connections, defective heating apparatus, or the existence of any combustible materials, flammable conditions, or other fire hazards* and is dangerous to the safety of the building premises or to

the public or is ~~so~~ situated ~~as to endanger~~ *in a way that endangers* other buildings and property in the vicinity, the state fire prevention and investigation ~~program~~ *section* of the department of justice or other ~~officer~~ *person identified in 50-62-101* may declare the building or other structure to be a public nuisance and proceed according to 50-62-103 or subsection (2) of this section.

(2) If the state fire prevention and investigation ~~program~~ *section*, an officer of the ~~program~~ *section*, or ~~an officer mentioned~~ *a person identified* in 50-62-101 determines that a building or other structure constitutes a public nuisance for any reason identified in subsection (1) *of this section*, the ~~department~~ *section, officer,* or other ~~officer~~ *person* shall order the hazardous condition or material to be removed or remedied. The order must be in writing and directed generally to the owner, lessee, agent, or occupant of the building or structure.

(3) If the hazardous condition or material can be removed or remedied within a period of 24 hours, the order must contain notice that the condition or material must be remedied or removed. The owner, lessee, agent, or occupant upon whom the notice is served who fails to comply with the notice is liable for any expenses incurred in the removal or remedying of the hazardous condition or material by the fire prevention and investigation ~~program~~ *section, officer of the section,* or other ~~officer mentioned~~ *person identified* in 50-62-101."

Section 27. Section 50-62-103, MCA, is amended to read:

"50-62-103. Service of order to repair hazardous condition or demolish structure. (1) If the fire prevention and investigation ~~program~~ *section* of the department of justice*, an officer of the section,* or any ~~officer mentioned~~ *other person identified* in 50-62-101, upon an examination or inspection, determines that a building or other structure constitutes a public nuisance for any reason identified in 50-62-102 and the condition cannot be removed or remedied within 24 hours, the ~~program~~ *section,* ~~or~~ officer*, or person* shall order the hazardous condition to be repaired or the structure to be torn down or demolished and all dangerous conditions remedied.

(2) The order ~~shall~~ *must* be in writing, ~~shall recite~~ *must provide* the grounds ~~therefor~~ *for the order*, and ~~shall~~ *must* be filed in the office of the clerk of the district court of the county in which the building or structure ordered to be altered, repaired, or demolished is ~~situated, and thereupon all~~ *located. All* further proceedings for the enforcement ~~thereof shall be had in that court~~ *of the order must be held in the district court in which the order is filed.*

(3) A copy of the order filed as ~~aforesaid~~ *provided in this section*, together with a written notice that it has been filed and will be put in force unless the owner, occupant, or tenant ~~shall file~~ *files objections or an answer to the order* with the clerk of the court ~~his objections or answer thereto~~ within the time specified in 50-62-104, ~~shall~~ *must* be served upon the owner and any purchaser under contract for deed of the building or structure directed to be altered, repaired, or demolished. If there is a tenant occupying the building, service ~~shall~~ *must* also be made upon ~~him~~ *the tenant*. Service ~~shall~~ *must* be made *personally* upon the owner and occupant, if there is one~~, personally either within or without the state~~.

(4) If the ~~whereabouts~~ *location* of the owner or any purchaser under contract for deed is unknown and cannot be ascertained by the department of justice by the exercise of reasonable diligence, then upon filing in the office of the clerk of the district court an affidavit to this effect, service of the notice upon the owner or any purchaser under contract for deed may be made by the clerk of the district court by publication of it once in each week for 3 successive weeks in a

newspaper printed and published in the county in which the building or structure is located and by posting a copy ~~thereof~~ *of the notice* in a conspicuous place upon the building or structure~~,~~. ~~and the service so~~ *Service* made *in this manner* is complete upon the expiration of the publication period. Proof of service of the notice ~~shall~~ *must* be filed in the office of the clerk of the district court within 5 days after the service ~~thereof~~ *of the notice*."

Section 28. Section 50-62-112, MCA, is amended to read:

"50-62-112. Notice of violations. (1) When the storage of class I or class II liquids, as defined in the ~~uniform~~ fire code *adopted by the department of justice*, in a tank on a farm or ranch is not in compliance with rules promulgated by the department of justice, the person making the inspection or the department shall serve a written warning notice upon the owner or operator of the tank.

(2) The notice must specify the violations found and the time within which the violations must be corrected. A penalty may not be imposed if the violation is corrected within the time period allowed."

Section 29. Section 50-63-102, MCA, is amended to read:

"50-63-102. ~~Penalty~~ *Civil penalty* for setting or leaving fire causing damage. ~~(1) Any~~ *A* person who ~~shall upon any land within this state set or leave any~~ *sets or leaves a* fire that ~~shall spread and damage or destroy~~ *spreads and damages or destroys* property of any kind not ~~his own shall upon conviction be punished by a fine~~ *belonging to the person is subject to a civil penalty* of not less than ~~$10~~ *$50* or more than $500. ~~If such fire be set maliciously, whether on his own or on another's land, with intent to destroy property not his own, he shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for not less than 1 or more than 50 years.~~

~~(2) During the closed season, any person who shall kindle a campfire on land not his own in or dangerously near any forest material and leave same unquenched or who shall be a party thereto or who shall by throwing away any lighted cigar, cigarette, matches, or by the use of firearms or in any other manner start a fire in forest material not his own and leave same unquenched shall, upon conviction, be fined not less than $10 or more than $100 or be imprisoned in the county jail not exceeding 60 days.~~"

Section 30. Section 50-63-103, MCA, is amended to read:

"50-63-103. Liability of offender for damages and costs. ~~Any~~ *A* person who ~~shall upon any land within this state, whether on his own or on another's land, set~~ *sets* or ~~leave any~~ *leaves a* fire that ~~shall spread and damage or destroy~~ *spreads and damages or destroys* property of any kind ~~not his own shall be~~ *not belonging to the person is* liable for all damages caused ~~thereby~~ *by the fire*, and ~~any~~ *an* owner of property damaged or destroyed by ~~such~~ *the* fire may maintain a civil suit for the purpose of recovering ~~such~~ damages. ~~Any~~ *A* person who ~~shall upon any land within this state, whether on his own or on another's land, set~~ *sets* or ~~leave any~~ *leaves a* fire ~~which~~ *that* threatens to spread and damage or destroy property ~~shall be~~ *is* liable for all costs and expenses incurred*, including but not limited to expenses incurred in investigation of the fire and administration of fire suppression,* by the state of Montana, by any forestry association, or by any person extinguishing or preventing the spread of ~~such~~ *the* fire."

Section 31. Section 50-63-202, MCA, is amended to read:

"50-63-202. Fire chief or sheriff to conduct investigation. If the fire occurs within a municipality, organized fire district, or fire service area, the chief of the *governmental* fire ~~department~~ *agency organized under Title 7,*

chapter 33, having jurisdiction or the chief's designee shall ~~make~~ *conduct* the investigation. If the fire occurs outside a municipality, organized fire district, or fire service area, the county sheriff shall ~~make~~ *conduct* the investigation *or ensure that an investigation is conducted*."

Section 32. Section 50-63-203, MCA, is amended to read:

"50-63-203. Notification to department of justice — *reports to be filed.* (1) If it appears that a fire was of suspicious origin, if there was a loss of human life, or if it is determined that a criminal investigation is necessary, the official responsible for the investigation shall notify the department of justice and the appropriate law enforcement agency within 24 hours and shall file *with the department* a written report of the cause within 10 days.

(2) If the property was insured, as soon as any adjustment has been made, a person representing the insurance company shall notify the department of justice of the amount of adjustment and the apparent cause and circumstances of the fire.

(3) Each official responsible for investigating fires shall file with the department of justice a fire incident report on each fire. Reports must be made on forms provided by the department and must contain information prescribed by the department. These reports must be sent to the department on a monthly basis or at intervals determined by the department."

Section 33. Section 50-63-401, MCA, is amended to read:

"50-63-401. Insurer to provide information regarding fire loss to certain agencies upon request. Each insurer engaged in issuing fire insurance policies in the state of Montana shall upon written request of any appropriate law enforcement *agency* or *governmental* fire ~~protection~~ agency *organized under Title 7, chapter 33,* release to the requesting agency all information in its possession relating to a fire loss of real or personal property. The information may include but is not limited to:

(1) any insurance policy relevant to the fire loss under investigation and any application for ~~such a~~ *the* policy;

(2) premium payment records;

(3) the history of previous claims made by the insured for fire loss; *and*

(4) material relating to the investigation of the loss, including statements of any person, proof of loss, and other relevant evidence."

Section 34. Section 50-63-402, MCA, is amended to read:

"50-63-402. Insurer to report suspicious fires. ~~Whenever~~ *When* an insurer has reason to believe that a fire loss in which it has an interest may be of other than accidental cause, it shall notify an appropriate law enforcement *agency* or *governmental* fire ~~protection~~ agency *organized under Title 7, chapter 33,* and provide ~~such~~ *the* agency with all material developed from its inquiry into the fire loss."

Section 35. Section 50-63-404, MCA, is amended to read:

"50-63-404. Testimony of agency personnel in action to recover under insurance policy. Law enforcement *agency* and *governmental* fire ~~protection~~ agency personnel may be required to testify as to any information in their possession regarding the fire loss of real or personal property in any civil action in which a person seeks recovery from an insurer under a policy for the fire loss."

Section 36. Section 50-78-102, MCA, is amended to read:

"50-78-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Chemical manufacturer" means an employer in codes 31 through 33, as defined in the North American Industry Classification System Manual, with a workplace where chemicals are produced for use or distribution.

(2) "Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the international union of pure and applied chemistry or the chemical abstracts service rules of nomenclature or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.

(3) "Common name" means any designation or identification, such as code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(4) "Department" means the department of environmental quality provided for in Title 2, chapter 15, part 35.

(5) "Designated representative" means:

(a) the individual or organization to whom an employee gives written authorization to exercise the employee's rights under this chapter; or

(b) a recognized or certified collective bargaining agent who is automatically a designated representative without regard to written employee authorization.

(6) "Distributor" means a business, other than a chemical manufacturer, that supplies hazardous chemicals to other distributors or to employers.

(7) "Employee" means a person who may be exposed to hazardous chemicals in the workplace under normal operating conditions or possible emergencies.

(8) "Employer" means a person, firm, corporation, partnership, association, governmental agency, or other entity that is engaged in business or providing services and that employs workers.

(9) "Exposure" means ingestion, inhalation, absorption, or other contact in the workplace with a hazardous chemical and includes potential, accidental, or possible exposure.

(10) "Hazardous chemical" means, except as provided in 50-78-103:

(a) any element, chemical compound, or mixture of elements or compounds that is a physical hazard or health hazard, as defined by subsection (c) of the OSHA standard, and that has been identified as such by the federal occupational safety and health administration or the manufacturer and has been filed with the federal occupational safety and health administration;

(b) any hazardous chemical, as defined by subsection (d)(3) of the OSHA standard; or

(c) any emitter of ionizing radiation.

(11) "Label" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

(12) "Local fire chief" means:

~~(a)~~ the chief of ~~the municipal fire department or the chief's agent, for any workplace located within a city or town; or~~

~~(b) the county rural fire chief or the district rural fire chief or the chief's agent, for any workplace not located within a city or town~~ *a governmental fire agency organized under Title 7, chapter 33, or the chief's designee*.

(13) "Manufacturing employer" means an employer with a workplace classified in codes 31 through 33 of the North American Industry Classification System who manufactures, uses, or stores a hazardous chemical.

(14) "Material safety data sheet" means a document prepared in accordance with the requirements of the OSHA standard and containing chemical hazard and safe handling information.

(15) "Nonmanufacturing employer" means an employer with a workplace classified in a North American Industry Classification System code other than 31 through 33.

(16) "OSHA standard" means the hazard communication standard issued by the federal occupational safety and health administration, codified under 29 CFR 1910.1200~~, as that statute reads on January 1, 1985~~.

(17) "Trade secret" means a confidential formula, pattern, process, device, or information, including chemical name or other unique chemical identifier, that is used in an employer's business and that gives the employer an opportunity to obtain an advantage over competitors.

(18) "Work area" means a room or defined space in a workplace where hazardous chemicals are produced, used, or stored and where employees are present.

(19) "Workplace" means an establishment at one geographical location containing one or more work areas.

(20) "Workplace chemical list" means the list of hazardous chemicals developed under ~~this chapter or under~~ subsection (e)(1)(i) of the OSHA standard *or under this chapter*."

Section 37. Section 52-2-733, MCA, is amended to read:

"52-2-733. Periodic visits to facilities by department — investigations — consultation with licensees and registrants. (1) The department or its authorized representative shall make periodic visits to all licensed day-care centers to ensure that minimum standards are maintained.

(2) The department may investigate and inspect the conditions and qualifications of any day-care center, group day-care home, or family day-care home seeking or holding a license or registration certificate under the provisions of this part.

(3) The department shall visit and inspect at least 20% of all registered family day-care homes and group day-care homes in each of the governor's planning regions annually.

(4) The department shall make annual unannounced visits to day-care centers.

(5) Upon request of the department, the state fire prevention and investigation ~~program~~ *section* of the department of justice shall inspect any day-care facility for which a license or registration certificate is applied for or issued and shall report its findings to the department.

(6) Upon request, the department shall give consultation to every licensee and registrant who desires to upgrade the services of the licensee's or registrant's program.

(7) This section may not be construed to require the department to conduct an inspection of each day-care facility applying for a registration certificate under the provisions of this part."

Section 38. Section 52-2-734, MCA, is amended to read:

"52-2-734. Fire safety — certification required. (1) The state fire prevention and investigation ~~program~~ *section* of the department of justice shall adopt and enforce rules for the protection of children in day-care centers from fire hazards and arrange for ~~such~~ *any* inspections and investigations ~~as~~ it considers necessary.

(2) Before a license can be issued to operate a day-care center, each applicant shall submit to the department a certificate of approval from the state fire prevention and investigation ~~program~~ *section* of the department of justice indicating ~~that~~ *compliance with* fire safety rules ~~have been met~~."

Section 39. Section 52-4-205, MCA, is amended to read:

"52-4-205. Rulemaking. (1) The department shall, for the purpose of licensing, adopt rules to govern administration, operation, and health and safety requirements for community homes for persons with severe disabilities in order to protect rights of residents. The department shall provide for temporary and provisional licensing.

(2) The state fire prevention and investigation ~~program~~ *section* of the department of justice shall provide advice and recommendations to the department concerning licensing requirements for health and safety."

Section 40. Section 53-20-307, MCA, is amended to read:

"53-20-307. Health and safety standards for licensing. (1) (a) After initial certification by the state fire prevention and investigation ~~program~~ *section* of the department of justice, community homes must be certified annually for fire and life safety by the department of justice.

(b) The department of justice shall notify the department of public health and human services when a community home has been certified.

(2) (a) Local health officers shall certify community homes for compliance with health and safety standards. If for any reason the local authority cannot complete the certification in a timely manner, the department of public health and human services is authorized to make the determination on certification.

(b) A reasonable fee may be charged to authorized parties, as defined in 53-20-303, for the health and safety certification."

Section 41. Section 61-8-102, MCA, is amended to read:

"61-8-102. Uniformity of interpretation — definitions. (1) Interpretation of this chapter in this state must be as consistent as possible with the interpretation of similar laws in other states.

(2) As used in this chapter, unless the context requires otherwise, the following definitions apply:

(a) "Authorized emergency vehicle" means a vehicle of ~~the fire department or fire patrol~~ *a governmental fire agency organized under Title 7, chapter 33*, an ambulance, and an emergency vehicle designated or authorized by the department.

(b) "Bicycle" means:

(i) a vehicle propelled solely by human power upon which any person may ride and that has two tandem wheels and a seat height of more than 25 inches from the ground when the seat is raised to its highest position, except scooters and similar devices; or

(ii) a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion, and an independent power source providing a maximum of 2 brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement may not exceed 3.05 cubic inches, {50 centimeters}, regardless of the number of chambers in the power source. The power source may not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour, {48.28 kilometers an hour}, on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged.

(c) "Business district" means the territory contiguous to and including a highway when within any 600 feet along a highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings that occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

(d) "Controlled-access highway" means a highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the highway, street, or roadway except at the points and in the manner as determined by the public authority having jurisdiction over the highway, street, or roadway.

(e) "Crosswalk" means:

(i) that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway;

(ii) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrians crossing by lines or other markings on the surface.

(f) "Flag person" means a person who directs, controls, or alters the normal flow of vehicular traffic upon a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person, except a uniformed traffic enforcement officer exercising the officer's duty as a result of a planned vehicular traffic hazard, must be equipped as required by the rules of the department of transportation.

(g) "Highway" has the meaning provided in 61-1-101, but includes ways that have been or are later dedicated to public use.

(h) "Ignition interlock device" means ignition equipment that:

(i) analyzes the breath to determine blood alcohol concentration;

(ii) is approved by the department pursuant to 61-8-441; and

(iii) is designed to prevent a motor vehicle from being operated by a person who has consumed a specific amount of an alcoholic beverage.

(i) (i) "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines or if there are no curb lines then the lateral boundary lines of the roadways of two highways that join one another at or

approximately at right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(ii) When a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of the divided highway by an intersecting highway must be regarded as a separate intersection. If the intersecting highways also include two roadways 30 feet or more apart, then every crossing of two roadways of the highways must be regarded as a separate intersection.

(j) "Local authorities" means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

(k) "Noncommercial motor vehicle" or "noncommercial vehicle" means any motor vehicle or combination of motor vehicles that is not included in the definition of commercial motor vehicle in 61-1-101 and includes but is not limited to the vehicles listed in 61-1-101(7)(b).

(l) "Official traffic control devices" means all signs, signals, markings, and devices not inconsistent with this title that are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(m) "Pedestrian" means any person on foot or any person in a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(n) "Police vehicle" means a vehicle used in the service of any law enforcement agency.

(o) "Private road" or "driveway" means a way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(p) "Residence district" means the territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of 300 feet or more is primarily improved with residences or residences and buildings in use for business.

(q) "Right-of-way" means the privilege of the immediate use of the roadway.

(r) "School bus" has the meaning provided in 20-10-101.

(s) "Sidewalk" means that portion of a street that is between the curb lines or the lateral lines of a roadway and the adjacent property lines and that is intended for use by pedestrians.

(t) "Traffic control signal" means a device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

(u) "Urban district" means the territory contiguous to and including any street that is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of one-fourth mile or more."

Section 42. Section 61-8-364, MCA, is amended to read:

"61-8-364. Crossing firehose. A vehicle may not be operated over an unprotected hose of a *governmental* fire ~~department~~ *agency organized under Title 7, chapter 33,* when the hose is laid down on any roadway, private road, or private driveway, to be used at any fire or alarm of fire, without the consent of the ~~fire department~~ *agency* official in command."

Section 43. Section 61-9-402, MCA, is amended to read:

"61-9-402. Audible and visual signals on police, emergency vehicles, and on-scene command vehicles — immunity. (1) A police vehicle must be equipped with a siren capable of giving an audible signal and may be equipped with alternately flashing or rotating red or blue lights as specified in this section.

(2) An authorized emergency vehicle must be equipped:

(a) with a siren and an alternately flashing or rotating red light as specified in this section; and

(b) with signal lamps mounted as high and as widely spaced laterally as practicable that are capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight.

(3) A bus used for the transportation of school children must be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two red and two amber alternating flashing lights and to the rear two red and two amber alternating flashing lights. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. The warning lights must be as prescribed by the board of public education and approved by the department.

(4) A police vehicle and an authorized emergency vehicle may, and an emergency service vehicle must, be equipped with alternately flashing or rotating amber lights as specified in this section.

(5) The use of signal equipment as described in this section imposes upon the operators of other vehicles the obligation to yield right-of-way or to stop and to proceed past the signal or light only with caution and at a speed that is no greater than is reasonable and proper under the conditions existing at the point of operation subject to the provisions of 61-8-209 and 61-8-303.

(6) An employee, agent, or representative of the state or a political subdivision of the state or of a *governmental* fire ~~department~~ *agency organized under Title 7, chapter 33,* who is operating a police vehicle, an authorized emergency vehicle, or an emergency service vehicle and using signal equipment in rendering assistance at a highway crash scene or in response to any other hazard on the roadway that presents an immediate hazard or an emergency or life-threatening situation is not liable, except for willful misconduct, bad faith, or gross negligence, for injuries, costs, damages, expenses, or other liabilities resulting from a motorist operating a vehicle in violation of subsection (5).

(7) Blue, red, and amber lights required in this section must be mounted as high as and as widely spaced laterally as practicable and *be* capable of displaying to the front two alternately flashing lights of the specified color located at the same level and to the rear two alternately flashing lights of the specified color located at the same level or one rotating light of the specified color, mounted as high as is practicable and visible from both the front and the rear. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. Except as provided in 61-9-204(6), only police vehicles*,* as defined in 61-8-102*,* may display blue lights, lenses, or globes.

(8) A police vehicle and authorized emergency vehicle may be equipped with a flashing signal lamp that is green in color, visible from 360 degrees, and attached to the exterior roof of the vehicle for purposes of designation as the

on-scene command and control vehicle in an emergency or disaster. The green light must have sufficient intensity to be visible at 500 feet in normal sunlight. Only the on-scene command and control vehicle may display green lights, lenses, or globes.

(9) Only a police vehicle or an authorized emergency vehicle may be equipped with the means to flash or alternate its headlamps or its backup lights.

(10) A violation of subsection (5) is considered reckless endangerment of a highway worker, as provided in 61-8-301(4), and is punishable as provided in 61-8-715."

Section 44. Section 75-10-725, MCA, is amended to read:

"75-10-725. Immunity of ~~volunteer fire company or department~~ *fire agency* and employees for hazardous or deleterious substance cleanup. A ~~volunteer fire company or department that is organized by a municipality, county, rural fire district, fire service area, or other entity~~ *governmental fire agency organized under Title 7, chapter 33,* and the employees of the ~~company or department~~ *agency* are not liable for civil damages, except damages for gross negligence or willful or wanton misconduct, for their acts or omissions that are directly related to the hazardous material incident."

Section 45. Effective date. [This act] is effective June 1, 2007.

Approved May 8, 2007

CHAPTER NO. 450

[SB 147]

AN ACT CLARIFYING THE AUTHORITY OF THE PRESIDING OFFICER OF A BOARD OF COUNTY COMMISSIONERS TO CLOSE AREAS TO ACCESS UPON A DECLARATION OF AN EMERGENCY OR DISASTER; AMENDING SECTION 10-3-406, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Activity restrictions in high fire hazard areas. (1) A board of county commissioners may designate areas on private land or on land that is not under the jurisdiction of a municipality or a state or federal agency as high fire hazard areas.

(2) Except as provided in 87-3-106(2), in designated high fire hazard areas, the board may require all persons, firms, or corporations present or engaged in any activity in those areas to cease operations or activities or to adjust working hours to less critical periods of the day.

(3) The presiding officer of the board may control ingress and egress into a high fire hazard area if an emergency or disaster is declared under the provisions of Title 10, chapter 3, part 4.

(4) (a) An entity that is conducting official business, an entity having actual residence as a permanent or principal place of abode in the designated area, or an entity engaged in employment that does not present a fire hazard must be allowed ingress and egress unless there is a significant risk to human health or safety.

(b) For the purposes of this section, "official business" includes but is not limited to the functions of governmental agencies and the activities of utilities, cooperatives, and telecommunications providers to operate, construct, repair, and maintain utility facilities that are essential to the public.

Section 2. Section 10-3-406, MCA, is amended to read:

"10-3-406. Authority of principal executive officer. *(1)* Upon the declaration of an emergency or disaster under 10-3-402 or 10-3-403 and the issuance of an order as required by 10-3-404, the principal executive officer may:

~~(1)~~*(a)* direct and compel the evacuation of all or part of the population from an *incident or* emergency or disaster area within that political subdivision when necessary for the preservation of life or other disaster mitigation, response, or recovery; and

~~(2)~~*(b)* control the ingress and egress to and from an *incident or* emergency or disaster area~~,~~ *and* the movement of persons within the area~~, and the occupancy of premises therein~~.

(2) Subject to [section 1(4)(a)], the authority to control ingress and egress, as provided in subsection (1)(b), includes the authority to close wildland areas to access during periods of extreme fire danger."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 33, part 22, and the provisions of Title 7, chapter 33, part 22, apply to [section 1].

Section 4. Effective date. [This act] is effective June 1, 2007.

Approved May 8, 2007

CHAPTER NO. 451

[SB 165]

AN ACT GENERALLY REVISING THE MONTANA DEFERRED DEPOSIT LOAN ACT; INCLUDING DEFERRED DEPOSIT LENDERS IN THE DEFINITION OF REGULATED LENDERS; INCREASING LICENSING FEES; REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION ANNUALLY EXAMINE EACH DEFERRED DEPOSIT LENDER'S OPERATION; MODIFYING BOOKKEEPING REQUIREMENTS FOR DEFERRED DEPOSIT LENDERS; PROHIBITING ADDITIONAL DEFERRED DEPOSIT LOANS TO CONSUMERS WITH AN OUTSTANDING DEFERRED DEPOSIT LOAN; AUTHORIZING THE DEPARTMENT TO CONDUCT INVESTIGATIONS AND ISSUE SUBPOENAS AND CEASE AND DESIST ORDERS; AUTHORIZING THE DEPARTMENT TO SEEK COURT-ORDERED INJUNCTIONS; AND AMENDING SECTIONS 31-1-111, 31-1-702, 31-1-703, 31-1-705, 31-1-706, 31-1-711, 31-1-712, 31-1-713, 31-1-714, 31-1-715, 31-1-721, AND 31-1-723, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-111, MCA, is amended to read:

"31-1-111. Definition of regulated lender. The term "regulated lender", as used in 31-1-112 and 31-1-116, means:

(1) a bank, building and loan association, savings and loan association, trust company, credit union, credit association, consumer loan licensee, *deferred*

deposit loan licensee, development corporation, bank holding company, or a mutual or stock insurance company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by:

(a) an agency of the state of Montana; or

(b) an agency of the federal government;

(2) a subsidiary of an entity described in subsection (1);

(3) a Montana state agency or a federal agency that is authorized to lend money;

(4) a corporation or other entity established by congress or the state of Montana that is owned, in whole or in part, by the United States or the state of Montana and that is authorized to lend money."

Section 2. Section 31-1-702, MCA, is amended to read:

"31-1-702. Purpose — rules — *fees.* (1) The purpose of this part is to protect consumers who enter into short-term, high-rate loans with lenders from abuses that occur in the credit marketplace when the lenders are unregulated.

(2) The department may adopt rules to implement the provisions of this part. The rules may include but are not limited to rules establishing forms and procedures for licensing, rules pertaining to acceptable practices at a business location, rules establishing disclosure requirements, and rules establishing complaint and hearing procedures.

(3) All fees collected pursuant to the provisions of this part must be deposited in the department's special revenue account to be used by the department in carrying out its supervisory functions under this part."

Section 3. Section 31-1-703, MCA, is amended to read:

"31-1-703. Definitions. For the purposes of this part, the following definitions apply:

(1) "Account" means any banking, checking, credit union, commercial, savings, savings and loan, brokerage, investment, or other kind of depository account held by a consumer.

(2) "Check" means a negotiable instrument, as defined in 30-3-104, that is drawn on a *state or federal* bank*, credit union, or savings and loan association* and is payable on demand at the maturity of a deferred deposit loan.

(3) "Consumer" means a natural person who, singly or jointly with another natural person, enters into a deferred deposit loan.

(4) "Deferred deposit lender" or "licensee" means a person engaged in the business of making deferred deposit loans.

(5) "Deferred deposit loan" means an arrangement, including all representations made by the deferred deposit lender whether express or implied, in which:

(a) a person accepts a check dated on the date on which the check is written and agrees to hold the check for a period of days prior to deposit or presentment;

(b) a person accepts a check dated subsequent to the date on which the check is written and agrees to hold the check for deposit or presentment until the date written on the check; or

(c) a person accepts written authorization from a consumer to electronically deduct from the consumer's account on a specific date the amount of the loan and fees that are authorized under this part.

(6) "Department" means the department of administration.

(7) "Person" means a natural person, sole proprietorship, firm, partnership, corporation, or other entity."

Section 4. Section 31-1-705, MCA, is amended to read:

"31-1-705. License — business locations — rules. (1) A person may not engage in or offer to engage in the business of making deferred deposit loans unless licensed by the department. *A license may be granted to a person located within the state or to a person located outside of the state who uses the internet, facsimiles, or third persons to conduct transactions with consumers in this state.*

(2) An applicant for a license to engage in the business of making deferred deposit loans shall pay to the department a license application fee of ~~$375~~ *$500*.

(3) (a) The department may not issue or renew a license unless findings are made that:

(i) the financial responsibility, experience, character, and general fitness of the applicant warrant the belief that the business will be operated lawfully and fairly and within the provisions of this part;

(ii) the applicant has unencumbered assets of at least $25,000 for each location;

(iii) the applicant has provided a sworn statement that the applicant will not in the future, directly or indirectly, use a criminal process to collect the payment of deferred deposit loans or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default; and

(iv) other information that the department considers necessary has been provided.

(b) The department may not issue or renew a license if the criminal history of the employees of the applicant demonstrates any convictions involving fraud or financial dishonesty or if the department's findings show adverse civil judgments involving fraudulent or dishonest financial dealings.

(4) A license may not be issued for longer than 1 year. The license year must coincide with the calendar year, and the license fee for any period less than 6 months is ~~$187.50~~ *$250*.

(5) Each licensee shall post a bond in the amount of $10,000 for each location. The bond must continue in effect for 2 years after the licensee ceases operation in the state. The bond must be available to pay damages and penalties to consumers harmed by any violation of this part.

(6) More than one place of business may not be maintained under the same license, but the department may issue more than one license to the same licensee upon compliance with the provisions of this section governing issuance of a single license."

Section 5. Section 31-1-706, MCA, is amended to read:

"31-1-706. License renewal fee. (1) A person licensed under 31-1-705 shall pay, on or before December 1 of each year, a license renewal fee of ~~$125~~ *$500* for each license that the person holds under this part.

(2) Failure to pay any yearly license renewal fee required by this section within the time prescribed will result in the automatic revocation of the license subject to renewal."

Section 6. Section 31-1-711, MCA, is amended to read:

"31-1-711. ~~Annual examinations~~ *Examinations* — fee. (1) The department ~~shall~~ *may* conduct ~~annually~~ an examination of each licensee's deferred deposit lending operation to ensure that the licensee is in compliance with the provisions of this part.

(2) *(a)* A licensee shall pay the department a fee in the amount of $300 a day for each examiner required to conduct an ~~annual~~ examination.

(b) The department may charge a licensee for no more than three examinations a year under this section.

(3) A licensee shall make available to a department examiner the information required under 31-1-714 or as required by rule.

~~(4) Completion of an annual examination must, in the absence of the department's finding just cause to revoke or suspend a license, constitute grounds for license renewal.~~"

Section 7. Section 31-1-712, MCA, is amended to read:

"31-1-712. License revocation *or suspension — restitution* — penalty. (1) ~~If the~~ *The* department ~~finds, after due~~ *shall provide a 10-day written* notice *of a proposed violation that includes a statement of the alleged violation* and *provision for a* hearing or *an* opportunity for hearing, as provided in the Montana Administrative Procedure Act~~,~~. *The notice must be based on a finding* that any person, licensee, or officer, agent, employee, or representative*, whether licensed or unlicensed,* of the *person or* licensee has violated any of the provisions of this part, has failed to comply with the rules, regulations, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, ~~or~~ has furnished false information to the department, *or has operated without a required license.* ~~the~~ *The* department may impose a civil penalty not to exceed $1,000 for each violation *and not to exceed $5,000 for each administrative action* and may issue an order revoking or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee *or to engage in the business of making deferred deposit loans. In addition, the department may order restitution to borrowers and reimbursement for the department's cost in bringing the administrative action.*

(2) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or, in the case of an unlicensed business, to the last-known address of record.

~~(2)~~*(3)* A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

(4) The department may reinstate any suspended or revoked license if there is not a fact or condition existing at the time of reinstatement that would have justified the department's refusal to originally issue the license. If a license has been suspended or revoked for cause, an application may not be made for the issuance of a new license or the reinstatement of a suspended or revoked license for a period of 6 months from the date of suspension or revocation.

(5) All civil penalties collected pursuant to this section must be deposited in the state general fund."

Section 8. Section 31-1-713, MCA, is amended to read:

"31-1-713. Complaint procedure. *(1)* The department shall maintain a list of licensees that is available to interested persons and to the general public. The department shall also establish by rule a procedure under which an aggrieved consumer or any member of the public may file a complaint against a licensee or an unlicensed person who violates any provision of this part.

(2) The department may hold hearings*, subject to the contested case provisions of Title 2, chapter 4, part 6,* upon the request of a party to the complaint, make findings of fact or conclusions of law, issue cease and desist orders, refer the matter to the appropriate law enforcement agency for prosecution for a violation of this part, seek injunctive or other relief in district court, or suspend or revoke a license granted under this part."

Section 9. Section 31-1-714, MCA, is amended to read:

"31-1-714. Information and annual reports. (1) Each licensee shall keep and use books, accounts, and records that will enable the department to determine if the licensee is complying with the provisions of this part and maintain any other records required by the department. The department is authorized to examine the records at any reasonable time. The records must be kept for 2 years following the last entry on a loan and must be kept according to generally accepted accounting procedures that include an examiner being able to review the recordkeeping and reconcile each ~~consumer~~ *deferred deposit* loan with documentation maintained in the consumer's loan file records.

(2) Each licensee shall file, on forms prescribed by the department, an annual report with the department on or before March 31 for the 12-month period in the preceding year ending as of December 31. The report must disclose in detail and under appropriate headings:

(a) the resources, assets, and liabilities of the licensee at the beginning and the end of the period;

(b) the income, expense, gain, loss, and balance sheets;

(c) the total number of deferred deposit loans made in the year ending as of December 31 of the previous year*, including:*

(i) the number of individual consumers with 12 or fewer new deferred deposit loans; and

(ii) the number of individual consumers with 13 or more new deferred deposit loans;

(d) the average deferred deposit loan amount, average annual interest percentage rate, and average deferred deposit loan term;

(e) the number of deferred deposit loans rescinded;

~~(d)~~*(f)* the total number of deferred deposit loans outstanding as of December 31 of the previous year;

~~(e)~~*(g)* the minimum and maximum amount of checks for which deposits were deferred in the year ending as of December 31 of the previous year;

~~(f)~~*(h)* the total number and dollar amount of returned checks, the total number and dollar amount of checks recovered, and the total number and dollar

amount of checks charged off during the year ending as of December 31 of the previous year;

~~(g)~~*(i)* the total number and dollar amount of agreements involving electronic transactions or deductions, the total number and dollar amount of electronic deductions made by the licensee, and the total number and dollar amount of electronic deductions for insufficient funds charged off during the year ending as of December 31 of the previous year; and

~~(h)~~*(j)* verification that the licensee has not used a criminal process or caused a criminal process to be used in the collection of any deferred deposit loans or used any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default during the year ending as of December 31 of the previous year.

(3) A report must be verified by the oath or affirmation of the owner, manager, or president of the deferred deposit lender.

(4) (a) If a licensee conducts another business or is affiliated with other licensees under this part or if any other situation exists under which allocations of expense are necessary, the licensee shall make the allocation according to appropriate and reasonable accounting principles as approved by the department.

(b) Information about any other business conducted on the same premises where deferred deposit loans are made must be provided as required by the department.

(5) Each licensee shall file a copy of the disclosure documents described in 31-1-721 with the department prior to the date of commencement of business at each location, at the time any changes are made to the documents, and annually upon renewal of the license. These documents must be available to interested parties and to the general public through the department."

Section 10. Section 31-1-715, MCA, is amended to read:

"31-1-715. Loan requirements — right of rescission — arbitration — *completion of transaction*. (1) ~~Each~~ *A* deferred deposit loan may not have a term that exceeds 31 days.

(2) The amount of the deferred deposit loan, exclusive of the fee allowed in 31-1-722(2), may not exceed $300.

(3) The minimum amount of a deferred deposit loan is $50.

(4) The check written by the consumer in a deferred deposit loan must be made payable to the licensee.

(5) (a) The loan agreement must contain a provision that the consumer may rescind the transaction if, by 5 p.m. of the licensee's first business day following the day that the loan was executed, the consumer provides the licensee with cash or certified funds equaling 100% of the amount loaned to the consumer.

(b) A licensee may not charge a consumer any fee or interest if the consumer rescinds the loan as provided in subsection (5)(a).

(c) Except as provided in subsection (5)(a), a consumer does not have a right to rescind the loan unless the licensee agrees to the rescission.

(6) (a) A loan agreement may not contain a mandatory arbitration clause that is oppressive, unconscionable, unfair, or in substantial derogation of a consumer's rights.

(b) A mandatory arbitration clause that complies with the applicable standards of the American arbitration association must be presumed to not violate the provisions of subsection (6)(a).

(7) Only the licensee may make an electronic deduction from the consumer's account. The licensee shall ensure that information obtained from the consumer about the consumer's account remains confidential.

(8) The licensee shall provide the consumer, or each consumer if there is more than one, with a copy of the loan documents described in 31-1-721 upon consummation of the loan.

(9) The holder or assignee of any check written by a consumer in connection with a deferred deposit loan takes the instrument subject to all claims and defenses of the consumer.

(10) A deferred deposit loan transaction is completed when the licensee receives payment in full from the consumer in cash or, if payment is made by check or electronic transfer from the consumer's account, when the check or electronic transfer is debited to the consumer's account by the consumer's financial institution. Once a deferred deposit loan transaction is complete, a licensee may enter into a new deferred deposit loan with the consumer. Deferred deposit loans may not be renewed or extended."

Section 11. Section 31-1-721, MCA, is amended to read:

"31-1-721. Required disclosures — loan agreement. (1) Before entering into a deferred deposit loan, the licensee shall deliver to the consumer a pamphlet prepared by or at the direction of the department that:

(a) explains, in simple language, all of the consumer's rights and responsibilities in a deferred deposit loan transaction;

(b) includes a telephone number to the department's office that handles concerns or complaints by consumers; and

(c) informs consumers that the department's office can provide information about whether a lender is licensed and other legally available information.

(2) Licensees shall provide consumers with a written agreement on a form specified or approved by the department that can be kept by the consumer, which must include the following information:

(a) the name, address, and phone number of the licensee making the deferred deposit loan and the initials or other written means of identifying the individual employee who signs the agreement on behalf of the licensee;

(b) the name, address, and phone number of the consumer obtaining the deferred deposit loan;

(c) ~~an itemization of the fees and interest charges to be paid by the consumer~~ *all disclosures required by the federal Truth in Lending Act, 15 U.S.C. 1601, et seq.*;

(d) a clear description of the consumer's payment obligations under the loan; and

(e) in a manner that is more conspicuous than the other information provided in the loan document and that is in at least 14-point bold typeface, a statement that "you cannot be prosecuted in criminal court for collection of this loan". The statement must be located immediately preceding the signature of the consumer."

Section 12. Section 31-1-723, MCA, is amended to read:

"31-1-723. Prohibited acts. A licensee making deferred deposit loans may not commit, or have committed on behalf of the licensee, any of the following prohibited acts:

(1) engaging in the business of deferred deposit lending unless the department has first issued a valid license;

(2) threatening to use or using a criminal process in this or any other state to collect on the loan made to a consumer in this state or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default;

(3) altering the date or any other information on a check received from a consumer;

(4) altering or changing the date upon which the licensee and consumer agreed to make any electronic deductions from the consumer's account unless the consumer agrees in writing to the change;

(5) making any false, misleading, or deceptive representation to a financial institution relating to a consumer who has agreed to provide payment for a loan through an electronic deduction;

(6) using any device or agreement that would have the effect of charging or collecting more fees, charges, or interest than those allowed by this part, including but not limited to entering into a different type of transaction or renewing or rolling over a loan with the consumer;

(7) engaging in unfair, deceptive, or fraudulent practices in the making or collection of a deferred deposit loan;

(8) entering into a deferred deposit loan with a consumer that is unconscionable. In determining whether a deferred deposit loan transaction is unconscionable, consideration must be given to, but is not limited to, whether the amount of the loan exceeds 25% of the consumer's monthly net income.

(9) charging to cash a check representing the proceeds of the deferred deposit loan;

(10) charging to perform an electronic deduction or transaction to obtain the proceeds of the deferred deposit loan;

(11) using or attempting to use the check provided by the consumer in a deferred deposit loan as security for purposes of any state or federal law;

(12) using or attempting to use the consumer's authorization to deduct the amount set forth in the loan agreement or any other information obtained from the consumer or the consumer's financial institution for any purpose other than to collect the proceeds of the deferred deposit loan;

(13) accepting payment of the deferred deposit loan through the proceeds of another deferred deposit loan ~~provided by the same licensee or any affiliate~~;

(14) ~~making a deferred deposit loan that, when combined with another outstanding deferred deposit loan owed to the licensee, exclusive of the fee allowed in 31-1-722(2), exceeds a total of $300 when combining the face amount of the checks written in connection with each loan. Regardless of the total of the loans, a licensee may not make a loan to a consumer who has two or more deferred deposit loans outstanding with the licensee.~~ *entering into a deferred deposit loan with a consumer who has an outstanding deferred deposit loan;*

(15) renewing, repaying, refinancing, or consolidating a deferred deposit loan with the proceeds of another deferred deposit loan made to the same consumer. However, a licensee may without charge extend the term of the loan beyond the due date.

(16) accepting any collateral for a deferred deposit loan;

(17) charging any interest, fees, or charges other than those specifically authorized by this part, including but not limited to charges for insurance;

(18) threatening to take any action against a consumer that is prohibited by this part or making any misleading or deceptive statements regarding the deferred deposit loan;

(19) making a misrepresentation of a material fact by an applicant in obtaining or attempting to obtain a license;

(20) including any of the following provisions in the loan agreement required by 31-1-721:

(a) a hold harmless clause;

(b) a confession of judgment clause;

(c) a waiver of the right to a jury trial, if applicable, in any action brought by or against a consumer;

(d) any assignment of or order for payment of wages or other compensation for services;

(e) a provision in which the consumer agrees not to assert any claim or defense arising out of the contract; or

(f) a waiver of any provision of this part."

Section 13. Investigations by department — subpoenas — oaths — examination of witnesses and evidence. (1) The department may investigate any matter, upon complaint or otherwise, if it appears that a person has engaged in or offered to engage in any act or practice that is in violation of any provision of this part or any rule adopted or order issued by the department pursuant to this part.

(2) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this part. The department may administer oaths and affirmations to a person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by the subpoena, a judge of the district court of Lewis and Clark County or the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated in the subpoena.

(4) If a person served with a subpoena refuses to obey the subpoena or to give testimony or produce evidence as required by the subpoena, the department may proceed under the contempt provisions of Title 3, chapter 1, part 5.

(5) Failure to comply with a court-ordered subpoena is punishable pursuant to 45-7-309.

Section 14. Cease and desist orders. (1) If it appears to the department that a person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this part or any rule adopted or order issued by the department pursuant to this part, the department may issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The order may apply only to the alleged act or practice constituting a violation of this chapter. The department may issue a temporary order pending the hearing that:

(a) remains in effect until 10 days after the hearings examiner issues proposed findings of fact and conclusions of law and a proposed order; or

(b) becomes final if the person to whom notice is addressed does not request a hearing within 10 days after receipt of the notice.

(2) A violation of an order issued pursuant to this section is subject to the penalty provisions of this part.

Section 15. Injunctions — receivers. (1) Whenever the department has reason to believe that a person is using, has used, or is about to knowingly use any method, act, or practice that violates any provision of this part or any rule adopted or order issued by the department pursuant to this part, the department, upon determining that proceeding would be in the public interest, may bring an action in the name of the state against the person to restrain by temporary or permanent injunction or temporary restraining order the use of the unlawful method, act, or practice.

(2) The notice for an action pursuant to subsection (1) must state generally the relief sought and be served at least 20 days before the hearing of the action in which the relief sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by 27-19-315.

(3) An action under this section may be brought in the district court in the county in which a person resides or has the person's principal place of business or in the district court of Lewis and Clark County if the person is not a resident of this state or does not maintain a place of business in this state.

(4) A district court may issue temporary or permanent injunctions or temporary restraining orders to restrain and prevent violations of this part, and an injunction must be issued without bond to the department. If the department is successful in obtaining an injunction or restraining order under this section, the department is entitled to an award of reasonable attorney fees and costs.

(5) In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which the action is brought may impound and appoint a receiver for the property and business of the defendant, including books, papers, documents, or records pertaining to the property or business, or as much of the property or business as the court considers reasonably necessary to prevent violations of this part. The receiver, when appointed and qualified, has the powers and duties as to custody, collection, administration, winding up, and liquidation of the property and business that are conferred upon the receiver by the court.

Section 16. Codification instruction. [Sections 13 through 15] are intended to be codified as an integral part of Title 31, chapter 1, part 7, and the provisions of Title 31, chapter 1, part 7, apply to [sections 13 through 15].

Approved May 8, 2007

CHAPTER NO. 452

[SB 166]

AN ACT REVISING LAWS RELATING TO FISH AND GAME LICENSURE; PROVIDING FOR THE ISSUANCE OF FREE WILDLIFE CONSERVATION LICENSES TO RESIDENT MINORS WHO ARE 12 YEARS OF AGE OR OLDER AND UNDER 15 YEARS OF AGE AND TO RESIDENTS 62 YEARS OF AGE OR OLDER; PROVIDING THAT RESIDENTS AND CERTAIN NONRESIDENTS WHO HAVE BEEN AWARDED A PURPLE HEART IN SERVICE WITH THE U.S. ARMED FORCES MAY FISH AND HUNT GAME BIRDS WITH ONLY A WILDLIFE CONSERVATION LICENSE; PROVIDING FOR THE TRANSFER OF MONEY FROM THE GENERAL FUND TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS GENERAL LICENSE ACCOUNT TO COMPENSATE FOR LICENSE REVENUE LOST THROUGH THE ISSUANCE OF THE FREE LICENSES AND EXTENSION OF PRIVILEGES TO RECIPIENTS OF A PURPLE HEART; AMENDING SECTIONS 87-2-202, 87-2-801, 87-2-805, AND 87-2-903, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-202, MCA, is amended to read:

"87-2-202. Application — fee — expiration. (1) Except as provided in 87-2-803(12) *and 87-2-805(5)*, a wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license or to receive a free wildlife conservation license pursuant to 87-2-803(12) *or 87-2-805(5)*. It is unlawful and a misdemeanor for a license agent to sell *or give* a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of $8, of which 25 cents is a search and rescue surcharge.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of $10, of which 25 cents is a search and rescue surcharge.

(c) In addition to the fee in subsection (3)(a), the first time in any license year that a resident uses the wildlife conservation license as a prerequisite to purchase a hunting license, an additional hunting access enhancement fee of $2 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access

enhancement fee is paid. The resident hunting access enhancement fee is chargeable only once during any license year.

(d) In addition to the fee in subsection (3)(b), the first time in any license year that a nonresident uses the wildlife conservation license as a prerequisite to purchase a hunting license, except a variably priced outfitter-sponsored Class B-10 or Class B-11 license issued under 87-1-268, an additional hunting access enhancement fee of $10 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The nonresident hunting access enhancement fee is chargeable only once during any license year.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

[(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(6) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001; the $2 wildlife conservation license fee increases in subsections (3)(a) and (3)(b) enacted by Ch. 596, L. 2003, are void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)"

Section 2. Section 87-2-801, MCA, is amended to read:

"87-2-801. Residents over sixty-two years of age — resident or nonresident legion of valor members — *purple heart awardees.* (1) A resident, as defined in 87-2-102, who is 62 years of age or older is entitled to fish and hunt game birds, not including wild turkeys, with a conservation license issued by the department. The form of the license must be prescribed by the department.

(2) A resident who is 62 years of age or older is also entitled to purchase a Class A-3 deer A tag for $10 and a Class A-5 elk tag for $12.

(3) Regardless of age, a resident, as defined in 87-2-102, or a nonresident who is a legion of valor member is entitled to fish with a conservation license issued by the department.

(4) Regardless of age, a resident, as defined in 87-2-102, who has been awarded a purple heart for service in the armed forces of the United States is entitled to fish and hunt game birds, not including wild turkeys, with a conservation license issued by the department.

(5) Regardless of age, a nonresident who has been awarded a purple heart for service in the armed forces of the United States is entitled to fish and hunt game birds, not including wild turkeys, with a conservation license issued by the department during expeditions arranged for the nonresident by a nonprofit organization that uses fishing and hunting as part of the rehabilitation of disabled veterans.

(6) The department's general license account must be reimbursed by a quarterly transfer of funds from the general fund to the general license account

for license costs associated with the fishing and game bird hunting privileges granted pursuant to subsections (4) and (5) during the preceding calendar quarter. Reimbursement costs must be designated as license revenue."

Section 3. Section 87-2-805, MCA, is amended to read:

"87-2-805. Persons under eighteen years of age — youth combination sports license — terminally ill youth under seventeen years of age — *free wildlife conservation license for resident seniors and certain minors.* (1) Resident minors who are 12 years of age or older and under 15 years of age may fish and may hunt upland game and migratory game birds during the open season with only a conservation license. Resident minors who are 15 years of age may hunt migratory game birds with only a conservation license. Resident minors who are under 12 years of age may fish without a license. A nonresident person under 15 years of age may not fish in or on any Montana waters without first having obtained a Class B, B-4, or B-5 fishing license unless the nonresident person under 15 years of age is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

(2) A resident, as defined by 87-2-102, who is 12 years of age or older and under 15 years of age may purchase a Class A-3 deer A tag for $6.50 and a Class A-5 elk tag for $8.

(3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license for $25. A resident who is 12 years of age or older and under 18 years of age and who applies for any hunting license for the first time is entitled to receive a youth combination sports license free of charge.

(b) The youth combination sports license includes:

(i) a conservation license;

(ii) a fishing license;

(iii) an upland game bird license;

(iv) an elk license; and

(v) a deer license.

(c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license for $8.

(d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license for $3.

(e) A person who lawfully purchases or is granted a free youth combination sports license at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year. A person who hunts or fishes using a youth combination sports license purchased or granted free after the person reaches 18 years of age is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:

(i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and

(ii) a monetary fine of not less than $500 and not more than $5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.

(f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license.

(4) (a) The department may issue a free resident or nonresident big game combination license, as applicable, to a resident or nonresident youth under 17 years of age who has been diagnosed with a terminal illness. In order for a youth to qualify for the free license, the department must receive documentation from a licensed physician verifying that the youth is terminally ill. The free license may be issued to a youth on a one-time basis for only one hunting season.

(b) In exercising hunting privileges, the youth must be in the company of an adult in possession of a valid Montana hunting license or of a licensed Montana outfitter and conduct all hunting within the terms and conditions of the license issued.

(c) The department may waive hunter safety and education and bowhunter education requirements in 87-2-105 for a qualified youth under this subsection (4) and, in appropriate circumstances, may also allow the qualified youth to hunt from a vehicle in the manner described in 87-2-803.

(5) Resident minors who are 12 years of age or older and under 15 years of age and residents 62 years of age or older must, upon application and production of the documentation and information required by 87-2-202(1), be issued a resident wildlife conservation license without charge."

Section 4. Section 87-2-903, MCA, is amended to read:

"87-2-903. Compensation, fees, and duties of agents — penalty for late submission of license money. (1) License agents, except salaried employees of the department, must receive for all services rendered a commission of 50 cents for each transaction, plus any additional amount as determined by rules adopted pursuant to subsection (9).

(2) A license agent may charge a convenience fee of up to 3% of the total amount of a transaction if a purchase is made with a credit card or a debit card. A financial institution or credit card company may not prohibit collection of the convenience fee provided for in this subsection.

(3) Each license agent shall submit to the department the money received from the sale of licenses, less the appropriate commission and convenience fee.

(4) Each license agent shall submit to the department copies of each paper license sold *or issued pursuant to 87-2-805(5).*

(5) The department may charge license agents appointed after March 1, 1998, an electronic license system fee not to exceed actual costs.

(6) The department may designate classes of license agents and may establish a protocol for each class of agent. Each license agent shall keep the license account open at all reasonable hours to inspection by the department, the director, the wardens, or the legislative auditor.

(7) For purposes of this section, the term "transaction" includes the sale *or issuance* of any license or permit, collection of any data or fee, or issuance of any certificate prescribed by the department.

(8) If a license agent fails to submit to the department all money received from the declared sale of licenses, less the appropriate commission and convenience fee, by the deadline established by the department, an interest charge equal to the rate charged under 15-1-216 may be assessed. Acceptance of

late payments with interest does not preclude the department from summarily revoking the appointment of a license agent under 87-2-904.

(9) The department may adopt rules necessary to implement this section."

Section 5. Transfer of funds. The department of fish, wildlife, and parks shall notify the department of administration, on a quarterly basis, of the number of free wildlife conservation licenses that have been issued pursuant to 87-2-805(5) during the preceding calendar quarter. Upon receipt of the notice, the department of administration shall transfer from the general fund to the department of fish, wildlife, and parks for deposit into the general license account as license revenue $8 for each free wildlife conservation license issued pursuant to 87-2-805(5) during the preceding calendar quarter, to compensate for license revenue lost through the issuance of free licenses. The amount transferred from the general fund may not exceed the following in each fiscal year:

Fiscal Year 2007	$274,400
Fiscal Year 2008	392,000
Fiscal Year 2009	117,600

Section 6. Effective date. [This act] is effective March 1, 2007, or on passage and approval, whichever is later.

Section 7. Termination. [Sections 1, 3, and 4] terminate February 28, 2009.

Approved May 8, 2007

CHAPTER NO. 453

[SB 173]

AN ACT REVISING LAWS RELATED TO THE STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION; TRANSFERRING ADMINISTRATIVE ATTACHMENT FOR THE STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION FROM THE GOVERNOR'S OFFICE TO THE DEPARTMENT OF COMMERCE; ADDING A MEMBER TO THE COMMISSION; REPEALING THE TERMINATION DATE OF THE STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION; AMENDING SECTIONS 90-1-131 AND 90-1-135, MCA; REPEALING SECTION 19, CHAPTER 512, LAWS OF 1999, SECTION 5, CHAPTER 69, LAWS OF 2001, AND SECTIONS 3 AND 4, CHAPTER 460, LAWS OF 2005; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-1-131, MCA, is amended to read:

"90-1-131. ~~(Temporary)~~ State-tribal economic development commission — composition — compensation for members. (1) There is a state-tribal economic development commission administratively attached to the ~~office of the governor~~ *department of commerce* as prescribed in 2-15-121.

(2) The commission is composed of ~~10~~ *11* members, each appointed by the governor to 3-year staggered terms commencing on July 1 of each year of appointment, and must include:

(a) the state coordinator of Indian affairs;

(b) one member from the department of commerce;

(c) one member from the governor's office of economic development;

~~(c)~~*(d)* one member from each of the seven federally recognized tribes in Montana and one member from the Little Shell band of Chippewa Indians. A tribal government may advertise for individuals interested in serving on the commission and develop a list of applicants from which it may choose its nominee to recommend to the governor. In place of choosing from a list of applicants, a tribal government may select an elected tribal official to recommend for membership on the commission. If a tribal government nominates or otherwise recommends more than one person for membership on the commission, the governor shall select one individual from among those recommended persons.

(3) The members of the commission shall elect a presiding officer from among the members.

(4) Six members of the commission constitute a quorum, and the affirmative vote of the majority of the members present is sufficient for any action taken by the commission.

(5) Any vacancy on the commission must be filled in the same manner as the original appointment.

(6) Each member of the commission is entitled to reimbursement for expenses as provided in 2-18-501 through 2-18-503. ~~(Terminates June 30, 2009—secs. 3, 4, Ch. 460, L. 2005.)~~"

Section 2. Section 90-1-135, MCA, is amended to read:

"90-1-135. ~~(Temporary)~~ Special revenue accounts. (1) There is an account in the state treasury for the receipt of state and private funds and an account in the state treasury for the receipt of federal funds for expenditure by the state-tribal economic development commission established in 90-1-131.

(2) Money in the accounts established in subsection (1) must be used to pay:

(a) the commission's administrative costs;

(b) the salary, benefits, and administrative expenses of the tribal business center coordinator and the federal grants coordinator; and

(c) the costs of conducting or commissioning and periodically updating or otherwise modifying a comprehensive assessment of economic development needs and priorities on each of the Indian reservations in the state.

(3) Money in the accounts that is not expended for the purposes identified in subsection (2) may be used for other purposes that the commission considers prudent or necessary.

(4) Interest and income earned on the money in the accounts must be deposited in the accounts for the commission's use.

~~(5) Money in the accounts that is not expended by June 30, 2005, must remain in the accounts for the commission's use. (Terminates June 30, 2009—secs. 3, 4, Ch. 460, L. 2005.)~~"

Section 3. Repealer. (1) Section 19, Chapter 512, Laws of 1999, is repealed.

(2) Section 5, Chapter 69, Laws of 2001, is repealed.

(3) Sections 3 and 4, Chapter 460, Laws of 2005, are repealed.

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 5. Effective date. [This act] is effective July 1, 2007.

Approved May 8, 2007

CHAPTER NO. 454

[SB 200]

AN ACT AUTHORIZING LITIGATION FOR NATURAL RESOURCE DAMAGES AND RESTORATION AT THE UPPER BLACKFOOT MINING COMPLEX, INCLUDING THE MIKE HORSE DAM AND MINE; ESTABLISHING THE NATURAL RESOURCE PROGRAM POLICY COMMITTEE TO OVERSEE THIS LITIGATION AND OTHER NATURAL RESOURCE DAMAGE LITIGATION; AUTHORIZING LEGISLATIVE OVERSIGHT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, mining and related operations and the release of hazardous substances at the Mike Horse Mine and Dam site near Lincoln, Montana, and in surrounding areas have resulted in significant contamination of lands in those areas, including the Blackfoot River and its flood plain, and as a consequence, have resulted in injuries to the state's natural resources, including its fishery resources; and

WHEREAS, the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 authorizes the state, as trustee, to pursue litigation in order to recover damages for the restoration of state natural resources that have been injured by the release of hazardous substances; and

WHEREAS, the state's Comprehensive Environmental Cleanup and Responsibility Act allows the state to file claims and actions in order to recover damages for the restoration of natural resources located within the state that have been injured by the release of hazardous substances; and

WHEREAS, a state natural resource damage program exists within the department of justice and is charged with pursuing litigation in order to recover damages to be used to restore natural resources that have been injured by the release of hazardous substances; and

WHEREAS, a natural resource damage program policy committee consisting of the attorney general and four other members that have been appointed by the governor exists to oversee natural resource damage litigation in the state and to make policy recommendations regarding this type of litigation and should be statutorily established to continue this work.

Be it enacted by the Legislature of the State of Montana:

Section 1. Authorization of natural resource damage litigation. Subject to appropriation, the department of justice is authorized to file on behalf of the state of Montana litigation seeking damages for injuries caused by the release of hazardous substances from the Upper Blackfoot mining complex, including the Mike Horse mine and dam, for the purpose of restoring the state's natural resources in and around these areas.

Section 2. Natural resource damage program policy committee. (1) There is a natural resource damage program policy committee.

(2) The committee membership consists of the governor's chief of staff, the directors of the departments of environmental quality, natural resources and conservation, and fish, wildlife, and parks, and the attorney general.

(3) The purpose of this committee is to oversee the litigation authorized in [section 1] and other natural resource damage litigation.

Section 3. Legislative oversight. The speaker of the house and the president of the senate shall each appoint two members of their respective bodies, one from the majority party and one from the minority party, to a committee that shall meet twice a year for briefings on the progress of the natural resource damages litigation pursuant to [section 1] and any related settlement negotiations. The department of justice shall provide staff assistance for the committee.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved May 8, 2007

CHAPTER NO. 455

[SB 201]

AN ACT GENERALLY REVISING LAND USE LAWS; ALLOWING LOCAL GOVERNMENTS TO ADOPT GROWTH POLICIES THAT ADDRESS INFRASTRUCTURE PLANNING; ALLOWING CERTAIN GOVERNING BODIES TO ASSESS PLANNING FEES; EXEMPTING CERTAIN LAND DIVISIONS FROM REVIEW; AMENDING SECTIONS 76-1-103, 76-1-601, 76-3-605, 76-3-608, AND 76-3-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-1-103, MCA, is amended to read:

"76-1-103. Definitions. As used in this chapter, the following definitions apply:

(1) "City" includes incorporated cities and towns.

(2) "City council" means the chief legislative body of a city or incorporated town.

(3) "Governing body" or "governing bodies" means the governing body of any governmental unit represented on a planning board.

(4) "Growth policy" means a comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to this chapter before October 1, 1999, or a policy that was adopted pursuant to this chapter on or after October 1, 1999.

(5) *"Land use management techniques and incentives" include but are not limited to zoning regulations, subdivision regulations, and market incentives.*

(6) "Mayor" means mayor of a city.

(7) "Market incentives" may include but are not limited to an expedited subdivision review process authorized by 76-3-609, reductions in parking requirements, and a sliding scale of development review fees.

~~(6)~~*(8)* "Neighborhood plan" means a plan for a geographic area within the boundaries of the jurisdictional area that addresses one or more of the elements of the growth policy in more detail.

~~(7)~~*(9)* "Person" means any individual, firm, or corporation.

~~(8)~~*(10)* "Planning board" means a city planning board, a county planning board, or a joint city-county planning board.

~~(9)~~*(11)* "Plat" means a subdivision of land into lots, streets, and areas, marked on a map or plan, and includes replats or amended plats.

~~(10)~~*(12)* "Public place" means any tract owned by the state or its subdivisions.

~~(11)~~*(13)* "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

~~(12)~~*(14)* "Utility" means any facility used in rendering service that the public has a right to demand."

Section 2. Section 76-1-601, MCA, is amended to read:

"76-1-601. Growth policy — contents. (1) A growth policy may cover all or part of the jurisdictional area.

(2) A growth policy must include the elements listed in subsection (3) ~~by October 1, 2006~~. The extent to which a growth policy addresses the elements ~~of a growth policy that are~~ listed in subsection (3) is at the full discretion of the governing body.

(3) A growth policy must include:

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;

(vii) natural resources; and

~~(viii)~~*(viii)* other characteristics and features proposed by the planning board and adopted by the governing bodies;

(c) projected trends for the life of the growth policy for each of the following elements:

(i) land use;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) natural resources; and

~~(vii)~~*(vii)* other elements proposed by the planning board and adopted by the governing bodies;

(d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (3)(a);

(e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;

(f) an implementation strategy that includes:

(i) a timetable for implementing the growth policy;

(ii) a list of conditions that will lead to a revision of the growth policy; and

(iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;

(g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:

(i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;

(ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located within the county's boundaries on matters related to the growth policy;

(h) a statement explaining how the governing bodies will:

(i) define the criteria in 76-3-608(3)(a); and

(ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a); and

(i) a statement explaining how public hearings regarding proposed subdivisions will be conducted.

(4) A growth policy may:

(a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.

(b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;

~~(c) address the criteria in 76-3-608(3)(a);~~

~~(d) evaluate the effect of subdivision on the criteria in 76-3-608(3)(a);~~

~~(e) describe zoning regulations that will be implemented to address the criteria in 76-3-608(3)(a); and~~

~~(f) identify geographic areas where the governing body intends to authorize an exemption from review of the criteria in 76-3-608(3)(a) for proposed subdivisions pursuant to 76-3-608.~~

(c) establish an infrastructure plan that, at a minimum, includes:

(i) projections, in maps and text, of the jurisdiction's growth in population and number of residential, commercial, and industrial units over the next 20 years;

(ii) for a city, a determination regarding if and how much of the city's growth is likely to take place outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate infrastructure planning with the county or counties where growth is likely to take place;

(iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;

(iv) for cities, a land use map showing where projected growth will be guided and at what densities within city boundaries;

(v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to cities showing where projected growth will be guided and at what densities;

(vi) using maps and text, a description of existing and future public facilities necessary to efficiently serve projected development and densities within infrastructure planning areas, including, whenever feasible, extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other municipal public facilities throughout the infrastructure planning area. For the purposes of this subsection (4)(c)(vi), public facilities include but are not limited to drinking water treatment and distribution facilities, sewer systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public access areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency services;

(vii) a description of proposed land use management techniques and incentives that will be adopted to promote development within cities and in an infrastructure planning area, including land use management techniques and incentives that address issues of housing affordability;

(viii) a description of how and where projected development inside municipal boundaries for cities and inside designated joint infrastructure planning areas for cities and counties could adversely impact:

(A) threatened or endangered wildlife and critical wildlife habitat and corridors;

(B) water available to agricultural water users and facilities;

(C) the ability of public facilities, including schools, to safely and efficiently service current residents and future growth;

(D) a local government's ability to provide adequate local services, including but not limited to emergency, fire, and police protection;

(E) the safety of people and property due to threats to public health and safety, including but not limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;

(F) natural resources, including but not limited to forest lands, mineral resources, streams, rivers, lakes, wetlands, and ground water; and

(G) agricultural lands and agricultural production; and

(ix) a description of measures, including land use management techniques and incentives, that will be adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

(5) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter."

Section 3. Planning fees — limit. (1) Governing bodies that have committed in a resolution to adopting or that have adopted a growth policy that includes the provisions of 76-1-601(4)(c) may assess planning fees to pay for services that fulfill the purposes of Title 76, chapter 1. The planning fees are in addition to any other fees authorized by law and may be collected as part of either subdivision applications or zoning permits.

(2) Planning fees may not exceed $50 for each residential lot or unit or $250 for each commercial, industrial, or other type of lot or unit.

Section 4. Exemption for certain subdivisions. (1) A subdivision that meets the criteria in subsection (2) is exempt from the following requirements:

(a) preparation of an environmental assessment as required by 76-3-603;

(b) a public hearing on the subdivision application pursuant to 76-3-605; and

(c) review of the subdivision for the criteria listed in 76-3-608(3)(a).

(2) To qualify for the exemptions in subsection (1), a subdivision must meet the following criteria:

(a) the proposed subdivision is entirely within an area inside or adjacent to an incorporated city or town where the governing body has adopted a growth policy that includes the provisions of 76-1-601(4)(c);

(b) the proposed subdivision is entirely within an area subject to zoning adopted pursuant to 76-2-203 or 76-2-304 that avoids, significantly reduces, or mitigates adverse impacts identified in a growth policy that includes the provisions of 76-1-601(4)(c); and

(c) the subdivision proposal includes a description of future public facilities and services, using maps and text, that are necessary to efficiently serve the projected development.

Section 5. Section 76-3-605, MCA, is amended to read:

"76-3-605. Hearing on subdivision application. (1) Except as provided in 76-3-609 *[and section 4]* and subject to the regulations adopted pursuant to 76-3-504(1)(o) and 76-3-615, at least one public hearing on the subdivision application must be held by the governing body, its authorized agent or agency, or both and the governing body, its authorized agent or agency, or both shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment if required, to determine whether the subdivision application should be approved, conditionally approved, or denied by the governing body.

(2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the subdivision application and annexation whenever possible.

(3) Notice of the hearing must be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record whose property is immediately adjoining the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat must also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or denial of the proposed subdivision. This recommendation must be submitted to the governing body in writing not later than 10 working days after the public hearing."

Section 6. Section 76-3-608, MCA, is amended to read:

"76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) ~~except when the governing body has established an exemption pursuant to subsection (6) of this section or~~ *except when the governing body has established an exemption pursuant to subsection (6) of this section or* except as provided in 76-3-509 ~~or in~~*, [section 4], or* 76-3-609(2) or (4), ~~the impact~~ *the impact* on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially ~~significant~~ *significant* adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

~~(6) The governing body may exempt proposed subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:~~

~~(a) the governing body has adopted a growth policy pursuant to chapter 1 that:~~

~~(i) addresses the criteria in subsection (3)(a);~~

~~(ii) evaluates the impact of development on the criteria in subsection (3)(a);~~

~~(iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and~~

~~(iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and~~

~~(b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:~~

~~(i) apply to the entire area subject to the exemption; and~~

~~(ii) address the criteria in subsection (3)(a), as described in the growth policy.~~

(6) The governing body may exempt proposed subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:

(a) the governing body has adopted a growth policy pursuant to chapter 1 that:

(i) addresses the criteria in subsection (3)(a);

(ii) evaluates the impact of development on the criteria in subsection (3)(a);

(iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and

(iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and

(b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:

(i) apply to the entire area subject to the exemption; and

(ii) address the criteria in subsection (3)(a), as described in the growth policy.

~~(7)~~*(7)* A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce."

Section 7. Section 76-3-609, MCA, is amended to read:

"76-3-609. Review procedure for minor subdivisions — determination of sufficiency of application — governing body to adopt regulations. (1) Minor subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to 76-3-504.

(2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this chapter or has not resulted from a tract of record that has had more than five parcels created from that tract of record

under 76-3-201 or 76-3-207 since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed as follows:

(a) Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or deny the first minor subdivision from a tract of record within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review. The determination and notification to the subdivider must be made in the same manner as is provided in 76-3-604(1) through (3).

(b) The subdivider and the reviewing agent or agency may agree to an extension or suspension of the review period, not to exceed 1 year.

(c) Except as provided in subsection (2)(d)(iii), an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608(3).

(d) The following requirements do not apply to the first minor subdivision from a tract of record as provided in subsection (2):

(i) the requirement to prepare an environmental assessment;

(ii) the requirement to hold a hearing on the subdivision application pursuant to 76-3-605; and

(iii) the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address the criteria in 76-3-608(3)(a).

(e) The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:

(i) 76-3-608(3); and

(ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

(3) Except as provided in *[section 4] and* subsection (4) *of this section*, any minor subdivision that is not a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and 76-3-620.

(4) The governing body may adopt subdivision regulations that establish requirements for review of subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as provided in subsection (2) and this chapter.

(5) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time that a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the period that the application is reviewed for required elements and sufficient information, the determination of whether the application contains the required elements and sufficient information must be based on the new regulations."

Section 8. Codification instruction. (1) [Section 3] is intended to be codified as an integral part of Title 76, chapter 1, part 4, and the provisions of Title 76, chapter 1, part 4, apply to [section 3].

(2) [Section 4] is intended to be codified as an integral part of Title 76, chapter 3, part 6, and the provisions of Title 76, chapter 3, part 6, apply to [section 4].

Section 9. Effective date. [This act] is effective on passage and approval.

Approved May 8, 2007

CHAPTER NO. 456

[SB 213]

AN ACT PROVIDING THAT THE ESTIMATED FAIR MARKET VALUE MUST BE DETERMINED BY A MONTANA-LICENSED AND MONTANA-CERTIFIED APPRAISER; AMENDING SECTIONS 77-2-213, 77-2-363, AND 77-2-364, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2-213, MCA, is amended to read:

"77-2-213. Department to investigate. *(1)* When a proposal for an exchange pursuant to 77-2-211 is made and the owners of the respective tracts involved seem agreeable to negotiate ~~such~~ exchanges, the proposal ~~shall~~ *must* be referred to the department and the department shall thoroughly investigate all the lands involved in the proposal*,* ~~and~~ estimate the value of all of the lands*,* and consider every factor in connection with the proposal ~~as~~ *that* may affect the public interest.

(2) The estimated fair market value must be determined by a Montana-licensed and Montana-certified appraiser."

Section 2. Section 77-2-363, MCA, is amended to read:

"77-2-363. Land banking land sales and limitations. (1) *(a)* The board may not cumulatively sell or dispose of more than 100,000 acres of state land. Seventy-five percent of the acreage cumulatively sold must be isolated parcels that do not have a legal right of access by the public. At any one time during the life of the land banking process, the board may not sell more than 20,000 acres of state land unless the board has acted to use the revenue from that land to make purchases pursuant to 77-2-364.

(b) The estimated fair market value must be determined by a Montana-licensed and Montana-certified appraiser.

(2) (a) A person bidding to purchase state land offered for sale shall 45 days prior to the day of auction deposit with the department a bid bond in the form of a certified check or cashier's check drawn on any Montana bank equal to at least 50% of the minimum sale price specified by the department pursuant to 77-2-323(1) to guarantee the bidder's payment of the purchase price.

(b) If the current lessee of the land to be sold has initiated the sale as authorized by 77-2-364, the lessee may cancel the sale by giving notice to the department at least 30 days prior to the day of the auction. When the sale is canceled by the lessee, the lessee shall pay the costs incurred by the department

for the preparation of the sale including any costs incurred for preparation of documents required by 75-1-201.

(c) The department shall retain the bid bond of the successful bidder and shall return the bid bonds of the unsuccessful bidders. If the successful bidder fails to comply with the terms of the sale for any reason, the successful bidder's bid bond must be forfeited and credited to the interest and income account of the proper trust.

(3) Except for a sale that is initiated by the lessee of the parcel of land proposed for sale, prior to the proposed sale of any parcel of state land under the land banking process, the board shall give 60 days' notice of the proposed sale to the lessee of the parcel to allow the lessee sufficient time to determine whether the lessee wishes to propose an exchange of the land to the board.

(4) For a sale initiated by the board or the department, the lessee of the land must be afforded all the rights and privileges to match the high bid, as provided in 77-2-324."

Section 3. Section 77-2-364, MCA, is amended to read:

"77-2-364. Land banking purchases. (1) The board may select and purchase, lease, receive by donation, hold in trust, or in any manner acquire for and in the name of the state of Montana, in trust for the beneficiaries specified in sections 10 through 19 of The Enabling Act of Congress (approved February 22, 1889, 25 Stat. 676), as amended, any interest in real property and improvements, tracts, and leaseholds of land that the board considers proper in order to best provide prudent, maximum, long-term revenue for the beneficiaries.

(2) Sales of state land may be initiated only by the board, the department, or at the request of a lessee, pursuant to 77-1-202, 77-1-301, 77-2-301, or 77-2-308. The board shall ensure that the full market value of the land sold is realized for each trust by using the appraisal, sale, advertising, and competitive bid procedures contained within 77-2-303, 77-2-321, 77-2-322, 77-2-323, and 77-2-324. *The estimated fair market value must be determined by a Montana-licensed and Montana-certified appraiser.*

(3) When it is not inconsistent with the purpose of the trust, the board shall purchase land possessing legal access for all legal purposes.

(4) When purchasing land, easements, or improvements for the existing trusts, the board shall develop and apply appraisal and revenue projection procedures to ensure that the land or easements proposed for purchase or that the improvements proposed to be acquired are likely to produce more net revenue for the affected trust than the revenue that was produced from the land that was sold. The board may not purchase land, easements, or improvements pursuant to 77-2-361 through 77-2-367 unless it has first prudently determined that the land, easements, or improvements are likely to produce a greater or equal annual rate of return, as may be reasonably expected over a 20-year accounting period, with an acceptable level of risk for the affected trust, than the current annual rate of return from the state land that has been sold pursuant to 77-2-363. As guidance, the board shall use generally accepted accounting standards and the Uniform Appraisal Standards for Federal Land Acquisitions published by the U.S. department of justice and the appraisal institute.

(5) Prior to purchasing any land, easements, or improvements, the board shall determine that the financial risks and benefits of the purchase are prudent, financially productive investments that are consistent with the board's

fiduciary duty as a reasonably prudent trustee of a perpetual trust. For the purposes of implementing 77-2-361 through 77-2-367, that duty requires the board to:

(a) discharge its duties with the care, skill, prudence, and diligence that a prudent person acting in a similar capacity with the same resources and familiar with similar matters should exercise in the conduct of an enterprise of similar character and aims;

(b) diversify the land holdings of each trust to minimize the risk of loss and maximize the sustained rate of return;

(c) discharge its duties and powers solely in the interest of and for the benefit of the trust managed;

(d) discharge its duties subject to the fiduciary standards set forth in 72-34-114; and

(e) maintain, as closely as possible, the existing land base of each trust, consistent with the state's fiduciary duty.

(6) Prior to purchasing a parcel of land in excess of 160 acres in any particular county, the board shall consult with the county commissioners of the county in which the parcel is located."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved May 8, 2007

CHAPTER NO. 457

[SB 227]

AN ACT PROVIDING THAT A JUSTICE'S COURT WRIT OF EXECUTION MAY BE SERVED ANYWHERE IN THE STATE; REVISING THE PROCEDURE FOR A JUDGMENT DEBTOR TO CLAIM AN EXEMPTION FROM EXECUTION ON CERTAIN PROPERTY; PROVIDING A PROCEDURE FOR A LEVY ON A TAX REFUND OR OTHER STATE FUNDS THAT ARE DUE TO A JUDGMENT DEBTOR; PROVIDING THAT A LEVYING OFFICER MAY PERFORM CERTAIN TASKS THAT MAY BE PERFORMED BY A SHERIFF OR CONSTABLE; INCREASING THE TIME WHEN A JUSTICE MAY ISSUE AN ALIAS SUMMONS FROM 1 YEAR TO 2 YEARS FROM THE DATE OF THE FILING OF THE COMPLAINT; PROVIDING THAT A PARTY AT THE PARTY'S DISCRETION MAY APPEAR IN CERTAIN JUSTICE'S COURT PRETRIAL PROCEEDINGS BY TELEPHONE CONFERENCE; AND AMENDING SECTIONS 3-10-304, 25-13-212, 25-13-402, 25-14-101, 25-31-409, 25-31-710, AND 25-31-1104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-304, MCA, is amended to read:

"3-10-304. Territorial extent of civil jurisdiction. *(1)* The civil jurisdiction of a justice's court extends to the limits of the county in which it is held, and *except as provided in subsection (2),* intermediate and final process of a justice's court in a county may be issued to and served in any part of the county.

(2) A summons *or a writ of execution* of a justice's court may be served in any county of the state."

Section 2. Section 25-13-212, MCA, is amended to read:

"25-13-212. Claiming exemption — process — time for hearing. (1) To claim an exemption from execution, a judgment debtor shall file a *written* request for a hearing with the court that issued the execution *accompanied by a written statement that describes the property that the judgment debtor claims is exempt and the reasons for the claim that the property is exempt and accompanied by copies of any documentation upon which the judgment debtor is relying for the exemption claim*. ~~The request must be in writing, and a~~ *A* copy of the request*, statement, and any documentation* must be mailed by the judgment debtor on the date of filing to the judgment creditor or the judgment creditor's attorney and to the sheriff or levying officer. The request*, statement, and any documentation* must be filed within 10 days, excluding weekends and holidays, of the date of:

(a) the judgment debtor's receipt of notification of execution~~,~~ if notification was by personal service; or

(b) the date notification was mailed to the judgment debtor pursuant to 25-13-211(2).

(2) If the judgment debtor does not file ~~a~~ *the* request*, statement, and any documentation* ~~for~~ *claiming* an exemption ~~hearing~~ within the period provided for in subsection (1), the judgment debtor may not claim an exemption in the seized property.

(3) A court that receives a request for an exemption hearing*, along with the statement and any documentation,* shall conduct the hearing within 10 days, excluding weekends and holidays, from the date of receipt of the request.

(4) The court shall forward the order determining the judgment debtor's exemption claim to the sheriff or levying officer."

Section 3. Section 25-13-402, MCA, is amended to read:

"25-13-402. How writ executed. (1) (a) The sheriff or levying officer shall, subject to ~~subsection~~ *subsections* (6) *and (7)*, execute the writ against the property of the judgment debtor not later than 120 days after receipt of the writ by:

(i) levying on a sufficient amount of property~~,~~ if there is sufficient property;

(ii) collecting or selling the things in action; and

(iii) selling the other property and paying to the judgment creditor or the judgment creditor's attorney as much of the proceeds as will satisfy the judgment.

(b) (i) If the third party is a corporation or other legal entity, service must be accomplished by personally serving the writ upon an officer or supervising employee of the third party or upon a department or person designated by the third party or by serving the writ by mail, as provided in subsection (1)(b)(ii).

(ii) Service by mail upon a corporation or other legal entity must be consented to in writing by the corporation or other legal entity and may be made by mailing a copy of the writ to an officer or supervising employee of the third party or to a department or person designated by the third party. Service may be mailed out of state, at the direction of the third party, if the third party processes garnishments or levies from a location outside the state. If service is by mail, it must be accompanied by a notice that the officer or employee receiving the writ is required to forward the writ to the person responsible for processing the levy for the third party if the officer or employee initially receiving the writ is not the proper party to process the levy. The writ must be considered served on the date

and time that the writ is received by the officer, supervising employee, or designee of the third party, but not later than 5 business days after it is mailed.

(c) A levy under subsection (1)(b) is effective when the writ is served by personal service or by mail, as provided in subsection (1)(b)(ii).

(2) Any proceeds in excess of the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When the sheriff or levying officer determines that there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, the sheriff or levying officer shall levy only on the part of the property that the judgment debtor may indicate if the property indicated is sufficient to satisfy the judgment and costs.

(3) With respect to property held by a third party, including but not limited to banks, credit unions, and other financial institutions and those parties identified in 25-13-306, the third party shall respond to the levy based on the assets held at the time of levy. Response must be made within 10 business days following the date of the levy by delivering the assets or payments to the sheriff or levying officer.

(4) Except for perishable property, the sheriff or levying officer shall hold any property or money levied upon for 10 days, excluding weekends and holidays, following notification of execution upon the judgment debtor. After that time, the sheriff or levying officer may sell the property and pay the money to the judgment creditor.

(5) If the first levy is not sufficient to satisfy the writ, the sheriff or levying officer may levy, from time to time and as often as necessary, within the 120 days until the judgment is satisfied or the writ expires.

(6) (a) A levy upon the earnings of a judgment debtor continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to earnings due on or after the date of service through the expiration of the writ. Earnings withheld from a judgment debtor must be remitted to the sheriff or levying officer within 5 days of the day the earnings are withheld.

(b) The sheriff or levying officer shall clearly mark the expiration date upon all served copies of the writ and notice.

(c) Except as provided in subsection ~~(7)~~ *(8)*, multiple levies served under this subsection (6) have priority according to the date and time of service upon the employer.

(d) The return of service on a levy upon the earnings of a judgment debtor is returned in the same manner provided for in 25-13-404.

(7) A levy upon a state tax refund or any other funds that are due to the judgment debtor from a Montana state agency continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to any funds due on or after the date of service through the expiration of the writ. Payment of funds withheld from a judgment debtor must be remitted to the sheriff or levying officer within 10 days of the date the funds would have been sent to the judgment debtor in the normal course of business. Any levy on state funds is subordinate to the department of revenue's right of offset for delinquent taxes or other debt as provided in 15-30-149, 15-30-310, 15-31-404, 15-36-315, 15-39-106, 15-39-109, 15-68-516, 15-70-110, 15-72-113, Title 17, chapter 4, and 39-51-1307.

~~(7)~~*(8)* This section is not intended to supersede any state or federal laws regarding priority that must be given to certain levies and executions."

Section 4. Section 25-14-101, MCA, is amended to read:

"25-14-101. Debtor to answer concerning ~~his~~ *debtor's* property when execution unsatisfied. When an execution against property of the judgment debtor or of any one of several debtors in the same judgment, issued to *a levying officer or* the sheriff of the county where ~~he~~ *the judgment debtor* resides or, if ~~he~~ *the judgment debtor* does not reside in this state, to *a levying officer or* the sheriff of the county where the judgment is docketed, is returned unsatisfied in whole or in part, the judgment creditor, at any time after ~~such~~ *the* return is made, is entitled to an order from a judge of the court requiring ~~such~~ *the* judgment debtor to appear and answer concerning ~~his~~ *the judgment debtor's* property before ~~such~~ *the* judge or a referee appointed by ~~him~~ *the judge* at a time and place specified in the order~~;~~. ~~but no~~ *However, a* judgment debtor who is a *state* resident may *not* be required to attend before a judge or referee ~~out of~~ *outside* the county in which ~~he~~ *the judgment debtor* resides."

Section 5. Section 25-31-409, MCA, is amended to read:

"25-31-409. Alias summons. If the summons is returned without being served upon any or all of the defendants, the justice, upon the demand of the plaintiff, may issue an alias summons in the same form as the original. The justice may, within ~~a year~~ *2 years* from the date of *the* filing *of* the complaint, issue as many alias summonses as may be demanded by the plaintiff."

Section 6. Section 25-31-710, MCA, is amended to read:

"25-31-710. Pretrial conferences or hearings — appearance by telephone conference. (1) ~~At the discretion of the court, a~~ *A* party or the party's attorney may make an appearance by telephone conference in a pretrial conference or other hearing under this chapter if:

(a) the party does not need to or intend to offer evidence at the pretrial conference or hearing; ~~and~~

(b) the party does not reside within the county in which the case is filed or the party's or the party's attorney's principal place of business is not located in that county*; and*

(c) at least 10 days before the pretrial conference or other hearing, the party or the party's attorney intending to appear by telephone conference provides written notice to the court and to all parties or the attorneys for the parties.

(2) The party requesting the telephone conference is responsible for arranging the telephone conference and paying the associated costs."

Section 7. Section 25-31-1104, MCA, is amended to read:

"25-31-1104. Manner of execution. The sheriff*,* ~~or~~ constable*, or levying officer* to whom the execution is directed ~~must~~ *shall* execute the ~~same~~ *the execution* in the same manner as the sheriff *or levying officer* is required by the provisions of *Title 25,* chapter 13*,* to proceed upon executions ~~directed to him;~~. ~~and the~~ *When an execution is directed to a* constable, ~~when the execution is directed to him,~~ *the constable* is vested for that purpose with all the powers of the sheriff *or levying officer*."

Approved May 8, 2007

CHAPTER NO. 458

[SB 270]

AN ACT REVISING THE FILING DEADLINE FOR INDEPENDENT CANDIDATES AND POLITICAL PARTIES NOT PARTICIPATING IN PRIMARY ELECTIONS; AND AMENDING SECTION 13-10-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-10-503, MCA, is amended to read:

"13-10-503. Filing deadlines. (1) A petition for nomination and the affidavits of circulation required by 13-27-302, accompanied by the required filing fee, must be filed with the same officer with whom other nominations for the office sought are filed. Petitions must be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306. ~~In the event~~ *If* there are insufficient signatures on the petition, additional signatures may be submitted before the deadline for filing.

(2) Except as provided in 13-10-504, each petition must be filed ~~before the scheduled primary election or the filing deadline for the special or general election if a primary election is not scheduled~~ *by the deadline established in 13-10-201(6)*."

Section 2. Coordination instruction. If both House Bill No. 520 and [this act] are passed and approved and both amend 13-10-503, then the sections amending 13-10-503 are void and 13-10-503 must read as follows:

"13-10-503. Filing deadlines. (1) A petition for nomination and the affidavits of circulation required by 13-27-302, accompanied by the required filing fee, must be filed with the same officer with whom other nominations for the office sought are filed. Petitions must be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306. ~~In the event~~ *If* there are insufficient signatures on the petition, additional signatures may be submitted before the deadline for filing. *If sufficient signatures are verified and certified pursuant to 13-10-502, the county election administrator shall file the petition for nomination with the same officer with whom other nominations for the office sought are filed.*

(2) Except as provided in 13-10-504, each petition *for nomination, accompanied by the required filing fee,* must be filed ~~before the scheduled primary election or the filing deadline for the special or general election if a primary election is not scheduled~~ *by the deadline established in 13-10-201(6)*."

Approved May 8, 2007

CHAPTER NO. 459

[SB 309]

AN ACT PROHIBITING THE CONFISCATION OF PRIVATELY OWNED FIREARMS WITHIN THE STATE FOLLOWING THE DECLARATION OF AN EMERGENCY OR DISASTER; AND PROVIDING FOR ENFORCEMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Confiscation of firearm by government prohibited — private right of action — costs and expenses. (1) Following a declaration of an emergency or disaster pursuant to Title 10, chapter 3, a peace officer or other person acting or purporting to act on behalf of the state or a political subdivision of the state may not take a confiscation action.

(2) After a violation of subsection (1) has occurred, the party injured by a confiscation action may bring an action for damages in a court having jurisdiction.

(3) A party awarded damages pursuant to this section must also be awarded the party's costs and expenses in bringing the action, including reasonable attorney fees.

(4) (a) As used in this section, "confiscation action" means the intentional deprivation by a person in Montana of a privately owned firearm.

(b) The term does not include the taking of a firearm from a person:

(i) in self-defense;

(ii) possessing a firearm while the person is committing a felony or misdemeanor; or

(iii) who may not lawfully possess the firearm because of a prior criminal conviction.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 10, chapter 3, and the provisions of Title 10, chapter 3, apply to [section 1].

Approved May 8, 2007

CHAPTER NO. 460

[SB 342]

AN ACT REQUIRING APPLICANTS FOR LICENSURE AS SOCIAL WORKERS AND PROFESSIONAL COUNSELORS TO SUBMIT FINGERPRINTS FOR CRIMINAL BACKGROUND CHECKS PRIOR TO THE ISSUANCE OF A LICENSE; AMENDING SECTIONS 37-22-101, 37-22-301, 37-23-101, AND 37-23-202, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-22-101, MCA, is amended to read:

"37-22-101. Purpose. *(1)* The legislature finds and declares that because the profession of social work profoundly affects the lives of people of this state, it is the purpose of this chapter to provide for the common good by*:*

(a) ~~insuring~~ *ensuring the* ethical, qualified, and professional practice of social work*; and*

(b) instituting an effective mechanism for obtaining accurate public information regarding an applicant's criminal background:

(i) to prevent convicted criminal offenders who committed crimes relevant to working with children, the elderly, the mentally ill, or other vulnerable persons from obtaining a Montana social work license as an attempt to gain access to and perpetrate crimes against new victims; and

(ii) to protect the state from claims of negligence.

(2) This chapter and the rules promulgated under 37-22-201 set standards of qualification, education, training, and experience and ~~will~~ establish professional ethics for those who seek to engage in the practice of social work as licensed social workers."

Section 2. Section 37-22-301, MCA, is amended to read:

"37-22-301. License requirements — exemptions. (1) A license applicant shall satisfactorily complete an examination prescribed by the board.

(2) Before an applicant may take the examination, the applicant shall present three letters of reference from licensed social workers, licensed clinical social workers, psychiatrists, or psychologists who have knowledge of the applicant's professional performance and shall demonstrate to the board that the applicant:

(a) has a doctorate or master's degree in social work from a program accredited by the council on social work education or approved by the board;

(b) has completed at least 24 months of supervised post master's degree work experience in psychotherapy, which included 3,000 hours of social work experience, of which at least 1,500 hours were in direct client contact, within the past 5 years; and

(c) abides by the social work ethical standards adopted under 37-22-201.

(3) An applicant who fails the examination may reapply to take the examination.

(4) An applicant is exempt from the examination requirement if the applicant satisfies the board that the applicant is licensed, certified, or registered under the laws of a state or territory of the United States that imposes substantially the same requirements as this chapter and that the applicant has passed an examination similar to that required by the board.

(5) (a) As a prerequisite to the issuance of a license, the board shall require the applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(b) The applicant shall sign a release of information to the board and is responsible to the department of justice for the payment of all fees associated with the criminal background check.

(c) Upon completion of the criminal background check, the department of justice shall forward all criminal justice information, as defined in 44-5-103, concerning the applicant that involves the conviction of a criminal offense in any jurisdiction to the board, as authorized in 44-5-303.

(d) At the conclusion of any background check required by this section, the board must receive the criminal background check report but may not receive the fingerprint card of the applicant. Upon receipt of the criminal background check report, the department of justice shall promptly destroy the fingerprint card of the applicant.

(6) If an applicant has a history of criminal convictions, then pursuant to 37-1-203, the applicant has the opportunity to demonstrate to the board that the applicant is sufficiently rehabilitated to warrant the public trust, and if the board determines that the applicant is not, the license may be denied."

Section 3. Section 37-23-101, MCA, is amended to read:

"37-23-101. Purpose. *(1)* The legislature finds and declares that because the profession of professional counseling profoundly affects the lives of people of this state, it is the purpose of this chapter to provide for the common good by*:*

(a) ensuring *the* ethical, qualified, and professional practice of professional counseling*; and*

(b) instituting an effective mechanism for obtaining accurate public information regarding an applicant's criminal background:

(i) to prevent convicted criminal offenders who committed crimes relevant to working with children, the elderly, the mentally ill, or other vulnerable persons from obtaining a Montana professional counseling license as an attempt to gain access to and perpetrate crimes against new victims; and

(ii) to protect the state from claims of negligence.

(2) This chapter and the rules promulgated by the board under 37-22-201 set standards of qualification, education, training, and experience and establish professional ethics for those who seek to engage in the practice of professional counseling as licensed professional counselors."

Section 4. Section 37-23-202, MCA, is amended to read:

"37-23-202. Licensure requirements. (1) An applicant for licensure must have satisfactorily:

(a) completed a planned graduate program of 60 semester hours, primarily counseling in nature, 6 semester hours of which were earned in an advanced counseling practicum that resulted in a graduate degree from an institution accredited to offer a graduate program in counseling;

(b) completed 3,000 hours of counseling practice supervised by a licensed professional counselor or licensed member of an allied mental health profession, at least half of which was postdegree. The applicant must have each supervisor endorse the application for licensure, attesting to the number of hours supervised.

(c) passed an examination prepared and administered by:

(i) the national board of certified counselors; or

(ii) the national academy of certified clinical mental health counselors; and

(d) completed an application.

(2) The board shall provide by rule for licensure of a person who possesses a graduate degree that consists of a minimum of 45 semester hours primarily related to counseling and that is from an institution accredited to offer a graduate program in counseling, by specifying the additional graduate credit hours necessary to fulfill the requirements of subsection (1)(a) in counseling courses in an approved program within a period of 5 years.

(3) (a) As a prerequisite to the issuance of a license, the board shall require the applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(b) The applicant shall sign a release of information to the board and is responsible to the department of justice for the payment of all fees associated with the criminal background check.

(c) Upon completion of the criminal background check, the department of justice shall forward all criminal justice information, as defined in 44-5-103,

concerning the applicant that involves the conviction of a criminal offense in any jurisdiction to the board, as authorized in 44-5-303.

(d) At the conclusion of any background check required by this section, the board must receive the criminal background check report but may not receive the fingerprint card of the applicant. Upon receipt of the criminal background check report, the department of justice shall promptly destroy the fingerprint card of the applicant.

(4) If an applicant has a history of criminal convictions, then pursuant to 37-1-203, the applicant has the opportunity to demonstrate to the board that the applicant is sufficiently rehabilitated to warrant the public trust, and if the board determines that the applicant is not, the license may be denied."

Section 5. Coordination instruction. If House Bill No. 668 and [this act] are both passed and approved, then the section in [this act] amending 37-22-301 is void and 37-22-301 is amended to read as follows:

"37-22-301. License requirements — exemptions. (1) A license applicant shall satisfactorily complete an examination prescribed by the board.

(2) Before an applicant may take the examination, the applicant shall present three letters of reference from licensed social workers, licensed clinical social workers, psychiatrists, or psychologists who have knowledge of the applicant's professional performance and shall demonstrate to the board that the applicant:

(a) has a doctorate or master's degree in social work from a program accredited by the council on social work education or approved by the board;

(b) has completed at least 24 months of supervised post master's degree work experience in psychotherapy, which included 3,000 hours of social work experience, of which at least 1,500 hours were in direct client contact, within the past 5 years; and

(c) abides by the social work ethical standards adopted under 37-22-201.

(3) An applicant who fails the examination may reapply to take the examination.

(4) An applicant is exempt from the examination requirement if the applicant satisfies the board that the applicant is licensed, certified, or registered under the laws of a state or territory of the United States that imposes substantially the same requirements as this chapter and that the applicant has passed an examination similar to that required by the board.

(5) As a prerequisite to the issuance of a license, the board shall require the applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation as provided in 37-1-307.

(6) If an applicant has a history of criminal convictions, then pursuant to 37-1-203, the applicant has the opportunity to demonstrate to the board that the applicant is sufficiently rehabilitated to warrant the public trust, and if the board determines that the applicant is not, the license may be denied."

Section 6. Coordination instruction. If House Bill No. 668 and [this act] are both passed and approved, then the section amending 37-23-202 in [this act] is void and 37-23-202 is amended to read as follows:

"37-23-202. Licensure requirements. (1) An applicant for licensure must have satisfactorily:

(a) completed a planned graduate program of 60 semester hours, primarily counseling in nature, 6 semester hours of which were earned in an advanced counseling practicum that resulted in a graduate degree from an institution accredited to offer a graduate program in counseling;

(b) completed 3,000 hours of counseling practice supervised by a licensed professional counselor or licensed member of an allied mental health profession, at least half of which was postdegree. The applicant must have each supervisor endorse the application for licensure, attesting to the number of hours supervised.

(c) passed an examination prepared and administered by:

(i) the national board of certified counselors; or

(ii) the national academy of certified clinical mental health counselors; and

(d) completed an application.

(2) The board shall provide by rule for licensure of a person who possesses a graduate degree that consists of a minimum of 45 semester hours primarily related to counseling and that is from an institution accredited to offer a graduate program in counseling, by specifying the additional graduate credit hours necessary to fulfill the requirements of subsection (1)(a) in counseling courses in an approved program within a period of 5 years.

(3) As a prerequisite to the issuance of a license, the board shall require the applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation as provided in 37-1-307.

(4) If an applicant has a history of criminal convictions, then pursuant to 37-1-203, the applicant has the opportunity to demonstrate to the board that the applicant is sufficiently rehabilitated to warrant the public trust, and if the board determines that the applicant is not, the license may be denied."

Section 7. Applicability. [This act] applies to applications for licensure submitted on or after [the effective date of this act].

Approved May 8, 2007

CHAPTER NO. 461

[SB 384]

AN ACT ALLOWING A PRIVATE LANDOWNER TO HAVE AN ABANDONED VEHICLE REMOVED FROM THE LANDOWNER'S PROPERTY AFTER MEETING A 5-DAY WAITING PERIOD; AND AMENDING SECTION 61-12-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-12-401, MCA, is amended to read:

"61-12-401. Taking vehicle into custody. (1) The following law enforcement agencies may take into custody any motor vehicle found abandoned for a period of 48 hours or more on a public highway or for a period of 5 days or more on a city street, public property, or private property:

(a) the Montana highway patrol if the vehicle is upon the right-of-way of any public highway other than a county road;

(b) the sheriff of the county if the vehicle is upon the right-of-way of any county road;

(c) the city police if the vehicle is upon a city street.

(2) The Montana highway patrol, sheriff of the county, or city police may use their personnel, equipment, and facilities for the removal and storage of the vehicle or may hire other personnel, equipment, and facilities for those purposes. The sheriff of the county or the chief of police of the city in which the vehicle is being stored may request reimbursement of the hired removal charge from the motor vehicle recycling and disposal program of the department of environmental quality in an amount and manner established by rules adopted by the department of environmental quality for this purpose.

(3) *(a)* At the request of the owner or person in lawful possession or control of the private property, the sheriff of the county in which the vehicle is located or the city police of the city in which the vehicle is located may remove and hold it in the manner and upon the conditions provided in subsections (1) and (2).

(b) A private landowner owning property considered to be part of ways of this state open to the public, as defined in 61-8-101, who can demonstrate meeting the 5-day waiting period in subsection (1) by calling one of the law enforcement agencies listed in subsection (1) at the start of the 5-day period may remove the abandoned vehicle within the conditions provided for in subsections (1) and (2)."

Approved May 8, 2007

CHAPTER NO. 462

[SB 386]

AN ACT INCREASING THE PENALTY FOR PERSONS WHO DRIVE ON PUBLIC HIGHWAYS WITHOUT OBTAINING A VALID DRIVER'S LICENSE; AND AMENDING SECTIONS 61-5-102 AND 61-5-212, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-102, MCA, is amended to read:

"61-5-102. Drivers to be licensed — *penalties.* (1) *(a)* Except as provided in 61-5-104, a person may not drive a motor vehicle upon a highway in this state unless the person has a valid Montana driver's license. A person may not receive a Montana driver's license until the person surrenders to the department all valid driver's licenses issued by any other jurisdiction. A person may not have in the person's possession or under the person's control more than one valid Montana driver's license at any time.

(b) Except as provided in subsection (1)(c), the penalty for a first violation of this section is a fine of not more than $500 or imprisonment for not more than 6 months, or by both fine and imprisonment. The penalty for second and subsequent violations of this section is a fine of not more than $500 and imprisonment for not less than 2 days or more than 6 months.

(c) A person who is eligible to hold a driver's license and has obtained a valid driver's license but has not renewed the license as provided in 61-5-111(3)(c) is not subject to the penalties in subsection (1)(b).

(2) (a) A license is not valid for the operation of a motorcycle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement".

(b) A license is not valid for the operation of a commercial motor vehicle unless the holder of the license has completed the requirements of 61-5-110, the license has been clearly marked with the words "commercial driver's license", and the license bears the proper endorsement for:

(i) the specific vehicle type or types being operated; or

(ii) the passengers or type or types of cargo being transported.

(3) When a city or town requires a licensed driver to obtain a local driving license or permit, a license or permit may not be issued unless the applicant presents a state driver's license valid under the provisions of this chapter."

Section 2. Section 61-5-212, MCA, is amended to read:

"61-5-212. Driving while license suspended or revoked — penalty — *second offense of driving without valid license or licensing exemption* — seizure of vehicle or rendering vehicle inoperable. (1) (a) A person commits the offense of driving a motor vehicle *without a valid license or without statutory exemption or* during a suspension or revocation period if the person drives:

(i) a motor vehicle on any public highway of this state at a time when the person's privilege to do so is suspended or revoked in this state or any other state; ~~or~~

(ii) a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled in this state or any other state or the person is disqualified from operating a commercial motor vehicle under federal regulations.*; or*

(iii) a motor vehicle on any public highway of this state without possessing a valid driver's license, as provided in 61-5-102, or without proof of a statutory exemption, as provided in 61-5-104.

(b) *(i) Except as provided in subsection (1)(b)(ii), a* ~~A~~ person convicted of the offense of driving a motor vehicle *without a valid driver's license or without proof of a statutory exemption for the second time or driving* during a suspension or revocation period shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than $500~~, except that if~~.

(ii) If the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-401 or 61-8-406 or a similar offense under the laws of any other state or the suspension was under 61-8-402 or 61-8-409 or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the person shall be punished by imprisonment for a term of not less than 2 days or more than 6 months or a fine not to exceed $2,000, or both, and in addition, the court may order the person to perform up to 40 hours of community service.

(2) (a) The department upon receiving a record of the conviction of any person under this section upon a charge of driving a noncommercial vehicle while the person's driver's license or privilege to drive was suspended or revoked shall extend the period of suspension or revocation for an additional 1-year period.

(b) Upon receiving a record of the conviction of any person under this section upon a charge of driving a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or canceled or the person was disqualified from operating a commercial motor vehicle under federal

regulations, the department shall suspend the person's commercial driver's license in accordance with 61-8-802.

(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, or 61-8-410 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.

(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who is determined to be without fault.

(6) A court may not suspend or defer imposition of penalties provided by this section."

Approved May 8, 2007

CHAPTER NO. 463

[SB 387]

AN ACT REQUIRING HEALTH INSURERS TO DISCLOSE INFORMATION ABOUT COVERED BENEFITS FOR CANCER SCREENING; AMENDING SECTIONS 2-18-704, 33-22-244, 33-22-262, 33-22-521, 33-31-102, AND 33-31-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

WHEREAS, early detection of cancer can save lives and improve and increase treatment options for patients; and

WHEREAS, screening tests for cancer are the main tool for early detection of cancer; and

WHEREAS, health insurers may not routinely provide information on the coverage provided for cancer screenings; and

WHEREAS, state law requires health insurers to provide a summary of benefits offered to consumers; and

WHEREAS, because of the importance of early detection, consumers deserve and will benefit from information about the types of cancer screenings that a policy covers.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-704, MCA, is amended to read:

"2-18-704. Mandatory provisions. (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions of a defined benefit plan provided by law or, in the case of the defined contribution plan provided in Title 19, chapter 3, part 21, a member with at least 5 years of service and who is at least age 50 while in covered employment to remain a member of the group until the member

becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)(a) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and subsequently terminates membership may not rejoin the group plan unless the person again serves as a legislator.

(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues to be an inactive vested member of the judges' retirement system as provided by

19-5-301. The judge shall notify the department of administration in writing within 90 days of the end of the judge's judicial service of the judge's choice to continue membership in the group plan.

(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or

(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended.

(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.

(5) A person electing to remain a member of the group under subsection (1), (2), (3), or (4) shall pay the full premium for coverage and for that of the person's covered dependents.

(6) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation.

(7) An insurance contract or plan issued under this part must include coverage for treatment of inborn errors of metabolism, as provided for in 33-22-131.

(8) An insurance contract or plan issued under this part must include substantially equivalent or greater coverage for outpatient self-management training and education for the treatment of diabetes and certain diabetic equipment and supplies as provided in 33-22-129.

(9) Prior to issuance of an insurance contract or plan under this part, written informational materials describing the contract's or plan's cancer screening coverages must be provided to a prospective group or plan member."

Section 2. Section 33-22-244, MCA, is amended to read:

"33-22-244. Disclosure standards — individual policy. (1) In order to provide for full and fair disclosure in the sale of disability insurance, an individual disability insurance policy may not be delivered or issued for delivery in this state unless an outline of coverage is filed with and approved by the insurance commissioner in accordance with 33-1-501 and is delivered to the applicant at the time the application is made.

(2) The outline of coverage must include:

(a) a general description of the principal benefits and coverages provided by the policy;

~~(b)~~*(b)* a general description of the insured's financial responsibility under the policy, including, if applicable, the amount of the deductible, the amount or percentage of copayment, and the maximum annual out-of-pocket expenses to be paid by the insured;

~~(c)~~*(c)* a statement of the maximum lifetime benefit available under the policy;

~~(d)~~*(d)* a statement of the estimated periodic premium to be paid by the insured;

~~(e)~~*(e)* a general description of the factors or case characteristics that the insurer may consider in establishing or changing the premiums and, if applicable, in determining the insurability of the applicant;

~~(f)~~*(f)* a prominently displayed statement of the insured's responsibility for payment of billed charges beyond those charges reimbursed by the insurer when the insured uses health care services from a health care provider who is outside a network of health care providers used by the insurer; and

~~(g)~~*(g)* a general description of the trend of premium increases or decreases for comparable policies issued by the insurer during the preceding 5 years, if the trend data is available.

(3) The outline of coverage may include any other information that the insurer considers relevant to the applicant's selection of an appropriate individual disability policy.

(4) An insurer or producer shall provide to an individual, upon request, an outline of coverage for any health benefit product marketed to the general public. The outline of coverage provided under this subsection may exclude the statement of the estimated periodic premium to be paid by the insured.

(5) Prior to issuance of an individual disability insurance policy, written informational materials describing the policy's cancer screening coverages must be provided to a potential applicant. The informational materials are not subject to filing with and approval of the insurance commissioner."

Section 3. Section 33-22-262, MCA, is amended to read:

"33-22-262. (Temporary) Limited coverage individual health benefit plan or managed care plan — demonstration project — criteria — rulemaking. (1) The commissioner of insurance may approve a 12-month demonstration project that allows a health insurance issuer to offer a limited coverage individual health benefit plan or managed care plan. The criteria for approval of a 12-month demonstration project include but are not limited to the following:

(a) the plan must include significant outpatient services and may not consist of inpatient benefits only;

(b) the plan may be offered only to residents of Montana who have been uninsured for 90 days or longer, except that at the discretion of the health insurance issuer, the plan may be offered to residents of Montana if the applicant:

(i) lost eligibility for a health plan because of age; or

(ii) lost coverage under a federally funded health insurance program, such as medicare, medicaid, or the Montana children's health insurance program, because of age or failure to meet financial guidelines; and

(c) the commissioner may adopt rules that describe additional criteria to be used to determine approval of demonstration projects. Additional criteria must relate to the purpose as stated in 33-22-261(2).

(2) The health benefit plan or managed care plan must specify the health services that are included and must specifically list the health services that will be limited or not be covered from the partial list of state-required coverage in subsection (3). The limitations and exclusions of the plan must be prominently displayed on the application and on the outline of coverage required by 33-22-244.

(3) Subject to subsection (4), if specifically listed as a limitation or an exclusion of coverage in the proposal, a demonstration project may limit or exclude the following health services from its health benefit plan or managed care plan:

(a) coverage of a newborn, as provided in 33-22-301, 33-30-1001, and ~~33-31-301(3)(e)~~ *33-31-301(3)(e)*, which may be subject only to the same extent of the limitations and exclusions contained in the parent's policy;

(b) coverage for severe mental illness, as provided in 33-22-706;

(c) coverage for mental health services, as provided in ~~33-31-301(3)(g)(i)~~ *33-31-301(3)(g)(i)*;

(d) benefits for emergency services, as provided in 33-36-201 and 33-36-205;

(e) coverage for certain basic health care services described in 33-31-102(2)(b) and (2)(h)(v);

(f) services provided by a specific category of licensed health care practitioner to be provided to the covered person for a health-related condition in a health benefit plan or managed care plan, including services described in 33-22-125 and 33-30-1017;

(g) coverage for diabetic education, treatment, services, and supplies, as provided in 33-22-129; or

(h) coverage for treatment of inborn errors of metabolism, as provided in 33-22-131.

(4) All health benefit plan and managed care plan demonstration projects are subject to the following provisions:

(a) the requirement that any plan that covers physical illness generally must cover severe mental illness in a way that is no less favorable than that level provided for other physical illness generally as required by federal law;

(b) the prohibition against discrimination in 49-2-309;

(c) except as provided in subsection (3)(d), the provisions in Title 33, chapter 36, regarding network adequacy and quality assurance; and

(d) all other applicable provisions of Title 33, except those listed in subsection (3).

(5) Upon a renewal request and approval by the insurance commissioner, a demonstration project may be renewed for additional 12-month increments for a maximum total of 5 years. (Terminates June 30, 2009—sec. 14, Ch. 325, L. 2003.)"

Section 4. Section 33-22-521, MCA, is amended to read:

"33-22-521. Disclosure standards — group policy. (1) In order to provide for full and fair disclosure in the sale of disability insurance, a group disability insurance policy may not be delivered or issued for delivery in this state unless an outline of coverage is filed with and approved by the insurance commissioner in accordance with 33-1-501 and is delivered to the applicant at the time the application is made.

(2) The outline of coverage must include:

(a) a general description of the principal benefits and coverages provided by the policy;

~~(b)~~*(b)* a general description of the insured's financial responsibility under the policy, including, if applicable, the amount of the deductible, the amount or percentage of copayment, and the maximum annual out-of-pocket expenses to be paid by the insured;

~~(c)~~*(c)* a statement of the maximum lifetime benefit available under the policy;

~~(d)~~*(d)* a statement of the estimated periodic premium to be paid by the insured;

~~(e)~~*(e)* a general description of the factors or case characteristics that the insurer may consider in establishing or changing the premiums and, if applicable, in determining the insurability of the applicant;

~~(f)~~*(f)* a prominently displayed statement of the insured's responsibility for payment of billed charges beyond those charges reimbursed by the insurer when the insured uses health care services from a health care provider who is outside a network of health care providers used by the insurer; and

~~(g)~~*(g)* a general description of the trend of premium increases or decreases for comparable policies issued by the insurer during the preceding 5 years, if the trend data is available.

(3) If applicable, the outline of coverage must disclose that the policy does not contain coverage for mental illness or chemical dependency.

(4) The outline of coverage may include any other information that the insurer considers relevant to the applicant's selection of an appropriate group disability policy.

(5) An insurer or producer shall provide to an individual, upon request, an outline of coverage for any health benefit product marketed to the general public. The outline of coverage provided under this subsection may exclude the statement of the estimated periodic premium to be paid by the insured.

(6) An outline of coverage must also be sent to an employee when an employee is sent a certificate of insurance.

(7) Prior to issuance of a group disability insurance policy, written informational materials describing the policy's cancer screening coverages must be provided to a prospective applicant. The informational materials are not subject to filing with and approval of the insurance commissioner."

Section 5. Section 33-31-102, MCA, is amended to read:

"33-31-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Affiliation period" means a period that, under the terms of the health insurance coverage offered by a health maintenance organization, must expire before the health insurance coverage becomes effective.

(2) "Basic health care services" means:

(a) consultative, diagnostic, therapeutic, and referral services by a provider;

(b) inpatient hospital and provider care;

(c) outpatient medical services;

(d) medical treatment and referral services;

(e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to ~~33-31-301(3)(e)~~ *33-31-301(3)(e)*;

(f) care and treatment of mental illness, alcoholism, and drug addiction;

(g) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(h) preventive health services, including:

(i) immunizations;

(ii) well-child care from birth;

(iii) periodic health evaluations for adults;

(iv) voluntary family planning services;

(v) infertility services; and

(vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction;

(i) minimum mammography examination, as defined in 33-22-132;

(j) outpatient self-management training and education for the treatment of diabetes along with certain diabetic equipment and supplies as provided in 33-22-129; and

(k) treatment and medical foods for inborn errors of metabolism. "Medical foods" and "treatment" have the meanings provided for in 33-22-131.

(3) "Commissioner" means the commissioner of insurance of the state of Montana.

(4) "Enrollee" means a person:

(a) who enrolls in or contracts with a health maintenance organization;

(b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or

(c) on whose behalf the health maintenance organization contracts to receive health care services.

(5) "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.

(6) "Health care services" means:

(a) the services included in furnishing medical or dental care to a person;

(b) the services included in hospitalizing a person;

(c) the services incident to furnishing medical or dental care or hospitalization; or

(d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

(7) "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

(8) "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers. This subsection does not limit methods of provider payments made by health maintenance organizations.

(9) "Insurance producer" means an individual, partnership, or corporation appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

(10) "Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

(11) "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

(12) "Point-of-service option" means a delivery system that permits an enrollee of a health maintenance organization to receive health care services from a provider who is, under the terms of the enrollee's contract for health care services with the health maintenance organization, not on the provider panel of the health maintenance organization.

(13) "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, or advanced practice registered nurse, as specifically listed in 37-8-202, who treats any illness or injury within the scope and limitations of the provider's practice or any other person who is licensed or otherwise authorized in this state to furnish health care services.

(14) "Provider panel" means those providers with whom a health maintenance organization contracts to provide health care services to the health maintenance organization's enrollees.

(15) "Purchaser" means the individual, employer, or other entity, but not the individual certificate holder in the case of group insurance, that enters into a health care services agreement.

(16) "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization becomes insolvent."

Section 6. Section 33-31-301, MCA, is amended to read:

"33-31-301. (Temporary) Evidence of coverage — schedule of charges for health care services. (1) Each enrollee residing in this state is entitled to an evidence of coverage. The health maintenance organization shall issue the evidence of coverage, except that if the enrollee obtains coverage through an insurance policy issued by an insurer or a contract issued by a health service corporation, whether by option or otherwise, the insurer or the health service corporation shall issue the evidence of coverage.

(2) A health maintenance organization may not issue or deliver an enrollment form, an evidence of coverage, or an amendment to an approved enrollment form or evidence of coverage to a person in this state before a copy of the enrollment form, the evidence of coverage, or the amendment to the approved enrollment form or evidence of coverage is filed with and approved by the commissioner in accordance with 33-1-501.

(3) An evidence of coverage issued or delivered to a person residing in this state may not contain a provision or statement that is untrue, misleading, or deceptive as defined in 33-31-312(1). The evidence of coverage must contain:

(a) a clear and concise statement, if a contract, or a reasonably complete summary, if a certificate, of:

(i) the health care services and the insurance or other benefits, if any, to which the enrollee is entitled;

(ii) any limitations on the services, kinds of services, or benefits to be provided, including any deductible or copayment feature;

(iii) the location at which and the manner in which information is available as to how services may be obtained;

(iv) the total amount of payment for health care services and the indemnity or service benefits, if any, that the enrollee is obligated to pay with respect to individual contracts; and

(v) a clear and understandable description of the health maintenance organization's method for resolving enrollee complaints;

(b) definitions of geographical service area, emergency care, urgent care, out-of-area services, dependent, and primary provider if these terms or terms of similar meaning are used in the evidence of coverage and have an effect on the benefits covered by the plan. The definition of geographical service area need not be stated in the text of the evidence of coverage if the definition is adequately described in an attachment that is given to each enrollee along with the evidence of coverage.

(c) clear disclosure of each provision that limits benefits or access to service in the exclusions, limitations, and exceptions sections of the evidence of coverage. The exclusions, limitations, and exceptions that must be disclosed include but are not limited to:

(i) emergency and urgent care;

(ii) restrictions on the selection of primary or referral providers;

(iii) restrictions on changing providers during the contract period;

(iv) out-of-pocket costs, including copayments and deductibles;

(v) charges for missed appointments or other administrative sanctions;

(vi) restrictions on access to care if copayments or other charges are not paid; and

(vii) any restrictions on coverage for dependents who do not reside in the service area.

~~(d)~~*(d)* clear disclosure of any benefits for home health care, skilled nursing care, kidney disease treatment, diabetes, maternity benefits for dependent children, alcoholism and other drug abuse, and nervous and mental disorders;

~~(e)~~*(e)* except as provided in 33-22-262, a provision requiring immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of an enrollee or the enrollee's dependents;

~~(f)~~*(f)* a provision providing coverage as required in 33-22-133;

~~(g)~~*(g)* except as provided in 33-22-262, a provision requiring medical treatment and referral services to appropriate ancillary services for mental illness and for the abuse of or addiction to alcohol or drugs in accordance with the limits and coverage provided in Title 33, chapter 22, part 7; however:

(i) after the primary care physician refers an enrollee for treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction, the health maintenance organization may not limit the enrollee to a health maintenance organization provider for the treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction;

(ii) if an enrollee chooses a provider other than the health maintenance organization provider for treatment and referral services, the enrollee's designated provider shall limit treatment and services to the scope of the referral in order to receive payment from the health maintenance organization;

(iii) the amount paid by the health maintenance organization to the enrollee's designated provider may not exceed the amount paid by the health maintenance organization to one of its providers for equivalent treatment or services;

(iv) the provisions of this subsection ~~(3)(g)~~ *(3)(g)* do not apply to services for mental illness provided under the Montana medicaid program as established in Title 53, chapter 6;

~~(h)~~*(h)* a provision as follows:

"Conformity With State Statutes: Any provision of this evidence of coverage that on its effective date is in conflict with the statutes of the state in which the insured resides on that date is amended to conform to the minimum requirements of those statutes."

~~(i)~~*(i)* a provision that the health maintenance organization shall issue, without evidence of insurability, to the enrollee, dependents, or family members continuing coverage on the enrollee, dependents, or family members:

(i) if the evidence of coverage or any portion of it on an enrollee, dependents, or family members covered under the evidence of coverage ceases because of termination of employment or termination of membership in the class or classes eligible for coverage under the policy or because the employer discontinues the business or the coverage;

(ii) if the enrollee had been enrolled in the health maintenance organization for a period of 3 months preceding the termination of group coverage; and

(iii) if the enrollee applied for continuing coverage within 31 days after the termination of group coverage. The conversion contract may not exclude, as a

preexisting condition, any condition covered by the group contract from which the enrollee converts.

~~(j)~~*(j)* a provision that clearly describes the amount of money an enrollee shall pay to the health maintenance organization to be covered for basic health care services.

(4) A health maintenance organization may amend an enrollment form or an evidence of coverage in a separate document if the separate document is filed with and approved by the commissioner in accordance with 33-1-501 and issued to the enrollee.

(5) (a) Except as provided in 33-22-262, a health maintenance organization shall provide the same coverage for newborn infants, required by subsection ~~(3)(e)~~ *(3)(e)*, as it provides for enrollees, except that for newborn infants, there may be no waiting or elimination periods. A health maintenance organization may not assess a deductible or reduce benefits applicable to the coverage for newborn infants unless the deductible or reduction in benefits is consistent with the deductible or reduction in benefits applicable to all covered persons.

(b) Except as provided in 33-22-262, a health maintenance organization may not issue or amend an evidence of coverage in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an enrollee or dependents from and after the moment of birth.

(c) If a health maintenance organization requires payment of a specific fee to provide coverage of a newborn infant beyond 31 days of the date of birth of the infant, the evidence of coverage may contain a provision that requires notification to the health maintenance organization, within 31 days after the date of birth, of the birth of an infant and payment of the required fee.

(6) The provisions of 33-1-501 govern the filing and approval of health maintenance organization forms.

(7) The commissioner may require a health maintenance organization to submit any relevant information considered necessary in determining whether to approve or disapprove a filing made pursuant to this section.

(8) Prior to issuance of an evidence of coverage, written informational materials describing the contract's cancer screening coverages must be provided to a prospective applicant. The informational materials are not subject to filing with and approval of the insurance commissioner. (Terminates June 30, 2009—sec. 14, Ch. 325, L. 2003.)

33-31-301. (Effective July 1, 2009) Evidence of coverage — schedule of charges for health care services. (1) Each enrollee residing in this state is entitled to an evidence of coverage. The health maintenance organization shall issue the evidence of coverage, except that if the enrollee obtains coverage through an insurance policy issued by an insurer or a contract issued by a health service corporation, whether by option or otherwise, the insurer or the health service corporation shall issue the evidence of coverage.

(2) A health maintenance organization may not issue or deliver an enrollment form, an evidence of coverage, or an amendment to an approved enrollment form or evidence of coverage to a person in this state before a copy of the enrollment form, the evidence of coverage, or the amendment to the approved enrollment form or evidence of coverage is filed with and approved by the commissioner in accordance with 33-1-501.

(3) An evidence of coverage issued or delivered to a person resident in this state may not contain a provision or statement that is untrue, misleading, or deceptive as defined in 33-31-312(1). The evidence of coverage must contain:

(a) a clear and concise statement, if a contract, or a reasonably complete summary, if a certificate, of:

(i) the health care services and the insurance or other benefits, if any, to which the enrollee is entitled;

(ii) any limitations on the services, kinds of services, or benefits to be provided, including any deductible or copayment feature;

(iii) the location at which and the manner in which information is available as to how services may be obtained;

(iv) the total amount of payment for health care services and the indemnity or service benefits, if any, that the enrollee is obligated to pay with respect to individual contracts; and

(v) a clear and understandable description of the health maintenance organization's method for resolving enrollee complaints;

(b) definitions of geographical service area, emergency care, urgent care, out-of-area services, dependent, and primary provider if these terms or terms of similar meaning are used in the evidence of coverage and have an effect on the benefits covered by the plan. The definition of geographical service area need not be stated in the text of the evidence of coverage if the definition is adequately described in an attachment that is given to each enrollee along with the evidence of coverage.

(c) clear disclosure of each provision that limits benefits or access to service in the exclusions, limitations, and exceptions sections of the evidence of coverage. The exclusions, limitations, and exceptions that must be disclosed include but are not limited to:

(i) emergency and urgent care;

(ii) restrictions on the selection of primary or referral providers;

(iii) restrictions on changing providers during the contract period;

(iv) out-of-pocket costs, including copayments and deductibles;

(v) charges for missed appointments or other administrative sanctions;

(vi) restrictions on access to care if copayments or other charges are not paid; and

(vii) any restrictions on coverage for dependents who do not reside in the service area.

~~(d)~~*(d)* clear disclosure of any benefits for home health care, skilled nursing care, kidney disease treatment, diabetes, maternity benefits for dependent children, alcoholism and other drug abuse, and nervous and mental disorders;

~~(e)~~*(e)* a provision requiring immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of an enrollee or the enrollee's dependents;

~~(f)~~*(f)* a provision providing coverage as required in 33-22-133;

~~(g)~~*(g)* a provision requiring medical treatment and referral services to appropriate ancillary services for mental illness and for the abuse of or addiction

to alcohol or drugs in accordance with the limits and coverage provided in Title 33, chapter 22, part 7; however:

(i) after the primary care physician refers an enrollee for treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction, the health maintenance organization may not limit the enrollee to a health maintenance organization provider for the treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction;

(ii) if an enrollee chooses a provider other than the health maintenance organization provider for treatment and referral services, the enrollee's designated provider shall limit treatment and services to the scope of the referral in order to receive payment from the health maintenance organization;

(iii) the amount paid by the health maintenance organization to the enrollee's designated provider may not exceed the amount paid by the health maintenance organization to one of its providers for equivalent treatment or services;

(iv) the provisions of this subsection ~~(3)(g)~~ *(3)(g)* do not apply to services for mental illness provided under the Montana medicaid program as established in Title 53, chapter 6;

~~(h)~~*(h)* a provision as follows:

"Conformity With State Statutes: Any provision of this evidence of coverage that on its effective date is in conflict with the statutes of the state in which the insured resides on that date is amended to conform to the minimum requirements of those statutes."

~~(i)~~*(i)* a provision that the health maintenance organization shall issue, without evidence of insurability, to the enrollee, dependents, or family members continuing coverage on the enrollee, dependents, or family members:

(i) if the evidence of coverage or any portion of it on an enrollee, dependents, or family members covered under the evidence of coverage ceases because of termination of employment or termination of membership in the class or classes eligible for coverage under the policy or because the employer discontinues the business or the coverage;

(ii) if the enrollee had been enrolled in the health maintenance organization for a period of 3 months preceding the termination of group coverage; and

(iii) if the enrollee applied for continuing coverage within 31 days after the termination of group coverage. The conversion contract may not exclude, as a preexisting condition, any condition covered by the group contract from which the enrollee converts.

~~(j)~~*(j)* a provision that clearly describes the amount of money an enrollee shall pay to the health maintenance organization to be covered for basic health care services.

(4) A health maintenance organization may amend an enrollment form or an evidence of coverage in a separate document if the separate document is filed with and approved by the commissioner in accordance with 33-1-501 and issued to the enrollee.

(5) (a) A health maintenance organization shall provide the same coverage for newborn infants, required by subsection ~~(3)(c)~~ *(3)(e)*, as it provides for enrollees, except that for newborn infants, there may be no waiting or elimination periods. A health maintenance organization may not assess a

deductible or reduce benefits applicable to the coverage for newborn infants unless the deductible or reduction in benefits is consistent with the deductible or reduction in benefits applicable to all covered persons.

(b) A health maintenance organization may not issue or amend an evidence of coverage in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an enrollee or dependents from and after the moment of birth.

(c) If a health maintenance organization requires payment of a specific fee to provide coverage of a newborn infant beyond 31 days of the date of birth of the infant, the evidence of coverage may contain a provision that requires notification to the health maintenance organization, within 31 days after the date of birth, of the birth of an infant and payment of the required fee.

(6) The provisions of 33-1-501 govern the filing and approval of health maintenance organization forms.

(7) The commissioner may require a health maintenance organization to submit any relevant information considered necessary in determining whether to approve or disapprove a filing made pursuant to this section.

(8) Prior to issuance of evidence of coverage, written informational materials describing the contract's cancer screening coverages must be provided to a potential applicant. The informational materials are not subject to filing with and approval of the insurance commissioner."

Section 7. Effective date. [This act] is effective January 1, 2008.

Approved May 8, 2007

CHAPTER NO. 464

[SB 404]

AN ACT CLARIFYING LIABILITY FOR FIREFIGHTERS; PROVIDING FOR LEGAL REPRESENTATION OF FIREFIGHTERS; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND LOCAL GOVERNMENTAL FIRE AGENCIES TO PAY ATTORNEY FEES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Liability of firefighters. (1) A firewarden, firefighter, or officer or employee of a state or governmental fire agency is not criminally liable for acts or omissions while fighting fires other than acts or omissions committed with demonstrable criminal intent.

(2) For the purposes of this section, "governmental fire agency" means a fire protection entity organized under Title 7, chapter 33.

Section 2. Legal representation for state firefighters. (1) The department shall pay reasonable attorney fees and costs for outside legal counsel to defend a firefighter employed by the department against a criminal prosecution for a good faith act or omission by the firefighter arising from the firefighter's performance of duties during a wildfire. The department may determine whether the firefighter's act or omission was in good faith and arising from the performance of the firefighter's duties during a wildfire. The

requirement to pay attorney fees and costs does not apply to any postconviction legal proceedings.

(2) The department shall adopt rules to implement this section.

Section 3. Legal representation for firewarden, firefighter, or employee — local governmental fire agency. A local governmental fire agency shall pay reasonable attorney fees and costs for outside legal counsel to defend a firewarden, firefighter, or paid or volunteer employee of a local governmental fire agency against a criminal prosecution arising from an act or omission in the performance of duties on a fire or in fire training that is made in good faith and within the course and scope of employment of the firewarden, firefighter, or paid or volunteer employee. The local governmental fire agency may determine whether the act or omission of the firewarden, firefighter, or paid or volunteer employee was in good faith and arising from the performance of the employee's duties in a fire or in fire training. The requirement to pay attorney fees and costs does not apply to any postconviction legal proceedings.

Section 4. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 45, chapter 2, part 2, and the provisions of Title 45, chapter 2, part 2, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 76, chapter 13, part 1, and the provisions of Title 76, chapter 13, part 1, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 7, chapter 33, and the provisions of Title 7, chapter 33, apply to [section 3].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved May 8, 2007

CHAPTER NO. 465

[SB 411]

AN ACT REVISING ELIGIBILITY FOR ORDERS OF PROTECTION; PROVIDING THAT A VICTIM OF ASSAULT, AGGRAVATED ASSAULT, OR ASSAULT ON A MINOR IS ELIGIBLE FOR AN ORDER OF PROTECTION REGARDLESS OF THE INDIVIDUAL'S RELATIONSHIP TO THE OFFENDER; AMENDING SECTION 40-15-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-15-102, MCA, is amended to read:

"40-15-102. Eligibility for order of protection. (1) A person may file a petition for an order of protection if:

(a) the petitioner is in reasonable apprehension of bodily injury by the petitioner's partner or family member as defined in 45-5-206; or

(b) the petitioner is a victim of one of the following offenses committed by a partner or family member:

(i) assault as defined in 45-5-201;

(ii) aggravated assault as defined in 45-5-202;

(iii) intimidation as defined in 45-5-203;

(iv) partner or family member assault as defined in 45-5-206;

(v) criminal endangerment as defined in 45-5-207;

(vi) negligent endangerment as defined in 45-5-208;

(vii) assault on a minor as defined in 45-5-212;

(viii) assault with a weapon as defined in 45-5-213;

(ix) unlawful restraint as defined in 45-5-301;

(x) kidnapping as defined in 45-5-302;

(xi) aggravated kidnapping as defined in 45-5-303; or

(xii) arson as defined in 45-6-103.

(2) The following individuals are eligible to file a petition for an order of protection against the offender regardless of the individual's relationship to the offender:

(a) a victim of *assault as defined in 45-5-201, aggravated assault as defined in 45-5-202, assault on a minor as defined in 45-5-212,* stalking as defined in 45-5-220, incest as defined in 45-5-507, sexual assault as defined in 45-5-502, or sexual intercourse without consent as defined in 45-5-503; or

(b) a partner or family member of a victim of deliberate homicide as defined in 45-5-102 or mitigated deliberate homicide as defined in 45-5-103.

(3) A parent, guardian ad litem, or other representative of the petitioner may file a petition for an order of protection on behalf of a minor petitioner against the petitioner's abuser. At its discretion, a court may appoint a guardian ad litem for a minor petitioner.

(4) A guardian must be appointed for a minor respondent when required by Rule 17(c), Montana Rules of Civil Procedure, or by 25-31-602. An order of protection is effective against a respondent regardless of the respondent's age.

(5) A petitioner is eligible for an order of protection whether or not:

(a) the petitioner reports the abuse to law enforcement;

(b) charges are filed; or

(c) the petitioner participates in a criminal prosecution.

(6) If a petitioner is otherwise entitled to an order of protection, the length of time between the abusive incident and the petitioner's application for an order of protection is irrelevant."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 8, 2007

CHAPTER NO. 466

[SB 417]

AN ACT AMENDING THE DEFINITION OF SPECIALTY HOSPITAL; PROVIDING FOR ATTESTATION FOR LICENSING SPECIALTY HOSPITALS; PROVIDING FOR DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES RULEMAKING AUTHORITY; EXTENDING AND REVISING THE MORATORIUM ON LICENSING SPECIALTY HOSPITALS; AMENDING SECTIONS 50-5-101, 50-5-203, AND 50-5-245, MCA;

REPEALING SECTION 6, CHAPTER 365, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. ~~(Temporary)~~ Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys ambulatory surgical centers upon their requests and grants accreditation status to the ambulatory surgical centers that it finds meet its standards and requirements.

(3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

(4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (5), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

(6) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

(16) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.

(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

(19) "Department" means the department of public health and human services provided for in 2-15-2201.

(20) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(21) "Federal acts" means federal statutes for the construction of health care facilities.

(22) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.

(24) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(26) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(27) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(28) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Except as otherwise provided by law, services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:

(i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients; and

(ii) specialty hospitals.

(b) The term does not include critical access hospitals.

(29) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.

(31) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.

(32) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(33) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(34) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.

(35) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(36) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant,

or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(37) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(38) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(39) "Offer" means the representation by a health care facility that it can provide specific health services.

(40) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

(i) serves either adjudicated or nonadjudicated youth;

(ii) charges a fee for its services; and

(iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

(41) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

(42) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

(43) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(44) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(45) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(46) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

(47) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

(48) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(49) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(50) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.

(51) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(52) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(53) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(54) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(55) *(a)* "Specialty hospital" means a ~~specialty hospital as defined in 50-5-245~~ *subclass of hospital that is exclusively engaged in the diagnosis, care, or treatment of one or more of the following categories:*

(i) patients with a cardiac condition;

(ii) patients with an orthopedic condition;

(iii) patients undergoing a surgical procedure; or

(iv) patients treated for cancer-related diseases and receiving oncology services.

(b) For purposes of this subsection (55), a specialty hospital may provide other services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals as otherwise provided by law if the care encompasses 35% or less of the hospital services.

(c) The term "specialty hospital" does not include:

(i) psychiatric hospitals;

(ii) rehabilitation hospitals;

(iii) children's hospitals;

(iv) long-term care hospitals; or

(v) critical access hospitals.

(56) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

(57) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient. ~~(Terminates July 1, 2007—sec. 6, Ch. 365, L. 2005.)~~

~~**50-5-101. (Effective July 1, 2007) Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:~~

~~(1) "Accreditation" means a designation of approval.~~

~~(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys ambulatory surgical centers upon their requests and grants accreditation status to the ambulatory surgical centers that it finds meet its standards and requirements.~~

~~(3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.~~

~~(4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.~~

~~(5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.~~

~~(b) As used in this subsection (5), the following definitions apply:~~

~~(i) "Aged person" means a person as defined by department rule as aged.~~

~~(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.~~

~~(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.~~

~~(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.~~

~~(B) The term does not include the administration of prescriptive medications.~~

~~(6) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.~~

~~(7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.~~

~~(8) "Capital expenditure" means:~~

~~(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or~~

~~(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.~~

~~(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.~~

~~(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.~~

~~(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.~~

~~(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.~~

~~(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.~~

~~(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.~~

~~(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.~~

~~(16) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.~~

~~(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.~~

~~(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.~~

~~(19) "Department" means the department of public health and human services provided for in 2-15-2201.~~

~~(20) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.~~

~~(21) "Federal acts" means federal statutes for the construction of health care facilities.~~

~~(22) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.~~

~~(23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities,~~

~~whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.~~

~~(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.~~

~~(24) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.~~

~~(25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.~~

~~(26) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.~~

~~(27) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:~~

~~(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and~~

~~(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.~~

~~(28) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients.~~

~~(b) The term does not include critical access hospitals.~~

~~(29) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:~~

~~(a) an "infirmary—A" provides outpatient and inpatient care;~~

~~(b) an "infirmary—B" provides outpatient care only.~~

~~(30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.~~

~~(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.~~

~~(31) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.~~

~~(32) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.~~

~~(33) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.~~

~~(34) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.~~

~~(35) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.~~

~~(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.~~

~~(36) "Medical assistance facility" means a facility that meets both of the following:~~

~~(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.~~

~~(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.~~

~~(37) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill~~

~~patients, the rehabilitation of mentally ill individuals, or any combination of these services.~~

~~(38) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.~~

~~(39) "Offer" means the representation by a health care facility that it can provide specific health services.~~

~~(40) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:~~

~~(i) serves either adjudicated or nonadjudicated youth;~~

~~(ii) charges a fee for its services; and~~

~~(iii) provides all or part of its services in the outdoors.~~

~~(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.~~

~~(41) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.~~

~~(42) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.~~

~~(43) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.~~

~~(44) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.~~

~~(45) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.~~

~~(46) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.~~

~~(47) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.~~

~~(48) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.~~

~~(49) "Resident" means an individual who is in a long-term care facility or in a residential care facility.~~

~~(50) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.~~

~~(51) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired~~

~~individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.~~

~~(52) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.~~

~~(53) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.~~

~~(54) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.~~

~~(55) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.~~

~~(56) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient.~~"

Section 2. Section 50-5-203, MCA, is amended to read:

"50-5-203. Application for license. The procedure to apply for a license is as follows:

(1) At least 30 days prior to the opening of a facility and after that no later than the expiration date of the license, application is made to the department accompanied by the license fee.

(2) The application shall contain:

(a) the name and address of the applicant if an individual, the name and address of each member if a firm, partnership, or association, or the name and address of each officer if a corporation;

(b) the location of the facility;

(c) the name of the person or persons who will manage or supervise the facility;

(d) the number and type of patients or residents for which care is provided;

(e) any information which the department may require pertaining to the number, experience, and training of employees;

(f) information on ownership, contract, or lease agreement if operated by a person other than the owner.

(3) Applications must include attestation or supporting documentation required by the department pertaining to the licensure of specialty hospitals using the procedures provided in parts 1 and 2 of this chapter. The attestation may be used as the basis for the issuance of a provisional or temporary license."

Section 3. Section 50-5-245, MCA, is amended to read:

"50-5-245. ~~(Temporary)~~ Department to license specialty hospitals — standards — ~~definition~~ *rulemaking* — moratorium. (1) ~~The~~ *Subject to subsection (4), the* department shall license specialty hospitals using the

requirements for licensure of hospitals and the procedure provided for in parts 1 and 2 of this chapter.

(2) ~~As used in this section, "specialty hospital" means a specialty hospital as defined in 42 U.S.C. 1395nn~~ *The department shall adopt rules that are necessary to implement and administer this section.*

(3) Notwithstanding the requirements of subsection (1), the department may not license a specialty hospital until July 1, ~~2007~~ *2009*.

(4) A health care facility licensed by the department and in existence on [the effective date of this act] may not change its licensure status in order to qualify for licensure as a specialty hospital unless the health care facility is licensed as a hospital. ~~(Terminates July 1, 2007 — sec. 6, Ch. 365, L. 2005.)~~"

Section 4. Repealer. Section 6, Chapter 365, Laws of 2005, is repealed.

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Applicability. [This act] does not apply to a hospital existing prior to [the effective date of this act].

Approved May 8, 2007

CHAPTER NO. 467

[SB 436]

AN ACT ALLOWING A BOARD OF COUNTY COMMISSIONERS TO LEVY A FEE ON PROPERTY WITHIN A FIRE SERVICE AREA TO FUND WILDLAND FIRE PROTECTION SERVICES; AND AMENDING SECTION 7-33-2404, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2404, MCA, is amended to read:

"7-33-2404. Financing of fire service area — fee on structures — *fee on undeveloped land.* (1) In the resolution creating the fire service area and by resolution as necessary after creation of the fire service area, the board of county commissioners shall establish a schedule of rates to be charged to owners of structures *and owners of undeveloped land* that are benefited by the services offered by the fire service area.

(2) *(a)* The rates *for structures* must be applied on a fair and equal basis to all classes of structures benefited by the fire service area. *The fee charged to owners of structures is intended to be primarily used for structural fire prevention and suppression.*

(b) The rates for undeveloped land must be applied on a fair and equal basis to all classes of undeveloped land benefited by the fire service area. Undeveloped land does not include land located under structures subject to a fee under subsection (2)(a). The excluded land may not exceed 1 acre. The fee charged to owners of undeveloped land is intended to be primarily used for wildland fire prevention and suppression. The fee may not exceed 15 cents an acre up to a maximum of $250 for undeveloped land under single ownership. The fee may not be assessed on undeveloped land for which the owner pays a fee or tax to another public agency for wildland fire prevention and suppression.

(3) The board of county commissioners shall collect the funds necessary to operate the fire service area by charging the area rate as a special assessment on

the owners of structures *and undeveloped land* and shall collect the assessments with the general taxes of the county. The assessments are a lien on the assessed property.

(4) The board of county commissioners or the trustees, if the fire service area is governed by trustees under 7-33-2403, may pledge the income of the fire service area to secure financing necessary to procure equipment and buildings to house the equipment. The outstanding amount of the indebtedness may not exceed 1.1% of the total assessed value of taxable property, determined as provided in 15-8-111, within the area, as ascertained by the last assessment for state and county taxes prior to the incurring of the indebtedness.

(5) If a fire service area is reduced or eliminated by annexation of all or a portion of the fire service area into a municipality, then the county commissioners or trustees of the fire service area shall notify the annexing municipality in order to prevent the property owners of the area to be annexed from assuming financial responsibility to both the municipality and the fire service area."

Approved May 8, 2007

CHAPTER NO. 468

[SB 439]

AN ACT CREATING THE MINERAL ROYALTY BACKUP WITHHOLDING ACT; PROVIDING DEFINITIONS; REQUIRING REMITTORS TO WITHHOLD TAXES ON ROYALTY PAYMENTS MADE TO ROYALTY OWNERS; PROVIDING EXCEPTIONS TO THE WITHHOLDING TAX; MAKING REMITTORS LIABLE FOR PAYMENT OF WITHHOLDING TAXES; PROVIDING A WITHHOLDING TAX RATE AND REMITTANCE SCHEDULE; PROVIDING FOR PENALTIES AND INTEREST FOR FAILURE TO REMIT TAX; REQUIRING REMITTORS TO PROVIDE ANNUAL STATEMENTS TO ROYALTY OWNERS AND THE DEPARTMENT OF REVENUE; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 12] may be cited as the "Mineral Royalty Backup Withholding Act".

Section 2. Definitions. As used in [sections 1 through 12], the following definitions apply:

(1) "Mineral" has the same meaning as provided in 15-38-103.

(2) "Publicly traded partnership" means a publicly traded partnership as defined in section 7704 of the Internal Revenue Code, 26 U.S.C. 7704, that is not treated as a corporation.

(3) "Remittor" means an individual, entity, or trust that makes royalty payments to royalty owners.

(4) "Royalty owner" means a person or entity entitled to receive periodic payments for a nonworking interest in the production of oil or gas or in the severance of other minerals from the mineral estate.

Section 3. Withholding required on mineral royalty payments. Except as provided in [section 4], each remittor shall withhold from each royalty

payment made to a royalty owner an amount equal to 6% of the net amount payable to the royalty owner.

Section 4. Withholding — no application under certain conditions. (1) The provisions of [sections 1 through 12] do not apply to royalty payments made to a royalty owner if the royalty owner is:

(a) the United States or an agency of the federal government, this state or a political subdivision of this state, or another state or a political subdivision of another state;

(b) a federally recognized Indian tribe with respect to on-reservation oil and gas production pursuant to a lease entered into under the Indian Mineral Leasing Act of 1938, 25 U.S.C. 396a through 396g;

(c) the United States as trustee for individual Indians;

(d) a publicly traded partnership;

(e) an organization that is exempt from taxation under 15-31-102; or

(f) the same person or entity as the remittor.

(2) (a) The provisions of [sections 1 through 12] do not apply to a remittor that produces less than 100,000 barrels of oil and less than 500 million cubic feet of gas annually. The department shall determine a remittor's annual production of oil and gas based upon a 3-year rolling average of the remittor's annual production as reported by the remittor to the Montana board of oil and gas conservation.

(b) Each producer that is exempted from withholding under subsection (2)(a) shall make an annual return to report royalty payments that exceed the dollar amounts in subsection (3). The return must be made under rules adopted by the department and be as nearly identical as possible to federal rules for internal revenue service form 1099 under section 6041, et seq., of the Internal Revenue Code, 26 U.S.C. 6041, et seq.

(c) Each year, a publicly traded partnership that is exempt from withholding under subsection (1)(d) shall transmit to the department, in an electronic format approved by the department, each partner's U.S. department of the treasury schedule K-1, form 1065 or 1065-B, as applicable, filed electronically for the year with the internal revenue service.

(d) A royalty owner that is a publicly traded partnership or an organization that is exempt from taxation under 15-31-102 shall report to the remittor and department under oath, on a form prescribed by the department, all information necessary to establish that the remittor is not required under [section 3] to withhold royalty payments made to the partnership or organization.

(3) If the royalty payment made to a royalty owner subject to withholding under the provisions of [sections 1 through 12] is less than $166 for the current withholding period or is less than $2,000 if the payment is annualized, then the department may grant a remittor's request to forego withholding the tax from the royalty payment made to that royalty owner for the current withholding period or, if applicable, the royalty payments for the annual period.

(4) The department may, by rule, establish minimum royalty amounts subject to withholding under the provisions of [sections 1 through 12], other than for oil and gas production, if the department determines that the withholding against the minimal amount of royalties is inefficient.

Section 5. Remittor liable for withholding taxes and statements — liability mitigation — sufficiency of mailing address. (1) Each remittor is liable for the payment required by [section 6], the amount required to be deducted and withheld under [sections 1 through 12], and the annual statements required by [sections 8 and 9]. The payments required by [section 6] and the amounts required to be deducted and withheld, plus penalty and interest due, are a tax. With respect to the tax, the remittor is the taxpayer.

(2) The officer of a corporation whose responsibility it is to collect, truthfully account for, and pay to the state the amounts withheld from mineral royalty payments and who fails to pay the withholdings is liable to the state for the amounts withheld and the penalty and interest due on the amounts.

(3) (a) Subject to subsections (3)(b) and (6), each officer of the corporation is individually liable, along with the corporation, for filing statements, to the extent that the officer has access to the requisite records, and for unpaid taxes, penalties, and interest upon a determination that the officer:

(i) possessed the responsibility to file statements and pay taxes on behalf of the corporation; and

(ii) possessed the responsibility on behalf of the corporation for directing the filing of tax statements or the payment of other corporate obligations and exercised that responsibility, resulting in the corporation's failure to file statements required by [sections 1 through 12] or to pay taxes due as required by [sections 1 through 12].

(b) If a corporate remittor violates the provisions of [sections 1 through 12], the department shall first apply the provisions of [section 11] against the corporation. If the corporation fails to remedy the violation, then the department shall apply the provisions of [section 11] against each responsible corporate officer as determined in subsections (3)(a) and (3)(c).

(c) In determining which corporate officer is liable, the department is not limited to considering the elements set forth in subsection (3)(a) to establish individual liability and may consider any other available information.

(4) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the discharge of penalty and interest against the corporation. The individual remains liable for any statements and the amount of taxes, penalties, and interest unpaid by the corporation.

(5) Subject to subsection (6), for the purpose of determining liability for the filing of statements and the payment of taxes, penalties, and interest owed under [sections 1 through 12]:

(a) each partner of a partnership is jointly and severally liable, along with the partnership, for any statements, taxes, penalties, and interest due while a partner;

(b) each member of a limited liability company that is treated as a partnership or as a corporation for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member;

(c) the member of a single-member limited liability company that is disregarded for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member; and

(d) each manager of a manager-managed limited liability company is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a manager.

(6) The liability of an individual described in subsection (3) or (5) for taxes, penalties, and interest is released if and to the extent that the amount required to be deducted and withheld under [sections 1 through 12] is deposited in a separate account that is:

(a) established in a bank, as defined in 32-1-102, located in Montana;

(b) designated as a special fund in trust for the state; and

(c) payable to the department.

(7) If the remittor fails to deduct and withhold the amounts specified in [section 3] and the tax, against which the deducted and withheld amounts would have been credited, is paid, the amounts required to be deducted and withheld may not be collected from the remittor.

Section 6. Royalty withholding tax remittance schedule — alternative schedules and methods — records. (1) Except as provided in subsection (2), each remittor is required to file a quarterly return, on a form prescribed by the department, and remit to the department the amount of tax withheld on royalty payments according to the following schedule:

(a) for royalty payments made during January, February, and March of each calendar year, the amount withheld is due on or before April 30 of the year;

(b) for royalty payments made during April, May, and June of each calendar year, the amount withheld is due on or before July 31 of the year;

(c) for royalty payments made during July, August, and September of each calendar year, the amount withheld is due on or before October 31 of the year; and

(d) for royalty payments made during October, November, and December of each calendar year, the amount withheld is due on or before January 31 of the following year.

(2) A remittor may request an alternative remittance schedule than is required by subsection (1). The department may consider situations such as administrative and taxpayer convenience and frequency of royalty payments in determining whether to approve an alternative remittance schedule.

(3) A remittor may elect to remit and file mineral backup withholding electronically in any format established and approved by the department if the remittor obtains prior approval from the department before remitting the tax by electronic fund transfer.

(4) If a remittor remits withholding taxes electronically, the remittance is considered timely if made within 5 days after the due date of the payment.

(5) If the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided under 15-1-703.

(6) Each remittor shall keep accurate royalty payment and withholding records containing the information that the department may prescribe by rule. Those records must be open to inspection and audit and may be copied by the department or its authorized representative at any reasonable time and as often as may be necessary. A remittor that maintains its records outside of Montana shall furnish copies of those records to the department at the remittor's expense.

Section 7. Amount of royalty payment withheld considered taxes collected. The amounts deducted and withheld from royalty payments are considered taxes collected under the provisions of [sections 1 through 12]. A royalty owner does not have a right of action against the remittor for any amount deducted and withheld from the royalty owner's royalty and paid to the state in compliance or intended compliance with [sections 1 through 12]. The amounts deducted and withheld and paid to the state in compliance or intended compliance with [sections 1 through 12] are not subject to the provisions of section 82-10-103.

Section 8. Annual withholding statement to royalty owner. Before January 31 of each year, each remittor shall furnish to each royalty owner a statement, on a form prescribed by the department, showing the total royalties paid by the remittor to the royalty owner during the preceding calendar year and showing the amount of the tax deducted and withheld from the royalty payments. The royalty owner shall file a duplicate of the statement with the royalty owner's state income tax return.

Section 9. Remittor to furnish annual statement to department. (1) On or before February 28 of each year, each remittor shall file with the department a royalty and tax statement, on a form provided by the department, that shows the total royalties paid to each royalty owner subject to withholding during the preceding calendar year or any portion of the preceding calendar year and the total amount of the tax deducted and withheld from the royalty payments under the provisions of [sections 1 through 12] for the same period.

(2) The annual statement filed by a remittor under this section complies with the requirements of 15-30-301 relating to the duties of information agents. An additional information return is not required with respect to the royalty payments.

(3) The department shall make the forms described in [section 6] and this section available no later than November 15, 2007.

Section 10. Withheld taxes held in trust for state. Each remittor that deducts and withholds the amounts under the provisions of [sections 1 through 12] shall hold the amounts in trust for the state.

Section 11. Violations by remittor — penalties — interest — remedies. (1) The department shall, as provided in 15-1-216, add penalty and interest to the amount of all delinquent withholding taxes.

(2) A remittor that purposely fails to furnish the royalty and tax statement required by [section 9] is subject to a penalty of $50 for each failure, with a minimum of $1,000. The penalties imposed by this subsection are in addition to the penalties imposed by 15-1-216.

(3) All remedies available to the state for the administration, enforcement, and collection of income taxes are available and apply to the tax required to be deducted and withheld under the provisions of [sections 1 through 12] unless otherwise specifically provided for in this part.

Section 12. Rulemaking authority. The department shall adopt rules that may be necessary to administer and enforce the provisions of [sections 1 through 12].

Section 13. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 14. Codification instruction. [Sections 1 through 12] are intended to be codified as an integral part of Title 15, chapter 30, part 2, and the provisions of Title 15, chapter 30, part 2, apply to [sections 1 through 12].

Section 15. Effective date. [This act] is effective January 1, 2008.

Section 16. Applicability. [This act] applies to royalty payments made after December 31, 2007.

Approved May 8, 2007

CHAPTER NO. 469

[SB 448]

AN ACT REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO NOTIFY THE OFFICE OF CONSUMER COUNSEL OF PERMIT APPLICATIONS FOR NEW ELECTRICAL GENERATION FACILITIES AND FACILITIES AND UPGRADES PERMITTED UNDER THE MONTANA MAJOR FACILITY SITING ACT; REQUIRING THE OFFICE OF THE CONSUMER COUNSEL TO COMPLETE A CUSTOMER FISCAL IMPACT ANALYSIS FOR NEW ELECTRICAL GENERATION FACILITIES AND FACILITIES AND UPGRADES PERMITTED UNDER THE MONTANA MAJOR FACILITY SITING ACT; PROVIDING FOR THE USE OF THE ANALYSIS; REQUIRING THAT AN APPLICANT PAY COSTS INCURRED BY THE OFFICE OF CONSUMER COUNSEL IN PREPARING A FISCAL IMPACT ANALYSIS; AMENDING SECTIONS 75-1-201, 75-1-205, 75-20-216, AND 75-20-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Customer fiscal impact analysis — requirements. (1) Within 10 days of receiving an application pursuant to subsection (1)(a) or (1)(b), the department of environmental quality shall notify the office of consumer counsel that it is in receipt of:

(a) a permit application pursuant to Title 75, chapter 2, 5, or 10, for a new electrical generation facility; or

(b) an application for a certificate under the Montana Major Facility Siting Act for a new facility or upgrade, as defined in 75-20-104.

(2) The office of consumer counsel shall complete an analysis outlining the fiscal impacts of the project on electricity customers in Montana. The analysis must include an estimation of how customers' rates may be impacted.

(3) (a) Except as provided in subsection (3)(b), the analysis must be completed within 30 days of receipt of the notice from the department.

(b) The department shall extend the 30-day deadline if compliance with the deadline is not necessary to comply with the requirements of subsection (4).

(4) The analysis must be provided to the department and incorporated into the department's environmental review, including draft documents released for public comment.

(5) (a) Within 5 days of the close of the public comment period for an application referred to in subsection (1)(a) or (1)(b), the department shall forward public comments related to the analysis to the consumer counsel.

(b) The consumer counsel shall respond to the comments and return the responses to the department within 30 days, and the responses must be included in the final environmental reviews.

Section 2. Exemptions. Projects proposed by utilities, as defined in 69-8-103, are exempt from the analysis required by [section 1].

Section 3. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions — environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) under this part, all agencies of the state, except the legislature and except as provided in subsection (2), shall:

(i) use a systematic, interdisciplinary approach that will ensure:

(A) the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment; and

(B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency considers alternatives, the alternative analysis will be in compliance with the provisions of subsections (1)(b)(iv)(C)(I) through (1)(b)(iv)(C)(III) and, if requested by the project sponsor or if determined by the agency to be necessary, subsection (1)(b)(iv)(C)(IV);

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action. An analysis of any alternative included in the environmental review must comply with the following criteria:

(I) any alternative proposed must be reasonable, in that the alternative must be achievable under current technology and the alternative must be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor;

(II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding the proposed alternative;

(III) if the project sponsor believes that an alternative is not reasonable as provided in subsection (1)(b)(iv)(C)(I), the project sponsor may request a review by the appropriate board, if any, of the agency's determination regarding the reasonableness of the alternative. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The agency may not charge the project sponsor for any of its activities associated with any review under this section. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208.

(IV) the agency shall complete a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's noncompletion.

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity;

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented; ~~and~~

(G) the customer fiscal impact analysis, if required by [section 1]; and

~~(G)~~*(H)* the details of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;

(v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;

(vi) recognize the national and long-range character of environmental problems and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved and with any local government, as defined in 7-12-1103, that may be directly impacted by the project. The responsible state official shall also consult with and obtain comments from any state agency with respect to any regulation of private

property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, a court may not consider any issue relating to the adequacy or content of the agency's environmental review document or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law. *A customer fiscal impact analysis pursuant to [section 1] or an allegation that the customer fiscal impact analysis is inadequate may not be used as the basis of any action challenging or seeking review of the agency's decision.*

(b) When new, material, and significant evidence or issues relating to the adequacy or content of the agency's environmental review document are presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence or issue relating to the adequacy or content of the agency's environmental review document back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the district court considers the evidence or issue relating to the adequacy or content of the agency's environmental review document within the administrative record under review. Immaterial or insignificant evidence or issues relating to the adequacy or content of the agency's environmental review document may not be remanded to the agency. The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.

(4) To the extent that the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) are inconsistent with federal requirements, the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) do not apply to an environmental review that is being prepared by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that is being prepared by a state agency to comply with the requirements of the National Environmental Policy Act.

(5) (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection (5) prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action.

(6) (a) (i) A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court or in federal court, whichever is appropriate.

(ii) Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(iii) For an action taken by the board of land commissioners or the department of natural resources and conservation under Title 77, "final agency action" means the date that the board of land commissioners or the department of natural resources and conservation issues a final environmental review document under this part or the date that the board approves the action that is subject to this part, whichever is later.

(b) Any action or proceeding under subsection (6)(a)(ii) must take precedence over other cases or matters in the district court unless otherwise provided by law.

(7) The director of the agency responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a determination of significance be made.

(8) A project sponsor may request a review of the significance determination or recommendation made under subsection (7) by the appropriate board, if any. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208."

Section 4. Section 75-1-205, MCA, is amended to read:

"75-1-205. Collection and use of fees and costs. (1) A person who applies to a state agency for a permit, license, or other authorization that the agency determines requires preparation of an environmental impact statement is responsible for paying:

(a) the agency's costs of preparing the environmental impact statement and conducting the environmental impact statement process if the agency makes a written determination, based on material evidence identified in the determination, that there will be a significant environmental impact or a potential for a significant environmental impact~~; or~~. *If a customer fiscal impact analysis is required under [section 1], the applicant shall also pay the staff and consultant costs incurred by the office of consumer counsel in preparing the analysis.*

(b) a fee as provided in 75-1-202 if the agency does not make the determination provided for in subsection (1)(a).

(2) Costs payable under subsection (1) include:

(a) the costs of generating, gathering, and compiling data and information that is not available from the applicant to prepare the draft environmental impact statement, any supplemental draft environmental impact statement, and the final environmental impact statement;

(b) the costs of writing, reviewing, editing, printing, and distributing a reasonable number of copies of the draft environmental impact statement;

(c) the costs of attending meetings and hearings on the environmental impact statement, including meetings and hearings held to determine the scope of the environmental impact statement; and

(d) the costs of preparing, printing, and distributing a reasonable number of copies of any supplemental draft environmental impact statement and the final environmental impact statement, including the cost of reviewing and preparing responses to public comment.

(3) Costs payable under subsection (1) include:

(a) payments to contractors hired to work on the environmental impact statement;

(b) salaries and expenses of an agency employee who is designated as the agency's coordinator for preparation of the environmental impact statement for time spent performing the activities described in subsection (2) or for managing those activities; and

(c) travel and per diem expenses for other agency personnel for attendance at meetings and hearings on the environmental impact statement.

(4) (a) Whenever the agency makes the determination in subsection (1)(a), it shall notify the applicant of the cost of conducting the process to determine the scope of the environmental impact statement. The applicant shall pay that cost, and the agency shall then conduct the scoping process. The timeframe in 75-1-208(4)(a)(i) and any statutory timeframe for a decision on the application are tolled until the applicant pays the cost of the scoping process.

(b) If the agency decides to hire a third-party contractor to prepare the environmental impact statement, the agency shall prepare a list of no fewer than four contractors acceptable to the agency and shall provide the applicant with a copy of the list. If fewer than four acceptable contractors are available, the agency shall include all acceptable contractors on the list. The applicant shall provide the agency with a list of at least 50% of the contractors from the agency's list. The agency shall select its contractor from the list provided by the applicant.

(c) Upon completion of the scoping process and subject to subsection (1)(d), the agency and the applicant shall negotiate an agreement for the preparation of the environmental impact statement. The agreement must provide that:

(i) the applicant shall pay the cost of the environmental impact statement as determined by the agency after consultation with the applicant. In determining the cost, the agency shall identify and consult with the applicant regarding the data and information that must be gathered and studies that must be conducted.

(ii) the agency shall prepare the environmental impact statement within a reasonable time determined by the agency after consultation with the applicant and set out in the agreement. This timeframe supersedes any timeframe in statute or rule. If the applicant and the agency cannot agree on a timeframe, the

agency shall prepare the environmental impact statement within any timeframe provided by statute or rule.

(iii) the applicant shall make periodic advance payments to cover work to be performed;

(iv) the agency may order work on the environmental impact statement to stop if the applicant fails to make advance payment as required by the agreement. The time for preparation of the environmental impact statement is tolled for any period during which a stop-work order is in effect for failure to make advance payment.

(v) (A) if the agency determines that the actual cost of preparing the environmental impact statement will exceed the cost set out in the agreement or that more time is necessary to prepare the environmental impact statement, the agency shall submit proposed modifications to the agreement to the applicant;

(B) if the applicant does not agree to an extension of the time for preparation of the environmental impact statement, the agency may initiate the informal review process under subsection (4)(d). Upon completion of the informal review process, the agreement may be amended only with the consent of the applicant.

(C) if the applicant does not agree with the increased costs proposed by the agency, the applicant may refuse to agree to the modification and may also provide the agency with a written statement providing the reason that payment of the increased cost is not justified or, if applicable, the reason that a portion of the increased cost is not justified. The applicant may also request an informal review as provided in subsection (4)(d). If the applicant provides a written statement pursuant to this subsection (4)(c)(v)(C), the agreement must be amended to require the applicant to pay all undisputed increased cost and 75% of the disputed increased cost and to provide that the agency is responsible for 25% of the disputed increased cost. If the applicant does not provide the statement, the agreement must be amended to require the applicant to pay all increased costs.

(d) If the applicant does not agree with costs determined under subsection (4)(c)(i) or proposed under subsection (4)(c)(v), the applicant may initiate the informal review process pursuant to 75-1-208(3). If the applicant does not agree to a time extension proposed by the agency under subsection (4)(c)(v), the agency may initiate an informal review by an appropriate board under 75-1-208(3). The period of time for completion of the environmental impact statement provided in the agreement is tolled from the date of submission of a request for a review by the appropriate board until the date of completion of the review by the appropriate board. However, the agency shall continue to work on preparation of the environmental impact statement during this period if the applicant has advanced money to pay for this work.

(5) All fees and costs collected under this part must be deposited in the state special revenue fund as provided in 17-2-102. All fees and costs paid pursuant to this part must be used as provided in this part. Upon completion of the necessary work, each agency shall make an accounting to the applicant of the funds expended and refund all unexpended funds without interest."

Section 5. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies. (1) After receipt of an application, the department shall within 30 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and shall list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 15 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall commence an evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department shall use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, the department shall issue, within 9 months following the date of acceptance of an application, any decision, opinion, order, certification, or permit required under the laws, other than those contained in this chapter, administered by the department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a preliminary decision by the board and pursuant to rules adopted by the department, the department shall provide an opportunity for public review and comment.

(4) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, within 9 months following acceptance of an application for a facility, the department shall issue a report that must contain the department's studies, evaluations, recommendations, *customer fiscal impact analysis, if required pursuant to [section 1], and* other pertinent documents resulting from its study and evaluation. An environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act may be included in the department findings if compelling evidence indicates that adverse environmental impacts are likely to result due to the construction and operation of a proposed facility. If the application is for a combination of two or more facilities, the department shall issue its report within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) For projects subject to joint review by the department and a federal land management agency, the department's certification decision may be timed to correspond to the record of decision issued by the participating federal agency.

(6) The departments of transportation; fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation *and the consumer counsel* shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports *and to the office of consumer counsel* to reimburse them for the costs of compiling information and issuing the required report."

Section 6. Section 75-20-223, MCA, is amended to read:

"75-20-223. Board review of department decisions. (1) A person aggrieved by the final decision of the department on an application for a certificate or the issuance of an air or water quality decision, opinion, order, certification, or permit under this chapter may within 30 days appeal the

decision to the board under the contested case procedures of Title 2, chapter 4, part 6.

(2) A person aggrieved by the final decision of the department on an application for amendment of a certificate may within 15 days appeal the decision to the board under the contested case procedures of Title 2, chapter 4, part 6.

(3) A person aggrieved by the department's decision not to include an environmental impact statement or analysis in the department's findings pursuant to 75-20-216 may within 30 days appeal the decision to the board under the contested case procedures of Title 2, chapter 4, part 6.

(4) A customer fiscal impact analysis required by [section 1] may not be used as the basis of an appeal of a final decision by the department."

Section 7. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 69, chapter 2, and the provisions of Title 69, chapter 2, apply to [sections 1 and 2].

Section 8. Coordination instruction. If both House Bill No. 610 and [this act] are passed and approved, then the amendments to 75-1-201(3) in [this act] are void.

Section 9. Effective date. [This act] is effective on passage and approval.

Section 10. Applicability. [This act] applies to applications received by the department of environmental quality on or after [the effective date of this act].

Approved May 8, 2007

CHAPTER NO. 470

[SB 449]

AN ACT REQUIRING FUEL EFFICIENCY STANDARDS FOR CERTAIN STATE-OWNED VEHICLES; REQUIRING A PLAN FOR FUEL AND TRAVEL REDUCTION BY STATE AGENCIES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, state agencies in Montana should lead by example in adopting, implementing, and promoting energy efficiency; and

WHEREAS, the State of Montana is a significant economic actor and substantial consumer of transportation fuels; and

WHEREAS, the increased use of high fuel efficiency vehicles will provide a direct benefit to the citizens of Montana through reducing pollution from Montana's beautiful landscape and reducing the nation's dependence on foreign fuel sources.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) "Agency" has the meaning provided in 2-15-102, but does not include the office of the governor, the attorney general, or the highway patrol.

(2) "CAFE standard" means the average fuel economy standard as provided in 49 U.S.C. 32904.

(3) "Department" means the department of administration provided for in 2-15-1001.

(4) "Director" means the director of the department.

(5) "Vehicle fleet" means all state vehicles that are owned by the state of Montana except those used in the service of the governor, the attorney general, or the highway patrol.

Section 2. Fuel economy standards — exceptions. (1) The department shall, in coordination with a designated representative in each agency that purchases new vehicles, develop a plan to ensure that each vehicle purchased on or after January 1, 2008, meets or exceeds the CAFE standard.

(2) The director may exempt certain vehicles from the CAFE standard that meet any one of the following conditions:

(a) vehicles that are used primarily in off-road use;

(b) vehicles used for road construction and maintenance;

(c) vehicles used for maintenance, construction, or groundskeeping;

(d) vehicles used primarily for moving and distributing large items or a large quantity of items;

(e) vehicles with a manufacturer-stated seating capacity of more than six persons; or

(f) vehicles using alternative fuels.

Section 3. Vehicle fleet energy conservation plan. (1) Before January 1, 2008, each agency shall develop and implement a program to reduce the fuel consumption of any agency vehicle, other than those vehicles listed in [section 2(2)], including:

(a) fuel consumption, miles traveled, and vehicle fleet fuel economy;

(b) car pooling and van pooling requirements for state employees when feasible; and

(c) options for cost-effective use of technologies that allow for a reduction in the number of car and van trips.

(2) Each agency shall include materials relating to travel conservation measures in new employee orientation and training materials.

Section 4. Agency records on fuel efficiency measures. Each agency shall keep adequate records to demonstrate compliance with the provisions of [sections 2 and 3].

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 2, chapter 17, part 4, and the provisions of Title 2, chapter 17, part 4, apply to [sections 1 through 4].

Section 6. Effective date. [This act] is effective July 1, 2007.

Approved May 8, 2007

CHAPTER NO. 471

[SB 478]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO IMPLEMENT A COMPREHENSIVE SUICIDE

PREVENTION PROGRAM, INCLUDING A SUICIDE PREVENTION OFFICER, A COMPREHENSIVE SUICIDE REDUCTION PLAN, AND A 24-HOUR SUICIDE PREVENTION HOTLINE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State of Montana has, according to 2003 federal data, the second highest rate of suicide in the nation, which is almost twice the national rate; and

WHEREAS, those Montanans completing suicides include children, adolescents, adults, and the elderly and residents of urban, rural, and frontier areas; and

WHEREAS, the vast majority of individuals that complete suicide suffer from a diagnosed or undiagnosed mental illness that prevents them from making a "rational" choice to end their life; and

WHEREAS, Montana's high rate of suicide is attributable to the complex interaction of many factors, including but not limited to lack of access to both crisis mental health services and noncrisis mental health care, including psychosocial interventions, effective supports and medication, and the barriers that often prevent youth and adults from seeking treatment because of stigma, myths, and misunderstandings about mental illnesses; and

WHEREAS, past statewide efforts to reduce suicide have lacked sufficient cohesiveness and resources to be effective.

Be it enacted by the Legislature of the State of Montana:

Section 1. Suicide prevention officer — duties. (1) The department of public health and human services shall implement a suicide prevention program by January 1, 2008. The program must be administered by a suicide prevention officer attached to the office of the director of the department.

(2) The suicide prevention officer shall:

(a) coordinate all suicide prevention activities being conducted by the department, including activities in the addictive and mental disorders division, the health resources division, and the public health and safety division, and coordinate with any suicide prevention activities that are conducted by other state agencies, including the office of the superintendent of public instruction, the department of corrections, department of military affairs, and the university system;

(b) develop a biennial suicide reduction plan that addresses reducing suicides by Montanans of all ages;

(c) direct a statewide suicide prevention program whose activities include but are not limited to:

(i) conducting statewide public awareness campaigns utilizing both paid and free media and including input from government agencies, school representatives from elementary schools through higher education, mental health advocacy groups, and other relevant nonprofit organizations;

(ii) initiating, in partnership with Montana's tribes and tribal organizations, a public awareness program that is culturally appropriate and that utilizes the modalities best suited for Indian country;

(iii) seeking opportunities for research that will improve understanding of suicide in Montana and provide increased suicide-related services;

(iv) training for medical professionals, military personnel, school personnel, social service providers, and the general public on recognizing the early warning signs of suicidality, depression, and other mental illnesses; and

(v) providing grants to communities or other government, nonprofit, or tribal entities to start new or sustain existing suicide prevention activities.

Section 2. Suicide reduction plan. (1) The department of public health and human services shall produce a biennial suicide reduction plan that must be submitted to the legislature as provided in 5-11-210.

(2) The plan must include:

(a) an assessment of both risk and protective factors impacting Montana's suicide rate;

(b) specific activities to reduce suicide;

(c) concrete targets for suicide reduction among various demographic populations, including but not limited to American Indians, veterans, and youth;

(d) measurable outcomes for all activities; and

(e) information on all existing state suicide reduction activities for all state agencies, as well as any known local or tribal suicide reduction activities.

(3) Upon the development of a suicide reduction plan draft, the department shall initiate a public comment period of not less than 21 days during which members of mental health advocacy groups and other interested parties may submit comments on and suggestions for the plan. The department shall produce a final plan, which takes public comment into account, no later than 60 days after the close of the comment period. The plan must be published on the department's website and submitted to the appropriate interim committee of the legislature, the director of the department, and the governor.

Section 3. Suicide hotline. (1) The department of public health and human services is required to have a suicide crisis hotline available, staffed by paid, trained employees 24 hours a day and 365 days a year.

(2) The hotline may be operated by the department or by a qualified Montana-based, nonprofit organization.

(3) The department shall conduct an annual review of hotline utilization and operator performance.

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 5. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 53, chapter 21, and the provisions of Title 53, chapter 21, apply to [sections 1 through 3].

Section 6. Effective date. [This act] is effective July 1, 2007.

Approved May 8, 2007

CHAPTER NO. 472

[SB 486]

AN ACT REVISING THE OFFENSE OF AGGRAVATED ASSAULT BY INCLUDING IN THE OFFENSE CAUSING REASONABLE APPREHENSION OF SERIOUS BODILY INJURY OR DEATH IN ANOTHER; REVISING THE PENALTY; AND AMENDING SECTION 45-5-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-202, MCA, is amended to read:

"45-5-202. Aggravated assault. (1) A person commits the offense of aggravated assault if the person purposely or knowingly causes serious bodily injury to another *or purposely or knowingly, with the use of physical force or contact, causes reasonable apprehension of serious bodily injury or death in another*.

(2) A person convicted of aggravated assault shall be imprisoned in the state prison for a term ~~of not less than 2 years or more than~~ *not to exceed* 20 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222."

Approved May 8, 2007

CHAPTER NO. 473

[SB 505]

AN ACT RENEWING THE CERVICAL CANCER TASK FORCE; ADDING A PEDIATRICIAN TO THE TASK FORCE; IDENTIFYING STRATEGIES FOR EDUCATING THE PUBLIC REGARDING AVAILABILITY AND EFFICACY OF HUMAN PAPILLOMAVIRUS VACCINE; AMENDING SECTION 50-1-211, MCA, AND SECTION 4, CHAPTER 404, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, human papillomavirus (HPV) disease is a communicable disease that can be transmitted from person to person through intimate sexual contact and is a significant cause of cervical cancer, and recently, the United States Food and Drug Administration has approved a vaccine that is effective in women in preventing the occurrence of some HPV disease and, thereby, in reducing the occurrence of cervical cancer; and

WHEREAS, as with all vaccines, HPV vaccine is most effective if given prior to exposure to the HPV virus, and accordingly, many states, school districts, public health authorities, and parents are contemplating the advisability of providing HPV vaccinations as a precautionary measure; and

WHEREAS, there has been a task force on cervical cancer established in the State of Montana under the Department of Public Health and Human Services that, when initiated, was charged with providing a report to the Children, Families, Health, and Human Services Interim Committee on August 1, 2006, and was to terminate as of June 30, 2007; and

WHEREAS, because the task force is ideally situated to consider key issues related to HPV vaccination and to advise the Department and the Legislature regarding those issues, it is advisable to extend the tenure of the task force.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-1-211, MCA, is amended to read:

"50-1-211. (Temporary) Task force on cervical cancer. (1) There is a task force on cervical cancer established in the department of public health and human services.

(2) The task force must be composed of at least ~~6~~ *7* and no more than 10 members and must include:

(a) an obstetrician-gynecologist;

(b) a registered nurse;

(c) a physician in family practice;

(d) a member from the cancer research community;

(e) ~~the~~ *a* state epidemiologist; ~~and~~

(f) a cervical cancer survivor~~.~~*; and*

(g) a pediatrician.

(3) The task force members must be appointed by the director to 2-year terms. The task force shall meet quarterly as needed. The task force members ~~must~~ *may* be reimbursed for expenses as provided in 2-18-501 through 2-18-503. Additional members may be added to the task force upon a majority vote of the members.

(4) The task force shall:

(a) review statistical and qualitative data on the ~~prevalence and burden of cervical cancer in Montana~~ *use and effectiveness of the human papillomavirus vaccine*;

~~(b) raise public awareness on the causes and nature of cervical cancer;~~

~~(c)~~*(b)* identify strategies ~~and new technologies that are effective in preventing and controlling the risk of cervical cancer~~ *for educating the public regarding the availability and efficacy of human papillomavirus vaccine, including appropriate methods for informing and educating parents and adolescents about the risks of human papillomavirus disease, modes of transmission, and availability of vaccine*;

~~(d)~~*(c)* identify and examine the limitations of existing laws, regulations, programs, and services with regard to ~~coverage and awareness issues for cervical cancer~~ *immunizations*;

(d) consider the medical, social, financial, and ethical implications of requiring human papillomavirus vaccination of adolescents for continued enrollment in school;

~~(e) include information and strategies relating to cervical cancer in a state comprehensive cancer control program;~~

~~(f)~~*(e)* facilitate coordination of and communication between state and local agencies and organizations;

~~(g)~~*(f)* receive and consider reports and testimony from individuals, including cervical cancer survivors, from leaders ~~in~~ *on* the issue of cervical cancer, *and from* local health departments, community-based organizations, and voluntary health organizations~~, and from other public and private organizations statewide to learn more about contributions to prognosis, prevention, treatment, and~~

~~improvement of cervical cancer prevention, diagnosis, and treatment in Montana~~.

(5) The task force shall issue a report to the children, families, health, and human services interim committee by August 1, ~~2006~~ *2008*:

~~(a) identifying the full impact of cervical cancer in Montana;~~

~~(b) recommending strategies or actions to the department to reduce the occurrence of and burden and costs caused by cervical cancer; and~~

~~(c) identifying how to increase public awareness of cervical cancer and the options for prevention.~~

(a) detailing its findings regarding the use and efficacy of human papillomavirus vaccine in adolescents;

(b) recommending strategies or actions regarding vaccination of adolescents; and

(c) recommending strategies or actions for the education of the public regarding human papillomavirus disease, modes of transmission, and availability of vaccine. (Terminates June 30, ~~2007~~ *2009* ~~— sec. 4, Ch. 404, L. 2005~~.)"

Section 2. Section 4, Chapter 404, Laws of 2005, is amended to read:

"**Section 4. Termination.** [This act] terminates June 30, ~~2007~~ *2009*."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 8, 2007

CHAPTER NO. 474

[SB 518]

AN ACT PROVIDING FOR A CERTIFICATE OF BIRTH RESULTING IN A STILLBIRTH; AMENDING SECTION 50-15-101, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Birth registration for stillbirth — requirements. (1) The department shall establish a certificate of birth resulting in a stillbirth on a form adopted by the department when the birth results in a stillbirth. Upon request by a parent, a certificate of birth resulting in a stillbirth must be filed in addition to the fetal death certificate provided for in 50-15-403. Upon request, a certificate of birth resulting in a stillbirth must be provided to a parent.

(2) A certificate of birth resulting in a stillbirth may be filed by:

(a) the physician, the physician's designee, or the direct-entry midwife licensed pursuant to Title 37, chapter 27, in attendance at a stillbirth;

(b) the person in attendance at a stillbirth;

(c) the father or the mother;

(d) in the absence of the father and the inability of the mother, the person in charge of the premises where the stillbirth occurred; or

(e) the local registrar if 50-15-202 applies.

(3) The department shall adopt rules providing for:

(a) the time by which the certificate of birth resulting in a stillbirth must be filed after the stillbirth;

(b) the evidence required to establish the facts of a stillbirth; and

(c) the information required on a certificate of birth resulting in a stillbirth.

Section 2. Section 50-15-101, MCA, is amended to read:

"50-15-101. Definitions. Unless the context requires otherwise, in parts 1 through 4, the following definitions apply:

(1) "Advanced practice registered nurse" means an individual who has been certified as an advanced practice registered nurse as provided in 37-8-202.

(2) "Authorized representative" means a person:

(a) designated by an individual, in a notarized written document, to have access to the individual's vital records;

(b) who has a general power of attorney for an individual; or

(c) appointed by a court to manage the personal or financial affairs of an individual.

(3) "Dead body" means a human body or parts of a human body from which it reasonably may be concluded that death occurred.

(4) "Department" means the department of public health and human services provided for in 2-15-2201.

(5) "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

(6) "Fetal death" means death of the fetus prior to the complete expulsion or extraction from its mother as a product of conception, notwithstanding the duration of pregnancy. The death is indicated by the fact that after expulsion or extraction, the fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

(7) "Final disposition" means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.

(8) "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained in 40-1-402.

(9) "Live birth" means the complete expulsion or extraction from the mother as a product of conception, notwithstanding the duration of pregnancy. The birth is indicated by the fact that after expulsion or extraction, the child breathes or shows any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

(10) "Local registrar" means a person appointed by the department to act as its agent in administering this chapter in the area set forth in the letter of appointment.

(11) "Person in charge of disposition of a dead body" means a person who places or causes a dead body or the ashes after cremation to be placed in a grave, vault, urn, or other receptacle or otherwise disposes of the body or fetus and who

is a funeral director licensed under Title 37, chapter 19, an employee acting for a funeral director, or a person who first assumes custody of a dead body or fetus.

(12) "Physician" means a person legally authorized to practice medicine in this state.

(13) "Registration" means the process by which vital records are completed, filed, and incorporated into the official records of the department.

(14) "Research" means a systematic investigation designed primarily to develop or contribute to generalizable knowledge.

(15) (a) "Stillbirth" means a fetal death occurring after a minimum of 20 weeks of gestation.

(b) The term does not include an abortion, as defined in 50-20-104.

~~(15)~~*(16)* "System of vital statistics" means the registration, collection, preservation, amendment, and certification of vital records. The term includes the collection of reports required by this chapter and related activities, including the tabulation, analysis, publication, and dissemination of vital statistics.

~~(16)~~*(17)* "Vital records" means certificates or reports of birth, death, fetal death, marriage, and dissolution of marriage and related reports.

~~(17)~~*(18)* "Vital statistics" means the data derived from certificates or reports of birth, death, fetal death, induced termination of pregnancy, marriage, and dissolution of marriage and related reports."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 50, chapter 15, part 2, and the provisions of Title 50, chapter 15, part 2, apply to [section 1].

Section 4. Effective date. [This act] is effective January 1, 2008.

Approved May 8, 2007

CHAPTER NO. 475

[SB 525]

AN ACT CLARIFYING THAT TAX AND FEE REVENUE MUST BE RECORDED AS PRESCRIBED BY THE DEPARTMENT OF ADMINISTRATION IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; AMENDING SECTIONS 15-35-108, 15-36-331, 15-37-117, 15-38-106, 15-50-311, 15-51-103, 15-53-156, 15-59-108, 15-60-210, 15-65-121, 15-66-102, 15-67-102, 15-68-820, 15-70-101, 15-70-125, 15-72-106, 16-1-306, 16-1-401, 16-1-404, 16-1-406, 16-1-411, 16-11-114, 16-11-119, 23-5-610, AND 39-71-2321, MCA; REPEALING SECTION 15-1-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Disposition of money from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the appropriate fund in accordance with the provisions of subsection (3) all money received from the collection of taxes and fees.

(2) The department of revenue shall deposit to the credit of the state general fund all money received from the collection of license taxes and all net revenue

and receipts from all sources, other than certain fees, under Title 16, chapters 1 through 4 and 6.

(3) The distribution of tax and fee revenue must be made according to the provisions of the law governing allocation of the tax or fee that were in effect for the period in which the tax or fee revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes or fees must be attributed to the funds in which the taxes or fees are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded.

Section 2. Section 15-35-108, MCA, is amended to read:

"15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the oil, gas, and coal natural resource account established in 90-6-1001.

(8) (a) Subject to subsection (8)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) $3.65 million to the research and commercialization state special revenue account created in 90-3-1002;

(iv) to the department of commerce:

(A) $125,000 for a small business development center;

(B) $50,000 for a small business innovative research program;

(C) $425,000 for certified regional development corporations;

(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) $300,000 for export trade enhancement. (Terminates June 30, 2010—sec. 6, Ch. 481, L. 2003.)

15-35-108. (Effective July 1, 2010) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the oil, gas, and coal natural resource account established in 90-6-1001.

(8) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

Section 3. Section 15-36-331, MCA, is amended to read:

"15-36-331. Distribution of taxes. (1) (a) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalties collected under this part.

(b) For the purposes of distribution of oil and natural gas production taxes to county and school district taxing units under 15-36-332 and to the state, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) (a) The amount of oil and natural gas production taxes collected for the privilege and license tax pursuant to 82-11-131 must be deposited, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(b) The amount of the tax for the oil, gas, and coal natural resource account established in 90-6-1001 must be deposited in the account.

(3) (a) For each tax year, the amount of oil and natural gas production taxes determined under subsection (1)(b) is allocated to each county according to the following schedule:

	~~2005~~	~~2006 and succeeding tax years~~
Big Horn	~~45.04%~~	45.05%
Blaine	~~58.11%~~	58.39%
Carbon	~~48.93%~~	48.27%
Chouteau	~~57.65%~~	58.14%
Custer	~~80.9%~~	69.53%
Daniels	~~49.98%~~	50.81%
Dawson	~~50.64%~~	47.79%
Fallon	~~41.15%~~	41.78%
Fergus	~~83.52%~~	69.18%
Garfield	~~48.81%~~	45.96%
Glacier	~~64.74%~~	58.83%
Golden Valley	~~57.41%~~	58.37%
Hill	~~65.33%~~	64.51%
Liberty	~~59.73%~~	57.94%
McCone	~~52.86%~~	49.92%
Musselshell	~~51.44%~~	48.64%
Petroleum	~~54.62%~~	48.04%
Phillips	~~53.78%~~	54.02%

Pondera	~~70.89%~~	54.26%
Powder River	~~62.17%~~	60.9%
Prairie	~~39.73%~~	40.38%
Richland	~~46.72%~~	47.47%
Roosevelt	~~46.06%~~	45.71%
Rosebud	~~38.69%~~	39.33%
Sheridan	~~47.54%~~	47.99%
Stillwater	~~54.35%~~	53.51%
Sweet Grass	~~60.24%~~	61.24%
Teton	~~48.4%~~	46.1%
Toole	~~57.14%~~	57.61%
Valley	~~54.22%~~	51.43%
Wibaux	~~48.68%~~	49.16%
Yellowstone	~~48.06%~~	46.74%
All other counties	~~50.15%~~	50.15%

(b) The oil and natural gas production taxes allocated to each county must be deposited in the state special revenue fund and transferred to each county for distribution, as provided in 15-36-332.

(4) The department shall, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, distribute the state portion of oil and natural gas production taxes remaining after the distributions pursuant to subsections (2) and (3) as follows:

(a) for each fiscal year through the fiscal year ending June 30, 2011, to be distributed as follows:

(i) 1.23% to the coal bed methane protection account established in 76-15-904;

(ii) 2.95% to the reclamation and development grants special revenue account established in 90-2-1104;

(iii) 2.95% to the orphan share account established in 75-10-743;

(iv) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and

(v) all remaining proceeds to the state general fund;

(b) for fiscal years beginning after June 30, 2011, to be distributed as follows:

(i) 4.18% to the reclamation and development grants special revenue account established in 90-2-1104;

(ii) 2.95% to the orphan share account established in 75-10-743;

(iii) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and

(iv) all remaining proceeds to the state general fund."

Section 4. Section 15-37-117, MCA, is amended to read:

"15-37-117. Disposition of metalliferous mines license taxes. (1) Metalliferous mines license taxes collected under the provisions of this part

must, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, be allocated as follows:

(a) to the credit of the general fund of the state, 57% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 2.5% of total collections each year;

(c) to the hard-rock mining reclamation debt service fund created in 82-4-312, 8.5% of total collections each year;

(d) to the reclamation and development grants program state special revenue account, 7% of total collections each year; and

(e) within 60 days of the date the tax is payable pursuant to 15-37-105, to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 37.5% to the county hard-rock mine trust account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(e)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for general planning functions or economic development activities as described in 7-6-2225(3)(c) through (3)(e);

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(e) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(e). The allocation to the county described by subsection (1)(e) is a statutory appropriation pursuant to 17-7-502."

Section 5. Section 15-38-106, MCA, is amended to read:

"15-38-106. (Temporary) Payment of tax — records — collection of taxes — refunds. (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before the due date of the annual statement established in 15-38-105, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, deposit in the following order:

(a) annually in due course, from the proceeds of the tax to the CERCLA match debt service fund provided in 75-10-622, the amount necessary, as certified by the department of environmental quality, after crediting to the CERCLA match debt service fund amounts transferred from the CERCLA cost recovery account established under 75-10-631, to pay the principal of, premium, if any, and interest during the next fiscal year on bonds or notes issued pursuant to 75-10-623;

(b) $366,000 of the proceeds of the resource indemnity and ground water assessment taxes in the ground water assessment account established by 85-2-905;

(c) 50% of the remaining proceeds in the reclamation and development grants account established by 90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects;

(d) $150,000 of the remaining proceeds of the resource indemnity and ground water assessment taxes in the natural resource workers' tuition scholarship account established in 39-10-106 for the first fiscal year following July 1 immediately after the date that the governor certifies that the resource indemnity trust fund balance has reached $100 million and for succeeding fiscal years, the amount required under 39-10-106(4);

(e) all remaining proceeds in the orphan share account established in 75-10-743.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer. (Terminates June 30, 2007—sec. 10, Ch. 586, L. 2001.)

15-38-106. (Effective July 1, 2007) Payment of tax — records — collection of taxes — refunds. (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before the due date of the annual statement established in 15-38-105, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, deposit in the following order:

(a) annually in due course, from the proceeds of the tax to the CERCLA match debt service fund provided in 75-10-622, the amount necessary, as certified by the department of environmental quality, after crediting to the CERCLA match debt service fund amounts transferred from the CERCLA cost recovery account established under 75-10-631, to pay the principal of, premium, if any, and interest during the next fiscal year on bonds or notes issued pursuant to 75-10-623;

(b) $366,000 of the proceeds in the ground water assessment account established by 85-2-905;

(c) 50% of the remaining proceeds in the orphan share account established in 75-10-743; and

(d) all remaining proceeds in the reclamation and development grants account established by 90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

Section 6. Section 15-50-311, MCA, is amended to read:

"15-50-311. Disposal of license taxes. License taxes collected under this chapter must be deposited by the department with the state treasurer, who shall*, in accordance with the provisions of [section 1],* credit ~~them~~ *the license taxes* to the *state* general fund ~~of the state~~."

Section 7. Section 15-51-103, MCA, is amended to read:

"15-51-103. Disposition of revenue — penalty and interest on delinquency. The department shall, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, promptly remit the collected taxes to the state treasurer. Taxes not paid on the due date are delinquent, and penalty and interest must be added to the delinquent taxes as provided in 15-1-216."

Section 8. Section 15-53-156, MCA, is amended to read:

"15-53-156. Retail telecommunications excise tax revenue. After retaining an allowance for refunds, retail telecommunications excise tax revenue collected by the department must*, in accordance with [section 1],* be deposited in the state general fund."

Section 9. Section 15-59-108, MCA, is amended to read:

"15-59-108. Deposit of taxes. All license taxes collected under the provisions of this part must, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, be deposited to the credit of the general fund of the state."

Section 10. Section 15-60-210, MCA, is amended to read:

"15-60-210. (Temporary) Disposition of fee. (1) Except as provided in subsection (2), all proceeds from the collection of utilization fees, including penalties and interest, must, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, be deposited in the general fund.

(2) Utilization fees, including penalties and interest, collected from the Montana mental health nursing care center must be allocated as follows:

(a) 30% to the state general fund; and

(b) 70% to the prevention and stabilization account in the state special revenue fund established pursuant to 53-6-1101 to the credit of the department of public health and human services to finance, administer, and provide health and human services. (Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)"

Section 11. Section 15-65-121, MCA, is amended to read:

"15-65-121. (Temporary) Distribution of tax proceeds. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of ~~15-1-501~~ *[section 1]* and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The amount of $400,000 each year must be deposited in the Montana heritage preservation and development account provided for in 22-3-1004. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation, deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies, or deposited in the heritage preservation and development account is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

(2) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit

convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials. (Terminates July 1, 2007—sec. 3, Ch. 469, L. 2001.)

15-65-121. (Effective July 1, 2007) Distribution of tax proceeds. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of ~~15-1-501~~ *[section 1]* and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

(2) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials."

Section 12. Section 15-66-102, MCA, is amended to read:

"15-66-102. (Temporary) Utilization fee for inpatient bed days. (1) Each hospital in the state shall pay to the department a utilization fee~~:~~

~~(a) in the amount of $19.43 for each inpatient bed day between January 1, 2004, and June 30, 2005;~~

~~(b) in the amount of $29.75 for each inpatient bed day between July 1, 2005, and December 31, 2005;~~

~~(c) in the amount of $27.70 for each inpatient bed day between January 1, 2006, and December 31, 2006; and~~

~~(d) after January 1, 2007,~~ in an amount determined by rule as provided in subsection (2).

(2) Prior to each calendar year that will be subject to the fee, the department by rule shall determine the amount of the fee, not to exceed $50, based upon:

(a) an estimate of the unpaid medicaid hospital costs, total inpatient days, and the federal medical assistance percentages;

(b) an estimate of any federal limit on federal financial participation for hospital services; and

(c) an estimate of federal disproportionate share funds not matched by state general funds.

(3) (a) All proceeds from the collection of utilization fees, including penalties and interest, must*, in accordance with the provisions of [section 1],* be deposited to the credit of the department of public health and human services in a state special revenue account as provided in 53-6-149.

(b) A hospital may not place a fee created in this chapter on a patient's bill. (Void on occurrence of contingency—sec. 18, Ch. 390, L. 2003. Terminates June 30, 2007—secs. 4, 7, Ch. 606, L. 2005.)"

Section 13. Section 15-67-102, MCA, is amended to read:

"15-67-102. (Temporary) Utilization fee for resident bed days. (1) Each calendar quarter, an intermediate care facility shall pay to the department a utilization fee for each resident bed day calculated as provided in subsection (2).

(2) The utilization fee is 6% of the intermediate care facility's quarterly revenue divided by the resident bed days for the quarter.

(3) In accordance with the provisions of ~~15-1-501~~ *[section 1]*, all proceeds of the utilization fee, including penalty and interest, must be deposited as follows:

(a) 30% in the state general fund; and

(b) 70% in an account in the state special revenue fund established pursuant to 53-6-1101 to the credit of the department of public health and human services to finance, administer, and provide health and human services. (Void on occurrence of contingency—sec. 17, Ch. 531, L. 2003—see chapter compiler's comment.)"

Section 14. Section 15-68-820, MCA, is amended to read:

"15-68-820. Sales tax and use tax proceeds. All money collected under this chapter must*, in accordance with the provisions of [section 1],* be deposited by the department into the general fund."

Section 15. Section 15-70-101, MCA, is amended to read:

"15-70-101. Disposition of funds. (1) All taxes collected under this chapter must, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, be placed in a highway revenue account in the state special revenue fund to the credit of the department of transportation. All interest and income earned on the account must be deposited to the credit of the account and any unexpended balance in the account must remain in the account. Those funds allocated to cities, towns, counties, and consolidated city-county governments in this section must, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, be paid by the department of transportation from the state special revenue fund to the cities, towns, counties, and consolidated city-county governments.

(2) The amount of $16,766,000 of the taxes collected under this chapter is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated each fiscal year on a monthly basis to the counties, incorporated cities and towns, and consolidated city-county governments in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (2)(a) through (2)(c):

(a) The amount of $100,000 must be designated for the purposes and functions of the Montana local technical assistance transportation program in Bozeman.

(b) The amount of $6,306,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the national highway system and the primary system, bears to the total rural road mileage in the state, exclusive of the national highway system and the primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state.

(c) The amount of $10,360,000 must be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the national highway system and the primary system, within corporate limits bears to the total street and alley mileage, exclusive of the national highway system and primary system, within the corporate limits of all cities and towns in Montana.

(3) (a) For the purpose of allocating the funds in subsections (2)(b) and (2)(c) to a consolidated city-county government, each entity must be considered to have separate city and county boundaries. The city limit boundaries are the last official city limit boundaries for the former city unless revised boundaries based on the location of the urban area have been approved by the department of transportation and must be used to determine city and county populations and road mileages in the following manner:

(i) Percentage factors must be calculated to determine separate populations for the city and rural county by using the last official decennial federal census population figures that recognized an incorporated city and the rural county. The factors must be based on the ratio of the city to the rural county population, considering the total population in the county minus the population of any other incorporated city or town in the county.

(ii) The city and county populations must be calculated by multiplying the total county population, as determined by the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census, minus the population of any other incorporated city or town in that county, by the factors established in subsection (3)(a)(i).

(b) The amount allocated by this method for the city and the county must be combined, and single monthly payments must be made to the consolidated city-county government.

(4) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, county, or consolidated city-county government might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the primary or secondary highway system or urban extensions to those systems. The governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys.

(5) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of $25,000.

(6) For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined annually for counties and biennially for cities according to the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(7) For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns,

counties, and consolidated city-county governments to furnish to the department of transportation a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

(8) Except by a town or third-class city as provided in subsection (4), the funds authorized by this section may not be used for the purchase of capital equipment.

(9) Funds authorized by this section must be used for construction and maintenance programs."

Section 16. Section 15-70-125, MCA, is amended to read:

"15-70-125. Highway nonrestricted account. There is a highway nonrestricted account in the state special revenue fund. All interest and penalties collected under this chapter, except those collected by a justice's court, must, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, be placed in the highway nonrestricted account. ~~Beginning July 1, 2001, all~~ *All* interest and income earned on the account must be deposited to the credit of the account and any unexpended balance in the account must remain in the account."

Section 17. Section 15-72-106, MCA, is amended to read:

"15-72-106. Collection of wholesale energy transaction tax — disposition of revenue. (1) A transmission services provider shall collect the tax imposed under 15-72-104 from the taxpayer and pay the tax collected to the department. If the transmission services provider collects a tax in excess of the tax imposed by 15-72-104, both the tax and the excess must be remitted to the department.

(2) A self-assessing distribution services provider is subject to the provisions of this part.

(3) The wholesale energy transaction tax collected under this part must, *in accordance with the provisions of [section 1],* be deposited in the general fund."

Section 18. Section 16-1-306, MCA, is amended to read:

"16-1-306. Revenue to be paid to state treasurer. Except as provided in 16-1-404, 16-1-405, 16-1-406, and 16-1-411, all fees, charges, taxes, and revenue collected by or under authority of the department must, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, be deposited to the credit of the state general fund."

Section 19. Section 16-1-401, MCA, is amended to read:

"16-1-401. Liquor excise tax. (1) The department shall collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the state of Montana an excise tax at the rate of:

(a) 16% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 13.8% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The department shall retain the amount of the excise tax received in a separate account and shall, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, deposit, to the credit of the general fund, the amount collected and received not later than the 10th day of each month."

Section 20. Section 16-1-404, MCA, is amended to read:

"16-1-404. License tax on liquor — amount — distribution of proceeds. (1) The department shall collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of:

(a) 10% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 8.6% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold more than 50,000 proof gallons but not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(c) 2% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold not more than 50,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The license tax must be charged and collected on all liquor produced in or brought into the state and taxed by the department. The retail selling price must be computed by adding to the cost of the liquor the state markup as designated by the department. The license tax must be figured in the same manner as the state excise tax and is in addition to the state excise tax. The department shall retain in a separate account the amount of the license tax received. The department, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, shall allocate the revenue as follows:

(a) Thirty-four and one-half percent is allocated to the state general fund.

(b) Sixty-five and one-half percent must be deposited in the state special revenue fund to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency.

(3) The license tax proceeds that are allocated to the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency must be credited quarterly to the department of public health and human services. The legislature may appropriate a portion of the license tax proceeds to support alcohol and chemical dependency programs. The remainder must be distributed as provided in 53-24-206."

Section 21. Section 16-1-406, MCA, is amended to read:

"16-1-406. Taxes on beer. (1) (a) A tax is imposed on each barrel of 31 gallons of beer sold in Montana by a wholesaler. A barrel of beer equals 31 gallons. The tax is based upon the total number of barrels of beer produced by a brewer in a year. A brewer who produces less than 20,000 barrels of beer a year is taxed on the following increments of production:

(i) up to 5,000 barrels, $1.30;

(ii) 5,001 barrels to 10,000 barrels, $2.30; and

(iii) 10,001 barrels to 20,000 barrels, $3.30.

(b) The tax on beer sold for a brewer who produces over 20,000 barrels is $4.30.

(2) The tax imposed pursuant to subsection (1) is due at the end of each month from the wholesaler upon beer sold by the wholesaler during that month. The department shall compute the tax due on beer sold in containers other than barrels or in barrels of more or less capacity than 31 gallons.

(3) Each quarter, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, of the tax collected pursuant to subsection (1), an amount equal to:

(a) 23.26% must be deposited in the state treasury to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency; and

(b) the balance must be deposited in the state general fund."

Section 22. Section 16-1-411, MCA, is amended to read:

"16-1-411. Tax on wine and hard cider — penalty and interest. (1) (a) A tax of 27 cents per liter is imposed on table wine, except hard cider, imported by a table wine distributor or the department.

(b) A tax of 3.7 cents per liter is imposed on hard cider imported by a table wine distributor or the department.

(2) The tax imposed in subsection (1) must be paid by the table wine distributor by the 15th day of the month following sale of the table wine or hard cider from the table wine distributor's warehouse. Failure to file a tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 15-1-216.

(3) The tax paid by a table wine distributor in accordance with subsection (2) must, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, be distributed as follows:

(a) 69% to the state general fund; and

(b) 31% to the state special revenue fund to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency.

(4) The tax computed and paid in accordance with this section is the only tax imposed by the state or any of its subdivisions, including cities and towns.

(5) For purposes of this section, "table wine" has the meaning assigned in 16-1-106, but does not include hard cider."

Section 23. Section 16-11-114, MCA, is amended to read:

"16-11-114. Insignia discount. (1) Each licensed wholesaler is entitled to purchase an insignia at full face value less the following percentage of the face value upon payment for the insignia as defrayment of the costs of affixing insignia and precollecting the tax on behalf of the state of Montana:

(a) 0.90% for the first 2,580 cartons or portion of 2,580 cartons purchased in any calendar month;

(b) 0.60% for the next 2,580 cartons or portion of 2,580 cartons purchased in any calendar month; and

(c) 0.45% for purchases in excess of 5,160 cartons in any calendar month.

(2) The taxes for tobacco products, other than cigarettes, that are paid by the wholesaler must be paid to the department in full less a 1.5% defrayment for the wholesaler's collection and administrative expenses and must, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, be deposited by the department in the state general fund except as provided in 16-11-119. Refunds of the tax paid must be made as provided in 15-1-503 in cases in which the tobacco products purchased become unsalable."

Section 24. Section 16-11-119, MCA, is amended to read:

"16-11-119. Disposition of taxes. (1) Cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, be deposited as follows:

(a) 8.3% or $2 million, whichever is greater, in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes;

(b) 2.6% in the long-range building program account provided for in 17-7-205;

(c) 44% in the state special revenue fund to the credit of the health and medicaid initiatives account provided for in 53-6-1201; and

(d) the remainder to the state general fund.

(2) If money in the state special revenue fund for the operation and maintenance of state veterans' nursing homes exceeds $2 million at the end of the fiscal year, the excess must be transferred to the state general fund.

(3) The taxes collected on tobacco products, other than cigarettes, must in accordance with the provisions of ~~15-1-501~~ *[section 1]* be deposited as follows:

(a) one-half in the state general fund; and

(b) one-half in the state special revenue fund account for health and medicaid initiatives provided for in 53-6-1201."

Section 25. Section 23-5-610, MCA, is amended to read:

"23-5-610. Video gambling machine gross income tax — records — distribution — quarterly statement and payment. (1) A licensed machine owner shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine issued a permit under this part. A licensed machine owner may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.

(2) A licensed machine owner shall keep a record of the gross income from each video gambling machine issued a permit under this part in the form the department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(3) For each video gambling machine issued a permit under this part, a licensed machine owner shall, within 15 days after the end of each quarter and in the manner prescribed by the department, complete and deliver to the department a statement showing the total gross income, together with the total amount due the state as video gambling machine gross income tax for the

preceding quarter. The statement must contain other relevant information that the department requires.

(4) The department shall, in accordance with the provisions of ~~15-1-501~~ *[section 1]*, forward the tax collected under subsection (3) *of this section* to *the state treasurer for deposit in* the general fund."

Section 26. Section 39-71-2321, MCA, is amended to read:

"39-71-2321. What to be deposited in state fund. (1) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, securities acquired by or through use of money, and all interest and penalties on taxes in accordance with ~~15-1-501~~ *[section 1]* must be deposited in the state fund. Except for a transfer authorized under 39-71-2352, the money must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

(2) All funds deposited in the state fund may be spent as provided in 17-8-101(2)(b)."

Section 27. Repealer. Section 15-1-501, MCA, is repealed.

Section 28. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 17, chapter 2, and the provisions of Title 17, chapter 2, apply to [section 1].

Section 29. Coordination instruction. If Senate Bill No. 118 and [this act] are both passed and approved and they contain a section amending 15-66-102, then the sections amending 15-66-102 are void and 15-66-102 must be amended as follows:

"15-66-102. (Temporary) Utilization fee for inpatient bed days. (1) Each hospital in the state shall pay to the department a utilization fee:

(a) in the amount of ~~$19.43~~ *$27.70* for each inpatient bed day between January 1, ~~2004~~ *2006*, and June 30, ~~2005~~ *2007*;

(b) in the amount of ~~$29.75~~ *$47* for each inpatient bed day between July 1, ~~2005~~ *2007*, and December 31, ~~2005~~ *2007*;

(c) in the amount of ~~$27.70~~ *$43* for each inpatient bed day between January 1, ~~2006~~ *2008*, and December 31, ~~2006~~ *2008*;

(d) in the amount of $48 for each inpatient bed day between January 1, 2009, and December 31, 2009; and

~~(d)~~*(e)* ~~after~~ *beginning* January 1, ~~2007~~ *2010*, ~~in an amount determined by rule as provided in subsection (2)~~ *in the amount of $50 for each inpatient bed day*.

~~(2) Prior to each calendar year that will be subject to the fee, the department by rule shall determine the amount of the fee, not to exceed $50, based upon:~~

~~(a) an estimate of the unpaid medicaid hospital costs, total inpatient days, and the federal medical assistance percentages;~~

~~(b) an estimate of any federal limit on federal financial participation for hospital services; and~~

~~(c) an estimate of federal disproportionate share funds not matched by state general funds.~~

~~(3)~~*(2)* ~~(a)~~ All proceeds from the collection of utilization fees, including penalties and interest, must*, in accordance with the provisions of [section 1 of*

Senate Bill No. 525], be deposited to the credit of the department of public health and human services in a state special revenue account as provided in 53-6-149.

~~(b) A hospital may not place a fee created in this chapter on a patient's bill.~~ (Void on occurrence of contingency—sec. 18, Ch. 390, L. 2003. ~~Terminates June 30, 2007—sees. 4, 7, Ch. 606, L. 2005.~~)"

Section 30. Effective date. [This act] is effective on passage and approval.

Section 31. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable.

Approved May 8, 2007

CHAPTER NO. 476

[SB 535]

AN ACT REVISING LAWS RELATING TO ANNUITIES; CREATING THE MONTANA SUITABILITY IN ANNUITY TRANSACTIONS ACT; PROVIDING FOR EXEMPTIONS FROM THE MONTANA SUITABILITY IN ANNUITY TRANSACTIONS ACT; ESTABLISHING DUTIES FOR INSURERS, INSURANCE PRODUCERS, AND INDEPENDENT AGENCIES; CREATING THE MONTANA ANNUITY DISCLOSURE ACT; PROVIDING DEFINITIONS; ESTABLISHING DISCLOSURE REQUIREMENTS FOR BUYER'S GUIDES AND DISCLOSURE DOCUMENTS; REQUIRING REPORTS TO ANNUITY CONTRACT HOLDERS; PROVIDING PENALTIES FOR VIOLATIONS OF EITHER ACT; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 6] may be referred to as the "Montana Suitability in Annuity Transactions Act".

Section 2. Purpose — scope. (1) The purpose of [sections 1 through 6] is to set forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

(2) [Sections 1 through 6] apply to any recommendation to purchase or exchange an annuity made to a consumer by an insurance producer or by an insurer when an insurance producer is not involved that results in the recommended purchase or exchange.

Section 3. Exemptions. Unless otherwise specifically included, [sections 1 through 6] do not apply to recommendations involving:

(1) direct response solicitations when there is not a recommendation made based on information collected from the consumer;

(2) contracts used to fund:

(a) an employee pension or welfare benefit plan that is covered by the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.;

(b) a plan described by section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code, 26 U.S.C. 401(a), 401(k), 403(b), 408(k), or 408(p), if established or maintained by an employer;

(c) a governmental plan or church plan defined in section 414 of the Internal Revenue Code, 26 U.S.C. 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under section 457 of the Internal Revenue Code, 26 U.S.C. 457;

(d) a nonqualified deferred compensation plan maintained by an employer or plan sponsor;

(e) settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(f) formal prepaid funeral contracts; or

(3) variable annuities regulated under Title 30, chapter 10.

Section 4. Definitions. As used in [sections 1 through 6], the following definitions apply:

(1) "Annuity" means a fixed annuity that is individually solicited, regardless of whether the product is classified as an individual or group annuity.

(2) "Insurance producer", in addition to the definition in 33-17-102, includes an insurance producer licensed to sell, solicit, or negotiate annuities.

(3) "Insurer", in addition to the definition in 33-1-201, includes an insurer providing annuity products.

(4) "Recommendation" means advice provided by an insurance producer or by an insurer when an insurance producer is not involved to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

Section 5. Duties of insurers, insurance producers, and independent agencies. (1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer or the insurer when an insurance producer is not involved must have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments, other insurance products, financial situation, and needs.

(2) Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer or an insurer when an insurance producer is not involved shall make reasonable efforts to obtain information concerning:

(a) the consumer's financial status;

(b) the consumer's tax status;

(c) the consumer's investment objectives; and

(d) other information used or considered reasonable in making recommendations to the consumer by the insurance producer or by the insurer when an insurance producer is not involved.

(3) (a) Except as provided under subsection (3)(b), an insurance producer or an insurer when an insurance producer is not involved does not have any obligation to a consumer under subsection (1) related to any recommendation if a consumer:

(i) refuses to provide relevant information requested by the insurer or insurance producer;

(ii) decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or

(iii) fails to provide complete or accurate information.

(b) Subject to subsection (1), an insurer's or insurance producer's recommendation must be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

(4) (a) An insurer may contract with a third party as provided in subsection (6) to establish and maintain a system to supervise recommendations that is reasonably designed to achieve compliance with this section.

(b) A system designed and maintained by an insurer must at a minimum provide for:

(i) maintaining written procedures; and

(ii) conducting periodic reviews of the insurer's records that are reasonably designed to assist in detecting and preventing violations of [sections 1 through 6].

(5) An insurance producer or independent agency shall:

(a) adopt a system established by an insurer to supervise recommendations of the insurance producer or agency's insurance producers that is reasonably designed to achieve compliance with [sections 1 through 6]; or

(b) establish and maintain a system that at a minimum provides for:

(i) maintaining written procedures; and

(ii) conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of [sections 1 through 6].

(6) (a) An insurer may contract with a third party, including an insurance producer or independent agency, to establish and maintain a system of supervision as provided for in subsection (4) with respect to insurance producers under contract with or employed by the third party.

(b) An insurer shall make reasonable inquiry to ensure that the third party is performing the functions required under subsection (4) and shall take reasonable action under the circumstances to enforce the third party's contractual obligations to perform the functions.

(c) An insurer may comply with its obligation to make reasonable inquiry by doing each of the following:

(i) annually obtaining a certification from a director, officer, or principal of the third party that the third party is performing the required functions; and

(ii) based on reasonable selection criteria, periodically selecting third parties for a review to determine whether the third parties are performing the required functions.

(7) An insurer, insurance producer, or independent agency is not required by this section to:

(a) review or provide for review of insurance producer solicited transactions not related to annuities; or

(b) include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, insurance producer, or independent agency.

(8) An insurance producer or independent agency contracting as a third party with an insurer pursuant to subsection (6) shall promptly, when requested by the insurer, give a certification as described in subsection (6) or give a clear statement that it is unable to meet the certification criteria.

(9) (a) Insurers, insurance producers, and independent agencies shall maintain or must be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for 5 years after the insurance transaction is completed by the insurer. An insurer is permitted, but is not required, to maintain documentation on behalf of an insurance producer.

(b) Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document.

Section 6. Mitigation of responsibility. (1) The commissioner may order:

(a) an insurer or insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurer's or insurance producer's violation of [sections 1 through 6]; or

(b) an insurance producer or independent agency that employs or contracts with another insurance producer to sell or solicit the sale of annuities to consumers to take reasonably appropriate corrective action for any consumer harmed by the other insurance producer's violation of [sections 1 through 6].

(2) A violation of [sections 1 through 6] is an unfair trade practice under Title 33, chapter 18. Fines may be imposed pursuant to 33-1-317.

Section 7. Short title. [Sections 7 through 13] may be referred to as the "Montana Annuity Disclosure Act".

Section 8. Purpose. The purpose of [sections 7 through 13] is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and to foster consumer education. [Sections 7 through 13] specify the minimum information that must be disclosed and the method for disclosing the information in connection with the sale of annuity contracts. The goal of [sections 7 through 13] is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

Section 9. Applicability. (1) [Sections 7 through 13] apply to all group and individual annuity contracts and certificates except:

(a) registered or nonregistered variable annuities or other registered products;

(b) immediate and deferred annuities that do not contain nonguaranteed elements;

(c) structured settlement annuities; and

(d) as provided in subsection (2), annuities used to fund:

(i) an employee pension plan that is covered by the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.;

(ii) a plan described by section 401(a), 401(k), or 403(b) of the Internal Revenue Code, 26 U.S.C. 401(a), 401(k), or 403(b), when the plan, for purposes of the Employment Retirement Income Security Act of 1974, is established or maintained by an employer;

(iii) a governmental plan or church plan defined in section 414 of the Internal Revenue Code, 26 U.S.C. 414, or a deferred compensation plan of a state or local government or a tax-exempt organization under section 457 of the Internal Revenue Code, 26 U.S.C. 457; or

(iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(2) (a) The provisions of [sections 7 through 13] apply to annuities used to fund a plan or arrangement when:

(i) the plan or arrangement is funded solely by contributions that an employee elects to make whether on a pretax or after-tax basis;

(ii) the insurer has been notified that plan participants may choose from among two or more fixed annuity providers; and

(iii) there is a direct solicitation of an individual employee by an insurance producer for the purchase of an annuity contract.

(b) As used in this subsection (2), direct solicitation does not include any meeting held by an insurance producer solely for the purpose of educating or enrolling employees in the plan or arrangement.

Section 10. Definitions. As used in [sections 7 through 13], the following definitions apply:

(1) "Contract owner" means the owner named in the annuity contract or a certificate holder in the case of a group annuity contract.

(2) (a) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and are not subject to insurer discretion, but where the values or amounts cannot be determined until some point after issue.

(b) The term includes premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, and charges or elements of formulas used to determine any of these items.

(c) Determinable elements may be described as guaranteed but not determined at issue.

(d) An element is considered determinable if it was calculated from underlying determinable elements only or from both determinable and guaranteed elements.

(3) "Generic name" means a short title descriptive of the annuity contract being applied for, such as "single premium deferred annuity".

(4) "Guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, and charges or elements of formulas used to determine any of these items that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(5) "Nonguaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, and charges or elements of formulas used to determine any of these items that are subject to

insurer discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(6) "Structured settlement annuity" means a qualified funding asset as defined in section 130(d) of the Internal Revenue Code, 26 U.S.C. 130(d), or an annuity that would be a qualified funding asset under section 130(d) except that it is not owned by an assignee under a qualified assignment.

Section 11. Standards for disclosure document and buyer's guide. (1) When the application for an annuity contract is taken in a face-to-face meeting, the applicant must be given, at or before the time of application, both the disclosure document and the buyer's guide.

(2) (a) When the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant must be sent both the disclosure document and the buyer's guide not later than 5 business days after the completed application is received by the insurer.

(b) When an application is received as a result of a direct solicitation through the mail, providing a disclosure document and a buyer's guide in the mailing inviting prospective applicants to apply for an annuity contract satisfies the requirement that the disclosure document and buyer's guide be provided not later than 5 business days after receipt of the application.

(c) When an application is received over the internet, taking reasonable steps to make the disclosure document and buyer's guide available for viewing and printing on the insurer's website satisfies the requirement that the disclosure document and the buyer's guide be provided not later than 5 business days of receipt of the application.

(d) A solicitation for an annuity contract provided in other than a face-to-face meeting must include a statement that the proposed applicant may contact the commissioner's office for a free annuity buyer's guide, or an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity buyer's guide.

(3) When the disclosure document and buyer's guide are not provided at or before the time of application, a free-look period of not less than 15 days must be provided for the applicant to return the annuity contract without penalty. This free-look period must run concurrently with any other free-look period provided under state law.

(4) At a minimum, the following information must be included in the disclosure document:

(a) the generic name of the contract, the company product name, if different, the form number, and the fact that it is an annuity;

(b) the insurer's name and address;

(c) a description of the contract and its benefits, emphasizing its long-term nature, including when appropriate:

(i) the guaranteed elements, nonguaranteed elements, and determinable elements of the contract and their limitations, if any, and an explanation of how the elements operate;

(ii) an explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and are not guaranteed;

(iii) periodic income options both on a guaranteed and nonguaranteed basis;

(iv) any value reductions caused by withdrawals from or surrender of the contract;

(v) how values in the contract can be accessed;

(vi) the death benefit, if one is available, and how it will be calculated;

(vii) a summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

(viii) impact of any rider, such as a long-term care rider;

(d) specific dollar amount or percentage charges and fees with an explanation of how they apply; and

(e) information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

(5) Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

Section 12. Report to contract owners. (1) For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract.

(2) The report must contain at least the following information:

(a) the beginning and ending date of the current report period;

(b) the accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;

(c) the total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period; and

(d) the amount of outstanding loans, if any, as of the end of the current report period.

Section 13. Penalties. In addition to any other penalties provided in Title 33, an insurer or insurance producer that violates a provision of [sections 7 through 13] also violates 33-18-102.

Section 14. Applicability. [This act] applies to all group and individual annuity contracts and certificates subject to the provisions of [sections 1 through 13] sold on or after [the effective date of this act].

Section 15. Codification instruction. [Sections 1 through 13] are intended to be codified as an integral part of Title 33, chapter 20, and the provisions of Title 33, chapter 20, apply to [sections 1 through 13].

Approved May 8, 2007

CHAPTER NO. 477

[SB 538]

AN ACT ESTABLISHING A BILL OF RIGHTS DAY FOR THE STATE OF MONTANA.

WHEREAS, the Bill of Rights, the first 10 amendments to the U.S. Constitution, limits the powers of the federal government and reserves the

remaining powers to the states and the people, and also protects the rights of all citizens to freedom of speech, freedom of the press, freedom of assembly, freedom of religious worship, freedom of petition, and freedom to keep and bear arms; and

WHEREAS, the Bill of Rights furthermore provides equal security to all who carry the noble title of citizen through protection from unreasonable search and seizure, cruel and unusual punishment, and self-incrimination and guarantees a trial by jury and due process in a court of law; and

WHEREAS, all Montanans know and cherish these liberties and understand them to be the foundation of the social contract and the correlating responsibilities inherent as members of the citizenry.

Be it enacted by the Legislature of the State of Montana:

Section 1. Bill of rights day. There is established a bill of rights day for the state of Montana. The bill of rights day is December 15 of each year to commemorate the day in 1791 in which three-fourths of the states ratified the bill of rights as part of the U.S. constitution.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 2, and the provisions of Title 1, chapter 1, part 2, apply to [section 1].

Approved May 8, 2007

CHAPTER NO. 478

[SB 549]

AN ACT REVISING THE METHOD FOR CLASSIFYING LAND AS AGRICULTURAL FOR PROPERTY TAX PURPOSES; REQUIRING A MINIMUM DOLLAR AMOUNT OF GROSS INCOME FROM AGRICULTURAL PRODUCTION TO QUALIFY AS CLASS THREE AGRICULTURAL LAND; PROVIDING THAT THE MINIMUM DOLLAR AMOUNT FOR GRAZING LAND BE DETERMINED BY AN ANIMAL UNIT MONTH COMPUTATION DETERMINED BY MONTANA STATE UNIVERSITY-BOZEMAN; AMENDING SECTION 15-7-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-202, MCA, is amended to read:

"15-7-202. Eligibility of land for valuation as agricultural. (1) (a) Contiguous parcels of land totaling 160 acres or more under one ownership are eligible for valuation, assessment, and taxation as agricultural land each year that none of the parcels is devoted to a residential, commercial, or industrial use.

(b) (i) Contiguous parcels of land of 20 acres or more but less than 160 acres under one ownership *that are actively devoted to agricultural use* are eligible for valuation, assessment, and taxation as agricultural land if*:*

(A) the land is used primarily for raising and marketing, as defined in subsection (1)(c), products that meet the definition of agricultural in 15-1-101~~. A parcel of land is presumed to be used primarily for raising agricultural products if~~ *and if, except as provided in subsection (3),* the owner or the owner's immediate family members, agent, employee, or lessee markets not less than $1,500 in

annual gross income from the raising of agricultural products produced by the land. ~~The owner of land that is not presumed to be agricultural land shall verify to the department that the land is used primarily for raising and marketing agricultural products.~~*; or*

(B) the parcels would have met the qualification set out in subsection (1)(b)(i)(A) were it not for independent, intervening causes of production failure beyond the control of the producer or a marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(ii) Noncontiguous parcels of land that meet the income requirement of subsection (1)(b)(i) are eligible for valuation, assessment, and taxation as agricultural land under subsection (1)(b)(i) if:

(A) the land is an integral part of a bona fide agricultural operation undertaken by the persons set forth in subsection (1)(b)(i) as defined in this section; and

(B) the land is not devoted to a residential, commercial, or industrial use.

(iii) Parcels of land of 20 acres or more but less than 160 acres that do not meet the income requirement of subsection (1)(b)(i) may also be valued, assessed, and taxed as agricultural land if the owner:

(A) applies to the department requesting classification of the parcel as agricultural;

(B) verifies that the parcel of land is greater than 20 acres but less than 160 acres and that the parcel is located within 15 air miles of the family-operated farming entity referred to in subsection (1)(b)(iii)(C); and

(C) verifies that:

(I) the owner of the parcel is involved in agricultural production by submitting proof that 51% or more of the owner's Montana annual gross income is derived from agricultural production; and

(II) property taxes on the property are paid by a family corporation, family partnership, sole proprietorship, or family trust that is involved in Montana agricultural production and 51% of the entity's Montana annual gross income is derived from agricultural production; or

(III) the owner is a shareholder, partner, owner, or member of the family corporation, family partnership, sole proprietorship, or family trust that is involved in Montana agricultural production and 51% of the person's or entity's Montana annual gross income is derived from agricultural production.

(c) For the purposes of this subsection (1):

(i) "marketing" means the selling of agricultural products produced by the land and includes but is not limited to:

(A) rental or lease of the land as long as the land is actively used for grazing livestock or for other agricultural purposes; and

(B) rental payments made under the federal conservation reserve program or a successor to that program;

(ii) land that is devoted to residential use or that is used for agricultural buildings and is included in or is contiguous to land under the same ownership that is classified as agricultural land, other than nonqualified agricultural land described in 15-6-133(1)(c), must be classified as agricultural land, and the land must be valued as provided in 15-7-206.

(2) Contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use are eligible for valuation, assessment, and taxation as agricultural each year that the parcels meet any of the following qualifications:

(a) *except as provided in subsection (3),* the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of agricultural products as defined in 15-1-101; or

(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent, intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(3) For grazing land to be eligible for classification as agricultural land under subsections (1)(b) and (2), the land must be capable of sustaining a minimum number of animal unit months of carrying capacity. The minimum number of animal unit months of carrying capacity must equate to $1,500 in annual gross income as determined by the Montana state university-Bozeman department of agricultural economics and economics.

~~(3)~~*(4)* Parcels that do not meet the qualifications set out in subsections (1) and (2) may not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

~~(4)~~*(5)* Land may not be classified or valued as agricultural land or nonqualified agricultural land if it has stated covenants or other restrictions that effectively prohibit its use for agricultural purposes.

~~(5)~~*(6)* The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise is not considered a bona fide agricultural operation.

~~(6)~~*(7)* The department may not classify land less than 160 acres as agricultural unless the owner has applied to have land classified as agricultural land. Land of 20 acres or more but less than 160 acres for which no application for agricultural classification has been made is valued as provided in 15-6-133(1)(c) and is taxed as provided in 15-6-133(3). If land has been valued, assessed, and taxed as agricultural land in any year, it must continue to be valued, assessed, and taxed as agricultural until the department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111.

~~(7)~~*(8)* For the purposes of this part, growing timber is not an agricultural use."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2006.

Approved May 8, 2007

CHAPTER NO. 479

[SB 489]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII, SECTION 13, OF THE MONTANA CONSTITUTION TO ALLOW UP TO 25 PERCENT OF CERTAIN PUBLIC

FUNDS TO BE INVESTED IN PRIVATE CORPORATE CAPITAL STOCK; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article VIII, section 13, of The Constitution of the State of Montana is amended to read:

"Section 13. Investment of public funds and public retirement system and state compensation insurance fund assets. (1) The legislature shall provide for a unified investment program for public funds and public retirement system and state compensation insurance fund assets and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except as provided in subsections (3) and (4), ~~no public~~ *up to 25 percent of public* funds ~~shall~~ *may* be invested in private corporate capital stock *in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use*. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) Bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other safe investments ~~bearing a fixed rate of interest as may be provided by law.~~ *that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in investing a fund guaranteed against loss or diversion.*

(3) Investment of public retirement system assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of an enterprise of a similar character with similar aims. Public retirement system assets may be invested in private corporate capital stock*, and the restrictions in subsection (1) on the percentage that may be invested in private capital stock do not apply*.

(4) Investment of state compensation insurance fund assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of a private insurance organization. State compensation insurance fund assets may be invested in private corporate capital stock. However, the stock investments shall not exceed 25 percent of the book value of the state compensation insurance fund's total invested assets."

Section 2. Effective date. This amendment is effective upon approval by the electorate.

Section 3. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 2008 by printing on the ballot the full title of this act and the following:

☐ FOR allowing up to 25% of all public funds presently restricted to fixed income investments to be invested in private corporate capital stock.

☐ AGAINST allowing up to 25% of all public funds presently restricted to fixed income investments to be invested in private corporate capital stock.

CHAPTER NO. 480

[HB 683]

AN ACT PROVIDING THAT A FULL GUARDIAN MAY NOT CONSENT TO THE WITHHOLDING OR WITHDRAWAL OF LIFE SUSTAINING TREATMENT OR TO A DO NOT RESUSCITATE ORDER IF THE GUARDIAN DOES NOT HAVE CONSENT AUTHORITY PURSUANT TO THE MONTANA RIGHTS OF THE TERMINALLY ILL ACT, THE LAWS PROVIDING FOR DO NOT RESUSCITATE ORDERS, OR A COURT ORDER; AND AMENDING SECTIONS 50-9-106 AND 72-5-321, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-9-106, MCA, is amended to read:

"50-9-106. Consent by others to withholding or withdrawal of treatment. (1) If a written consent to the withholding or withdrawal of the treatment, witnessed by two individuals, is given to the attending physician or attending advanced practice registered nurse, the attending physician or attending advanced practice registered nurse may withhold or withdraw life-sustaining treatment from an individual who:

(a) has been determined by the attending physician or attending advanced practice registered nurse to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment; and

(b) has no effective declaration.

(2) The authority to consent or to withhold consent under subsection (1) may be exercised by the following individuals, in order of priority:

(a) the spouse of the individual;

(b) an adult child of the individual or, if there is more than one adult child, a majority of the adult children who are reasonably available for consultation;

(c) the parents of the individual;

(d) an adult sibling of the individual or, if there is more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation; or

(e) the nearest other adult relative of the individual by blood or adoption who is reasonably available for consultation.

(3) A full guardian may consent or withhold consent under subsection (1) as provided in 72-5-321.

~~(3)~~*(4)* If a class entitled to decide whether to consent is not reasonably available for consultation and competent to decide or if it declines to decide, the next class is authorized to decide. However, an equal division in a class does not authorize the next class to decide.

~~(4)~~*(5)* A decision to grant or withhold consent must be made in good faith. A consent is not valid if it conflicts with the expressed intention of the individual.

~~(5)~~*(6)* A decision of the attending physician or attending advanced practice registered nurse acting in good faith that a consent is valid or invalid is conclusive.

~~(6)~~*(7)* Life-sustaining treatment cannot be withheld or withdrawn pursuant to this section from an individual known to the attending physician or attending advanced practice registered nurse to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment."

Section 2. Section 72-5-321, MCA, is amended to read:

"72-5-321. Powers and duties of guardian of incapacitated person. (1) The powers and duties of a limited guardian are those specified in the order appointing the guardian. The limited guardian is required to report the condition of the incapacitated person and of the estate that has been subject to the guardian's possession and control, as required by the court or by court rule.

(2) A full guardian of an incapacitated person has the same powers, rights, and duties respecting the ward that a parent has respecting an unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular and without qualifying the foregoing, a full guardian has the following powers and duties, except as limited by order of the court:

(a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, the full guardian is entitled to custody of the person of the ward and may establish the ward's place of residence within or outside of this state.

(b) If entitled to custody of the ward, the full guardian shall make provision for the care, comfort, and maintenance of the ward and whenever appropriate arrange for the ward's training and education. Without regard to custodial rights of the ward's person, the full guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of the ward is in need of protection.

(c) A full guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service. *This subsection (2)(c) does not authorize a full guardian to consent to the withholding or withdrawal of life sustaining treatment or to a do not resuscitate order if the full guardian does not have authority to consent pursuant to the Montana Rights of the Terminally Ill Act, Title 50, chapter 9, or to the do not resuscitate provisions of Title 50, chapter 10. A full guardian may petition the court for authority to consent to the withholding or withdrawal of life-sustaining treatment or to a do not resuscitate order. The court may grant that authority only upon finding that consent to the withholding or withdrawal of life-sustaining treatment or the do not resuscitate order is consistent with the ward's wishes to the extent that those wishes can be determined.*

(d) If a conservator for the estate of the ward has not been appointed, a full guardian may:

(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform that person's duty;

(ii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward. However, the full guardian may not use funds from the ward's estate for room and board that the full guardian, the full guardian's spouse, parent, or child has furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the incompetent ward, if notice is possible. The full guardian must exercise care to conserve any excess for the ward's needs.

(e) Unless waived by the court, a full guardian is required to report the condition of the ward and of the estate which has been subject to the full guardian's possession or control annually for the preceding year. A copy of the report must be served upon the ward's parent, child, or sibling if that person has made an effective request under 72-5-318.

(f) If a conservator has been appointed, all of the ward's estate received by the full guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this chapter, and the full guardian must account to the conservator for funds expended.

(3) Upon failure, as determined by the clerk of court, of the guardian to file an annual report, the court shall order the guardian to file the report and give good cause for the guardian's failure to file a timely report.

(4) Any full guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall control those aspects of the custody and care of the ward over which the limited guardian is given authority by the order establishing the limited guardianship. The full guardian or limited guardian is entitled to receive reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The full guardian or limited guardian authorized to oversee the incapacitated person's care may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(5) A full guardian or limited guardian may not involuntarily commit for mental health treatment or for treatment of a developmental disability or for observation or evaluation a ward who is unwilling or unable to give informed consent to commitment, except as provided in 72-5-322, unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed. This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters 20 and 21.

(6) Upon the death of a full guardian's or limited guardian's ward, the full guardian or limited guardian, upon an order of the court and if there is no personal representative authorized to do so, may make necessary arrangements for the removal, transportation, and final disposition of the ward's physical remains, including burial, entombment, or cremation, and for the receipt and disposition of the ward's clothing, furniture, and other personal effects that may be in the possession of the person in charge of the ward's care, comfort, and maintenance at the time of the ward's death."

Approved May 10, 2007

CHAPTER NO. 481

[SB 96]

AN ACT GENERALLY REVISING THE LAWS RELATING TO INITIATIVES AND REFERENDUMS; REVISING THE PROCEDURE FOR REVIEWING A PROPOSED BALLOT ISSUE; CHANGING THE ENTITY PREPARING BALLOT STATEMENTS FROM THE ATTORNEY GENERAL TO THE PETITIONER, WITH REVIEW BY THE LEGISLATIVE SERVICES DIVISION AND APPROVAL BY THE ATTORNEY GENERAL FOR INITIATED MEASURES AND PREPARATION BY THE ATTORNEY GENERAL FOR REFERRED MEASURES; REVISING THE ATTORNEY GENERAL'S PROCEDURE FOR REVIEWING PROPOSED BALLOT ISSUES FOR LEGAL SUFFICIENCY; PROVIDING THAT THE SUPREME COURT HAS ORIGINAL JURISDICTION TO HEAR CHALLENGES TO THE ATTORNEY GENERAL'S BALLOT STATEMENTS AND DETERMINATION OF LEGAL SUFFICIENCY; REQUIRING THE ATTORNEY GENERAL TO PREPARE A STATEMENT IF A PROPOSED BALLOT ISSUE CONFLICTS WITH ANOTHER PROPOSED BALLOT ISSUE; REQUIRING THE SECRETARY OF STATE TO PREPARE THE PETITION FORM FOR BALLOT ISSUES; PROVIDING THAT SIGNATURE GATHERERS MUST BE MONTANA RESIDENTS AND MAY NOT BE PAID BASED UPON THE NUMBER OF SIGNATURES GATHERED; ELIMINATING THE CERTIFICATION OF SIGNATURES BY A PERSON WHO ASSISTED IN GATHERING THE SIGNATURES; REQUIRING THAT FACTUAL STATEMENTS CONTAINED IN BALLOT STATEMENTS MUST BE SUPPORTED BY DOCUMENTS FILED WITH THE SECRETARY OF STATE; PROVIDING FOR CONSISTENT USE OF DEFINED TERMS; PROVIDING A PENALTY; AMENDING SECTIONS 3-2-202, 3-5-302, 13-1-101, 13-22-102, 13-27-102, 13-27-201, 13-27-202, 13-27-204, 13-27-205, 13-27-207, 13-27-208, 13-27-302, 13-27-312, 13-27-315, 13-27-316, 13-27-402, 13-27-403, 13-27-409, 13-27-501, 13-35-207, 13-37-210, 13-37-226, AND 13-37-228, MCA; REPEALING SECTIONS 13-27-310 AND 13-27-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-2-202, MCA, is amended to read:

"3-2-202. Original jurisdiction — ~~contest~~ *review* of ballot ~~issue~~ *statements*. (1) ~~Except as provided in subsection (3), in~~ *In* the exercise of its original jurisdiction, the supreme court has power to issue writs of mandamus, certiorari, prohibition, injunction, and habeas corpus.

(2) ~~It also~~ *The supreme court* has *the* power to issue all other writs necessary and proper to the complete exercise of its appellate jurisdiction.

~~(3) (a) Except as provided in subsection (3)(b), a contest of a ballot issue submitted by initiative or referendum may be brought prior to the election only if it is filed within 30 days after the date on which the issue was certified to the governor, as provided in 13-27-308, and only for the following causes:~~

~~(i) violation of the law relating to qualifications for inclusion on the ballot;~~

~~(ii) constitutional defect in the substance of a proposed ballot issue; or~~

~~(iii) illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.~~

~~(b) A contest of a ballot issue based on subsection (3)(a)(i) or (3)(a)(iii) may be brought at any time after discovery of illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.~~

(3) (a) The supreme court has original jurisdiction to review the petitioner's ballot statements for initiated measures and the attorney general's ballot statements for referred measures and the attorney general's legal sufficiency determination in an action brought pursuant to 13-27-316.

(b) (i) In an original proceeding under subsection (3)(a), the petitioner and the attorney general shall certify the absence of factual issues or shall stipulate to and file any factual record necessary to the supreme court's consideration of the petitioner's ballot statements or the attorney general's legal sufficiency determination.

(ii) If the parties to an original proceeding under subsection (3)(a) fail to make the certification or stipulation required by subsection (3)(b)(i), the supreme court shall refer the proceeding to the district court in the county of residence of the lead petitioner for development of a factual record and an order that addresses the issues provided in 13-27-316(3). Any party may appeal the order of the district court to the supreme court by filing a notice of appeal within 5 days of the date of the order of the district court. If a lead petitioner has not been designated in accordance with this section or if the parties to the proceeding agree, the proceeding must be referred to the district court for Lewis and Clark County.

(4) As used in this section, "lead petitioner" means an individual designated by the petitioner or petitioners on a form provided by the secretary of state.

~~(c)~~*(5)* Nothing in subsection (3) limits the right to challenge a ~~measure~~ *ballot issue* enacted by a vote of the people."

Section 2. Section 3-5-302, MCA, is amended to read:

"3-5-302. Original jurisdiction. (1) ~~Except as provided in subsection (6), the~~ *The* district court has original jurisdiction in:

(a) all criminal cases amounting to felony;

(b) all civil and probate matters;

(c) all cases at law and in equity;

(d) all cases of misdemeanor not otherwise provided for; and

(e) all ~~such~~ special actions and proceedings ~~as~~ *that* are not otherwise provided for.

(2) The district court has concurrent original jurisdiction with the justice's court in the following criminal cases amounting to misdemeanor:

(a) misdemeanors arising at the same time as and out of the same transaction as a felony or misdemeanor offense charged in district court;

(b) misdemeanors resulting from the reduction of a felony or misdemeanor offense charged in the district court; and

(c) misdemeanors resulting from a finding of a lesser included offense in a felony or misdemeanor case tried in district court.

(3) The district court has exclusive original jurisdiction in all civil actions that might result in a judgment against the state for the payment of money.

(4) The district court has the power of naturalization and of issuing papers ~~therefor~~ *for naturalization* in all cases where it is authorized to do so by the laws of the United States.

(5) The district court and its judges have power to issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, and injunction, other original remedial writs, and all writs of habeas corpus on petition by or on behalf of any person held in actual custody in their respective districts. Injunctions and writs of prohibition and habeas corpus may be issued and served on legal holidays and nonjudicial days.

~~(6) (a) Except as provided in subsection (6)(b), a contest of a ballot issue submitted by initiative or referendum may be brought prior to the election only if it is filed within 30 days after the date on which the issue was certified to the governor, as provided in 13-27-308, and only for the following causes:~~

~~(i) violation of the law relating to qualifications for inclusion on the ballot;~~

~~(ii) constitutional defect in the substance of a proposed ballot issue; or~~

~~(iii) illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.~~

~~(b) A contest of a ballot issue based on subsection (6)(a)(i) or (6)(a)(iii) may be brought at any time after discovery of illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.~~

~~(c) Nothing in subsection (6) limits the right to challenge a measure enacted by a vote of the people.~~"

Section 3. Section 13-1-101, MCA, is amended to read:

"13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Active elector" means an elector who voted in the previous federal general election and whose name is on the active list.

(2) "Active list" means a list of active electors maintained pursuant to 13-2-220.

(3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) "Application for voter registration" means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, submitted to the election administrator, and contains voter registration information subject to verification as provided by law.

(5) "Ballot" means:

(a) a paper ballot used with a paper-based system, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots; or

(b) a nonpaper ballot, such as a ballot used with a nonpaper-based system, such as a lever machine, a direct recording electronic machine, or other technology.

(6) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure

nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; and

(c) an officeholder who is the subject of a recall election.

(7) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees; or

(iv) filing fees paid by the candidate.

(8) "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(9) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.

(10) "Elector" means an individual qualified to vote under state law.

(11) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (7);

(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

(12) "Federal election" means a general or primary election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

(13) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).

(14) "Inactive elector" means an individual who failed to vote in the preceding federal general election and whose name was placed on an inactive list pursuant to 13-2-220.

(15) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220.

(16) "Individual" means a human being.

(17) *(a)* "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question.

(b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon ~~approval~~ *preparation and transmission* by the secretary of state of the form of the petition or referral *to the person who submitted the proposed issue*.

(18) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

(19) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (6).

(20) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

(21) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

(22) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including

nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.

(23) "Provisional ballot" means a ballot cast by an elector whose identity and eligibility to vote have not been verified as provided by law.

(24) "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose eligibility has not yet been verified as provided by law.

(25) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(26) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(27) "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

(28) "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

(29) "Transfer form" means a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector's registration when the elector's residence address has changed within the county.

(30) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

(31) "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper or nonpaper ballot."

Section 4. Section 13-22-102, MCA, is amended to read:

"13-22-102. Purpose and intent. The intent of the legislature is to establish a nonpartisan youth voting program that will:

(1) provide the youth of Montana with practical experience in the democratic process;

(2) increase the likelihood that Montana's youth will participate in the process as adult voters and encourage the participation of more parents in elections;

(3) not benefit any elected official, candidate for elective office, political party, campaign for or against any ballot issue, or any ~~measure~~ *proposed ballot issue* attempting to qualify for placement on a ballot; and

(4) be entirely funded through private donations."

Section 5. Section 13-27-102, MCA, is amended to read:

"13-27-102. Who may petition *and gather signatures.* *(1)* A petition for the initiative, the referendum, or to call a constitutional convention may be signed only by a qualified elector of the state of Montana.

(2) A person gathering signatures for the initiative, the referendum, or to call a constitutional convention:

(a) must be a resident, as provided in 1-1-215, of the state of Montana; and

(b) may not be paid anything of value based upon the number of signatures gathered."

Section 6. Section 13-27-201, MCA, is amended to read:

"13-27-201. Form of petition generally. (1) A petition for the initiative, for the referendum, or to call a constitutional convention must be substantially in the form provided by this chapter. Clerical or technical errors that do not interfere with the ability to judge the sufficiency of signatures on the petition do not render a petition void.

(2) Petition sheets may not exceed 8 1/2 x 14 inches in size. Separate sheets of a petition may be fastened in sections of not more than 25 sheets. Near the top of each sheet containing signature lines must be printed the title of the statute or constitutional amendment proposed or the ~~measure~~ *issue* to be referred or a statement that the petition is for the purpose of calling a constitutional convention. If signature lines are printed on both the front and back of a petition sheet, the information required above must appear on both the front and back of the sheet. The complete text of the ~~measure~~ *issue* proposed or referred must be attached to or contained within each signature sheet if sheets are circulated separately. The text of the ~~measure~~ *issue* must be in the bill form provided in the most recent ~~issue~~ *edition* of the bill drafting manual furnished by the legislative services division. If sheets are circulated in sections, the complete text of the ~~measure~~ *issue* must be attached to each section.

(3) An internet posting of petition language must include a statement that the petition language and format may not be modified. An internet posting must include an affidavit in substantially the same form as prescribed by the secretary of state pursuant to 13-27-302."

Section 7. Section 13-27-202, MCA, is amended to read:

"13-27-202. Recommendations — approval of form required. ~~(1) Before submission of a sample sheet to the secretary of state pursuant to subsection (3), the following requirements must be fulfilled:~~

~~(a) The text of the proposed measure must be submitted to the legislative services division for review.~~

(1) A proponent of a ballot issue shall submit the text of the proposed issue to the secretary of state together with draft ballot statements intended to comply with 13-27-312. Petitions may not be circulated for the purpose of signature gathering more than 1 year prior to the final date for filing the signed petition with the county election administrator. The secretary of state shall forward a copy of the text of the proposed issue and statements to the legislative services division for review.

~~(b)~~*(2) (a)* The legislative services division staff shall review the text *and statements* for clarity, consistency, *and conformity with the most recent edition of the bill drafting manual furnished by the legislative services division, the requirements of 13-27-312,* and any other factors that the staff considers when drafting proposed legislation.

~~(c)~~*(b)* Within 14 days after submission of the text *and statements*, the legislative services division staff shall ~~make~~ *recommend in writing* to the ~~person submitting the text written recommendations for changes in~~ *proponent revisions to* the text *and revisions to the statements to make them consistent with any recommendations for change to the text and the requirements of 13-27-312* or ~~a statement~~ *state* that no ~~changes~~ *revisions* are recommended.

~~(d)~~*(c)* The ~~person submitting the text~~ *proponent* shall consider the recommendations and respond in writing to the legislative services division, accepting, rejecting, or modifying each of the recommended ~~changes~~ *revisions*. If ~~no changes~~ *revisions* are *not* recommended, ~~no~~ *a* response is *not* required.

~~(2)~~*(3)* The legislative services division shall furnish a copy of the correspondence provided for in subsection ~~(1)~~ *(2)* to the secretary of state, who shall make a copy of the correspondence available to any person upon request.

~~(3)~~*(4)* Before a petition may be circulated for signatures, ~~a sample sheet containing~~ the *final* text of the proposed ~~measure~~ *issue and ballot statements* must be submitted to the secretary of state ~~in the form in which it will be circulated~~. ~~The sample petition may not be submitted to the secretary of state more than 1 year prior to the final date for filing the signed petition with the county election administrator.~~ *The secretary of state shall reject the proposed issue if the text or a ballot statement contains material not submitted to the legislative services division that is a substantive change not recommended by the legislative services division.* ~~The~~ *If accepted, the* secretary of state shall refer a copy of the ~~petition sheet~~ *proposed issue and statements* to the attorney general for ~~approval~~ *a determination as to the legal sufficiency of the issue and for approval of the petitioner's ballot statements and for a determination pursuant to 13-27-312 whether a fiscal note is necessary*. ~~The secretary of state and attorney general shall each review the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons for rejection, if any. The attorney general shall also review the petition as to its legal sufficiency. If the attorney general determines that the petition is legally deficient, the attorney general shall notify the secretary of state of that fact and provide a copy of the determination to the secretary of state and to the petitioner within the time provided in 13-27-312(8). The petition may not be given final approval by the secretary of state unless the attorney general's determination is overruled pursuant to 13-27-316. As used in this section, "legal sufficiency" means that the petition complies with the statutory prerequisites to submission of the proposed measure to the electors and that the text of the proposed measure complies with constitutional requirements governing submission of ballot measures to the electorate. Review of a petition for legal sufficiency does not include consideration of the merits or application of the measure if adopted by the voters. The secretary of state or the attorney general may not reject the petition solely because the text contains material not submitted to the legislative services division unless the material not submitted to the legislative services division is a substantive change not suggested by the legislative services division.~~

~~(4)~~*(5)* (a) The secretary of state shall review the ~~comments~~ *legal sufficiency opinion* and *ballot* statements of the ~~attorney general~~ *petitioner, as approved by the attorney general and* received pursuant to 13-27-312 ~~and make a final decision as to the approval or rejection of the petition~~.

(b) If the attorney general approves the proposed issue, the secretary of state shall immediately send to the person submitting the proposed issue a sample petition form, including the text of the proposed issue, the statement of purpose, and the statements of implication, as prepared by the petitioner, reviewed by the legislative services division, and approved by the attorney general and in the form provided by this part. A signature gatherer may circulate the petition only in the form of the sample prepared by the secretary of state. The secretary of state shall immediately provide a copy of the sample petition form to any interested parties who have made a request to be informed of an approved petition.

~~(b)~~*(c)* ~~The~~ *If the attorney general rejects the proposed issue, the* secretary of state shall send written notice to the person who submitted the ~~petition sheet~~ *proposed issue* of the ~~approval or~~ rejection, ~~of the form of the petition within 28~~

~~days after submission of the petition sheet~~ *including the attorney general's legal sufficiency opinion*.

~~(c)~~*(d)* If an action is filed challenging the validity of the petition, the secretary of state shall immediately notify the person who submitted the ~~petition sheet~~ *proposed issue*.

~~(5) A petition with technical defects in form may be approved with the condition that those defects will be corrected before the petition is circulated for signatures.~~

~~(6) The secretary of state shall upon request provide the person submitting the petition with a sample petition form, including the text of the proposed measure, the statement of purpose, and the statements of implication, all as approved by the secretary of state and the attorney general. The petition may be circulated by a signature gatherer in the form of the sample prepared by the secretary of state. The petition may be circulated by a signature gatherer upon approval of the form of the petition by the secretary of state and the attorney general pending a final determination of its legal sufficiency.~~"

Section 8. Section 13-27-204, MCA, is amended to read:

"13-27-204. Petition for initiative. (1) The following is substantially the form for a petition calling for a vote to enact a law by initiative:

PETITION TO PLACE INITIATIVE NO.____
ON THE ELECTION BALLOT

(a) If 5% of the voters in each of one-half of the counties sign this petition and the total number of voters signing this petition is _____, this ~~measure~~ *initiative* will appear on the next general election ballot. If a majority of voters vote for this ~~measure~~ *initiative* at that election, it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following ~~measure~~ *initiative* on the _____, 20__, general election ballot:

(Title of ~~measure~~ *initiative* written pursuant to 13-27-312)

(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the ~~measure~~ *initiative*, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on this petition is only to put the ~~measure~~ *initiative* on the ballot and does not necessarily mean the signer agrees with the ~~measure~~ *initiative*.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, *date,* residence address, county of residence, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the

signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer."

Section 9. Section 13-27-205, MCA, is amended to read:

"13-27-205. Petition for referendum. (1) The following is substantially the form for a petition calling for approval or rejection of an act of the legislature by the referendum:

PETITION TO PLACE REFERENDUM NO.____
ON THE ELECTION BALLOT

(a) If 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing the petition is ____, Senate (House) Bill Number ____ will appear on the next general election ballot. If a majority of voters vote for this ~~measure~~ *referendum* at that election it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following Senate (House) Bill Number ____, passed by the legislature on _____ on the next general election ballot:

(Title of referendum written pursuant to 13-27-312)

(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the ~~measure~~ *referendum*, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on this petition is only to put the ~~measure~~ *referendum* on the ballot and does not necessarily mean the signer agrees with the ~~measure~~ *referendum*.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, ~~or~~ who signs more than once for the same issue at one election, or signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person ~~must~~ *is required to* sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter ~~registry~~ *registration* card~~,~~ or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, *date,* residence address, legislative representative district number, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer."

Section 10. Section 13-27-207, MCA, is amended to read:

"13-27-207. Petition for initiative for constitutional amendment. (1) The following is substantially the form for a petition for an initiative to amend the constitution:

PETITION TO PLACE CONSTITUTIONAL AMENDMENT NO.____
ON THE ELECTION BALLOT

(a) If 10% of the voters in each of one-half of the counties sign this petition and the total number of voters signing the petition is _____, this constitutional amendment will appear on the next general election ballot. If a majority of voters vote for this amendment at that election, it will become part of the constitution.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following constitutional amendment on the _____, 20__, general election ballot:

(Title of the proposed constitutional amendment
written pursuant to 13-27-312)

(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the ~~measure~~ *constitutional amendment*, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on this petition is only to put the constitutional amendment on the ballot and does not necessarily mean the signer agrees with the amendment.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, *date,* residence address, county of residence, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer."

Section 11. Section 13-27-208, MCA, is amended to read:

"13-27-208. Petitions to be made available in each county election administrator's office. Upon final approval of ~~a petition~~ *a proposed ballot issue* as ~~required under 13-27-202(4)~~ *provided in 13-27-202*, the secretary of state shall forward a copy of the petition, along with signature sheets, to the election administrator of each county. The election administrator shall make a copy of each approved petition available for reading ~~and signing~~ in the administrator's office during business hours in an election year until the petitions are submitted under 13-27-301. The secretary of state may charge the person who submitted the ~~petition~~ *proposed ballot issue* a fee, which must be set and deposited in accordance with 2-15-405."

Section 12. Issues referred by legislature. The secretary of state shall transmit a copy of an act referred to the people or a constitutional amendment

proposed by the legislature to the attorney general no later than 6 months before the election at which the issue will be voted on by the people.

Section 13. Physical prevention of obtaining signatures or physical intimidation of signature gatherers prohibited. A person may not knowingly or purposefully physically prevent an individual from obtaining signatures or attempting to obtain signatures on a petition for a ballot issue or physically intimidate another individual when that individual is obtaining or attempting to obtain signatures on a petition for a ballot issue. A person who violates this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500, by imprisonment for not more than 90 days, or by both a fine and imprisonment.

Section 14. Section 13-27-302, MCA, is amended to read:

"13-27-302. Certification of signatures. ~~An~~ *An* affidavit, in substantially the following form, must be attached to each sheet or section submitted to the county official:

I, (name of person who is the signature gatherer), swear that I gathered ~~or assisted in gathering~~ the signatures on the petition to which this affidavit is attached on the stated dates, that I believe the signatures on the petition are genuine, are the signatures of the persons whose names they purport to be, and are the signatures of Montana electors who are registered at the address or have the telephone number following the person's signature, and that the signers knew the contents of the petition before signing the petition.

_____

(date on which the first signature was gathered)

_____

(Signature of petition signature gatherer)

_____

(Address of petition signature gatherer)

Subscribed and sworn to before me this ___ day of _____, 20__

Seal _____

(Person authorized to take oaths)

_____

(Title or notarial information)"

Section 15. Section 13-27-312, MCA, is amended to read:

"13-27-312. Review of ~~petition~~ *proposed ballot issue and statements* by attorney general — preparation of ~~statements~~ — fiscal note. (1) Upon receipt of a ~~petition~~ *proposed ballot issue and statements* from the office of the secretary of state pursuant to 13-27-202, the attorney general shall examine the ~~petition as to form and~~ *proposed issue for* legal sufficiency~~,~~ as provided in ~~13-27-202, and, if the proposed ballot issue has an effect on the revenue, expenditures, or the fiscal liability of the state, shall order a fiscal note incorporating an estimate of the effect, the substance of which must substantially comply with the provisions of 5-4-205~~ *this section and shall determine whether the ballot statements comply with the requirements of this section*. ~~The budget director, in cooperation with the agency or agencies affected by the petition, is responsible for preparing the fiscal note and shall return it~~

~~within 6 days unless the attorney general, for good cause shown, extends the time for completing the fiscal note.~~

(2) ~~If the petition form is approved, the~~ *The* ~~attorney general shall endeavor to seek out parties on both sides of the issue and obtain their advice. The attorney general~~ ~~shall prepare~~ *attorney general shall, in reviewing the ballot statements, endeavor to seek out parties on both sides of the issue and obtain their advice. The attorney general shall review the ballot statements to determine if they contain the following matters*:

(a) a statement, not to exceed 100 words, explaining the purpose of the ~~measure~~ *issue*; and

(b) statements, not to exceed 25 words each, explaining the implications of a vote for and a vote against the ~~measure~~ *issue*.

(3) *If the proposed ballot issue has an effect on the revenue, expenditures, or the fiscal liability of the state, the attorney general shall order a fiscal note incorporating an estimate of the effect, the substance of which must substantially comply with the provisions of 5-4-205. The budget director, in cooperation with the agency or agencies affected by the ballot issue, is responsible for preparing the fiscal note and shall return it to the attorney general within 10 days.* ~~The~~ *If the fiscal note indicates a fiscal impact, the* ~~attorney general~~ *attorney general* shall prepare a fiscal statement of no more than 50 words ~~if a fiscal note was prepared for the proposed ballot issue~~, and the statement must be used on the petition and ballot if the ~~measure~~ *issue* is placed on the ballot.

(4) The ~~statement of purpose and the~~ *ballot* statements ~~of implication~~ must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the ~~measure~~ *issue*. ~~Statements of implication must be written so that a positive vote indicates support for the measure and a negative vote indicates opposition to the measure.~~

(5) ~~The~~ *Unless altered by the court under 13-27-316, the* statement of purpose~~, unless altered by a court under 13-27-316,~~ is the petition title for the ~~measure~~ *issue* circulated by the petition and the ballot title if the ~~measure~~ *issue* is placed on the ballot.

(6) The statements of implication must be *written so that a positive vote indicates support for the issue and a negative vote indicates opposition to the issue and must be* placed beside the diagram provided for marking of the ballot in a manner similar to but not limited to the following example:

☐ FOR extending the right to vote to persons 18 years of age

☐ AGAINST extending the right to vote to persons 18 years of age

~~(7) If the petition is rejected as to form, the attorney general shall forward the comments to the secretary of state within 21 days after receipt of the petition by the attorney general. If the petition is approved as to form, the attorney general shall forward the statement of purpose, the statements of implication, and the fiscal statement, if applicable, to the secretary of state within 21 days after receipt of the petition by the attorney general.~~

(7) The attorney general shall review the proposed ballot issue for legal sufficiency. As used in this part, "legal sufficiency" means the petition complies with statutory and constitutional requirements governing submission of the proposed issue to the electors. Review of the petition for legal sufficiency does not include consideration of the substantive legality of the issue if approved by the

voters. The attorney general shall also determine if the proposed issue conflicts with one or more issues that may appear on the ballot at the same election.

(8) *(a)* ~~If the petition is approved as to form, within~~ *Within* 30 days ~~of the approval~~ *after receipt of the proposed issue from the secretary of state*, the attorney general shall forward to the secretary of state ~~the determination regarding~~ *an opinion as to the issue's* legal sufficiency~~, as provided in 13-27-202~~.

(b) If the attorney general determines that the proposed ballot issue is legally sufficient, the attorney general shall also forward to the secretary of state the petitioner's ballot statements that comply with the requirements of this section. If the attorney general determines in writing that a ballot statement clearly does not comply with the requirements of this section, the attorney general shall prepare a statement that complies with the requirements of this section, forward that statement to the secretary of state as the approved statement, and provide a copy to the petitioner. The attorney general shall give the secretary of state notice of whether the proposed issue conflicts with one or more issues that may appear on the ballot at the same election.

(c) If the attorney general determines that the proposed ballot issue is not legally sufficient, the secretary of state may not deliver a sample petition form unless the attorney general's opinion is overruled pursuant to 13-27-316 and the attorney general has approved or prepared ballot statements under this section."

Section 16. Section 13-27-315, MCA, is amended to read:

"13-27-315. Statements by ~~attorney general~~ *attorney general* on issues referred by legislature. ~~(1)~~ Upon receipt of ~~a copy of a ballot form under 13-27-310(2) for~~ an issue ~~proposed~~ *referred* by the legislature *from the secretary of state pursuant to [section 12]*, the ~~attorney general~~ *attorney general* shall ~~order a fiscal note as provided in 13-27-312(1) if the issue has an effect on the revenues, expenditures, or the fiscal liability of the state~~ *prepare and forward to the secretary of state, within 30 days, ballot statements as provided in 13-27-312, except that the attorney general may not prepare statements of implication of a vote for or against a ballot issue if the statements have been provided by the legislature.* ~~At the same time the explanatory statement is prepared under subsection (2), the attorney general shall prepare a fiscal statement of no more than 50 words to be forwarded to the secretary of state at the same time as the explanatory statement.~~

~~(2) At the same time the attorney general, pursuant to 13-27-313, informs the secretary of state of the approval or rejection of a ballot form for an issue proposed by the legislature, the attorney general shall forward to the secretary of state a statement, not exceeding 100 words, expressing a true and impartial explanation of the purpose of the measure in plain, easily understood language. The statement may not be an argument and may not be written to create a prejudice for or against the issue. The statement prepared under this section is known as the attorney general's explanatory statement.~~

~~(3) If statements of the implication of a vote for or against a ballot issue have not been provided by the legislature, the attorney general shall prepare the statements. Requirements for statements of implication for ballot issues referred by the legislature are the same as those provided in 13-27-312 for other ballot issues. Statements of implication prepared by the attorney general must be returned to the secretary of state no later than the time specified for approval of the ballot form.~~"

Section 17. Section 13-27-316, MCA, is amended to read:

"13-27-316. Court review of attorney general opinion or *approved petitioner* statements. (1) If the proponents of a ballot measure believe that the ~~statement of purpose, the statements of implication of a vote, or the fiscal statement~~ *ballot statements* ~~formulated~~ *approved* by the ~~attorney general~~ *attorney general* ~~pursuant to 13-27-312~~ do not satisfy the requirements of 13-27-312~~,~~ or believe that the attorney general was incorrect in determining that the petition was legally deficient, they may, within 10 days of the ~~secretary of state's or~~ attorney general's determination regarding legal sufficiency provided for in 13-27-202, file an ~~action in the district court in and for the county of Lewis and Clark~~ *original proceeding in the supreme court* challenging the adequacy of the statement or the attorney general's determination and requesting the court to alter the statement or modify the attorney general's determination.

(2) If the opponents of a ballot measure believe that the ~~statement of purpose, the statements of implication of a vote, or the fiscal statement~~ *petitioner ballot statements* ~~formulated~~ *approved* by the ~~attorney general~~ *attorney general* ~~pursuant to 13-27-312~~ do not satisfy the requirements of 13-27-312~~,~~ or believe that the attorney general was incorrect in determining that the petition was legally sufficient, they may, within 10 days of the date of certification to the governor that the completed petition has been officially filed, file an ~~action in the district court in and for the county of Lewis and Clark~~ *original proceeding in the supreme court* challenging the adequacy of the statement or the attorney general's ~~conclusion~~ *determination* and requesting the court to alter the statement or overrule the attorney general's determination concerning the legal sufficiency of the petition. *The attorney general must respond to a complaint within 5 days.*

(3) (a) Notice must be served upon the secretary of state and upon the attorney general.

(b) If the proceeding requests modification of ballot statements, an action brought under this section must state how the petitioner's ballot statements approved by the attorney general do not satisfy the requirements of 13-27-312 and must propose alternate ballot statements that satisfy the requirements of 13-27-312.

(c) (i) ~~The~~ *Pursuant to Article IV, section 7(2), of the Montana constitution, an* action *brought pursuant to this section* takes precedence over other cases and matters in the ~~district~~ *supreme* court. The court shall examine the proposed ~~measure~~ *issue* and the challenged statement or determination of the attorney general and shall as soon as possible render a decision ~~and certify to the secretary of state a statement which the court determines will meet the requirements of 13-27-312 or an opinion~~ as to *the adequacy of the ballot statements or* the correctness of the attorney general's determination.

(ii) If the court decides that the ballot statements do not meet the requirements of 13-27-312, it may order the attorney general to revise the statements within 5 days or certify to the secretary of state a statement that the court determines will meet the requirements of 13-27-312. A statement revised by the attorney general pursuant to the court's order or certified by the court must be placed on the petition for circulation and on the official ballot.

(iii) If the court decides that the attorney general's legal sufficiency determination is incorrect and that a proposed issue does not comply with statutory and constitutional requirements governing submission of the issue to the electors, any petitions supporting the issue are void and the issue may not

appear on the ballot. A proponent of the ballot issue may resubmit a revised issue pursuant to 13-27-202, subject to the deadlines provided in this chapter.

(iv) If the court decides that the attorney general's legal deficiency determination is incorrect and that a proposed issue complies with statutory and constitutional requirements governing submission of the issue to the electors, the attorney general shall prepare ballot statements pursuant to 13-27-312 and forward the statements to the secretary of state within 5 days of the court's decision.

~~(b) A statement certified by the court must be placed on the petition for circulation and on the official ballot.~~

~~(4) A copy of the petition in final form must be filed in the office of the secretary of state by the proponents.~~

~~(5) Any party may appeal the order of the district court to the Montana supreme court by filing a notice of appeal within 5 days of the date of the order of the district court.~~

(4) A petition for a proposed ballot issue may be circulated by a signature gatherer upon transmission of the sample petition form by the secretary of state pending review under this section. If, upon review, the attorney general or the supreme court revises the petition form or ballot statements, any petitions signed prior to the revision are void.

(5) An original proceeding in the supreme court under this section is the exclusive remedy for a challenge to the petitioner's ballot statements, as approved by the attorney general, or the attorney general's legal sufficiency determination. A ballot issue may not be invalidated under this section after the secretary of state has certified the ballot under 13-12-201.

(6) This section does not limit the right to challenge a constitutional defect in the substance of an issue approved by a vote of the people."

Section 18. Contest of ballot issue petitions. (1) Any qualified elector may, within 30 days after the date on which the issue was certified to the governor, file an action in the district court in the county of residence of the qualified elector contesting the certification of a ballot issue for illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

(2) If a court finds that illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures affected the outcome of the petition process and certification, the secretary of state shall decertify the contested ballot issue.

Section 19. Section 13-27-402, MCA, is amended to read:

"13-27-402. Committees to prepare arguments for and against ballot issues. (1) The arguments advocating approval or rejection of the ballot issue and rebuttal arguments must be submitted to the secretary of state by committees appointed as provided in this section.

(2) The committee advocating approval of a legislative act referred to the people either by the legislature or by referendum petition or advocating approval of a constitutional amendment referred by the legislature must be composed of:

(a) one senator known to favor the referred ~~measure~~ *ballot issue*, appointed by the president of the senate;

(b) one representative known to favor the referred ~~measure~~ *ballot issue*, appointed by the speaker of the house of representatives; and

(c) one individual who need not be a member of the legislature, appointed by the first two members.

(3) (a) The committee advocating rejection of an act referred to the people or of a constitutional amendment proposed by the legislature must be composed of:

(i) one senator appointed by the president of the senate;

(ii) one representative appointed by the speaker of the house of representatives; and

(iii) one individual who need not be a member of the legislature, appointed by the first two members.

(b) Whenever possible, the members must be known to have opposed the issue.

(4) The following must be three-member committees and must be appointed by the person submitting the ~~petition~~ *ballot issue* to the secretary of state under the provisions of 13-27-202:

(a) the committee advocating approval of a ballot issue proposed by any type of initiative petition; and

(b) the committee advocating rejection of any legislative act referred to the people by referendum petition.

(5) A committee advocating rejection of a ballot issue proposed by any type of initiative petition must be composed of five members. The governor, attorney general, president of the senate, and speaker of the house of representatives shall each appoint one member, and the fifth member must be appointed by the first four members. If possible, members must be known to favor rejection of the issue.

(6) A person may not be required to serve on any committee under this section, and except for legislative appointments made by the president of the senate or by the speaker of the house of representatives, the person making an appointment must have written acceptance of appointment from the appointee. If an appointment is not made by the required time, the committee members that have been appointed may fill the vacancy by unanimous written consent up until the deadline for filing the arguments."

Section 20. Section 13-27-403, MCA, is amended to read:

"13-27-403. Appointment to committee. (1) Except as provided in subsection (2), appointments to committees advocating approval or rejection of an act referred to the people, a constitutional amendment proposed by the legislature, or a ballot ~~measure~~ *issue* referred to the people by referendum petition or proposed by any type of initiative petition must be made no later than 1 week prior to the deadline for filing arguments on the ballot issue under 13-27-406.

(2) Appointments to committees advocating approval or rejection of a ballot ~~measure~~ *issue* referred to the people by referendum petition or proposed by any type of initiative petition must be made no later than 1 week before the deadline for filing arguments on the ballot issue under 13-27-406. All persons responsible for appointing members to the committee shall submit to the secretary of state the names and addresses of the appointees no later than the date set by this subsection. The submission must include the written acceptance of appointment

from each appointee required by section 13-27-402(6). If an appointment is not made by the required time, the committee members that have been appointed may fill the vacancy by unanimous written consent up until the deadline for filing the arguments.

(3) Within 5 days after receiving notice under subsection (2)~~,~~ but not later than 5 days after the deadline set for appointment of committee members, the secretary of state shall notify the appointees to a committee appointed pursuant to subsection (1) or (2) by certified mail, with return receipt requested, of the deadlines for submission of the committee's arguments."

Section 21. Section 13-27-409, MCA, is amended to read:

"13-27-409. ~~Liability~~ *Fact statement to be supported — liability* for contents of argument. *(1) A factual statement made in an argument advocating approval or rejection of a ballot issue or in a rebuttal argument to either of those arguments must be supported by documents filed by the proponents or opponents with the secretary of state within 2 business days of the date on which the statements are required be filed with the secretary of state.*

(2) Nothing in this chapter relieves an author of any argument from civil or criminal responsibility for statements contained in an argument printed in the voter information pamphlet."

Section 22. Section 13-27-501, MCA, is amended to read:

"13-27-501. Secretary of state to certify ballot form — ~~abbreviated ballot.~~ (1) The secretary of state shall furnish to the official of each county responsible for preparation of the ballots, at the same time as the election administrator certifies the names of the persons who are candidates for offices to be filled at the election, a certified copy of the form in which each ballot issue to be voted on by the people at that election is to appear on the ballot.

(2) ~~Except as provided in subsection (4), the~~ *The* secretary of state shall list for each issue:

(a) the number;

(b) the method of placement on the ballot;

(c) the title;

(d) the ~~attorney general's~~ *attorney general's* explanatory statement, if applicable;

(e) the fiscal statement, if applicable; ~~and~~

(f) the statements of the implication of a vote for or against the issue that are to be placed beside the diagram for marking the ballot*; and*

(g) a statement that the issue conflicts with one or more issues, referenced by number, that also appear on the ballot, if applicable.

(3) When required to do so, the secretary of state shall use for each ballot issue the title of the legislative act or legislative constitutional proposal or the title provided by the attorney general or district court. Following the number of the ballot issue, the secretary of state, when required to do so, shall include one of the following statements to identify why the issue has been placed on the ballot:

(a) an act referred by the legislature;

(b) an amendment to the constitution proposed by the legislature;

(c) an act of the legislature referred by referendum petition; or

(d) a law or constitutional amendment proposed by initiative petition.

~~(4) The county election administrator may, at least 14 days prior to the deadline for ballot certification by the secretary of state, request in writing that the county election administrator be furnished an abbreviated form of the certified ballot. The secretary of state shall furnish to all counties from which the secretary of state has received such a request a certified ballot containing only the information in subsections (2)(a), (2)(e), and (2)(f). If the county election administrator requests that the abbreviated ballot be prepared, copies of the information contained in subsections (2)(a) through (2)(f) must be distributed to each elector by an election judge as the elector enters the polling place.~~"

Section 23. Section 13-35-207, MCA, is amended to read:

"13-35-207. Deceptive election practices. A person is guilty of false swearing, unsworn falsification, or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-202, 45-7-203, or 45-7-208, as applicable, whenever the person:

(1) falsely represents ~~his~~ *the person's* name or other information required upon ~~his~~ *the person's* registry card and causes registration with the card;

(2) signs a registry card knowingly witnessing any false or misleading statement;

(3) knowingly causes a false statement, certificate, or return of any kind to be signed;

(4) falsely makes a declaration or certificate of nomination;

(5) files or receives for filing a declaration or certificate of nomination knowing that all or part of the declaration or certificate is false;

(6) forges or falsely makes the official endorsement of a ballot;

(7) forges or counterfeits returns of an election purporting to have been held at a precinct, municipality, or ward where no election was in fact held;

(8) knowingly substitutes forged or counterfeit returns of election in place of the true returns for a precinct, municipality, or ward where an election was held;

(9) signs a name other than ~~his~~ *the person's* own to a petition, signs more than once for the same ~~measure~~ *ballot issue*, or signs a petition while not being a qualified elector of the state; or

(10) makes a false oath or affidavit where an oath or affidavit is required by law."

Section 24. Section 13-37-210, MCA, is amended to read:

"13-37-210. Naming and labeling of political committees. (1) Any political committee filing a certification and organizational statement pursuant to 13-37-201 shall:

(a) name and identify itself in its organizational statement using a name or phrase:

(i) that clearly identifies the economic or other special interest, if identifiable, of a majority of its contributors; and

(ii) if a majority of its contributors share a common employer, that identifies the employer; and

(b) label any media advertisement or other paid public statement it makes or causes to be made in support of or opposition to any candidate or ballot ~~measure~~ *issue* by printing or broadcasting its name, as provided under subsection (1)(a), and position in support of or opposition to the candidate or ballot ~~measure~~ *issue* as a part of the media advertisement or other paid public statement.

(2) The naming and labeling requirements in subsection (1) are reporting requirements for purposes of enforcement under 13-37-128."

Section 25. Section 13-37-226, MCA, is amended to read:

"13-37-226. Time for filing reports. (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statewide candidate shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot;

(b) on the 10th day of March and September in each year that an election is to be held and on the 15th and 5th days preceding the date on which an election is held and within 24 hours after receiving a contribution of $200 or more if received between the 10th day before the election and the day of the election;

(c) not more than 20 days after the date of the election; and

(d) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which the text of the proposed ~~measure~~ *ballot issue* is submitted for review and approval pursuant to 13-27-202 during the year or years prior to the election year that an issue is or is expected to be on the ballot;

(b) on the 10th day of March and on the 10th day of each subsequent month through September;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of $500 or more if received between the 10th day before the election and the day of the election;

(e) within 20 days after the election; and

(f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).

(3) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

(a) on the 12th day preceding the date on which an election is held and within 48 hours after receiving a contribution of $100 or more if received between the 17th day before the election and the day of the election. The report under this subsection (3)(a) may be made by mail or by electronic

communication to the clerk and recorder and the commissioner of political practices.

(b) not more than 20 days after the date of the election; and

(c) whenever a candidate or political committee files a closing report as specified in 13-37-228(3).

(4) Candidates for any other public office and political committees that are specifically organized to support or oppose a particular local issue shall file the reports specified in subsection (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds $500, except as provided in 13-37-206.

(5) For the purposes of this subsection, a committee that is not specifically organized to support or oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file:

(a) a report on the 12th day preceding the date of an election in which it participates by making an expenditure;

(b) a report not more than 20 days after the date of the election in which it participates by making an expenditure; and

(c) a report on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.

(6) The commissioner may promulgate rules regarding the extent to which organizations that are incidental political committees shall report their politically related activities in accordance with this chapter.

(7) All reports required by this section must be complete as of the fifth day before the date of filing as specified in 13-37-228(2) and this section."

Section 26. Section 13-37-228, MCA, is amended to read:

"13-37-228. Time periods covered by reports. Reports filed under 13-37-225 and 13-37-226 must be filed to cover the following time periods even though no contributions or expenditures may have been received or made during the period:

(1) The initial report must cover all contributions received or expenditures made by a candidate or political committee prior to the time that a person became a candidate or a political committee as defined in 13-1-101 until the fifth day before the date of filing of the appropriate initial report pursuant to subsections (1) through (5) of 13-37-226. Reports filed by political committees organized to support or oppose a statewide ballot issue must disclose all contributions received and expenditures made prior to the time an issue becomes a ballot issue by ~~approval~~ *transmission* of ~~the form of~~ the petition *to the proponent of the ballot issue* or referral by the secretary of state, even if the issue subsequently fails to garner sufficient signatures to qualify for the ballot.

(2) Subsequent periodic reports must cover the period of time from the closing of the previous report to 5 days before the date of filing of a report pursuant to 13-37-226(1) through (5).

(3) Closing reports must cover the period of time from the last periodic report to the final closing of the books of the candidate or political committee. A candidate or political committee shall file a closing report following an election

in which the candidate or political committee participates whenever all debts and obligations are extinguished and no further contributions or expenditures will be received or made which relate to the campaign, unless the election is a primary election and the candidate or political committee will participate in the general election."

Section 27. Repealer. Sections 13-27-310 and 13-27-313, MCA, are repealed.

Section 28. Codification instruction. (1) [Sections 12 and 13] are intended to be codified as an integral part of Title 13, chapter 27, part 2, and the provisions of Title 13, chapter 27, part 2, apply to [sections 12 and 13].

(2) [Section 18] is intended to be codified as an integral part of Title 13, chapter 27, part 3, and the provisions of Title 13, chapter 27, part 3, apply to [section 18].

Section 29. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 30. Effective date. [This act] is effective on passage and approval.

Approved May 11, 2007

CHAPTER NO. 482

[SB 155]

AN ACT CREATING AN OLDER MONTANANS TRUST FUND AND PROVIDING FOR THE PURPOSES AND USE OF THE FUND; PROVIDING FOR A TRANSFER OF FUNDS FROM THE HEALTH AND MEDICAID INITIATIVES ACCOUNT TO THE OLDER MONTANANS TRUST FUND; AMENDING SECTIONS 17-7-302, 17-7-304, AND 53-6-1201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Older Montanans trust fund. (1) There is an older Montanans trust fund within the permanent fund type. The trust fund is subject to legislative appropriation as provided in this section.

(2) The money in the fund may be used to create new, innovative services or to expand existing services for the benefit of Montana residents 60 years of age or older that will enable those Montanans to live an independent lifestyle in the least restrictive setting and will promote the dignity of and respect for those Montanans. The interest and income produced by the trust fund and appropriated to the department by the legislature is intended to increase services referred to in this subsection and not to supplant other sources of revenue for those programs in the trended traditional level, as used in 53-6-1201, of appropriations for those services.

(3) The department may accept contributions and gifts for the trust fund, in money or other forms, and when accepted, the contributions and gifts must be deposited in the trust fund.

(4) Interest and income earned on money in the trust fund must be retained within the fund except as provided in this section. Until the year 2015, if assets

in the fund reach the following amounts, money may be appropriated by the legislature and used in the following amounts for the programs specified in subsection (2):

(a) When the fund balance reaches $20 million, 50% of the interest earned may be appropriated.

(b) When the fund balance reaches $50 million, 60% of the interest earned may be appropriated.

(c) When the fund balance reaches $100 million, 80% of the interest earned may be appropriated.

(5) On and after January 1, 2015, 90% of the interest earned on the trust fund may be appropriated for the programs specified in subsection (2).

(6) The department shall provide to the legislature a biennial report of the expenditures of the money appropriated from the older Montanans trust fund as provided in 5-11-210.

Section 2. Section 17-7-302, MCA, is amended to read:

"17-7-302. Encumbrance of fiscal yearend obligations. (1) Any valid obligation not paid within the fiscal year, including valid written interagency or intra-agency service agreements for systems development, ~~shall be~~ *is* encumbered for payment ~~thereof~~ *of the obligation* at the end of each fiscal year in the department of administration's accounts. Except as provided in subsection (2), an appropriation ~~shall be deemed to be~~ *is considered* encumbered at the time and to the extent that a valid obligation against the appropriation is created.

(2) An appropriation may be encumbered by a written interagency or intra-agency agreement with the department for the alteration, repair, maintenance, or renovation of a building pursuant to the provisions of Title 18, chapter 2. ~~If~~ *Except as provided in 53-6-1201(4), if* the appropriation is not encumbered by a valid obligation at the end of the next fiscal year, the appropriation reverts to the fund from which it was originally appropriated."

Section 3. Section 17-7-304, MCA, is amended to read:

"17-7-304. Disposal of unexpended appropriations. (1) All money appropriated for any specific purpose except that appropriated for the university system units listed in subsection (2) [or state money appropriated for the state children's health insurance program provided for in Title 53, chapter 4, part 10,] and except as provided in subsection (4) *and 53-6-1201(4)* must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made or may be used to fund the provisions of 2-18-1203 through 2-18-1205 and 19-2-706 in the succeeding year.

(2) Except as provided in 17-2-108 and subsection (3) of this section, all money appropriated for the university of Montana campuses at Missoula, Butte, Dillon, and Helena and the Montana state university campuses at Bozeman, Billings, Havre, and Great Falls, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, and the bureau of mines and geology with central offices in Butte must, after the expiration of the time for which appropriated, revert to an account held by the board of regents. The board of regents is authorized to maintain a fund balance. There is a statutory appropriation, as provided in

17-7-502, to use the funds held in this account in accordance with a long-term plan for major and deferred maintenance expenditures and equipment or fixed assets purchases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board of regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning.

(3) Subsection (2) does not apply to reversions that are the result of a reduction in spending directed by the governor pursuant to 17-7-140. Any amount that is a result of a reduction in spending directed by the governor must revert to the fund or account from which it was originally appropriated.

(4) (a) Subject to subsection (4)(b), after the end of a fiscal year, 30% of the money appropriated to an agency for that year by the general appropriations act for personal services, operating expenses, and equipment, by fund type, and remaining unexpended and unencumbered at the end of the year may be reappropriated to be spent during the following 2 years for any purpose that is consistent with the goals and objectives of the agency. The dollar amount of the 30% amount that may be carried forward and spent must be determined by the office of budget and program planning.

(b) (i) Any portion of the 30% of the unexpended and unencumbered money referred to in subsection (4)(a) that was appropriated to a legislative branch entity may be deposited in the account established in 5-11-407.

(ii) After the end of a biennium, any portion of the unexpended and unencumbered money appropriated for the operation of the preceding legislature in a separate appropriation act may be deposited in the account established in 5-11-407. The approving authority shall determine the portion of the unexpended and unencumbered money that is deposited in the account. (Bracketed language terminates on occurrence of contingency—sec. 7, Ch. 565, L. 2005.)"

Section 4. Section 53-6-1201, MCA, is amended to read:

"53-6-1201. Special revenue fund — health and medicaid initiatives. (1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

(a) money from cigarette taxes deposited under 16-11-119(1)(c);

(b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119(3)(b); and

(c) any interest and income earned on the account.

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to maximize enrollment of eligible children under the children's health insurance program, provided for under Title 53, chapter 4, part 10, and to provide outreach to the eligible children. The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits;

(e) to fund new programs to assist eligible small employers with the costs of providing health insurance benefits to eligible employees;

(f) the cost of administering the tax credit, the purchasing pool, and the premium incentive payments and premium assistance payments as provided in Title 33, chapter 22, part 20; and

(g) to provide a state match for the medicaid program for premium incentive payments or premium assistance payments to the extent that a waiver is granted by federal law as provided in 53-2-216.

(4) Money appropriated but not expended for the prescription drug program described in subsection (3)(b) must be transferred annually to the older Montanans trust fund provided for in [section 1].

~~(4)~~*(5)* ~~(a) Except for $1 million appropriated for the startup costs of 53-6-1004 and 53-6-1005, the money appropriated for fiscal year 2006 for the programs in subsections (3)(b) and (3)(d) through (3)(g) may not be expended until the office of budget and program planning has certified that $25 million has been deposited in the account provided for in this section or December 1, 2005, whichever occurs earlier.~~

~~(b)~~*(a)* On or before July 1, the budget director shall calculate a balance required to sustain each program in subsection (3) for each fiscal year of the biennium. If the budget director certifies that the reserve balance will be sufficient, then the agencies may expend the revenue for the programs as appropriated. If the budget director determines that the reserve balance of the revenue will not support the level of appropriation, the budget director shall notify each agency. Upon receipt of the notification, the agency shall adjust the operating budget for the program to reflect the available revenue as determined by the budget director.

~~(c)~~*(b)* Until the programs or credits described in subsections (3)(b) and (3)(d) through (3)(g) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

~~(5)~~*(6)* The phrase "trended traditional level of appropriation", as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

~~(6)~~*(7)* The department of public health and human services may adopt rules to implement this section."

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 52, chapter 3, and the provisions of Title 52, chapter 3, apply to [section 1].

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Termination. [Sections 2 through 4] terminate July 1, 2007.

Approved May 11, 2007

CHAPTER NO. 483

[SB 547]

AN ACT STRENGTHENING THE REGISTRATION REQUIREMENTS AND OTHER PROVISIONS APPLICABLE TO SEXUAL OFFENDERS; AMENDING PROVISIONS GOVERNING YOUTH COURT, CRIMINAL PROSECUTION AND PENALTIES, DEFINITIONS, PROBATION AND PAROLE, REGISTRATION OF TRANSIENTS, AND DISSEMINATION OF INFORMATION ABOUT SEXUAL OFFENDERS; ALLOWING THE DEPARTMENT OF CORRECTIONS TO CONTRACT FOR A RESIDENTIAL SEXUAL OFFENDER TREATMENT PROGRAM; AMENDING SECTIONS 41-5-206, 41-5-216, 41-5-1513, 45-1-205, 45-5-503, 45-5-507, 45-5-512, 45-5-601, 45-5-602, 45-5-603, 45-5-625, 46-18-111, 46-18-201, 46-18-202, 46-18-203, 46-18-205, 46-18-222, 46-18-231, 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, 46-23-509, 46-23-1011, AND 53-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-206, MCA, is amended to read:

"41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103;

(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated assault as defined in 45-5-202;

(iv) sexual assault as provided in 45-5-502(3);

~~(iv)~~*(v)* assault with a weapon as defined in 45-5-213;

~~(v)~~*(vi)* robbery as defined in 45-5-401;

~~(vi)~~*(vii)* burglary or aggravated burglary as defined in 45-6-204;

~~(vii)~~*(viii)* aggravated kidnapping as defined in 45-5-303;

~~(viii)~~*(ix)* possession of explosives as defined in 45-8-335;

~~(ix)~~*(x)* criminal distribution of dangerous drugs as defined in 45-9-101;

~~(x)~~*(xi)* criminal possession of dangerous drugs as defined in 45-9-102(4) through (6);

~~(xi)~~*(xii)* criminal possession with intent to distribute as defined in 45-9-103(1);

~~(xii)~~*(xiii)* criminal production or manufacture of dangerous drugs as defined in 45-9-110;

~~(xiii)~~*(xiv)* use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership~~,~~ as defined in 45-8-403;

~~(xiv)~~*(xv)* escape as defined in 45-7-306;

~~(xv)~~*(xvi)* attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through ~~(1)(b)(xiv)~~ *(1)(b)(xv)*.

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court unless the district court finds, by a preponderance of the evidence, that:

(a) a youth court proceeding and disposition will serve the interests of community protection;

(b) the nature of the offense does not warrant prosecution in district court; and

(c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) If a youth's case is filed in the district court and remains in the district court after the transfer hearing, the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal offenses."

Section 2. Section 41-5-216, MCA, is amended to read:

"41-5-216. Disposition of youth court, law enforcement, and department records. (1) Formal youth court records, law enforcement records, and department records that are not exempt from sealing under subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed on the youth's 18th birthday. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, records referred to in 42-3-203, ~~or~~ reports referred to in 45-5-624(7)*, or the information referred to in 46-23-508, in any instance in which the youth was required to register, pursuant to Title 46, chapter 23, part 5, as a sexual offender*.

(5) After formal youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits a new offense, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

(6) (a) When formal youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the department of public

health and human services and by the department relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

(b) The department of public health and human services and the department shall disassociate the offense and disposition information from the name of the youth in the respective management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the department of public health and human services or by the department and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may ~~only~~ be inspected *only* pursuant to subsection (5).

(b) The informal youth court records may be maintained and inspected only by youth court personnel upon a new offense prior to the youth's 18th birthday.

(c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended supervision ends and the youth was ~~only~~ involved *only* in informal proceedings, informal youth court records that are in hard-copy form must be destroyed and any electronic records in the youth court management information system must disassociate the offense and disposition information from the name of the youth and may be used only for the following purposes:

(i) for research and program evaluation authorized by the office of the court administrator and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(8) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth court records within the juvenile probation management information system. Electronic records of the youth court may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) *of this section*.

(9) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth court records within the department's youth management information system. Electronic records of the department's youth management information system may not be shared except as provided in subsection (5). If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section."

Section 3. Section 41-5-1513, MCA, is amended to read:

"41-5-1513. Disposition — delinquent youth — restrictions. (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-1512;

(b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age. The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b). The court may not place a youth adjudicated to be a delinquent youth in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless:

(i) the youth committed four or more misdemeanors in the prior 12 months;

(ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or a licensed clinical social worker has evaluated the youth and recommends placement in a state youth correctional facility; and

(iii) the court finds that the youth will present a danger to the public if the youth is not placed in a state youth correctional facility.

(c) *subject to the provisions of subsection (5),* require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a ~~sexual offense or~~ violent offense, as defined in 46-23-502, if committed by an adult, to register *and remain registered* as a ~~sexual or~~ violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection *to ensure registration compliance*.

(d) in the case of a delinquent youth who has been adjudicated for a sexual offense, as defined in 46-23-502, and is required to register as a sexual offender pursuant to Title 46, chapter 23, part 5, exempt the youth from the duty to register if the court finds that:

(i) the youth has not previously been found to have committed or been adjudicated for a sexual offense, as defined in 46-23-502; and

(ii) registration is not necessary for protection of the public and that relief from registration is in the public's best interest;

~~(d)~~*(e)* in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

~~(e)~~*(f)* impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a ~~sex~~ *sexual* offense*, as defined in 46-23-502*, the youth court ~~may~~ *shall:*

(a) prior to disposition, order a psychosexual evaluation that must comply with the provisions of 46-18-111;

(b) designate the youth's risk level pursuant to 46-23-509; and

(c) require completion of ~~sex~~ *sexual* offender treatment ~~before a youth is discharged~~.

(3) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may order a local government entity to pay for evaluation and in-state transportation of a youth.

(4) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the account established for that district under 41-5-130 without approval from the cost containment review panel.

(5) The duration of registration for a youth who is required to register as a sexual or violent offender shall be as provided in 46-23-506, except that the court may, based on specific findings of fact, order a lesser duration of registration."

Section 4. Section 45-1-205, MCA, is amended to read:

"45-1-205. General time limitations. (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) A prosecution for a felony offense under 45-5-502, 45-5-503, or 45-5-507(4) *or (5)* may be commenced within 10 years after it is committed, except that it may be commenced within 10 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred. A prosecution for a misdemeanor offense under those provisions may be commenced within 1 year after the offense is committed, except that it may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(c) A prosecution under 45-5-504, 45-5-505, 45-5-507(1), (2), (3), or ~~(5)~~ *(6)*, 45-5-625, or 45-5-627 may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(2) Except as provided in subsection (7)(b) or as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The periods prescribed in subsection (2) are extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination of the minority or incompetency;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations of the laws regulating the activities of outfitters and guides under Title 37, chapter 47, and prosecution must be brought within 3 years after an offense is committed.

(7) (a) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years following the date of the theft, whether or not the offender is in possession of or otherwise exerting unauthorized control over the property at the time the prosecution is commenced. After the 5-year period ends, a prosecution may be commenced at any time if the offender is still in possession of or otherwise exerting unauthorized control over the property, except that the prosecution must be commenced within 1 year after the investigating officer discovers that the offender still possesses or is otherwise exerting unauthorized control over the property.

(8) A prosecution is commenced either when an indictment is found or an information or complaint is filed."

Section 5. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iv).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219*,* ~~and~~ 46-18-222*, and subsections (3) and (4) of this section*.

(3) (a) If the victim is less than 16 years old and the offender is ~~3~~ *4* or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender

inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

(d) If the victim was incarcerated in an adult or juvenile correctional, detention, or treatment facility at the time of the offense and the offender had supervisory or disciplinary authority over the victim, the offender shall be punished by imprisonment in the state prison for a term of not more than 5 years or fined an amount not to exceed $50,000, or both.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

~~(4)~~*(5)* In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

~~(5)~~*(6)* As used in ~~subsection~~ *subsections* (3) *and (4)*, an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission."

Section 6. Section 45-5-507, MCA, is amended to read:

"45-5-507. Incest. (1) A person commits the offense of incest if the person knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) ~~A~~ *Except as provided in subsections (4) and (5), a* person convicted of incest shall be punished by life imprisonment or by imprisonment in the state

prison for a term not to exceed 100 years or be fined an amount not to exceed $50,000.

(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000.

(5) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (5)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

~~(5)~~*(6)* In addition to any sentence imposed under subsection (3)*, (4),* or ~~(4)~~ *(5)*, after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

Section 7. Section 45-5-512, MCA, is amended to read:

"45-5-512. Chemical treatment of sex offenders. (1) A person convicted of a first offense under 45-5-502(3), 45-5-503(3), or 45-5-507(4) *or (5)* may, in addition to the sentence imposed under those sections, be sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, administered by the department of corrections or its agent pursuant to subsection (4) *of this section*.

(2) A person convicted of a second or subsequent offense under 45-5-502(3), 45-5-503, or 45-5-507 may, in addition to the sentence imposed under those sections, be sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, administered by the department of corrections or its agent pursuant to subsection (4) *of this section*.

(3) A person convicted of a first or subsequent offense under 45-5-502, 45-5-503, or 45-5-507 who is not sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, may voluntarily undergo such treatment, which must be administered by the department of corrections or its agent and paid for by the department of corrections.

(4) Treatment under subsection (1) or (2) must begin 1 week before release from confinement and must continue until the department of corrections determines that the treatment is no longer necessary. Failure to continue treatment as ordered by the department of corrections constitutes a criminal contempt of court for failure to comply with the sentence, for which the sentencing court shall impose a term of incarceration without possibility of parole of not less than 10 years or more than 100 years.

(5) Prior to chemical treatment under this section, the person must be fully medically informed of its effects.

(6) A state employee who is a professional medical person may not be compelled against the employee's wishes to administer chemical treatment under this section."

Section 8. Section 45-5-601, MCA, is amended to read:

"45-5-601. Prostitution. (1) A person commits the offense of prostitution if the person engages in or agrees or offers to engage in sexual intercourse with another person for compensation, whether ~~such~~ *the* compensation is received or to be received or paid or to be paid.

(2) (a) A prostitute convicted of prostitution shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) ~~A~~ *Except as provided in subsection (3), a* prostitute's client who is convicted of prostitution shall for the first offense be fined an amount not to exceed $1,000 or be imprisoned for a term not to exceed 1 year, or both, and for a second or subsequent offense shall be fined an amount not to exceed $10,000 or be imprisoned for a term not to exceed 5 years, or both.

(3) (a) If the prostitute was 12 years of age or younger and the prostitute's client was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

Section 9. Section 45-5-602, MCA, is amended to read:

"45-5-602. Promoting prostitution. (1) A person commits the offense of promoting prostitution if the person purposely or knowingly commits any of the following acts:

(a) owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with others, a house of prostitution or a prostitution business;

(b) procures an individual for a house of prostitution or a place in a house of prostitution for an individual;

(c) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;

(d) solicits clients for another person who is a prostitute;

(e) procures a prostitute for a patron;

(f) transports an individual into or within this state with the purpose to promote that individual's engaging in prostitution or procures or pays for transportation with that purpose;

(g) leases or otherwise permits a place controlled by the offender, alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate that use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or

(h) lives in whole or in part upon the earnings of an individual engaging in prostitution, unless the person is the prostitute's minor child or other legal dependent incapable of self-support.

(2) ~~A~~ *Except as provided in subsection (3), a* person convicted of promoting prostitution shall be fined an amount not to exceed $50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(3) (a) If the prostitute was 12 years of age or younger and the prostitute's client was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

Section 10. Section 45-5-603, MCA, is amended to read:

"45-5-603. Aggravated promotion of prostitution. (1) A person commits the offense of aggravated promotion of prostitution if the person purposely or knowingly commits any of the following acts:

(a) compels another to engage in or promote prostitution;

(b) promotes prostitution of a child under the age of 18 years, whether or not the person is aware of the child's age;

(c) promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or support the person is responsible.

(2) (a) Except as provided in ~~subsection~~ *subsections* (2)(b) *and (2)(c)*, a person convicted of aggravated promotion of prostitution shall be punished by:

(i) life imprisonment; or

(ii) imprisonment in a state prison for a term not to exceed 20 years or a fine in an amount not to exceed $50,000, or both.

(b) Except as provided in 46-18-219 and 46-18-222, a person convicted of aggravated promotion of prostitution of a child, who at the time of the offense is under 18 years of age, shall be punished by:

(i) life imprisonment; or

(ii) imprisonment in a state prison for a term of not less than 4 years or more than 100 years or a fine in an amount not to exceed $100,000, or both.

(c) (i) If the prostitute was 12 years of age or younger and the prostitute's client was 18 years of age or older at the time of the offense, the offender:

(A) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (2)(c)(i)(A) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(B) may be fined an amount not to exceed $50,000; and

(C) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(ii) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

Section 11. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly, by any means of communication, including electronic communication as defined in 45-8-213, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or

(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated.

(2) (a) ~~A~~ *Except as provided in subsection (2)(b), (2)(c), or (4), a* person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than $10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed $10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a ~~sex~~ *sexual* offender information or treatment course or program conducted or approved by the department of corrections.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

Section 12. Section 46-18-111, MCA, is amended to read:

"46-18-111. Presentence investigation — when required. (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, ~~or~~ 45-5-627, *45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or if the defendant was convicted under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant to Title 46, chapter 23, part 5,* the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs, unless the defendant was sentenced under 46-18-219.

The evaluation must be completed by a sex offender therapist who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(2) The court shall order a presentence report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation and parole officer is presented to and considered by the district court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense as defined in 46-23-502.

(3) The defendant shall pay to the department of corrections a $50 fee at the time that the report is completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time. The fee may be retained by the department and used to finance contracts entered into under ~~53-1-203(4)~~ *53-1-203(5)*."

Section 13. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(a) a fine as provided by law for the offense;

(b) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(c) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(d) commitment of:

(i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, *except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), and 45-5-625(4)*; or

(ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(e) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(g) chemical treatment of ~~sex~~ *sexual* offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(h) any combination of subsections (2) through (3)(g).

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) *of this section* may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) participation in a day reporting program provided for in 53-1-203;

(o) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(p) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(p).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

Section 14. Section 46-18-202, MCA, is amended to read:

"46-18-202. Additional restrictions on sentence. (1) The sentencing judge may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that the judge considers necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

(a) prohibition of the offender's holding public office;

(b) prohibition of the offender's owning or carrying a dangerous weapon;

(c) restrictions on the offender's freedom of association;

(d) restrictions on the offender's freedom of movement;

(e) a requirement that the defendant provide a biological sample for DNA testing for purposes of Title 44, chapter 6, part 1, if an agreement to do so is part of the plea bargain;

(f) any other limitation reasonably related to the objectives of rehabilitation and the protection of the victim and society.

(2) Whenever the sentencing judge imposes a sentence of imprisonment in a state prison for a term exceeding 1 year, the sentencing judge may also impose the restriction that the offender is ineligible for parole and participation in the supervised release program while serving that term. If the restriction is to be

imposed, the sentencing judge shall state the reasons for it in writing. If the sentencing judge finds that the restriction is necessary for the protection of society, the judge shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction.

~~(3) An offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison shall enroll in and complete the educational phase of the prison's sexual offender program.~~"

Section 15. Section 46-18-203, MCA, is amended to read:

"46-18-203. Revocation of suspended or deferred sentence. (1) Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence, ~~or~~ any condition of a deferred imposition of sentence, *or any condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4),* the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court during the period of suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the offender must be brought before the judge, and the offender must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the offender's own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified, unless:

(a) the offender admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) *(a)* At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of*:*

(i) the terms and conditions of the suspended or deferred sentence*; or*

(ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4).

(b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any sentence that could have been imposed that does not include a longer imprisonment or commitment term than the original sentence; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit. The judge shall state the reasons for the judge's determination in the order. Credit must be allowed for time served in a detention center or home arrest time already served.

(c) If a judge finds that an offender has not violated a term or condition of a suspended or deferred sentence, that judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released.

(9) The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence."

Section 16. Section 46-18-205, MCA, is amended to read:

"46-18-205. Mandatory minimum sentences — restrictions on deferral or suspension. (1) If the victim was less than 16 years ~~old~~ *of age*, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under the following sections may not be deferred or suspended and the provisions of 46-18-222 do not apply to the first 30 days of the imprisonment:

(a) 45-5-503, sexual intercourse without consent;

(b) 45-5-504, indecent exposure;

(c) 45-5-505, deviate sexual conduct; or

(d) 45-5-507, incest.

(2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:

(a) 45-5-103(4), mitigated deliberate homicide;

(b) 45-5-202, aggravated assault;

(c) 45-5-302(2), kidnapping;

(d) 45-5-303(2), aggravated kidnapping;

(e) 45-5-401(2), robbery;

(f) 45-5-502(3), sexual assault;

(g) 45-5-503(2) and (3), sexual intercourse without consent;

(h) 45-5-603, aggravated promotion of prostitution;

(i) 45-9-101(2), (3), and (5)(d), criminal distribution of dangerous drugs;

(j) 45-9-102(4), criminal possession of dangerous drugs; and

(k) 45-9-103(2), criminal possession with intent to distribute dangerous drugs.

(3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended.

(4) The provisions of this section do not apply to sentences imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4)."

Section 17. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences ~~and~~, restrictions on deferred imposition and suspended execution of sentence, *and restrictions on parole eligibility*. Mandatory minimum sentences prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, ~~and~~ the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3)*, and restrictions on parole eligibility* do not apply if:

(1) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

(2) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3)*, 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4)* and the judge determines*, based on the findings contained in a sexual offender evaluation report prepared by a qualified sexual offender evaluator pursuant to the*

provisions of 46-23-509, that treatment of the offender *while incarcerated, while in a residential treatment facility, or while* in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in which case the judge shall include in its judgment a statement of the reasons for its determination."

Section 18. Section 46-18-231, MCA, is amended to read:

"46-18-231. Fines in felony and misdemeanor cases. (1) (a) Except as provided in subsection (1)(b), whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

(b) For those crimes for which penalties are provided in the following sections, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment:

(i) 45-5-103(4), mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) 45-5-213, assault with a weapon;

(iv) 45-5-302(2), kidnapping;

(v) 45-5-303(2), aggravated kidnapping;

(vi) 45-5-401(2), robbery;

(vii) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;

(viii) 45-5-503(2) ~~and (3)~~ *through (4)*, sexual intercourse without consent*;*

(ix) 45-5-507(5), incest when the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(x) 45-5-601(3), 45-5-602(3), or 45-5-603(2)(c), prostitution, promotion of prostitution, or aggravated promotion of prostitution when the prostitute was 12 years of age or younger and the prostitute's client was 18 years of age or older at the time of the offense;

(xi) 45-5-625(4), sexual abuse of children;

~~(ix)~~*(xii)* 45-9-101(2), (3), and (5)(d), criminal possession with intent to distribute a narcotic drug, criminal possession with intent to distribute a dangerous drug included in Schedule I or Schedule II, or other criminal possession with intent to distribute a dangerous drug;

~~(x)~~*(xiii)* 45-9-102(4), criminal possession of an opiate;

~~(xi)~~*(xiv)* 45-9-103(2), criminal possession of an opiate with an intent to distribute; and

~~(xii)~~*(xv)* 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school property.

(2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may impose a fine only in accordance with subsection (3).

(3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into account the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the sentencing judge not to exceed $50,000."

Section 19. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

~~(3)~~*(4)* "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(4)~~*(5)* "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(5)~~*(8)* "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

~~(6)~~*(9)* "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 *(if the victim is less than 18 years of age and the offender is not a parent of the victim)*, 45-5-303 *(if the victim is less than 18 years of age and the offender is not a parent of the victim)*, 45-5-502(3) *(if the victim is less than 16 years of age and the offender is 3 or more years older than the victim)*, 45-5-503, 45-5-504(1) (if the victim is under 18 years of age and the offender is 18 years of age or older), 45-5-504(2)(c), 45-5-507 (if the victim is under 18 years of age and the offender is 3 or more years older than the victim *or if the victim is 12 years of age or younger and the offender is 18 years of age or*

older at the time of the offense), *45-5-601(3), 45-5-602(3),* 45-5-603(1)(b) *or (2)(c)*, or 45-5-625; or

(b) any violation of a law of another state*, a tribal government,* or the federal government that is reasonably equivalent to a violation listed in subsection ~~(6)(a)~~ *(9)(a)* or for which the offender was required to register as a ~~sex~~ *sexual* offender after *an adjudication or* conviction.

~~(7)~~*(10)* "Sexual or violent offender" means a person who has been convicted of *or, in youth court, found to have committed or been adjudicated for* a sexual or violent offense.

~~(8)~~*(11)* "Sexually violent predator" means a person who*:*

(a) has been convicted of *or, in youth court, found to have committed or been adjudicated for* a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses~~.~~*; or*

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

~~(9)~~*(13)* "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, *45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor),* 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state*, a tribal government,* or the federal government reasonably equivalent to a violation listed in subsection ~~(9)(a)~~ *(13)(a)*."

Section 20. Section 46-23-504, MCA, is amended to read:

"46-23-504. Persons required to register — procedure. (1) ~~A~~ *Except as provided in 41-5-1513, a* sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within ~~10~~ *3 business* days of entering a county of this state for the purpose of residing or setting up a temporary ~~domicile~~ *residence* for 10 days or more or for an aggregate period exceeding 30 days in a calendar year*; and*

(d) who is a transient shall register within 3 business days of entering a county of this state.

(2) Registration under subsection (1)(a)*,* ~~or~~ (1)(c)*, or (1)(d)* must be with the ~~chief of police of the municipality or the sheriff of the county if the offender resides in an area other than a municipality. Whichever law enforcement official the offender registers with~~ *appropriate registration agency. If an offender registers with a police department, the department* shall notify the ~~other official~~ *sheriff's office of the county in which the municipality is located* of the registration. The probation officer having supervision over an offender required

to register under subsection (1)(a) shall verify the offender's registration status with the appropriate ~~law enforcement~~ *registration* agency.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by *subsections (3)(a) through (3)(g) and any other information required by* the department of justice. The ~~chief of police or sheriff~~ *registration agency* shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, and shall photograph the offender. Within 3 days, the ~~chief of police or sheriff~~ *registration agency* shall send copies of the statement, fingerprints, and photographs to the department of justice. *The information collected from the offender at the time of registration must include the:*

(a) name of the offender and any aliases used by the offender;

(b) offender's social security number;

(c) residence information required by subsection (4);

(d) name and address of any business or other place where the offender is or will be an employee;

(e) name and address of any school where the offender will be a student;

(f) offender's driver's license number; and

(g) description and license number of any motor vehicle owned or operated by the offender.

(4) (a) If, at the time of registration, the offender regularly resides in more than one county or municipality, the offender shall register with the registration agency of each county or municipality in which the offender resides. If an offender resides in more than one location within the same county or municipality, the registration agency may require the offender to provide all of the locations where the offender regularly resides and to designate one of them as the offender's primary residence.

(b) Registration of more than one residence pursuant to this section is an exception from the single residence rule provided in 1-1-215.

(5) A transient shall report monthly, in person, to the registration agency with which the transient registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency and during the normal business hours of that agency. On that day, the transient shall provide the registration agency with the information listed in subsections (3)(a) through (3)(g). The registration agency to which the transient reports may also require the transient to provide the locations where the transient stayed during the previous 30 days and may stay during the next 30 days.

~~(4)~~*(6)* (a) The department of justice shall mail a registration verification form:

(i) each 90 days to an offender designated as a level 3 offender under 46-23-509; ~~and~~

(ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and

~~(ii)~~*(iii)* each year to a violent offender or an offender designated as a level 1 ~~or level 2~~ offender under 46-23-509.

(b) If the offender is a transient, the department of justice shall mail the offender's registration verification form to the registration agency with which the offender last registered.

~~(b)~~*(c)* The form must require the offender's ~~current address and~~ notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the ~~department~~ *registration agency where the offender last registered or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in the county or municipality in which the offender is located. A sexual offender shall return the form to the appropriate registration agency in person, and at the time that the sexual offender returns the registration verification form, the registration agency shall take a photograph of the offender.*

(7) Within 3 days after receipt of a registration verification form, the registration agency shall provide a copy of the form and most recent photograph to the department of justice.

~~(5)~~*(8)* The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

~~(6)~~*(9)* The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Section 21. Section 46-23-505, MCA, is amended to read:

"46-23-505. Notice of change of ~~address~~ *name or residence or student, employment, or transient status* — duty to inform — forwarding of information. *(1)* If an offender required to register under this part has a change of ~~address~~ *name or residence or a change in student, employment, or transient status*, the offender shall within ~~10~~ *3 business* days of the change ~~give written~~ *appear in person and give* notification of the ~~new address~~ *change* to the *registration* agency with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the ~~department and to the chief of police of the municipality or sheriff of the county~~ *registration agency for the county or municipality* from which the offender is moving. ~~The agency or department shall, within 3 days after receipt of the new address, forward it to the department of justice, which shall forward a copy of the new address and photograph to the sheriff having jurisdiction over the new address and to the chief of police of the municipality of the new address if the new address is in a municipality.~~

(2) If an offender required to register under this part is a transient, the offender shall provide written notification to the registration agency with which the offender last registered or, if the offender initially registered pursuant to 46-23-504(1)(b), shall provide notice within 3 business days to the registration agency in the county or municipality in which the offender resides.

(3) Within 3 business days after receipt of the information concerning the new name or residence or a change in the student, employment, or transient status, the registration agency shall forward the information to the department of justice, which shall forward a copy of the information and photograph to:

(a) in the event of a change in residence, the registration agency for the county to which the offender moves and, if the offender lives in a municipality, the registration agency for that municipality to which the offender moves;

(b) in the event of a change of name or of student, employment, or transient status, the registration agency of the appropriate county or municipality."

Section 22. Section 46-23-506, MCA, is amended to read:

"46-23-506. Duration of registration. (1) A sexual offender required to register under this part shall register for the remainder of the offender's life, except as provided in subsection (3) or during a period of time during which the offender is in prison.

(2) A violent offender required to register under this part shall register:

(a) for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing, but the offender is not relieved of the duty to register until a petition is granted under subsection (3)(a); or

(b) if convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, for the remainder of the offender's life unless relieved of the duty to register as provided in subsection (3)(b).

(3) (a) An offender required to register for 10 years under subsection (2)(a) may, after the 10 years have passed, petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. The petition must be granted if the defendant has not been convicted under subsection (2)(b).

(b) Except as provided in subsection (5), at any time after 10 years of registration *for a level 1 sexual offender and at any time after 25 years of registration for a level 2 sexual offender*, an offender ~~required to register for life~~ may petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:

(i) the offender has remained a law-abiding citizen; and

(ii) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(4) The offender may move that all or part of the proceedings in a hearing under subsection (3) be closed to the public, or the judge may close them on the judge's own motion. If a proceeding under subsection (3)(b) is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

(5) Subsection (3) does not apply to an offender who was convicted of:

(a) a violation of 45-5-503 if:

(i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; or

(ii) at the time the offense occurred, the victim was under 12 years of age;

(b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and the offender was 3 or more years older than the victim;

(c) a second or subsequent sexual offense that requires registration; or

(d) a sexual offense and was designated as a sexually violent predator under 46-23-509."

Section 23. Section 46-23-508, MCA, is amended to read:

"46-23-508. Dissemination of information. (1) Information maintained under this part is confidential criminal justice information, as defined in 44-5-103, except that:

(a) the name and address of a registered sexual or violent offender are public criminal justice information, as defined in 44-5-103; and

(b) ~~a law enforcement~~ *the department of justice or the registration* agency shall release any offender registration information *that it possesses* relevant to the public if the *department of justice or the registration* agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information *that it possesses* may protect the public and, at a minimum:

(i) if the offender is also a violent offender, the department of justice shall, and the registration agency may, disseminate to the victim and the public:

(A) the offender's name; and

(B) the offenses for which the offender is required to register under this part;

~~(i)~~*(ii)* if an offender was given a level 1 designation under 46-23-509, ~~the agency with which the offender is registered shall notify the agency in whose jurisdiction the offense occurred of the registration;~~ *the department of justice shall, and the registration agency may, disseminate to the victim and the public:*

(A) the offender's address;

(B) the name, photograph, and physical description of the offender;

(C) the offender's date of birth; and

(D) the offenses for which the offender is required to register under this part;

~~(ii)~~*(iii)* if an offender was given a *level 1 designation and committed an offense against a minor or was given a* level 2 designation under 46-23-509, the *department of justice shall, and the registration* agency ~~with which the offender is registered may disseminate the offender's name to the public with the notation that the offender is a sexual or violent offender and may notify a victim of the offense and any agency, organization, or group serving persons who have characteristics similar to those of a previous victim of the offender of~~ *may, disseminate to the victim and the public*:

(A) the offender's address;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offender's date of birth;

(E) the license plate number and a description of any vehicle owned or operated by the offender;

~~(D)~~*(F)* the offenses for which the offender is required to register under this part; and

~~(E)~~*(G)* any conditions imposed by the court upon the offender for the safety of the public; and

~~(iii)~~*(iv)* if an offender was given a level 3 designation under 46-23-509, the *department of justice and the registration* agency shall give the victim and the public notification that includes the information contained in subsection ~~(1)(b)(ii)~~ *(1)(b)(iii)*. The ~~agency shall~~ *notification must* also include the date of the offender's release from confinement or, if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and ~~shall~~ *must* include the community in which the offense occurred.

(c) prior to release of information under subsection (1)(b), a ~~law enforcement~~ *registration* agency may, in its sole discretion, request an in camera review by a district court of the determination by the ~~law enforcement~~ *registration* agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of the offender from confinement.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a ~~law enforcement~~ *registration* agency without the permission of the victim.

(3) ~~A state or local law enforcement agency may use the internet to disseminate the information allowed by this section to the public.~~ *Dissemination to the public of information allowed or required by this section may be done by newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In determining the method of dissemination, the disseminating entity should consider the level of risk posed by the offender to the public.*

(4) The department of justice shall develop a model community notification policy to assist registration agencies in implementing the dissemination provisions of this section."

Section 24. Section 46-23-509, MCA, is amended to read:

"46-23-509. Sexual offender evaluations and designations — rulemaking authority. (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual offender and sexually violent predator evaluations and for determinations by sexual offender evaluators of the risk of a repeat offense and the threat that an offender poses to the public safety.

(2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender evaluator shall provide the court with a sexual offender evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(3) Upon sentencing the offender, the court shall:

(a) review the sexual offender evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(4) An offender designated as a level 2 offender or given a level designation by another state, the federal government, or the department under subsection (6) that is determined by the court to be similar to level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender *treatment* program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(5) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part *and who was sentenced prior to October 1, 1997*, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

(6) If an offense is covered by 46-23-502~~(6)(b)~~*(9)(b)*, the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department of justice may give the offender the risk level designation assigned by the other state or the federal government.

(7) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the department in determining the risk level to be assigned to an offender pursuant to this section."

Section 25. Section 46-23-1011, MCA, is amended to read:

"46-23-1011. Supervision on probation. (1) The department shall supervise probationers during their probation period*, including supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4),* in accord with the conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

(2) A copy of the conditions of probation must be signed by the probationer. The department may require a probationer to waive extradition for the probationer's return to Montana.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage the probationer to improve the probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful completion of the sentence.

(4) (a) The probation and parole officer may recommend and a judge may modify or add any condition of probation or suspension of sentence at any time.

(b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with a report that identifies the conditions of probation and the reason why the officer believes that the judge should modify or add the conditions.

(c) The county attorney may file a petition requesting that the court modify or add conditions as requested by the probation and parole officer.

(d) The court may grant the petition if the probationer does not object. If the probationer objects to the petition, the court ~~must~~ *shall* hold a hearing pursuant to the provisions of 46-18-203.

(e) ~~The~~ *Except as they apply to supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4), the* provisions of 46-18-203(7)(a)(ii) do not apply to this section.

(f) The probationer shall sign a copy of new or modified conditions of probation. The court may waive or modify a condition of restitution only as provided in 46-18-246.

(5) (a) Upon recommendation of the probation and parole officer, a judge may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if:

(i) the judge determines that a conditional discharge from supervision:

(A) is in the best interests of the probationer and society; and

(B) will not present unreasonable risk of danger to the victim of the offense; and

(ii) the offender has paid all restitution and court-ordered financial obligations in full.

(b) Subsection (5)(a) does not prohibit a judge from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.

(c) If the department certifies to the sentencing judge that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the judge may not place an offender on probation under supervision by that district office unless the judge grants a conditional discharge to a probationer being supervised by that district office. The department may recommend probationers to the judge for conditional discharge. The judge may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."

Section 26. Section 53-1-203, MCA, is amended to read:

"53-1-203. Powers and duties of department of corrections. (1) The department of corrections shall:

(a) adopt rules necessary to carry out the purposes of 41-5-123 through 41-5-125, rules necessary for the siting, establishment, and expansion of prerelease centers, rules for the establishment and maintenance of residential methamphetamine treatment programs, and rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law. However, rules adopted by the department may not amend or alter the statutory powers and duties of the state board of pardons and parole.

The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations to establish and maintain:

(i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for release into the community, providing an alternative placement for offenders who have violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs. This subsection does not affect the department's authority to operate and maintain prerelease centers.

(ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for persons convicted of possession of methamphetamine. The department shall issue a request for proposals using a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

(d) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed in correctional facilities or programs;

(f) encourage the establishment of programs at the local and state level for the rehabilitation and education of felony offenders;

(g) administer all state and federal funds allocated to the department for youth in need of intervention and delinquent youth, as defined in 41-5-103;

(h) collect and disseminate information relating to youth in need of intervention and delinquent youth;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to youth in need of intervention and delinquent youth in out-of-home care facilities;

(j) provide funding for and place youth who are adjudicated to be delinquent or in need of intervention and who are committed to the department;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for delinquent youth committed to the department; and

(ii) coordinate and apply the principles of modern correctional administration to the facilities and programs administered by the department.

(2) The department may contract with private, nonprofit or for-profit Montana corporations to establish and maintain a residential sexual offender treatment program. If the department intends to contract for that purpose, the department shall adopt rules for the establishment and maintenance of that program.

~~(2)~~*(3)* The department and a private, nonprofit *or for-profit* Montana corporation may not enter into a contract under subsection (1)(c) *or (2)* for a period that exceeds 20 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c) *or (2)*. Prior to entering into a contract for a period of 10 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

~~(3)~~*(4)* The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of intervention and delinquent youth in youth correctional facilities.

~~(4)~~*(5)* The department may contract with Montana corporations to operate a day reporting program as an alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015. The department shall adopt by rule the requirements for a day reporting program, including but not limited to requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance with any conditions of probation, such as drug testing."

Section 27. Sexual offender treatment. (1) Upon sentencing a person convicted of a sexual offense, as defined in 46-23-502, the court shall designate the offender as a level 1, 2, or 3 offender pursuant to 46-23-509.

(2) (a) Except as provided in subsection (2)(b), the court shall order an offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison to:

(i) enroll in and successfully complete the educational phase of the prison's sexual offender treatment program;

(ii) if the person has been or will be designated as a level 3 offender pursuant to 46-23-509, enroll in and successfully complete the cognitive and behavioral phase of the prison's sexual offender treatment program; and

(iii) if the person is sentenced pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4) and is released on parole, remain in an outpatient sex offender treatment program for the remainder of the person's life.

(b) A person who has been sentenced to life imprisonment without possibility of release may not participate in treatment provided pursuant to this section.

(3) A person who has been ordered to enroll in and successfully complete a phase of a state prison's sexual offender treatment program is not eligible for parole unless that phase of the program has been successfully completed as certified by a sexual offender evaluator to the board of pardons and parole.

(4) (a) Except for an offender sentenced pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4), during an offender's term of commitment to the department of corrections or a state prison, the department may place the person in a residential sexual offender treatment program approved by the department under 53-1-203.

(b) If the person successfully completes a residential sexual offender treatment program approved by the department of corrections, the remainder of the term must be served on probation unless the department petitions the sentencing court to amend the original sentencing judgment.

(5) If a person's sentence is suspended pursuant to subsection (4)(b), during the suspended portion of the sentence the person:

(a) shall abide by the standard conditions of probation established by the department of corrections;

(b) shall pay the costs of imprisonment, probation, and any sexual offender treatment if the person is financially able to pay those costs;

(c) may have no contact with the victim or the victim's immediate family unless approved by the victim or the victim's parent or guardian, the person's therapists, and the person's probation officer;

(d) shall comply with all requirements and conditions of sexual offender treatment as directed by the person's sex offender therapist;

(e) may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;

(f) may not consume alcoholic beverages;

(g) shall enter and remain in an aftercare program as directed by the person's probation officer;

(h) shall submit to random or routine drug and alcohol testing;

(i) may not possess pornographic material or access pornography through the internet; and

(j) at the discretion of the probation and parole officer, may be subject to electronic monitoring or continuous satellite monitoring.

(6) The sentencing of a sexual offender is subject to 46-18-202(2) and 46-18-219.

(7) The sentencing court may, upon petition by the department of corrections, modify a sentence of a sexual offender to impose any part of a sentence that was previously suspended.

Section 28. Codification instruction. [Section 27] is intended to be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to [section 27].

Section 29. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 30. Effective date. [This act] is effective on passage and approval.

Section 31. Retroactive applicability. [Sections 2, 3, and 19 through 24] apply retroactively, within the meaning of 1-2-109, to:

(1) sexual offenders who are sentenced or who are in the custody or under the supervision of the department of corrections on or after July 1, 1989; and

(2) violent offenders who are sentenced or who are in the custody or under the supervision of the department of corrections on or after October 1, 1995.

Approved May 11, 2007

CHAPTER NO. 484

[HB 160]

AN ACT TRANSFERRING AND APPROPRIATING MONEY FROM THE GENERAL FUND TO REPAY LAND TRUSTS AND TRUST BENEFICIARIES FOR DIVERSIONS FOR ADMINISTRATIVE COSTS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Transfer and appropriation for repayment. (1) (a) There is appropriated $822,774.07 from the general fund to Montana state university for the purpose of repaying Montana state university-Bozeman the amount of distributable money plus interest that has been diverted for administrative costs on Morrill Act trust lands.

(b) There is transferred $115,123.49 from the general fund to the Morrill Act permanent trust fund for the purpose of repaying the Morrill Act trust fund the amount of permanent fund money plus interest that has been diverted for administrative costs on Morrill Act trust lands.

(2) The following money is appropriated from the general fund to the identified beneficiary for the purpose of repaying the beneficiary the amount of distributable money plus interest that was inappropriately diverted to pay for administrative costs on Morrill Act trust lands:

Beneficiary	Diversion
University of Montana-Missoula	$5.94
Montana State University-Bozeman (2nd Grant)	$14,500.19
Montana Tech of the University of Montana	$761.97
University of Montana-Western (Normal School)	$6,060.68

School for the Deaf and Blind	$10.40
Pine Hills Youth Correctional Facility (Reform School)	$19.24
Common Schools Guarantee Account	$206,316.75
Capitol Buildings	$29,149.38

(3) The following money is transferred from the general fund to the permanent trust fund of the trust identified for the purpose of repaying the permanent trust funds the amount of permanent fund money plus interest that was inappropriately diverted to pay for administrative costs on Morrill Act trust lands:

Permanent Trust Fund	Diversion
Public School Fund	$10,038.28
State Reform School Trust Fund	$8,441.19
The trust established for the support of the School for the Deaf and Blind	$731.18

(4) (a) There is appropriated $235,747.10 from the general fund to the common schools guarantee account for the purpose of repaying the common schools guarantee account the amount of distributable money that was diverted to allow the department of natural resources and conservation to fully fund the trust land administration account provided for in 77-1-108 to pay administrative costs that were allocated to the capitol building trust, the state reform school trust, and the Montana tech of the university of Montana trust.

(b) There is transferred $4,764.55 from the general fund to the public school fund for the purpose of repaying the public school fund the amount of permanent fund money plus interest that was diverted to allow the department of natural resources and conservation to fully fund the trust land administration account provided for in 77-1-108 to pay administrative costs that were allocated to the capitol building trust, the state reform school trust, and the Montana tech of the university of Montana trust.

Section 2. Obligation settled. The transfers and appropriations provided for in [section 1] satisfy the state's responsibility to the permanent trust funds and beneficiaries and makes the permanent trust funds and beneficiaries of those trust funds whole for the diversions identified in [section 1].

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved May 14, 2007

CHAPTER NO. 485

[HB 337]

AN ACT AUTHORIZING A COUNTY, A CONSOLIDATED GOVERNMENT, OR A MUNICIPALITY TO ESTABLISH A VOLUNTEER FIREFIGHTERS' DISABILITY INCOME INSURANCE ACCOUNT; AUTHORIZING A COUNTY, A CONSOLIDATED GOVERNMENT, OR A MUNICIPALITY TO LEVY A TAX, SUBJECT TO VOTER APPROVAL, ON PROPERTY TO PURCHASE DISABILITY INCOME INSURANCE COVERAGE FOR VOLUNTEER FIREFIGHTERS; AMENDING SECTIONS 7-33-2109, 7-33-2209, 7-33-2403, 7-33-4109, AND 7-33-4111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Disability income insurance authorized — voted levy — fund. (1) Disability income insurance, as defined in 33-1-235, purchased for volunteer firefighters must provide that:

(a) payments or benefits are paid only for an injury received as a volunteer firefighter; and

(b) the duration of payments or benefits may not exceed the lesser of 1 year or until the treating physician determines that the beneficiary is no longer disabled.

(2) If the voters have approved a levy for the purchase of volunteer firefighters' disability income insurance, the governing body of a local government entity may establish a volunteer firefighters' disability income insurance account. The governing body may hold money in the account for any time period considered appropriate by the governing body. Money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(3) Money may be expended from the account to purchase disability income insurance coverage meeting the provisions of subsection (1) for volunteer firefighters organized or deployed pursuant to any of the provisions of Title 7, chapter 33, parts 21 through 24 or 41.

(4) Money in the account must be invested as provided by law. Interest and income from the investment of money in the account must be credited to the account.

Section 2. Section 7-33-2109, MCA, is amended to read:

"7-33-2109. Tax levy, debt incurrence, and bonds authorized — *voted levy for disability income coverage.* (1) At the time of the annual levy of taxes, the board of county commissioners may, subject to 15-10-420, levy a ~~special~~ tax upon all property within a rural fire district for the purpose of buying or maintaining fire protection facilities, including real property, and apparatus, including emergency response apparatus, for the district or for the purpose of paying to a city, town, or private fire service the consideration provided for in any contract with the council of the city, town, or private fire service for ~~the purpose of~~ furnishing fire protection service to property within the district. The tax must be collected as are other taxes.

(2) Subject to 15-10-425, the board of county commissioners may levy a tax upon all taxable property within a rural fire district for the purpose of purchasing disability income insurance coverage for the volunteer firefighters of the district as provided in [section 1].

~~(2)~~*(3)* The board of county commissioners or the trustees, if the district is governed by trustees, may pledge the income of the district, subject to the requirements and limitations of 7-33-2105(3), to secure financing necessary to procure equipment and buildings, including real property, to house the equipment.

~~(3)~~*(4)* In addition to the levy authorized in subsection (1), a district may borrow money by the issuance of bonds to provide funds for the payment of all or part of the cost of buying or maintaining fire protection facilities, including real property, and apparatus, including emergency response apparatus, for the district.

~~(4)~~*(5)* The amount of debt incurred pursuant to subsection ~~(2)~~ *(3)* and the amount of bonds issued pursuant to subsection ~~(3)~~ *(4)* and outstanding at any time may not exceed 1.1% of the total assessed value of taxable property, determined as provided in 15-8-111, within the district, as ascertained by the most recent assessment for state and county taxes prior to the incurrence of debt or the issuance of the bonds.

~~(5)~~*(6)* The bonds must be authorized, sold, and issued and provisions must be made for their payment in the manner and subject to the conditions and limitations prescribed for the issuance of bonds by counties under Title 7, chapter 7, part 22."

Section 3. Section 7-33-2209, MCA, is amended to read:

"7-33-2209. Finance of fire control activities — *voted levy for disability income insurance.* (1) The county governing body may appropriate funds for the purchase, care, and maintenance of firefighting equipment or for the payment of wages in prevention, detection, and suppression of fires.

(2) Subject to 15-10-420, if the general fund is budgeted to the full limit, the county governing body may, at any time fixed by law for levy and assessment of taxes, levy a tax for the purposes of subsection (1).

(3) Subject to 15-10-425, the county governing body may levy a tax for the purpose of purchasing disability income insurance coverage for volunteer firefighters of volunteer rural fire control crews and county volunteer fire companies as provided in [section 1]."

Section 4. Section 7-33-2403, MCA, is amended to read:

"7-33-2403. Operation of fire service area — *voted levy for disability income insurance.* (1) Whenever the board of county commissioners has established a fire service area, the commissioners may:

(a) govern and manage the affairs of the area;

(b) appoint five qualified trustees to govern and manage the affairs of the area; or

(c) authorize the election of five qualified trustees to govern and manage the affairs of the area. The term of office and procedures for nomination and election are the same as those provided for election of rural fire district trustees in 7-33-2106.

(2) Subject to 15-10-425, the commissioners may levy a tax upon all property within the county for the purpose of buying disability income insurance coverage for volunteer firefighters deployed within the fire service area as provided in [section 1].

~~(2)~~*(3)* If the commissioners appoint trustees under subsection (1), the provisions of 7-33-2105 apply and 7-33-2106 applies whether the trustees are elected or appointed, except that the trustees shall prepare annual budgets and request a schedule of rates for the budget."

Section 5. Section 7-33-4109, MCA, is amended to read:

"7-33-4109. Supplementary volunteer fire department authorized for cities of second class — *voted levy for disability income insurance.* (1) In addition to a paid department, the city council, city commission, or other governing body in cities of the second class may make provision for a volunteer fire department.

(2) The city commission or governing department ~~shall be~~ *is* exempted ~~as to~~ *from* compliance with 7-33-4128 ~~insofar as the same may pertain~~ *to the extent that section applies* to the ~~said~~ volunteer fire department by way of penalties and infringements.

(3) A volunteer is ~~one who is~~ an enrolled member of the volunteer fire department, ~~and~~ assists the paid fire department~~;~~, ~~who~~ *and* is eligible to serve only on the board of trustees of the fire department relief association of ~~such~~ *the* city. ~~(provided~~ *However,* not more than three volunteer members ~~are~~ *may be* on ~~said~~ *the* board of trustees~~); but who shall not be~~. *A person who is a volunteer for the purposes of this section is not* entitled to receive a service pension.

(4) The governing body of ~~said~~ *the* city may*:*

(a) ~~at its discretion~~ pay an enrolled volunteer firefighter a minimum of $1 for attending a fire and a minimum of $1 for each hour or fraction of an hour after the first hour in active service at ~~said~~ *a* fire or returning ~~any or all~~ equipment to its proper place*;*

(b) subject to 15-10-425, levy a tax upon all property within a fire district for the purpose of buying disability income insurance coverage for the volunteer firefighters of the volunteer fire department as provided in [section 1].

(5) In ~~the~~ attending ~~of~~ fires, any volunteer shall act and serve under the supervision of the chief of the paid fire department."

Section 6. Section 7-33-4111, MCA, is amended to read:

"7-33-4111. Tax levy for volunteer fire departments — *voted levy for disability income insurance.* *(1)* For the purpose of supporting volunteer fire departments in any city or town that does not have a paid fire department and for the purpose of purchasing the necessary equipment for them, the council in any city or town may, subject to 15-10-420, levy, in addition to other levies permitted by law, a tax on the taxable value of all taxable property in the city or town.

(2) Subject to 15-10-425, a city or town may levy a tax on the taxable value of all taxable property in the city or town for the purpose of purchasing disability income insurance coverage for volunteer firefighters of volunteer fire departments as provided in [section 1]."

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 6, part 6, and the provisions of Title 7, chapter 6, part 6, apply to [section 1].

Section 8. Effective date. [This act] is effective on passage and approval.

Approved May 14, 2007

CHAPTER NO. 486

[HB 368]

AN ACT PROVIDING APPROPRIATIONS TO THE LEGISLATIVE SERVICES DIVISION AND TO THE MONTANA HISTORICAL SOCIETY TO SUPPORT BROADCASTING SERVICES AND PERMANENT PRESERVATION OF TELEVISED LEGISLATIVE PROCEEDINGS.

WHEREAS, the Legislature in 2001 established a state-funded public affairs television program to provide Montana citizens with increased access to unbiased information about state government; and

WHEREAS, the Legislative Services Division has the statutory duty, pursuant to section 5-11-1111, MCA, to administer the television program and to develop and implement a plan to provide the maximum attainable distribution of telecasts in order to reach as many Montana citizens as possible; and

WHEREAS, although the Legislature in 2001 and in subsequent sessions hoped that the transmission and distribution of the televised proceedings could be financed with federal grants and private contributions, these funding sources have been unreliable and insufficient; and

WHEREAS, the gavel-to-gavel coverage of state government proceedings, known as TVMT programming, will for the first time be made available in eight urban markets, where approximately 350,000 cable customers reside, during the 2007 legislative session as a result of a pilot program partnership involving Helena Civic Television, Bresnan Communications, VisionNet, Inc., and the Legislative Services Division; and

WHEREAS, public funding is required to sustain the noncommercial integrity of TVMT programming and expand the public-private partnership described above so that citizens in rural, urban, and reservation communities all across Montana have access to unfiltered coverage of state government activities; and

WHEREAS, the Legislative Services Division has a historic duty to provide the Montana Historical Society with official records of permanent value to the state, as provided in section 22-3-202, MCA, and the Montana Historical Society is not currently equipped to archive and preserve, or provide access to, digital recordings of the televised proceedings.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations. (1) There is appropriated $265,000 from the general fund to the legislative services division for the 2009 biennium to maximize the accessibility of gavel-to-gavel coverage of the legislative proceedings to additional Montana citizens.

(2) There is appropriated $70,000 from the general fund to the Montana historical society for the 2009 biennium for the preservation of digital recordings to make the content of televised proceedings of the legislature available to the public on a permanent basis.

(3) Purchase of services or equipment from the appropriation in this section must conform to state procurement law in Title 18, chapter 4.

Section 2. Contingent voidness. If House Bill No. 818 is not passed and approved, then [this act] is void.

Approved May 14, 2007

CHAPTER NO. 487

[HB 462]

AN ACT PROVIDING FOR THE ESTABLISHMENT OF CONSTITUENT SERVICES ACCOUNTS; PROVIDING FOR THE FUNDING AND USE OF

MONEY IN A CONSTITUENT SERVICES ACCOUNT; PROVIDING REPORTING REQUIREMENTS FOR CONSTITUENT SERVICES ACCOUNTS; AMENDING SECTION 13-37-240, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 and 2], the following definitions apply:

(1) "Constituent services" means travel, mailing, and other expenses incurred to represent and serve constituents and authorized in rules adopted by the commissioner to implement the provisions of [sections 1 and 2].

(2) "Personal benefit" has the meaning provided in 13-37-240.

Section 2. Constituent accounts — reports. (1) A constituent services account may be established by a person elected to a statewide or legislative office or as a public service commissioner to pay for constituent services. A constituent services account may be established by filing an appropriate form with the commissioner.

(2) (a) A successful candidate for the legislature, a statewide elected office, or the public service commission may deposit only surplus campaign funds in a constituent services account.

(b) The money in the account may be used only for constituent services. The money in the account may not be used for personal benefit. Expenditures from a constituent services account may not be made when the holder of the constituent services account also has an open campaign account.

(3) A statewide elected official, legislator, or public service commissioner may not establish any account related to the public official's office other than a constituent services account. This subsection does not prohibit a statewide elected official, legislator, or public service commissioner from establishing a campaign account.

(4) The holder of a constituent services account shall file a quarterly report with the commissioner, by a date established by the commissioner by rule. The report must disclose the source of all money deposited in the account and enumerate expenditures from the account. The report must include the same information as required for a candidate reporting contributions under 13-37-229 and expenditures under 13-37-230. The report must be certified as provided in 13-37-231.

(5) The holder of a constituent services account shall close the account within 120 days after the account holder leaves public office.

Section 3. Section 13-37-240, MCA, is amended to read:

"13-37-240. Surplus campaign funds. (1) A candidate shall dispose of any surplus funds from the candidate's campaign within 120 days after the time of filing the closing campaign report pursuant to 13-37-228. In disposing of the surplus funds, a candidate may not contribute the funds to another campaign, including the candidate's own future campaign, or use the funds for personal benefit. *A successful candidate for a statewide elected or legislative office or for public service commissioner may establish a constituent services account as provided in [section 2].* The candidate shall provide a supplement to the closing campaign report to the commissioner showing the disposition of any surplus campaign funds.

(2) For purposes of this section, "personal benefit" means a use that will provide a direct or indirect benefit of any kind to the candidate or any member of the candidate's immediate family."

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 13, chapter 37, and the provisions of Title 13, chapter 37, apply to [sections 1 and 2].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved May 14, 2007

CHAPTER NO. 488

[HB 491]

AN ACT PERMITTING TESTIMONY OF CERTAIN CHILD WITNESSES BY TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION IN CRIMINAL CASES INVOLVING SEXUAL OR VIOLENT OFFENSES; AND REPEALING SECTION 46-16-216, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 2 through 4] and this section, the following definitions apply:

(1) "Child witness" means an individual who is:

(a) 13 years of age or younger at the time the individual is called as a witness in a criminal proceeding involving a sexual or violent offense; or

(b) under 16 years of age at the time that the individual is called as a witness in a criminal proceeding involving a sexual or violent offense and who is an individual with a developmental disability, as defined in 53-20-102.

(2) "Sexual offense" means any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-603, or 45-5-625.

(3) "Violent offense" means any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206, 45-5-210, 45-5-212, 45-5-213, 45-5-302, 45-5-303, 45-5-401, 45-6-103, or 45-9-132.

Section 2. Raising issue of testimony of child witness outside presence of defendant — motion by prosecution or defense. Upon a motion by the prosecution or defense if the defense intends to call a child witness other than the victim in its case in chief, a court shall conduct a hearing to consider whether the testimony of a child witness may be taken outside the presence of the defendant and communicated to the courtroom by two-way electronic audio-video communication.

Section 3. Hearing — procedure — evidence that may be received — protection for child witness. (1) A court shall conduct a hearing on a motion made under [section 2].

(2) The prosecution, if the prosecution made the motion pursuant to [section 2], or the defense, if the defense made the motion pursuant to [section 2], shall present evidence at the hearing made on the motion to prove the need for an order under [section 4].

(3) In ruling on the motion, the court shall consider the following factors:

(a) the age and maturity of the child witness;

(b) the possible effect that testifying in person might have on the child witness;

(c) the extent of the trauma that the child witness has already suffered;

(d) the nature of the testimony to be given by the child witness;

(e) the nature of the offense;

(f) threats made to the child witness or the child witness's family in order to prevent or dissuade the child witness from attending or giving testimony at any trial or court proceeding;

(g) conduct on the part of the defendant or the defendant's attorney that causes the child witness to be unable to continue the child witness's testimony; and

(h) any other matter that the court considers relevant.

(4) The court may consider hearsay evidence of reports or testimony by psychologists who have examined or treated the child witness.

Section 4. Order for two-way electronic audio-video communication testimony — finding by court — procedure for conducting testimony. (1) The court shall order that the testimony of a child witness be taken by two-way electronic audio-video communication if, after considering the factors set forth in [section 3(3)], the court finds by clear and convincing evidence that the child witness is unable to testify in open court in the presence of the defendant for any of the following reasons:

(a) the child witness is unable to testify because of fear caused by the presence of the defendant;

(b) the child witness would suffer substantial emotional trauma from testifying in the presence of the defendant; or

(c) conduct by the defendant or the defendant's attorney causes the child witness to be unable to continue testifying.

(2) If the court orders that the child witness's testimony be taken by two-way electronic audio-video communication, the testimony must be taken outside the courtroom in a suitable location designated by the judge. Examination and cross-examination of the child witness must proceed as though the child witness were testifying in the courtroom. The only persons who may be permitted in the room with the child witness during the child's testimony are:

(a) the judge or a judicial officer appointed by the court;

(b) the prosecutor;

(c) the defense attorney;

(d) the child's attorney;

(e) persons necessary to operate the two-way electronic audio-video communication equipment; and

(f) any person whose presence is determined by the court to be necessary to the welfare and well-being of the child witness.

(3) The defendant must be afforded a means of private, contemporaneous communication with the defendant's attorney during the testimony.

(4) This section does not preclude the presence of both a victim and the defendant in the courtroom together for purposes of establishing or challenging

the identification of the defendant when identification is a legitimate issue in the proceeding.

Section 5. Repealer. Section 46-16-216, MCA, is repealed.

Section 6. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 46, chapter 16, part 2, and the provisions of Title 46, chapter 16, part 2, apply to [sections 1 through 4].

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 14, 2007

CHAPTER NO. 489

[HB 829]

AN ACT PROVIDING A MEANS TO RATIFY THE IMPENDING WATER RIGHTS COMPACT AMONG THE BLACKFEET TRIBE, THE STATE OF MONTANA, AND THE UNITED STATES; CREATING A BLACKFEET TRIBE WATER RIGHTS COMPACT MITIGATION ACCOUNT; CREATING A BLACKFEET TRIBE WATER RIGHTS COMPACT INFRASTRUCTURE ACCOUNT; AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADMINISTER THE ACCOUNTS; PROVIDING A FUND TRANSFER; APPROPRIATING FUNDS FOR THE MITIGATION ACCOUNT; AND PROVIDING EFFECTIVE DATES.

WHEREAS, it is the policy of the state to seek negotiated settlements of federal and Indian reserved water rights claims in Montana under Title 85, chapter 2, part 7, MCA; and

WHEREAS, pursuant to this policy, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate the settlement of water rights claims filed by Indian tribes or on their behalf by the United States claiming reserved waters within the state of Montana; and

WHEREAS, the Montana Reserved Water Rights Compact Commission, the Blackfeet Tribe, and the United States are near final agreement on a water rights compact; and

WHEREAS, a final Blackfeet Tribe-Montana water rights compact is essential to provide legal certainty with regard to the water rights of Indian and non-Indian water rights holders; and

WHEREAS, implementation of the compact will require state and federal cost-sharing, in amounts to be determined by future negotiation among the parties, for the renovation and upgrading of infrastructure on the reservation, which may include but is not limited to the Four Horns Reservoir; and

WHEREAS, state law requires legislative ratification of any compact entered into pursuant to 85-2-702, MCA; and

WHEREAS, a compact is expected to be agreed upon between the Blackfeet Tribe and the state of Montana shortly, and state legislative ratification is necessary.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) "Blackfeet Tribe" means the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana; and

(2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

Section 2. Blackfeet Tribe water rights compact mitigation account — use. (1) There is an account within the state special revenue fund called the Blackfeet Tribe water rights compact mitigation account. The department shall administer the account. Up to $650,000 each fiscal year of interest and earnings on the account must be deposited in the account.

(2) The Blackfeet Tribe water rights compact mitigation account may be used only for:

(a) expenditures for grants to or matching funds for federal or other grants to water right holders under state law for water from Birch Creek, Badger Creek, Cut Bank Creek, the Two Medicine River, and the portion of the Milk River within the exterior boundaries of the Blackfeet Indian Reservation for projects approved by the department to enhance water availability or otherwise mitigate the economic and hydrologic impacts on water right holders under state law caused by the development of the Blackfeet Tribe's water rights under a water rights compact pursuant to 85-2-702 quantifying the water rights of the Blackfeet Tribe; and

(b) implementation of the water rights compact among the Blackfeet Tribe, the state, and the United States and any associated agreements as may be specified in the compact or agreements.

(3) (a) The department may expend up to $500,000 of the account to conduct preliminary feasibility studies and an associated environmental review for water compact purposes.

(b) The department may expend up to $650,000 each fiscal year of the interest and income on the escrow account provided for in subsection (4)(b) for the purposes described in subsection (2)(b).

(4) (a) At least $4.5 million of this account must be dedicated to mitigate impacts on water right holders under state law for use of water out of Birch Creek.

(b) The amount of $10 million in this account must be held in escrow. The department shall negotiate the terms of an escrow agreement.

(5) Except as provided in subsection (3), funds from this account may not be disbursed unless a water rights compact among the Blackfeet Tribe, the state, and the United States has been finally ratified by the legislature, the Congress of the United States, and the Blackfeet Tribe.

Section 3. Blackfeet Tribe water rights compact infrastructure account — use. (1) There is an account within the state special revenue fund called the Blackfeet Tribe water rights compact infrastructure account. The department shall administer the account.

(2) The Blackfeet Tribe water rights compact infrastructure account may be used only for water-related infrastructure projects within the exterior boundaries of the Blackfeet Indian reservation.

(3) Funds from this account may not be disbursed unless a water rights compact among the Blackfeet Tribe, the state, and the United States has been finally ratified by the legislature, the Congress of the United States, and the Blackfeet Tribe.

Section 4. Administrative rules. (1) The department shall adopt reasonable rules for implementing and administering [sections 1 through 3].

(2) In proposing rules, the department shall:

(a) consult with affected stakeholders, including the Pondera County conservation district and the Glacier County conservation district; and

(b) give priority to mitigating impacts on water right holders under state law who use water out of Birch Creek.

Section 5. Fund transfer. There is transferred $15 million from the state general fund to the Blackfeet Tribe water rights compact mitigation state special revenue account created in [section 2].

Section 6. Appropriation. (1) (a) There is appropriated $500,000 from the Blackfeet Tribe water rights compact mitigation account to the department of natural resources and conservation for the biennium ending June 30, 2009. The appropriation may be used solely for the purposes described in [section 2(3)(a)].

(b) Up to $650,000 each fiscal year of the interest and income on the escrow account provided for in [section 2] is appropriated to the department for the purposes described in [section 2(2)(b)].

(2) There is appropriated $14.5 million from the Blackfeet Tribe water rights compact mitigation account to the department of natural resources and conservation. This appropriation may be used solely for the purposes described in [section 2].

Section 7. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [sections 1 through 4].

Section 8. Effective dates — contingency. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 6(2)] is effective when a water rights compact among the Blackfeet Tribe, the state, and the United States has been finally ratified by the legislature, the congress of the United States, and the Blackfeet Tribe.

Approved May 14, 2007

CHAPTER NO. 490

[SB 22]

AN ACT REVISING THE ELIGIBILITY REQUIREMENTS FOR THE CHILDREN'S HEALTH INSURANCE PROGRAM; AMENDING SECTION 53-4-1004, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-4-1004, MCA, is amended to read:

"53-4-1004. (Temporary) Eligibility for program — rulemaking. (1) To be considered eligible for the program, a child:

(a) must be 18 years of age or younger;

(b) must have a combined family income at or below ~~150%~~ *175%* of the federal poverty level or at a lower level determined by the department of public health and human services as provided in subsection (4);

(c) may not already be covered by private insurance that offers creditable coverage, as defined in 42 U.S.C. 300gg(c);

(d) may not be eligible for medicaid benefits; and

(e) must be a United States citizen or qualified alien and a Montana resident.

(2) The department of public health and human services shall adopt rules that establish the program's criteria for residency. The criteria must conform as nearly as practicable with the residency requirements for medicaid eligibility.

(3) Subject to 53-4-1009(3), rules governing eligibility may also include financial standards and criteria for income and resources, treatment of resources, and nonfinancial criteria.

(4) If the department determines that there is insufficient funding for the program, it may lower the percentage of the federal poverty level established in subsection (1)(b) in order to reduce the number of persons who may be eligible to participate or may limit the amount, scope, or duration of specific services provided. (Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999.)"

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved May 14, 2007

CHAPTER NO. 491

[HB 25]

AN ACT GENERALLY REVISING THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING AND CUSTOMER CHOICE LAWS; ELIMINATING AND CLARIFYING CERTAIN DEFINITIONS; DEFINING CERTAIN TERMS; CLARIFYING CUSTOMER OPTIONS REGARDING PURCHASING ELECTRICITY SUPPLY; CLARIFYING PUBLIC UTILITY AND COOPERATIVE UTILITY EXEMPTIONS; CLARIFYING ELECTRICITY SUPPLY AND PROCUREMENT REQUIREMENTS; CLARIFYING THE APPROVAL PROCESS FOR ELECTRICITY SUPPLY RESOURCES; REQUIRING THE COMMISSION TO ADDRESS CARBON OFFSETS IN THE APPROVAL PROCESS; CLARIFYING USE OF GENERATION ASSETS; AMENDING SECTIONS 15-72-103, 15-72-104, 35-19-102, 69-1-114, 69-8-101, 69-8-103, 69-8-201, 69-8-210, 69-8-311, 69-8-402, 69-8-403, 69-8-411, 69-8-419, 69-8-420, 69-8-421, 69-8-602, 69-8-603, AND 69-8-1004, MCA; AND REPEALING SECTIONS 69-8-102, 69-8-104, 69-8-202, 69-8-203, 69-8-204, 69-8-208, 69-8-209, 69-8-211, 69-8-301, 69-8-302, 69-8-303, 69-8-304, 69-8-308, 69-8-309, 69-8-310, 69-8-404, 69-8-408, 69-8-409, AND 69-8-410, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-72-103, MCA, is amended to read:

"15-72-103. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Customer" or "purchaser" means a person who acquires for consideration electricity for use or consumption and not for resale.

(2) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of electricity to the public. A distribution services provider includes a purchaser who takes electricity directly from a transmission line *or substation* and a purchaser who generates electricity for the purchaser's own use but does not include electricity generated by the purchaser for noncommercial use or for agricultural use.

(3) "Person" means an individual, estate, trust, receiver, cooperative association, corporation, limited liability company, firm, partnership, joint venture, syndicate, or other entity, including any gas or electric utility owned or operated by a county, municipality, or other political subdivision of the state.

(4) "Transmission services provider" means a person *or entity* controlling or operating ~~transmission~~ facilities ~~as that term is defined in 69-8-103~~ *used for the transmission of electricity*."

Section 2. Section 15-72-104, MCA, is amended to read:

"15-72-104. Wholesale energy transaction tax — rate of tax — exemptions — cost recovery. (1) (a) Except as provided in subsection (3), a wholesale energy transaction tax is imposed upon electricity transmitted within the state as provided in this section. The tax is imposed at a rate of 0.015 cent per kilowatt hour of electricity transmitted by a transmission services provider in the state.

(b) For electricity produced in the state for delivery outside ~~of~~ the state, the taxpayer is the person owning or operating the electrical generation facility producing the electricity. The transmission services provider shall collect the tax from the person based upon the kilowatt hours introduced onto transmission lines from the electrical generation facility. The amount of kilowatt hours subject to tax must be reduced by 5% to compensate for transmission line losses.

(c) For electricity produced in the state for delivery within the state, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider. The taxpayer may apply for a refund for overpayment of taxes pursuant to 15-72-116.

(d) For electricity produced outside the state for delivery inside the state, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider.

(e) For electricity delivered to a distribution services provider that is a rural electric cooperative for delivery to purchasers that have opted for customer choice under the provisions of Title 69, chapter 8, part 3, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based on the amount of kilowatt hours of electricity delivered to the distribution services provider that is attributable to customers that have opted for customer choice.

(f) For electricity delivered to a distribution services provider that prior to May 2, 1999, was owned by a public utility as defined in 69-3-101, the tax is imposed on the successor distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider.

(2) (a) If more than one transmission services provider transmits electricity, the last transmission services provider transmitting or delivering the electricity shall collect the tax.

(b) If the transmission services provider is an agency of the United States government, the distribution services provider receiving the electricity shall self-assess the tax subject to the provisions of this part.

(c) If an electrical generation facility located within the state produces electricity for sale inside and outside the state, sales within the state are considered to have come from electricity produced within the state for purposes of the tax imposed by this section.

(3) (a) Electricity transmitted through the state that is not produced or delivered in the state is exempt from the tax imposed by this section.

(b) Electricity produced in the state by an agency of the United States government or electricity produced from an electric energy generation facility, as defined in 90-5-101(3), constructed after May 1, 2001, that is within the exterior boundaries of a Montana Indian reservation for delivery outside ~~of~~ the state is exempt from the tax imposed by this section.

(c) Electricity produced by wind turbines erected on state land for which annual lease payments are made to the permanent school trust fund is exempt from the tax imposed by this section.

(d) Electricity delivered to a distribution services provider that is a municipal utility described in ~~69-8-103(5)(b)~~ *69-8-103(4)(b)* or a rural electric cooperative organized under the provisions of Title 35, chapter 18, is exempt from the tax imposed by this section.

(e) Electricity delivered to a purchaser that receives its power directly from a transmission or distribution facility owned by an entity of the United States government on or before May 2, 1997, or electricity that is transmitted exclusively on transmission or distribution facilities owned by an entity of the United States government on or before May 2, 1997, is exempt from the tax imposed by this section.

(4) A distribution services provider is allowed to recover the tax imposed by this section and the administrative costs to comply with this part in its rates."

Section 3. Section 35-19-102, MCA, is amended to read:

"35-19-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Distribution utility" means ~~the electricity distribution portion of a public utility as defined in 69-8-103~~ *a utility owning distribution facilities for distribution of electricity to the public*.

(2) "Residential customer" means a residential customer of a distribution utility.

(3) "Small commercial customer" means, for a distribution utility, individual accounts of a commercial customer with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100 kilowatts.

(4) "Small customer" means a residential customer or small commercial customer of a distribution utility."

Section 4. Section 69-1-114, MCA, is amended to read:

"69-1-114. Fees. (1) Each fee charged by the commission must be reasonable.

(2) Except for a fee assessed pursuant to 69-3-204(2), ~~69-8-421(7)~~ *69-8-421(10)*, or 69-12-423(2), a fee set by the commission may not exceed $500.

(3) All fees collected by the department under ~~69-8-421(7)~~ *69-8-421(10)* must be deposited in an account in the special revenue fund. Funds in this account must be used as provided in ~~69-8-421(7)~~ *69-8-421(10)*."

Section 5. Section 69-8-101, MCA, is amended to read:

"69-8-101. Short title. This chapter may be cited as the "Electric Utility Industry ~~Restructuring and Customer Choice~~ *Generation Reintegration* Act"."

Section 6. Section 69-8-103, MCA, is amended to read:

"69-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

~~(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers, purchases electrical energy, and takes title to electrical energy as an intermediary for sale to retail customers.~~

~~(2)~~*(1)* "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

~~(3)~~*(2)* "Board" means the board of investments created by 2-15-1808.

~~(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electrical energy but that does not take title to electrical energy.~~

(3) "Carbon offset provider" means a qualified third-party entity that arranges for projects or actions that either reduce carbon dioxide emissions or that increase the absorption of carbon dioxide.

~~(5)~~*(4)* "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

~~(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.~~

(5) "Cost-effective carbon offsets" means any combination of certified actions that are taken to reduce carbon dioxide emissions or that increase the absorption of carbon dioxide, which collectively do not increase the cost of electricity produced annually on a per-megawatt-hour basis by more than 2.5%, including:

(a) actions undertaken by the applicant that reduce carbon dioxide emissions or that increase the absorption of carbon dioxide from a facility or equipment used to generate electricity; or

(b) actions by a carbon offset provider on behalf of the applicant.

~~(7)~~*(6)* "Customer-generator" means a user of a net metering system.

~~(8) "Default supplier" means a distribution services provider of a utility that has restructured in accordance with this chapter.~~

~~(9) "Default supply service" means the provision of electricity supply by a default supplier.~~

~~(10) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.~~

~~(11) "Distribution services provider" means a utility owning distribution facilities for distribution of electricity to the public.~~

~~(12) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.~~

(7) "Distribution facilities" means those facilities by and through which electricity is received from transmission facilities and distributed to a retail customer and that are controlled or operated by a utility.

~~(13)~~*(8)* "Electricity supply costs" means the actual costs ~~of~~ *incurred in* providing ~~default~~ *electricity* supply service *through power purchase agreements, demand-side management, and energy efficiency programs*, including but not limited to:

(a) capacity costs;

(b) energy costs;

(c) fuel costs;

(d) ancillary service costs;

~~(e) demand-side management and energy efficiency costs;~~

~~(f)~~*(e)* transmission costs, including congestion and losses;

~~(g) billing costs;~~

~~(h)~~*(f)* planning and administrative costs; *and* ~~and~~

~~(i)~~*(g)* any other costs directly related to the purchase of electricity~~,~~ *and the* management ~~of default electricity supply costs,~~ and provision of ~~default supply and related services.~~ *power purchase agreements.*

(9) "Electricity supply resource" means:

(a) contracts for electric capacity and generation;

(b) plants owned or leased by a utility or equipment used to generate electricity;

(c) customer load management and energy conservation programs; or

(d) other means of providing adequate, reliable service to customers, as determined by the commission.

(10) "Electricity supply service" means the provision of electricity supply and related services through power purchase agreements, the acquisition and operation of electrical generation facilities, demand-side management, and energy efficiency programs.

~~(14)~~*(11)* "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

~~(15)~~*(12)* (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and of acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in the financing order.

~~(16) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.~~

(13) "Generation assets cost of service" means a return on invested capital and all costs associated with the acquisition, construction, administration, operation, and maintenance of a plant or equipment owned or leased by a public utility and used for the production of electricity.

~~(17)~~*(14)* "Interested person" means a retail electricity customer, the consumer counsel established in 5-15-201, the commission, or a utility.

~~(18)~~*(15)* "Large customer" means, for universal system benefits programs purposes, a customer with an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that individual load.

~~(19)~~*(16)* "Local governing body" means a local board of trustees of a rural electric cooperative.

~~(20)~~*(17)* "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

~~(21)~~*(18)* "Net metering" means measuring the difference between the electricity distributed to and the electricity generated by a customer-generator that is fed back to the distribution system during the applicable billing period.

~~(22)~~*(19)* "Net metering system" means a facility for the production of electrical energy that:

(a) uses as its fuel solar, wind, or hydropower;

(b) has a generating capacity of not more than 50 kilowatts;

(c) is located on the customer-generator's premises;

(d) operates in parallel with the ~~distribution services provider's~~ *utility's* distribution facilities; and

(e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

~~(23)~~*(20)* "Nonbypassable rates or charges" means rates or charges that are approved by the commission and imposed on a customer to pay the customer's

share of transition costs or universal system benefits programs costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

~~(24) "Pilot program" means an experimental program using a select set of small customers to assess the potential for developing and offering customer choice of electricity supply to small customers in the future.~~

~~(25)~~*(21)* "Public utility" ~~means any electric utility~~ *has the meaning of a public utility* regulated by the commission pursuant to Title 69, chapter 3~~, on May 2, 1997, including the public utility's successors or assignees~~*, on May 2, 1997, including the public utility's successors or assignees*.

~~(26)~~*(22)* "Qualifying load" means, for payments and credits associated with universal system benefits programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory in which the customer qualifies as a large customer.

~~(27) "Small customer" means a residential customer or a commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than 50 kilowatts or a new residential or commercial customer with an estimated average monthly demand of less than 50 kilowatts of a public utility that has restructured pursuant to Title 35, chapter 19, or this chapter.~~

(23) "Retail customer" means a customer that purchases electricity for residential, commercial, or industrial end-use purposes and does not resell electricity to others.

~~(28)~~*(24)* "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents, and other entities acting for the benefit of that bondholder.

~~(29)~~*(25)* "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

~~(30)~~*(26)* "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

~~(31)~~*(27)* "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

~~(32)~~*(28)* "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of ~~this chapter or of~~ federal law requiring retail open access or customer choice *or of this chapter*;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts executed before May 2, 1997, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

~~(33) "Transition period" means the period ending July 1, 2027.~~

~~(34)~~*(29)* "Transition property" means the property right created by a financing order, including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order, including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

~~(35) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.~~

~~(36) "Transmission services provider" means an entity controlling or operating transmission facilities.~~

(30) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission and that are controlled or operated by a utility.

~~(37)~~*(31)* "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits programs costs.

~~(38)~~*(32)* "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) renewable resource projects and applications, including those that capture unique social and energy system benefits or that provide transmission and distribution system benefits;

(d) research and development programs related to energy conservation and renewables;

(e) market transformation designed to encourage competitive markets for public purpose programs; and

(f) low-income energy assistance.

~~(39)~~*(33)* "Utility" means any public utility or cooperative utility."

Section 7. Section 69-8-201, MCA, is amended to read:

"69-8-201. Public utility — ~~transition to customer choice~~ — *customer electricity supply service* options and requirements — ~~waiver~~ *exemption.* ~~(1) Before July 1, 2027, all public utility customers of a public utility that has restructured in accordance with this chapter must have the opportunity to choose an electricity supplier other than the default supplier.~~

~~(2) (a) A small customer of a public utility that has restructured in accordance with this chapter:~~

~~(i) must receive default supply services from the default supplier as provided in this chapter; and~~

~~(ii) may purchase electricity supply services through a commission-approved small customer electricity supply program as provided in this section.~~

~~(b) A small customer receiving electricity from a licensed supplier prior to July 1, 2003, may continue to receive electricity supply from a supplier other than the default supplier.~~

~~(c) Customers that represent separately metered services with an estimated average monthly demand of less than 50 kilowatts related to the same individual customer referred to in subsection (3) or (4) may be combined with the respective eligible customer load or loads.~~

~~(3) (a) Subject to subsection (3)(b), a customer of a public utility that has restructured in accordance with this chapter and that has an individual load with an average monthly demand of less than 5,000 kilowatts but greater than or equal to 50 kilowatts may choose an electricity supplier.~~

~~(b) The total average monthly billing demand for all customers that choose an electricity supplier pursuant to subsection (3)(a) in each calendar year may not exceed 20,000 kilowatts.~~

~~(c) A customer referred to in subsection (3)(a) receiving electricity from a licensed supplier prior to July 1, 2003, may continue to receive electricity supply from a supplier other than the default supplier.~~

~~(4)~~*(1)* (a) Except as provided in subsections ~~(4)(b)~~ *(1)(b)* ~~through (4)(c)~~ *and (1)(c)*, a *retail* customer ~~of a utility that has restructured in accordance with this chapter and~~ that has an individual load with an average monthly demand of greater than or equal to 5,000 kilowatts ~~shall purchase its entire electricity supply from the competitive marketplace~~ *and that is not purchasing electricity supply service from a public utility on [the effective date of this act] may not purchase electricity supply service from a public utility*.

~~(b) A customer referred to in subsection (4)(a) that is receiving its electricity supply from the competitive marketplace may make a one-time election to enter into a permanent power supply contract with the default supplier for service on or after July 1, 2004. These contracts must include the applicable provisions established by the commission pursuant to subsection (5). This election must be submitted to the commission in writing no later than December 31, 2003.~~

~~(c)~~*(b)* A ~~new~~ *retail* customer ~~with an estimated average monthly demand of greater than or equal to 5,000 kilowatts may enter into a power supply contract~~

~~with the default supplier in order to receive default supply service~~ *referred to in subsection (1)(a) may request electricity supply service from the public utility, and the public utility must provide electricity supply service if the retail customer demonstrates that the provision of electricity supply service to the retail customer will not adversely impact the public utility's other customers over the long term as determined by the commission.* ~~The new customer's election of an electricity supplier must be submitted in writing to the commission at least 90 days before delivery of electricity. These contracts must include the applicable provisions established by the commission pursuant to subsection (5).~~

~~(d) A customer referred to in subsection (4)(a) that was receiving electricity from the default supplier on July 1, 2003, may continue to receive electricity from the default supplier.~~

(c) If a public utility provides electricity supply service to a retail customer as provided in subsection (1)(b), that service is regulated by the commission and the customer may not, at a later date, purchase electricity supply service from another provider of electricity supply service.

~~(e) A customer referred to in subsection (4)(a) that is a public agency, as defined in 18-1-101, may enter into a power supply contract with the default supplier for default supply service for all or part of the public agency's load. These contracts must include the applicable provisions established by the commission pursuant to subsection (5).~~

~~(5) The commission shall adopt rules and establish rates and fees to enable customers to have reasonable opportunities to choose an electricity supplier or to receive default supply service in accordance with subsections (2) through (4), while providing protection for small customers from higher or more unstable default supply service rates than would otherwise result if these choices were not offered.~~

~~(6) An electricity supplier licensed by the commission to offer electricity supply service to small customers may petition the commission for the opportunity to provide electricity to small customers. The total average monthly demand for all customers referred to in subsection (2)(a) in each calendar year that receive service from an electricity supplier that is not the default supplier may not exceed 10,000 kilowatts. The commission shall ensure that electricity supply service provided pursuant to this subsection is consistent with the requirements in subsection (5) and the provision of default supply service pursuant to this chapter.~~

~~(7) Based on an analysis of the sources of costs of providing default supply service, the commission may:~~

~~(a) establish different categories of default supply service customers to assist with the implementation of this section;~~

~~(b) allocate default supply costs; and~~

~~(c) develop default supply rates.~~

~~(8) (a) Except as provided in subsection (8)(b), a customer receiving default supply service may not resell the electricity.~~

~~(b) A default supplier may implement demand reduction programs that reward customers for reducing demand under terms established by the commission.~~

(2) (a) A retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts that is not purchasing electricity from a

public utility on [the effective date of this act] may continue to purchase electricity from an electricity supplier. The retail customer may subsequently purchase electricity from a public utility subject to commission rule or order, but the customer may not, at a later date, choose to purchase electricity from another source.

(b) A retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts and that is currently purchasing electricity from a public utility may not choose to purchase electricity from another source after [the effective date of this act].

(3) Nothing in this section affects a retail customer's rights and obligations with respect to net metering, cogeneration, self-generation, or ancillary sales of electricity related to deviations from scheduled energy deliveries from nonutility suppliers, as may be provided for in law, commission rule or order, or a tariff approved by the public service commission or the federal energy regulatory commission.

~~(9)~~*(4)* (a) Except as provided in 69-5-101, 69-5-102, 69-5-104 through 69-5-112, ~~and~~ 69-8-402, *and subsection (4)(b) of this section,* a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, ~~may defer compliance with this chapter until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory~~ *is exempt from the requirements of this chapter*.

(b) To the extent that a public utility described in subsection ~~(9)(a)~~ *(4)(a)* becomes the successor in interest of another public utility that has restructured in accordance with this chapter *before [the effective date of this act]*, ~~it shall assume responsibility only for the applicable transition plan of~~ *it is subject to the requirements of this chapter with respect to the service area of* the acquired public utility.

~~(10) Upon a request from a public utility with fewer than 50 customers, the commission shall waive compliance with the requirements of 69-8-104, 69-8-202 through 69-8-204, 69-8-208 through 69-8-211, 69-8-402, and this section.~~"

Section 8. Section 69-8-210, MCA, is amended to read:

"69-8-210. Public utilities — electricity supply — *environmentally preferred resources.* ~~(1) A public utility's distribution services provider shall provide default supply service.~~

~~(2)~~*(1)* The commission shall establish an electricity cost recovery mechanism that allows a ~~default supplier~~ *public utility* to fully recover prudently incurred electricity supply costs, subject to the provisions of 69-8-419 ~~and~~, 69-8-420*, and commission rules. The commission may include other utility costs and expenses in the cost recovery mechanism if it determines that including additional costs and expenses is reasonable and in the public interest*. The cost recovery mechanism must provide for prospective rate adjustments for cost differences resulting from cost changes, load changes, and the time value of money on the differences.

~~(3) The commission may direct a default supplier to offer its customers multiple default supply service options if the commission determines that those options are in the public interest and are consistent with the provisions of 69-8-104 and 69-8-201.~~

~~(4)~~*(2)* Notwithstanding any service options that the commission may require ~~pursuant to subsection (3), a default supplier~~*, a public utility* shall offer its

customers the option of purchasing a product composed of or supporting power from certified environmentally preferred resources that include but are not limited to wind, solar, geothermal, and biomass, subject to review and approval by the commission. The commission shall ensure that these resources have been certified as meeting industry-accepted standards.

~~(5) (a) Subject to subsection (5)(b), the commission shall, in reviewing the procurement of electricity supply by the default supplier, take into account the statewide economic benefits that are associated with the electricity supply procurement for the default supply stakeholders. The default supply stakeholders include the default supplier, customers of the default supplier, and the public.~~

~~(b) The consideration of economic benefits is secondary to the consideration of the costs and benefits to the consumer and other criteria established by law.~~

~~(6) If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to 69-8-404.~~"

Section 9. Section 69-8-311, MCA, is amended to read:

"69-8-311. Cooperative utility — *electricity supply service* — exemption. *(1) A local governing body shall establish the price for electricity supply service offered by a cooperative utility.*

~~(1) Within 1 year after May 2, 1997, a cooperative utility may file a notice with the commission that the cooperative utility does not intend to open the cooperative utility's distribution facilities to electricity suppliers and does not intend to adopt a transition plan.~~

(2) Except as otherwise provided in the universal system benefits program pursuant to 69-8-402, a cooperative utility ~~filing notice under this section~~ is exempt from the provisions and requirements of this chapter.

~~(2) A cooperative utility filing a notice under this section:~~

~~(a) may elect later to adopt a transition plan in accordance with this chapter; and~~

~~(b) may not use a public utility's distribution facilities unless preexisting contracts exist.~~"

Section 10. Section 69-8-402, MCA, is amended to read:

"69-8-402. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance.

(2) Beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the initial funding level for universal system benefits programs. To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives. These universal system benefits charge rates must remain in effect through December 31, 2009.

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) A utility must receive credit toward annual funding requirements for the utility's internal programs or activities that qualify as universal system benefits programs, including those amortized or nonamortized portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance, and for large customers' programs or activities as provided in subsection (7). The department of revenue shall review claimed credits of the utilities and large customers pursuant to 69-8-414.

(c) A ~~utility's distribution services provider~~ *utility* at which the sale of power for final end use occurs is the utility that receives credit for the universal system benefits programs expenditure.

(d) A customer's ~~distribution services provider~~ *utility* shall collect universal system benefits funds less any allowable credits.

(e) For a utility to receive credit for low-income-related expenditures, the activity must have taken place in Montana.

(f) If a utility's or a large customer's credit for internal activities does not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund established in 69-8-412 for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs and low-income energy assistance.

(4) A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) A utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying load equal to the lesser of:

(A) $500,000, less the large customer credits provided for in this subsection (7); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection (7);

(ii) must receive credit toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and

(B) those amortized or nonamortized portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) Large customers making these expenditures must receive a credit against the large customer's universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that large customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that large customer's universal system benefits charges.

(8) A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission, the department of revenue, and the energy and telecommunications interim committee provided for in 5-5-230. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the energy and telecommunications interim committee. The statewide cooperative utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of revenue and the energy and telecommunications interim committee. The annual report of a public utility or of the statewide cooperative utility office must include but is not limited to:

(a) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

(b) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

(c) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

(9) A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

(10) (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the department of revenue or the utility is not required, except as provided in subsection (10)(b).

(b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the large customer is financially responsible for the disallowance. A large customer and the large customer's utility may mutually agree that credits claimed by the large customer be first approved by the utility.

If the utility approves the large customer credit, the utility may be financially responsible for any subsequent disallowance."

Section 11. Section 69-8-403, MCA, is amended to read:

"69-8-403. Commission ~~authority~~ — rulemaking authority. ~~(1) Beginning on the effective date of a commission order regarding a public utility's transition plan, the commission shall regulate the public utility's retail transmission, distribution, and default supply services within the state of Montana, as provided in this chapter.~~

~~(2) The commission shall license electricity suppliers and enforce licensing provisions pursuant to 69-8-404.~~

~~(3) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.~~

~~(4) The commission shall establish just and reasonable rates through established ratemaking principles for public utility default supply, distribution, and transmission services and shall regulate these services. The commission may approve rates and charges for those services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with this chapter, and on the public utility's transition plan.~~

~~(5) The commission shall certify that a cooperative utility has adopted a transition plan that complies with this chapter. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.~~

~~(6) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.~~

~~(7) (a) After July 1, 2010, the commission shall continuously monitor whether or not workable competition has developed for small customers.~~

~~(b) If the commission determines that workable competition has developed for small customers after July 1, 2010, the commission shall provide a report to the legislature that includes recommendations for legislative implementation of customer choice for small customers.~~

~~(8)~~ In addition to promulgating rules expressly provided for in this chapter, the commission may promulgate any other rules necessary to carry out the provision of this chapter.

~~(9) This chapter does not give the commission the authority to:~~

~~(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with this chapter; or~~

~~(b) compel any change to a cooperative utility's certification filing made pursuant to this chapter.~~"

Section 12. Section 69-8-411, MCA, is amended to read:

"69-8-411. Nondiscriminatory access — ~~reciprocity~~. ~~Except as provided in 69-8-311, all electricity suppliers must be afforded open, fair, and nondiscriminatory access to customers and a comparable opportunity to compete. A distribution services provider or the distribution services provider's affiliates may not use another distribution services provider's facilities in the state of Montana to sell electricity to customers in the state of Montana unless~~

~~the first distribution services provider or the distribution services provider's affiliates offer comparable and nondiscriminatory access to the distribution services provider's distribution facilities within the state of Montana.~~ *(1) Nonutility generators and electricity suppliers must have open, fair, and nondiscriminatory access to a public utility's transmission and distribution facilities according to federal energy regulatory commission rules and regulations for purposes of serving those customers identified in 69-8-201(1) and (2).*

(2) Public utilities shall grant the retail customers identified in 69-8-201(1) and (2) and their electricity suppliers access to transmission and distribution facilities at rates and under terms and conditions comparable to the public utility's own access to those facilities or access by the public utility's affiliates.

(3) Public utilities shall file tariffs for transmission and distribution services regulated by the federal energy regulatory commission and the commission implementing subsections (1) and (2)."

Section 13. Section 69-8-419, MCA, is amended to read:

"69-8-419. ~~Default~~ *Electricity* supply resource planning and procurement — duties of ~~default supplier~~ *public utility* — objectives — commission rules. (1) The ~~default supplier~~ *public utility* shall:

(a) plan for future ~~default~~ *electricity* supply resource needs;

(b) manage a portfolio of ~~default~~ *electricity* supply resources; and

(c) procure new ~~default~~ *electricity* supply resources when needed.

(2) The ~~default supplier~~ *public utility* shall pursue the following objectives in fulfilling its duties pursuant to subsection (1):

(a) provide adequate and reliable ~~default supply services~~ *electricity supply service* at the lowest long-term total cost;

(b) conduct an efficient ~~default~~ *electricity* supply resource planning and procurement process that evaluates the full range of cost-effective electricity supply and demand-side management options;

(c) identify and cost-effectively manage and mitigate risks related to its obligation to provide ~~default~~ electricity supply service;

(d) use open, fair, and competitive procurement processes whenever possible; and

(e) provide ~~default supply services~~ *electricity supply service and related services* at just and reasonable rates.

(3) ~~By December 31, 2003, the~~ *By March 31, 2008, the* commission shall adopt rules that guide the ~~default~~ *electricity* supply resource planning and procurement processes used by the ~~default supplier~~ *public utility* and facilitate the achievement of the objectives in subsection (2) by the ~~default supplier~~ *public utility*. The rules must establish:

(a) goals, objectives, and guidelines that are consistent with the objectives in subsection (2) for:

(i) planning for future ~~default~~ *electricity* supply resource needs;

(ii) managing the portfolio of ~~default~~ *electricity* supply resources; and

(iii) procuring new ~~default~~ *electricity* supply resources;

(b) standards for the evaluation by the commission of the reasonableness of a power supply purchase agreement proposed by the ~~default supplier~~ *public utility*; and

(c) minimum filing requirements for an application by the ~~default supplier~~ *public utility* for ~~advanced approval of a proposed power supply purchase agreement~~ *approval of an electricity supply resource*."

Section 14. Section 69-8-420, MCA, is amended to read:

"69-8-420. ~~Default~~ *Electricity* supply resource procurement plans — comment on plans. (1) The ~~default supplier~~ *public utility* shall develop ~~default~~ *electricity* supply resource procurement plans. The plans must be submitted to the commission at intervals determined in rules adopted by the commission ~~pursuant to 69-8-419~~.

(2) ~~A default~~ *An electricity* supply resource procurement plan must demonstrate the ~~default supplier's~~ *public utility's* achievement of the objectives provided in 69-8-419 and compliance with ~~the rules adopted pursuant to 69-8-419~~ *commission rules*.

(3) The commission shall:

(a) review the ~~default~~ *electricity* supply resource procurement plan;

(b) provide an opportunity to the public to comment on the plan; and

(c) issue written comments that identify:

(i) any concerns of the commission regarding the ~~default supplier's~~ *public utility's* compliance with ~~the rules adopted pursuant to 69-8-419; and~~ *commission rules; and*

(ii) ways to remedy any concerns."

Section 15. Section 69-8-421, MCA, is amended to read:

"69-8-421. ~~Default supply filings — commission processing and approval~~ *Approval of electricity supply resources.* (1) A ~~default supplier~~ *public utility that removed its generation assets from its rate base pursuant to this chapter prior to [the effective date of this act]* may apply to the commission for *approval of an electricity supply resource that is not yet procured.* ~~advanced approval of a power supply purchase agreement that is:~~

~~(a) not executed; or~~

~~(b) executed with a provision that allows termination of the agreement if the commission does not find the agreement reasonable.~~

~~(2) (a) The commission shall issue an order on the default supplier's application for advanced approval of a power supply purchase agreement in a timely manner as provided in this subsection (2).~~

~~(b) In establishing an administrative procedure for reviewing an application for advanced approval, the commission shall consider any financing and market constraints and the due process rights of affected persons.~~

~~(c)~~*(2)* Within 45 days of the ~~default supplier's~~ *public utility's* submission of an application for ~~advanced approval~~ *approval*, the commission shall determine whether or not the application is adequate and in compliance with the commission's minimum filing requirements. If the commission determines that the application is inadequate, it shall explain ~~how the filing fails to comply with the objectives in 69-8-419 and the rules adopted pursuant to 69-8-419.~~ *the deficiencies.*

~~(d)~~*(3)* The commission shall issue an order within 180 days of receipt of an adequate application *for approval of a power purchase agreement from an existing generating resource* unless it determines that extraordinary circumstances require additional time.

(4) (a) Except as provided in subsections (4)(b) through (4)(d), the commission shall issue an order within 270 days of receipt of an adequate application for approval of a lease, an acquisition of an equity interest in a new or existing plant or equipment used to generate electricity, or a power purchase agreement for which approval would result in construction of a new electric generating resource. The commission may extend the time limit up to an additional 90 days if it determines that extraordinary circumstances require it.

(b) If an air quality permit pursuant to Title 75, chapter 2, is required for a new electrical generation resource or a modification to an existing resource, the commission shall hold the public hearing on the application for approval at least 30 days after the issuance of the final air quality permit.

(c) If a final air quality permit is not issued within the time limit pursuant to subsection (4)(a), the commission shall extend the time limit in order to comply with subsection (4)(b).

(d) The commission may extend the time limit for issuing an order for an additional 60 days following the hearing pursuant to subsection (4)(b).

~~(e)~~*(5)* To facilitate timely consideration of an application, the commission may initiate proceedings to evaluate planning and procurement activities related to a potential resource procurement prior to the ~~default supplier's~~ *public utility's* submission of an application for ~~approval~~ *approval*.

~~(3)~~*(6)* (a) The commission may approve or deny, in whole or in part, an application for ~~advanced approval of a power supply purchase agreement~~ *approval of an electricity supply resource*.

(b) The commission may consider all relevant information known up to the time that the administrative record in the proceeding is closed in the evaluation of an application for ~~advanced approval of a power supply purchase agreement~~ *approval*.

(c) A commission order granting ~~advanced approval of a power supply purchase agreement~~ *approval of an application* must include the following findings:

(i) ~~advanced approval of all or part of the agreement~~ *approval, in whole or in part,* is in the public interest; *and*

~~(ii) the agreement resulted from a reasonable effort by the default supplier to comply with the objectives in 69-8-419 and the rules adopted pursuant to 69-8-419; and~~

~~(iii) the price, quantity, duration, and other contract terms directly related to the price, quantity, and duration of the power supply purchase agreement are reasonable.~~

(ii) procurement of the electricity supply resource is consistent with the requirements in 69-3-201, the objectives in 69-8-419, and commission rules.

(d) The commission order may include a provision for allowable generation assets cost of service when the utility has filed an application for the lease or acquisition of an equity interest in a plant or equipment used to generate electricity.

(e) When issuing an order for the acquisition of an equity interest or lease in a facility or equipment that is constructed after January 1, 2007, and that is used to generate electricity that is primarily fueled by natural or synthetic gas, the commission shall require the applicant to implement cost-effective carbon offsets. Expenditures required for cost-effective carbon offsets pursuant to this subsection (6)(e) are fully recoverable in rates. By March 31, 2008, the commission shall adopt rules for the implementation of this subsection (6)(e).

~~(d)~~*(f)* The commission order may include other findings that the commission determines are necessary.

~~(e)~~*(g)* A commission order that denies ~~advanced approval~~ *approval* must describe why the findings required in subsection ~~(3)(c)~~ *(6)(c)* could not be reached.

~~(4)~~*(7)* Notwithstanding any provision of this chapter to the contrary, if the commission has issued an order containing the findings required under subsection ~~(3)(c)~~ *(6)(c)*, the commission may not subsequently disallow the recovery of costs ~~incurred under the agreement~~ *related to the approved electricity supply resource* based on contrary findings.

~~(5) If a default supplier does not apply for advanced approval of a power supply purchase agreement, the commission shall consider the prudence of the default supplier's resource procurement actions in the context of a default supplier's cost recovery filing pursuant to 69-8-210 or in a separate proceeding. The commission's decisions in these proceedings must be based on facts that were known or should reasonably have been known by the default supplier at the time of its procurement decisions.~~

(8) Until the state or federal government has adopted uniformly applicable statewide standards for the capture and sequestration of carbon dioxide, the commission may not approve an application for the acquisition of an equity interest or lease in a facility or equipment used to generate electricity that is primarily fueled by coal and that is constructed after January 1, 2007, unless the facility or equipment captures and sequesters a minimum of 50% of the carbon dioxide produced by the facility. Carbon dioxide captured by a facility or equipment may be sequestered offsite from the facility or equipment.

~~(6)~~*(9)* Nothing limits the commission's ability to subsequently, in any future ~~cost recovery~~ *rate* proceeding, inquire into the manner in which the ~~default supplier~~ *public utility* has managed*, dispatched, operated, or maintained any resource or managed any power supply purchase agreement* ~~a power supply purchase agreement~~ as part of its overall *resource* portfolio. The commission may subsequently disallow ~~default supply~~ *rate recovery for the* costs that result from the failure of a ~~default supplier~~ *public utility* to reasonably ~~administer power supply purchase agreements~~ *manage, dispatch, operate, maintain, or administer electricity supply resources* in ~~the context of its overall default supply portfolio management and service obligations.~~ *a manner consistent with 69-3-201, 69-8-419, and commission rules.*

~~(7)~~*(10)* The commission may engage independent *engineering, financial, and management* consultants or advisory services to evaluate a *public* utility's ~~default~~ *electricity* supply resource procurement plans and proposed ~~power supply purchase agreements~~ *electricity supply resources*. The consultants must have demonstrated knowledge and experience with electricity supply procurement and resource portfolio management, modeling, ~~and~~ risk management*, and engineering* practices. The commission shall charge a fee to

the ~~default supplier~~ *public utility* to pay for the costs of consultants or advisory services. These costs are recoverable in ~~default supply~~ rates.

(11) By March 31, 2008, the commission shall adopt rules prescribing minimum filing requirements for applications filed pursuant to this part."

Section 16. Section 69-8-602, MCA, is amended to read:

"69-8-602. ~~Distribution services provider~~ *Utility* net metering requirements. A ~~distribution services provider~~ *utility* shall:

(1) allow net metering systems to be interconnected using a standard kilowatt-hour meter capable of registering the flow of electricity in two directions, unless the commission determines, after appropriate notice and opportunity for comment:

(a) that the use of additional metering equipment to monitor the flow of electricity in each direction is necessary and appropriate for the interconnection of net metering systems, after taking into account the benefits and costs of purchasing and installing additional metering equipment; and

(b) how the costs of net metering are to be allocated between the customer-generator and the ~~distribution services provider~~ *utility*; and

(2) charge the customer-generator a minimum monthly fee that is the same as other customers of the electric utility in the same rate class. The commission shall determine, after appropriate notice and opportunity for comment if:

(a) the ~~distribution services provider~~ *utility* will incur direct costs associated with interconnecting or administering net metering systems that exceed any offsetting benefits associated with these net metering systems; and

(b) public policy is best served by imposing these costs on the customer-generator, rather than allocating these costs among the ~~distribution services provider's~~ *utility's* entire customer base."

Section 17. Section 69-8-603, MCA, is amended to read:

"69-8-603. Net energy measurement calculation. Consistent with the other provisions of this part, the net energy measurement must be calculated in the following manner:

(1) The ~~distribution services provider~~ *utility* shall measure the net electricity produced or consumed during the billing period, in accordance with normal metering practices.

(2) If the electricity supplied by the electricity supplier exceeds the electricity generated by the customer-generator and fed back to the electricity supplier during the billing period, the customer-generator must be billed for the net electricity supplied by the electricity supplier, in accordance with normal metering practices.

(3) If electricity generated by the customer-generator exceeds the electricity supplied by the electricity supplier, the customer-generator must be:

(a) billed for the appropriate customer charges for that billing period, in accordance with 69-8-602; and

(b) credited for the excess kilowatt hours generated during the billing period, with this kilowatt-hour credit appearing on the bill for the following billing period.

(4) On January 1, April 1, July 1, or October 1 of each year, as designated by the customer-generator as the beginning date of a 12-month billing period, any

remaining unused kilowatt-hour credit accumulated during the previous 12 months must be granted to the electricity supplier, without any compensation to the customer-generator."

Section 18. Section 69-8-1004, MCA, is amended to read:

"69-8-1004. Renewable resource standard — administrative penalty — waiver. (1) Except as provided in 69-8-1007 and subsection (11) of this section, a graduated renewable energy standard is established for public utilities as provided in subsections (2) through (4) of this section.

(2) In each compliance year beginning January 1, 2008, through December 31, 2009, each public utility shall procure a minimum of 5% of its retail sales of electrical energy in Montana from eligible renewable resources.

(3) (a) In each compliance year beginning January 1, 2010, through December 31, 2014, each public utility shall procure a minimum of 10% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) As part of their compliance with subsection (3)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 50 megawatts in nameplate capacity.

(c) Public utilities shall proportionately allocate the purchase required under subsection (3)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2009.

(4) (a) In the compliance year beginning January 1, 2015, and in each succeeding compliance year, each public utility shall procure a minimum of 15% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) (i) As part of their compliance with subsection (4)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 75 megawatts in nameplate capacity.

(ii) In meeting the standard in subsection (4)(b)(i), a public utility may include purchases made under subsection (3)(b).

(c) Public utilities shall proportionately allocate the purchase required under subsection (4)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2014.

(5) (a) In complying with the standards required under subsections (2) through (4), a public utility shall, for any given compliance year, calculate its procurement requirement based on the public utility's previous year's sales of electrical energy to retail customers in Montana.

(b) The standard in subsections (2) through (4) must be calculated on a delivered-energy basis after accounting for any line losses.

(6) A public utility has until 3 months following the end of each compliance year to purchase renewable energy credits for that compliance year.

(7) (a) In order to meet the standard established in subsections (2) through (4), a public utility may only use:

(i) electricity from an eligible renewable resource in which the associated renewable energy credits have not been sold separately;

(ii) renewable energy credits created by an eligible renewable resource purchased separately from the associated electricity; or

(iii) any combination of subsections (7)(a)(i) and (7)(a)(ii).

(b) A public utility may not resell renewable energy credits and count those sold credits against the public utility's obligation to meet the standards established in subsections (2) through (4).

(c) Renewable energy credits sold through a voluntary service such as the one provided for in ~~69-8-210(4)~~ *69-8-210(2)* may not be applied against a public utility's obligation to meet the standards established in subsections (2) through (4).

(8) Nothing in this part limits a public utility from exceeding the standards established in subsections (2) through (4).

(9) If a public utility exceeds a standard established in subsections (2) through (4) in any compliance year, the public utility may carry forward the amount by which the standard was exceeded to comply with the standard in either or both of the 2 subsequent compliance years. The carryforward may not be double-counted.

(10) Except as provided in subsection (11), if a public utility is unable to meet the standards established in subsections (2) through (4) in any compliance year, that public utility shall pay an administrative penalty, assessed by the commission, of $10 for each megawatt hour of renewable energy credits that the public utility failed to procure. A public utility may not recover this penalty in electricity rates. Money generated from these penalties must be deposited in the universal low-income energy assistance fund established in 69-8-412(1)(a).

(11) A public utility may petition the commission for a short-term waiver from full compliance with the standards in subsections (2) through (4) and the penalties levied under subsection (10). The petition must demonstrate that the:

(a) public utility has undertaken all reasonable steps to procure renewable energy credits under long-term contract, but full compliance cannot be achieved either because renewable energy credits cannot be procured or for other legitimate reasons that are outside the control of the public utility; or

(b) integration of additional eligible renewable resources into the electrical grid will clearly and demonstrably jeopardize the reliability of the electrical system and that the public utility has undertaken all reasonable steps to mitigate the reliability concerns."

Section 19. Use of generation assets. Generation assets acquired by a public utility pursuant to this chapter:

(1) must be used by the public utility to serve and benefit customers within the public utility's Montana service territory; and

(2) may not be removed from the rate base unless the commission finds that customers of the public utility will not be adversely affected.

Section 20. Codification instruction. [Section 19] is intended to be codified as an integral part of Title 69, chapter 8, part 4, and the provisions of Title 69, chapter 8, part 4, apply to [section 19].

Section 21. Repealer. Sections 69-8-102, 69-8-104, 69-8-202, 69-8-203, 69-8-204, 69-8-208, 69-8-209, 69-8-211, 69-8-301, 69-8-302, 69-8-303, 69-8-304, 69-8-308, 69-8-309, 69-8-310, 69-8-404, 69-8-408, 69-8-409, and 69-8-410, MCA, are repealed.

Section 22. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 23. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 14, 2007

CHAPTER NO. 492

[SB 4]

AN ACT ESTABLISHING A PROCUREMENT REBATE SPECIAL REVENUE ACCOUNT; PROVIDING FOR THE FUNDING AND USE OF MONEY IN THE ACCOUNT; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Procurement rebate account — funding — use. (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the procurement rebate special revenue account.

(2) All rebates credited to the department from using state procurement cards and contracts must be deposited in the procurement rebate special revenue account.

(3) The money in the account may be used only to:

(a) administer the state's procurement card programs; and

(b) reimburse applicable funds to the federal government.

(4) The unreserved, unexpended balance of the funds collected under this section must be deposited in the general fund by the close of the fiscal year.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 18, chapter 4, part 2, and the provisions of Title 18, chapter 4, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved May 16, 2007

CHAPTER NO. 493

[SB 12]

AN ACT REVISING THE COMMUNITY COLLEGE FUNDING STATUTES TO PROVIDE FOR CALCULATION OF THE STATE GENERAL FUND APPROPRIATION BASED ON VARIABLE AND FIXED COSTS; CLARIFYING THAT THE VARIABLE AND FIXED COSTS AND THE STATE SHARE ARE DETERMINED BY THE LEGISLATURE; PROVIDING DEFINITIONS; AMENDING SECTIONS 20-15-310 AND 20-15-312, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-15-310, MCA, is amended to read:

"20-15-310. Appropriation — *definitions.* *(1)* It is the intent of the legislature that all community college spending, other than from restricted funds*, designated funds,* or funds generated by an optional, voted levy, be governed by the provisions of this part and the state general appropriations act.

(2) (a) The state general fund appropriation must be ~~based on a budget amount per full-time equivalent student, as determined by the legislature~~ *determined as follows:*

(i) multiply the variable cost of education per student by the full-time equivalent student count and add the budget amount for the fixed cost of education; and

(ii) multiply the total in subsection (2)(a)(i) by the state share.

(b) The variable cost of education per student, the budget amount for fixed costs, and the state share must be determined by the legislature. The state share, expressed as a percentage, and the variable cost of education per student must be specified in the appropriations act appropriating funds to the community colleges for each biennium.

(3) The student count may not include those enrolled in community service courses as defined by the board of regents.

(4) As used in this section, the following definitions apply:

(a) "Cost of education" means the actual costs incurred by the community colleges during the budget base fiscal year, as reported on the current unrestricted operating fund schedule that is statutorily required to be submitted to the commissioner of higher education, minus any reversion and one-time-only expenditures that are included.

(b) "Fixed cost of education" means that portion of the cost of education, as determined by the legislature, that is not influenced by increases or decreases in student enrollment.

(c) "Variable cost of education per student" means that portion of the cost of education, as determined by the legislature, that is subject to change as a result of increases or decreases in student enrollment, divided by the actual student enrollment during the budget base fiscal year."

Section 2. Section 20-15-312, MCA, is amended to read:

"20-15-312. Calculation and approval of operating budget. (1) Annually by September 1, the board of trustees of a community college shall submit an operating budget to the board of regents for their review. The operating budget of the community college must be financed in the following manner:

(a) The general fund appropriation must ~~represent a specific percentage of the budget amount per full-time equivalent student, as determined by the legislature. This percentage must be specified in the appropriations act appropriating funds to the community colleges for each biennium. This percentage does not apply to any portion of the unrestricted budget in excess of the budget amount per full-time equivalent student, as determined by the legislature~~ *be determined pursuant to 20-15-310.*

(b) The mandatory levy amount must represent a specific percentage of the ~~budget amount per full-time equivalent student~~ *combined total of the fixed cost of education and the variable cost of education, as those terms are defined in 20-15-310, and* as determined by the legislature. This percentage must be

specified for each community college by the board of trustees of the district and approved by the board of regents.

(c) The funding obtained ~~in~~ *pursuant to* subsections (1)(a) and (1)(b) plus the revenue derived from tuition and fee schedules approved by the board of regents and unrestricted income from any other source is the amount of the unrestricted budget. A detailed expenditure schedule for the unrestricted budget must be submitted to the board of regents for their review and approval.

(d) The amount estimated to be raised by the voted levy must be detailed separately in an expenditure schedule.

(e) The spending of each restricted *or designated* funding source must be detailed separately in an expenditure schedule.

(f) The expenditure schedules provided in subsections (1)(c) through (1)(e) represent the total operating budget of the community college.

(2) The board of regents shall review the proposed total operating budget and all its components and make any changes it determines necessary. The board of trustees of a community college district shall operate within the limits of the operating budget approved by the board of regents."

Section 3. Effective date — applicability. [This act] is effective July 1, 2007, and applies to funds appropriated on or after July 1, 2007.

Approved May 16, 2007

CHAPTER NO. 494

[SB 25]

AN ACT CREATING THE CONTRACT HARVESTING PROGRAM; DEFINING TERMS FOR THE CONTRACT HARVESTING AND SALE OF FOREST PRODUCTS FROM STATE TRUST LANDS; AUTHORIZING CONTRACT HARVESTING OF TIMBER AND FOREST PRODUCTS ON STATE TRUST LANDS; AUTHORIZING THE SALE OF FOREST PRODUCTS BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; CREATING A CONTRACT HARVESTING SUBACCOUNT FOR THE DEPOSIT OF GROSS PROCEEDS FROM CONTRACT HARVESTING SALES AND THE PAYMENT OF CONTRACT HARVESTING COSTS; PROVIDING RULEMAKING AUTHORITY FOR THE BOARD OF LAND COMMISSIONERS TO IMPLEMENT THE CONTRACT HARVESTING PROGRAM; AMENDING SECTIONS 77-1-613, 77-5-201, AND 77-5-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Statement of policy. (1) The application of contract harvesting on Montana's trust lands provides an opportunity to improve forest health and long-term productivity, increase options for managing forests in environmentally sensitive areas, and provide potential revenue benefits for trust beneficiaries.

(2) It is important that the department has clear authorization and direction for conducting contract harvesting, including marketing and selling log sorts and other forest products.

(3) A clear funding mechanism addressing the receipt of revenue and payment for costs associated with contract harvesting projects provides the

transparent process that allows beneficiaries to understand the costs and benefits associated with contract harvesting.

(4) Contract harvesting has the potential to result in increased bidder activity, better use and merchandising of products, improved harvesting results and environmental protection, and quicker completion of projects when time constraints are a factor.

Section 2. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Contract harvesting" means a timber harvest or timber sale occurring on state trust lands by which:

(a) the department solicits bids and contracts with a firm or individual awarded the bid to:

(i) perform all necessary work to harvest and process trees into merchantable forest products;

(ii) sort trees pursuant to contract specifications and department use standards; and

(iii) transport and deliver the products to forest product purchasers; and

(b) the department sells the forest products to one or more forest product purchasers through the competitive bidding process pursuant to 77-5-201(1) and (2).

(2) "Contract harvesting costs" means expenses related to the production of log sorts or other merchantable products from a stand of timber and the transportation of the products to point-of-sale locations. These expenses may include but are not limited to:

(a) sale preparation and development costs;

(b) marketing of forest products and administration of contract harvesting contracts;

(c) road building and maintenance;

(d) labor for felling, bucking, yarding, and loading;

(e) scaling of forest products; and

(f) the transportation of sorted logs and other merchantable products from the harvest site to a point of sale.

(3) "Decked" means a pile of logs or other merchantable forest products that have been prepared for sale or shipment and placed upon a landing.

(4) "Forest health concerns" means issues that can be addressed through management or harvest of merchantable or nonmerchantable trees and includes:

(a) forested lands that are overcrowded or stagnant and that are showing declining annual growth;

(b) wildland/urban interface areas where timber harvest or forest management is necessary to prevent catastrophic or other damage to forested lands, livestock, buildings, or other infrastructure;

(c) fire fuel buildup and treatment on forested lands;

(d) forested lands susceptible to imminent or repeated insect or disease attack and timber degradation;

(e) forested lands that are in a high state of decline or decay or are rapidly deteriorating;

(f) forested lands with high recreational use and high degradation risk; and

(g) forested lands under drought stress.

(5) "Forest products" means any product produced from the forest that the department can sell through competitive bid or direct negotiation.

(6) "Log sorts" means trees or portions of trees that are grouped and sorted into various product categories, including but not limited to pulp logs, saw logs, and house logs.

(7) "Saw logs" means merchantable timber prepared and sorted as decked, scaled logs and sold f.o.b., as defined in 30-2-319, at a designated location, expressed in terms of dollars per thousand board feet or dollars per ton.

(8) "Scaled" means the measured volume, weight, or other measurement of a log, load of logs, or other products.

(9) "Stumpage" means the value of timber as it exists, uncut, within a harvest unit, expressed in terms of dollars per thousand board feet, dollars per ton, or other appropriate value per unit designation.

(10) (a) "Timber" means any wood growth on state trust land, mature or immature, alive or dead, standing or down, that is capable of furnishing merchantable raw material used in the manufacture of lumber or other forest products.

(b) The term does not include cultivated Christmas trees.

Section 3. Contract harvesting authorized. (1) Under direction of the board and after submitting the various portions of the sale for bid, as described in 77-5-201, the department is authorized to sell timber and forest products from contract harvesting sales through the competitive bidding process pursuant to 77-5-201(1) and (2) and to contract with firms and individuals for the removal of timber and forest products from state trust lands, the preparation of those materials into merchantable form, the transportation of those materials to a point of sale, and other purposes that the department determines to be necessary.

(2) Except as provided in subsection (3), the department may not conduct contract harvesting on state trust lands in an amount greater than 10% of the annual sustained yield.

(3) If the department is addressing forest health concerns as provided in [section 4], the department may exceed the annual sustained harvest level by up to 5% using contract harvesting, provided that the contract harvest volume in excess of the annual sustained harvest level contains no more than 25% merchantable saw log volume.

Section 4. Contract harvesting to address forest health concerns. All contract harvesting sales meant to address specific forest health concerns must be designed to:

(1) improve the overall health, productivity, and long-term revenue potential for the timber stand;

(2) be consistent with the state forest land management plan; and

(3) comply with all applicable state laws, rules, and regulations.

Section 5. Rules. (1) (a) The board may adopt rules to implement the contract harvesting program. The board shall evaluate each proposed contract harvest to determine if, in the board's judgment, contract harvesting will fulfill its duty to prudently obtain the maximum long-term revenue for the trust beneficiaries or to address forest health concerns or other environmental concerns.

(b) The board shall adopt rules describing the procedures necessary to ensure that the trust beneficiaries receive the full market value of the forest products.

(2) The board may adopt rules that impose specific appraisal requirements and sale procedures for any forest products directly marketed and sold by the department.

Section 6. Contract harvesting account — authorized expenditures — termination. (1) An account, called the contract harvesting account, must be created as a subaccount of the timber sale account established in 77-1-613, in which to deposit gross revenue and for the payment of expenditures associated with contract harvesting sales. All proceeds of the sale of forest products from a contract harvesting sale must be deposited into this account and must be retained in the account to be used to pay for all contract harvesting costs, as provided in subsection (2).

(2) Expenditures may be credited against the account for contract harvesting costs. Personnel services costs for state employees may not be credited against the account.

(3) An amount equal to the contract harvesting costs must be retained in the account and must be deducted from the gross proceeds to determine the net proceeds. The net proceeds from the sale of the forest products must be distributed to the appropriate trust.

(4) An initial account balance must be created by transferring up to $500,000 into the contract harvesting account from the timber sale account.

(5) If the contract harvesting program is terminated or discontinued for more than 10 years, any balance remaining in the contract harvesting account in excess of $500,000 must be distributed to the appropriate trust. The remaining balance up to $500,000 must be transferred back to the timber sale account provided for in 77-1-613.

Section 7. Section 77-1-613, MCA, is amended to read:

"77-1-613. Deduction of portion of income received from sale of timber from state trust lands — creation of account. (1) There is an account in the state special revenue fund called the state timber sale account. Money in the account may be appropriated by the legislature for use by the department in the manner set out in this section to enhance the revenue creditable to the trusts. There must be placed in the account an amount from timber sales on state lands each fiscal year equal to the amount appropriated from the account for the corresponding fiscal year.

(2) Timber sale program funds deducted under subsection (1) must be directly applied to timber sale preparation, ~~and~~ *timber sale* documentation*, and contract harvesting costs as provided in [section 6]*.

(3) In order to increase the volume of timber sold at the earliest possible time while continuing to meet the requirements of applicable state and federal laws and in order to avoid unnecessary delays and extra costs that would result from

increasing its permanent staff, the department may contract for services that will enable achievement of the purposes of this section and that will achieve the highest net return to the trusts.

(4) To maximize overall return to the trusts, the timely salvage of timber must be considered. However, salvage timber sales may not adversely affect the implementation of green timber sales programs."

Section 8. Section 77-5-201, MCA, is amended to read:

"77-5-201. Sale of timber. (1) Under the direction of the board, the department may sell the timber crop and other crops of the forests after examination, estimate, appraisal, and report and under any rules established by the board. *Timber or forest products sold from state trust lands may be sold by a stumpage method or a lump-sum method or marketed by the state through contract harvesting as provided in [sections 1 through 6].*

(2) Timber proposed for sale in excess of 100,000 board feet must be advertised in a paper of the county in which the timber is situated for a period of at least 30 days, during which time the department must receive sealed bids up to the hour of the closing of the bids, as specified in the notice of sale.

(3) (a) In cases of emergency ~~due to~~ *because of* fire, insect, fungus, parasite, or blowdown *or to address forest health concerns* or in cases when the department is required to act immediately to take advantage of access granted by permission of an adjoining landowner, timber proposed for sale not in excess of 1 million board feet may be advertised by invitation to bid for a period of not less than 10 days. The department may reject any ~~or all~~ bids, upon approval of the board, or it shall award the sale to the highest responsible bidder.

(b) (i) In cases when the department is required to act immediately to take advantage of access granted by permission of an adjoining landowner and there is only one potential buyer with legal access, the department may negotiate a sale of timber not in excess of 1 million board feet without offering the timber for bid if the sale is for fair market value.

(ii) The provisions of subsection (3)(b)(i) do not apply to situations when the only access is totally controlled by a potential purchaser of the timber, in which case the department shall seek to negotiate permanent, reciprocal access.

(c) In the situations described in subsections (3)(a) and (3)(b)(i), the department is not required to comply with the provisions of 75-1-201(1) to the extent that compliance is precluded by limited time available to take advantage of the sales opportunities described by this subsection (3)."

Section 9. Section 77-5-204, MCA, is amended to read:

"77-5-204. Sale of timber — fee for forest improvement. (1) The board may sell timber on state lands~~, at a price per 1,000 board feet, when appropriate, that,~~ *or other forest products removed from state lands, as provided in [sections 1 through 6], at a per unit price when,* in the board's judgment, *it* is in the best interest of the state, provided that live timber is not sold for less than full market value.

(2) Timber sold or cut from state lands must be cut and removed under rules that may be prescribed by the board for standing timber preservation and fire prevention. In all cases, the board shall require the person cutting the timber to pile and burn or otherwise dispose of the brush and slash in the manner that may be prescribed by the board.

(3) Before the sale of timber is granted, the value of the timber must be appraised under the direction of the department, upon the request and subject to the approval of the board. An appraisal must show as nearly as possible the *per unit* value ~~per 1,000 board feet~~, when appropriate, of all merchantable ~~timber~~ *forest products*.

(4) In addition to the price of the ~~timber~~ *forest products* established under subsection (1), the board may require a timber *or other forest product* purchaser to pay a fee for forest improvement. Revenue from the fee must be deposited in the state special revenue fund to the credit of the department and, as appropriated by the legislature, may be used only for:

(a) disposing of logging slash;

(b) acquiring access and maintaining roads necessary for timber harvesting on state lands;

(c) reforesting, thinning, and otherwise improving the condition and income potential of forested state lands; and

(d) complying with legal requirements for timber harvesting."

Section 10. Coordination instruction. If either House Bill No. 231 or Senate Bill No. 75 and [this act] are passed and approved and if they contain a section that amends 77-1-613, then the sections amending 77-1-613 are void and 77-1-613 must be amended as follows:

"77-1-613. ~~Deduction of portion of income received from~~ *Administrative costs associated with* sale of timber from state trust lands ~~— creation of account~~. (1) ~~There is an account in the state special revenue fund called the state timber sale account. Money in the account may be appropriated by the legislature for use by the department in the manner set out in this section to enhance the revenue creditable to the trusts. There must be placed in the account an amount from timber sales on state lands each fiscal year equal to the amount appropriated from the account for the corresponding fiscal year.~~ *The department may use funds appropriated from the trust land administration account, provided for in 77-1-108, for timber sale preparation, timber sale documentation, and contract harvesting costs as provided in [section 6 of Senate Bill No. 25].*

~~(2) Timber sale program funds deducted under subsection (1) must be directly applied to timber sale preparation and documentation.~~

~~(3)~~*(2)* In order to increase the volume of timber sold at the earliest possible time while continuing to meet the requirements of applicable state and federal laws and in order to avoid unnecessary delays and extra costs that would result from increasing its permanent staff, the department may contract for services that will enable achievement of the purposes of this section and that will achieve the highest net return to the trusts.

~~(4)~~*(3)* To maximize overall return to the trusts, the timely salvage of timber must be considered. However, salvage timber sales may not adversely affect the implementation of green timber sales programs *conducted pursuant to 77-5-201*."

Section 11. Coordination instruction. If either House Bill No. 231 or Senate Bill No. 75 and [this act] are passed and approved, then [section 6 of this act] must read as follows:

"NEW SECTION. **Section 6. Contract harvesting account — authorized expenditures — termination.** (1) An account, called the contract

harvesting account, must be created as a subaccount of the trust land administration account established in 77-1-108, in which to deposit gross revenue and for the payment of expenditures associated with contract harvesting sales. All proceeds of the sale of forest products from a contract harvesting sale must be deposited into this account and must be retained in the account to be used to pay for all contract harvesting costs, as provided in subsection (2).

(2) Expenditures may be credited against the account for contract harvesting costs. Personnel services costs for state employees may not be credited against the account.

(3) An amount equal to the contract harvesting costs must be retained in the account and must be deducted from the gross proceeds to determine the net proceeds. The net proceeds from the sale of the forest products must be distributed to the appropriate trust.

(4) An initial account balance must be created by transferring up to $500,000 of timber harvest revenue into the contract harvesting account from the trust land administration account.

(5) If the contract harvesting program is terminated or discontinued for more than 10 years, any balance remaining in the contract harvesting account in excess of $500,000 must be distributed to the appropriate trust. The remaining balance up to $500,000 must be transferred back to the trust land administration account provided for in 77-1-108."

Section 12. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 13. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 77, chapter 5, part 2, and the provisions of Title 77, chapter 5, part 2, apply to [sections 1 through 6].

Section 14. Effective date. [This act] is effective on passage and approval.

Approved May 16, 2007

CHAPTER NO. 495

[SB 27]

AN ACT CLARIFYING THE RIGHT OF A GRANDPARENT TO HAVE CONTACT WITH A GRANDCHILD IN LIGHT OF DECISIONS BY THE U.S. SUPREME COURT AND THE MONTANA SUPREME COURT; AMENDING SECTION 40-9-102, MCA; AND PROVIDING AN APPLICABILITY DATE.

WHEREAS, the Legislature enacted the principal grandparent-grandchild contact statute, section 40-9-102, MCA, in 1979 and has not amended that statute since 1997; and

WHEREAS, since 1997, the statute has provided that a grandparent wanting to have contact with a grandchild could petition a District Court to grant that contact and that the court must grant the petition if it found that the contact was "in the best interest of the child"; and

WHEREAS, since 1997, the United States Supreme Court and the Montana Supreme Court have both held that a parent's right to the custody, care, and

control of a child is founded upon a parent's constitutional right to liberty and have also held that it is the constitutionally protected right of a fit parent to determine who the parent's child may or may not associate with; and

WHEREAS, the Montana Supreme Court held on May 9, 2006, in the case of Polasek v. Omura, that a District Court for Cascade County committed reversible error when the District Court granted a petition for grandparent-grandchild contact under section 40-9-102, MCA, against the wishes of the custodial parent who had not been found to be an unfit parent, based upon the single statutory criteria that the contact was "in the best interest of the child"; and

WHEREAS, the Montana Supreme Court held in Polasek v. Omura that before a District Court could use the "best interest of the child" standard, the District Court must first determine whether the child's parent was a fit parent and, if the District Court determines the parent to be a fit parent and an objecting fit parent, that the presumption in favor of the parent's wishes has been rebutted; and

WHEREAS, because of the rulings of the U.S. Supreme Court and the Montana Supreme Court, section 40-9-102, MCA, is now misleading to grandparents in that the statute implies that a grandparent may petition a District Court to award, and the District Court may grant, grandparent-grandchild contact without consideration of the wishes of a custodial parent, or even over the objection of a custodial parent, and without consideration of the fitness of that parent; and

WHEREAS, the Legislature believes in the constitutional right of parents to control the actions and conduct of their children and believes that third parties should not be allowed, through the courts, to control the actions of those children if the parents are fit and proper parents; and

WHEREAS, the Legislature believes that both parents and grandparents must have a clear understanding or "road map" of parental rights and a grandparent's right to contact with a grandchild and that those rights should be clear in state law and easily located in state statutes by both parents and grandparents alike.

THEREFORE, it is the purpose of the Legislature to make Montana statutes reflect the holding of the U.S. Supreme Court in Troxel v. Granville and of the Montana Supreme Court in Polasek v. Omura regarding the constitutional rights of custodial parents to determine who a child may or may not have contact with by providing that before a District Court may grant grandparent-grandchild contact over the objection of a custodial parent, the District Court must inquire into the fitness of the parent and approve the petition for contact only if the parent is found to be unfit and the contact is in the best interest of the child or, if the court determines the parent to be a fit parent, the contact petitioned for is in the best interest of the child and the presumption in favor of the parent's wishes has been rebutted.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-9-102, MCA, is amended to read:

"40-9-102. Grandparent-grandchild contact. (1) Except as provided in subsection (5), the district court may grant to a grandparent of a child reasonable rights to contact with the child, including but not limited to rights regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title.

The department of public health and human services must be given notice of a petition for grandparent-grandchild contact regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title.

(2) Before a court may grant a petition brought pursuant to this section for grandparent-grandchild contact over the objection of a parent whose parental rights have not been terminated, the court shall make a determination whether the objecting parent is a fit parent. A determination of fitness and granting of the petition may be made only after a hearing, upon notice as determined by the court.

(3) A determination of unfitness may be made only if the court, based upon clear and convincing evidence, makes one or more of the determinations provided in 42-2-608(1) or finds that one or more of the events provided for in that subsection have occurred.

(4) Grandparent-grandchild contact may be granted over the objection of a parent determined by the court pursuant to subsection (2) to be unfit only if the court also determines by clear and convincing evidence that the contact is in the best interest of the child.

~~(2)~~*(5)* Grandparent-grandchild contact granted under this section *over the objections of a fit parent* may be granted only upon a finding by the court, ~~after a hearing~~ *based upon clear and convincing evidence*, that the contact *with the grandparent* would be in the best interest of the child *and that the presumption in favor of the parent's wishes has been rebutted.*

~~(3)~~*(6)* A person may not petition the court under this section more often than once every 2 years unless there has been a significant change in the circumstances of:

(a) the child;

(b) the child's parent, guardian, or custodian; or

(c) the child's grandparent.

~~(4)~~*(7)* The court may appoint an attorney to represent the interests of a child with respect to grandparent-grandchild contact when the interests are not adequately represented by the parties to the proceeding.

~~(5)~~*(8)* This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. Grandparent-grandchild contact granted under this section terminates upon the adoption of the child by a person other than a stepparent or a grandparent.

(9) A determination pursuant to subsection (2) that a parent is unfit has no effect upon the rights of a parent, other than with regard to grandparent-grandchild contact if a petition pursuant to this section is granted, unless otherwise ordered by the court."

Section 2. Applicability. [This act] applies to a petition for grandparent-grandchild contact filed in accordance with Title 40, chapter 9, part 1, after October 1, 2007.

Approved May 16, 2007

CHAPTER NO. 496

[SB 31]

AN ACT ALLOWING CONTINUED CUSTODY OF A CHILD BY THE CHILD'S CARETAKER RELATIVE FOLLOWING VOLUNTARY SURRENDER OF THE CHILD BY A PARENT OF THE CHILD UNDER CIRCUMSTANCES INDICATING ABANDONMENT; PROVIDING FOR AN EX PARTE ORDER BY A DISTRICT COURT; PROHIBITING A PEACE OFFICER OR COURT FROM REQUIRING SURRENDER OF THE CHILD BY THE CARETAKER RELATIVE EXCEPT IN CERTAIN CIRCUMSTANCES; PROVIDING IMMUNITY; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative finding and purpose — definitions. (1) The legislature recognizes that the right of parents to the custody and control of their children is based upon the liberties secured by the United States and Montana constitutions and that a parent's right to that custody and control is therefore normally supreme to the interests of other persons. The legislature also recognizes a growing phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and care of a child to a grandparent or other caretaker relative for a lengthy period of time. The legislature finds that a caretaker relative frequently offers a child a loving, stable, and secure environment in which to live, make friends, and attend school, which is an environment not provided by a parent who temporarily abandons a child. However, a child is deprived of that caring and safe environment when a parent returns to claim the child with little or no notice to the caretaker relative. This situation, which in some instances has occurred multiple times with the same child, is disruptive to the more stable life offered by the caretaker relative and may violate the child's rights ensured by Article II, section 15, of the Montana constitution, such as the right under Article II, section 3, of the Montana constitution of seeking safety, health, and happiness. For these reasons, it is the purpose of the legislature in enacting [section 2] and this section to exercise its police powers for the health and welfare of children who have been abandoned by their parents to the care of relatives and to create a procedure, applicable in limited situations caused by the voluntary surrender of a child by a parent, under circumstances indicating abandonment, whereby a child in the care of a relative may remain with that relative while the issue of abandonment by the parent is reviewed and determined by a court of law. The legislature believes that this temporary infringement on the right of a parent to the custody and control of a minor child is justified by the possibility of abandonment by the parent, because the welfare of the child is at stake, and because of the likely violation of the child's rights ensured by Article II, section 15, of the Montana constitution.

(2) As used in [section 2] and this section, the following definitions apply:

(a) "Caretaker relative" or "relative" means an individual related to a child by blood, marriage, or adoption by another individual, who has care and custody of a child but who is not a parent, foster parent, stepparent, or legal guardian of the child.

(b) "Parent" means a biological or adoptive parent or other legal guardian of a child.

Section 2. Caretaker relative rights upon return of parent — continuing custody affidavit — review, finding, and order by district

court — limited reconsideration — immunity. (1) If custody of a child has been voluntarily given to a relative of the child by a parent of the child and the child has remained with that relative for at least 6 months under circumstances in which it is unclear whether or when the parent will return and retake custody of the child, the provisions of this section apply unless, during that 6-month period, the parent expresses to the relative a firm intention and a date on which the parent will return and resume custody of the child and subsequently adheres to that schedule.

(2) Upon a return of the parent and an expression by the parent of an intent by that parent to reassert the parent's right of custody and control over the child, the caretaker relative may file, without payment of a filing fee, with the district court in the county of the relative's residence a detailed affidavit as provided in this section. The affidavit must contain the following matters, the exclusion of any of which makes the affidavit void:

(a) the identification of:

(i) the caretaker relative, including the relative's address;

(ii) the child in the custody of the relative; and

(iii) the parent demanding custody of the child, including the parent's address, if known;

(b) a statement of the facts, as nearly as can be determined, of:

(i) the date, time, and circumstances surrounding the voluntary surrender of the custody of the child to the caretaker relative, including any conversation between the relative and the parent concerning the purpose of the parent's absence and when the parent would return and resume custody of the child;

(ii) the reason for the surrender of the child to the relative, as far as is known by the relative;

(iii) the efforts made by the relative to care for the child, including:

(A) facts explaining the nature of the home provided by the relative for the child;

(B) the schooling of the child while in the relative's custody; and

(C) the socialization of the child with other children and adults, both inside and outside the family of the caretaker relative; and

(iv) whether any contact was made by the child's parent with the relative, the child, or both, during the absence of the parent and if so, the date, time, and circumstances of that contact, including any conversation between the relative and the parent concerning when the parent would return and resume custody of the child;

(c) a statement by the caretaker relative as to why the relative wishes to maintain custody of the child;

(d) a warning, in at least 14-point type, to the caretaker relative in the following language: "WARNING: DO NOT SIGN THE FOREGOING AFFIDAVIT IF ANY OF THE ABOVE STATEMENTS ARE INCORRECT, OR YOU WILL BE COMMITTING AN OFFENSE PUNISHABLE BY FINE, IMPRISONMENT, OR BOTH."; and

(e) a notarized signature of the caretaker relative following a written declaration that the affidavit is made under oath and under penalty of the laws

of Montana governing the giving of false sworn testimony and that the information stated by the caretaker relative in the affidavit is true and correct.

(3) A copy of the affidavit filed with the district court must be provided by the caretaker relative to the child's parent, if the address or location of the parent is known to the relative, and may be provided to the department of public health and human services. A caretaker relative may maintain temporary custody of the child for 5 days following the return of the parent and the demand by the parent for custody of the child pending completion of the affidavit and the order of the district court. During that 5-day period, the caretaker relative may not be deprived of the custody of the child by a peace officer or by the order of a court unless a court finds, upon petition by the child's parent and after a hearing and upon notice to the caretaker relative as the court shall require, that:

(a) the child has not been in the custody of the caretaker relative for at least 6 months;

(b) the caretaker relative has committed child abuse or neglect with regard to the child in the custody of the relative; or

(c) the action by the caretaker relative to make and file the affidavit with the district court in accordance with this section was not made in good faith.

(4) Upon receipt of the caretaker relative's affidavit pursuant to subsection (3), the department may proceed pursuant to 41-3-202 as if a report of abandonment of the child had been received.

(5) (a) Within 48 hours of the filing of the affidavit, the district court shall review the affidavit and determine ex parte whether the affidavit contains prima facie evidence that the child was abandoned by the child's parent. If the court determines that there is prima facie evidence that the child was abandoned by the child's parent, the court shall within 3 business days of its determination of prima facie evidence enter appropriate findings of fact concerning the abandonment and enter an ex parte order approving and ordering continued custody and control of the child by the caretaker relative. An order of the district court pursuant to this subsection approving and ordering continued custody by the caretaker relative is effective for 14 days following entry of the order.

(b) If the court determines that the affidavit does not provide prima facie evidence of abandonment by the parent, the court shall within 3 business days of its determination make appropriate findings of fact and order the child returned to the parent. Upon receipt of the written findings and order of the court, the caretaker relative shall surrender the custody and control of the child to the child's parent.

(c) During or after the 14-day period established under subsection (5)(a), the caretaker relative may commence a parenting plan proceeding under 40-4-211 or petition the court to be appointed the guardian of the minor under 72-5-225.

(6) Upon entry of an order by the district court pursuant to subsection (5)(a), a copy of the order must be sent to the child's parent, if the address of the parent is known.

(7) The child's parent may, after receipt of the court's findings and order ordering continued custody of a child by a caretaker relative, apply to the court, upon notice to the caretaker relative as the court shall provide, for a reconsideration of the court's order approving continued custody of the child by the relative. The court shall reconsider its order and may reverse its order based upon presentation of evidence of nonabandonment. Pending a reconsideration

pursuant to this subsection, custody of the child must remain with the relative unless the order of the district court approving that custody expires or a court has ordered a change of custody pursuant to subsection (3).

(8) [(a)] A caretaker relative refusing to surrender custody of a child while acting in good faith and in accordance with this section is immune from civil or criminal action brought because of that refusal.

[(b) A peace officer acting in good faith and taking or refusing to take custody of a child from a relative in accordance with this section and the entity employing the officer is immune from civil or criminal action or professional discipline brought because of the taking of or refusal to take custody of the child.]

(9) Subject to availability of appropriations, the attorney general shall prepare a form for the affidavit provided for in this section and shall distribute the form as the attorney general determines appropriate.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 40, and the provisions of Title 40 apply to [sections 1 and 2].

Section 4. Two-thirds vote required — contingent voidness. Because [section 2(8)(b)] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for its passage. If [this act] is not approved by at least two-thirds of the members of each house of the legislature, then the bracketed language in [section 2(8)] is void.

Section 5. Applicability. [This act] applies to the voluntary surrender of a child by the child's parent to a caretaker relative occurring on or after October 1, 2007.

Approved May 16, 2007

CHAPTER NO. 497

[SB 74]

AN ACT GENERALLY REVISING THE MONTANA TITLE LOAN ACT; INCLUDING TITLE LOAN LICENSEES IN THE DEFINITION OF REGULATED LENDERS; EXPANDING THE SCOPE OF THE ACT TO INCLUDE PAWNBROKERS; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO CONDUCT INVESTIGATIONS AND TO ISSUE SUBPOENAS AND CEASE AND DESIST ORDERS; AUTHORIZING THE DEPARTMENT TO SEEK COURT-ORDERED INJUNCTIONS; PROVIDING FOR RESTITUTION; AND AMENDING SECTIONS 31-1-111, 31-1-802, 31-1-803, 31-1-811, 31-1-816, 31-1-817, AND 31-1-825, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-111, MCA, is amended to read:

"31-1-111. Definition of regulated lender. The term "regulated lender", as used in 31-1-112 and 31-1-116, means:

(1) a bank, building and loan association, savings and loan association, trust company, credit union, credit association, consumer loan licensee, *title loan licensee,* development corporation, bank holding company, or a mutual or stock

insurance company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by:

(a) an agency of the state of Montana; or

(b) an agency of the federal government;

(2) a subsidiary of an entity described in subsection (1);

(3) a Montana state agency or a federal agency that is authorized to lend money;

(4) a corporation or other entity established by congress or the state of Montana that is owned, in whole or in part, by the United States or the state of Montana and that is authorized to lend money."

Section 2. Section 31-1-802, MCA, is amended to read:

"31-1-802. Purpose — rules — ~~scope~~ — fees. (1) The purpose of this part is to protect consumers who enter into short-term, high-rate loans with lenders from abuses that occur in the credit marketplace when the lenders are unregulated.

(2) The department may adopt rules to implement the provisions of this part. The rules may include but are not limited to rules establishing forms and procedures for licensing, rules pertaining to acceptable practices at a business location, rules establishing disclosure requirements, and rules establishing complaint and hearing procedures.

~~(3) This part does not apply to pawnbrokers.~~

~~(4)~~*(3)* This part may not be construed as affecting in any way the method of perfecting security interests on personal property provided for elsewhere in law.

~~(5)~~*(4)* Fees collected under this part must be deposited in an account in the state special revenue fund to be used by the department in carrying out its supervisory functions under this part.

(5) This part does not apply to a person who makes less than four loans a year and complies with the provisions of Title 31, chapter 1, part 1."

Section 3. Section 31-1-803, MCA, is amended to read:

"31-1-803. Definitions. For the purposes of this part, the following definitions apply:

(1) "Borrower" means the owner of any titled personal property who pledges the property to a title lender pursuant to a title loan agreement.

(2) "Capital assets" means the assets of a person less the liabilities of that person. Assets and liabilities must be measured according to generally accepted accounting principles.

(3) "Certificate of title" means a state-issued certificate of title or certificate of ownership for personal property deposited with a title lender as security for a title loan pursuant to a title loan agreement.

(4) "Department" means the department of administration provided for in 2-15-1001.

(5) "Person" means an individual, corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, or other entity.

(6) "Pledged property" means personal property the ownership of which is evidenced and delineated by a state-issued certificate of title.

(7) "Title lender" means a person who has qualified to engage in the business of making title loans pursuant to this part and maintains at least one title loan office in this state.

(8) "Title loan" means ~~a loan secured by an unencumbered state-issued certificate of title or certificate of ownership to personal property, with an original term of 30 days.~~ *a nonpurchase money loan secured by an unencumbered state-issued certificate of title or certificate of ownership to personal property that is designated as a title loan by the department.*

(9) "Title loan agreement" means a written agreement between a borrower and a title lender in a form that complies with the requirements of this part.

(10) "Title loan office" means the location or premises where a title lender regularly conducts business.

(11) "Titled personal property" means any personal property the ownership of which is evidenced and delineated by a state-issued certificate of title."

Section 4. Section 31-1-811, MCA, is amended to read:

"31-1-811. License revocation or suspension — *unlicensed activity — restitution* — penalty. (1) If the department finds, after *providing a 10-day written* notice *that includes a statement of alleged violations* and *a* hearing or *an* opportunity for hearing, as provided in the Montana Administrative Procedure Act, that any person, licensee, or officer, agent, employee, or representative*, whether licensed or unlicensed,* of the *person or* licensee has violated any of the provisions of this part, has failed to comply with the rules, regulations, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, ~~or~~ has furnished false information to the department, *or has operated without a required license,* the department may impose a civil penalty not to exceed $1,000 for each violation *and not to exceed $5,000 for each administrative action* and may issue an order revoking or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee *or to engage in the business of making title loans. In addition, the department may issue an order requiring restitution to borrowers and reimbursement of the department's cost in bringing the administrative action.*

(2) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or in the case of an unlicensed business to the last-known address of record.

~~(2)~~*(3)* A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

(4) The department may reinstate any suspended or revoked license if there is not a fact or condition existing at the time of reinstatement that would have justified the department's refusal to originally issue the license. If a license has been suspended or revoked for cause, an application may not be made for the issuance of a new license or the reinstatement of a suspended or revoked license for a period of 6 months from the date of suspension or revocation.

(5) All civil penalties collected pursuant to this section must be deposited in the state general fund."

Section 5. Investigations by department — subpoenas — oaths — examination of witnesses and evidence. (1) The department may investigate any matter, upon complaint or otherwise, if it appears that a person

has engaged in or offered to engage in any act or practice that is in violation of any provision of this part or any rule adopted or order issued by the department pursuant to this part.

(2) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this part. The department may administer oaths and affirmations to a person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by the subpoena, a judge of the district court of Lewis and Clark County or the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated in it.

(4) If a person served with a subpoena refuses to obey the subpoena or to give testimony or produce evidence as required by the subpoena, the department may proceed under the contempt provisions of Title 3, chapter 1, part 5.

(5) Failure to comply with the requirements of subsection (4) is punishable pursuant to 45-7-309.

Section 6. Cease and desist orders. (1) If it appears to the department that a person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this part or any rule adopted or order issued by the department pursuant to this part, the department may issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The order may apply only to the alleged act or practice constituting a violation of this chapter. The department may issue a temporary order pending the hearing that:

(a) remains in effect until 10 days after the hearings examiner issues proposed findings of fact and conclusions of law and a proposed order; or

(b) becomes final if the person to whom notice is addressed does not request a hearing within 10 days after receipt of the notice.

(2) A violation of an order issued pursuant to this section is subject to the penalty provisions of this part.

Section 7. Injunctions — receivers. (1) Whenever the department has reason to believe that a person is using, has used, or is about to knowingly use any method, act, or practice that violates any provision of this part or any rule adopted or order issued by the department pursuant to this part, the department, upon determining that proceeding would be in the public interest, may bring an action in the name of the state against the person to restrain by temporary or permanent injunction or temporary restraining order the use of the unlawful method, act, or practice.

(2) The notice for an action pursuant to subsection (1) must state generally the relief sought and must be served at least 20 days before the hearing of the action in which the relief sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by 27-19-315.

(3) An action under this section may be brought in the district court in the county in which a person resides or has the person's principal place of business

or in the district court of Lewis and Clark County if the person is not a resident of this state or does not maintain a place of business in this state.

(4) A district court may issue temporary or permanent injunctions or temporary restraining orders to restrain and prevent violations of this part, and an injunction must be issued without bond to the department.

(5) In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which the action is brought may impound and appoint a receiver for the property and business of the defendant, including books, papers, documents, or records pertaining to the property or business, or as much of the property or business as the court considers reasonably necessary to prevent violations of this part. The receiver, when appointed and qualified, has the powers and duties as to custody, collection, administration, winding up, and liquidation of the property and business that are conferred upon the receiver by the court.

Section 8. Section 31-1-816, MCA, is amended to read:

"31-1-816. Title loan requirements — liability of borrower — right of rescission — arbitration. (1) Any licensed title lender may engage in the business of making loans secured by a certificate of title subject to the provisions of this part.

(2) ~~Every~~ *Each* title loan *must have a term of 30 days and* must be reduced to writing in a title loan agreement. Each title loan agreement must provide that:

(a) the title lender agrees to make a loan of money to the borrower and that the borrower agrees to give the title lender a security interest in unencumbered titled personal property owned by the borrower;

(b) the borrower consents to the title lender keeping possession of the certificate of title;

(c) (i) the borrower has the exclusive right to redeem the certificate of title by repaying the loan of money in full and by complying with the title loan agreement for an agreed period of time;

(ii) the borrower may rescind the transaction if, by 5 p.m. of the title lender's first business day following the day that the loan was executed, the borrower provides the title lender with cash or certified funds equaling 100% of the amount loaned to the borrower. A title lender may not charge a borrower any fee or interest if the borrower rescinds the loan as provided in this subsection (2)(c)(ii). Except as provided in this subsection (2)(c)(ii), a borrower does not have a right to rescind the loan unless the title lender agrees to the rescission.

(d) (i) the title ~~lender~~ *loan* may *be* ~~renew~~ *renewed* ~~the title loan~~ for additional 30-day periods beyond the original term provided that beginning with the sixth ~~extension or continuation~~ *renewal*, and for each subsequent ~~extension or continuation~~ *renewal*, the borrower ~~must~~ *shall* reduce the principal amount by at least 10% of the original principal amount of the loan; and

(ii) if the borrower fails to reduce the principal amount as required by subsection (2)(d)(i), the title lender may at its option:

(A) declare outstanding principal and any finance charges due and payable; or

(B) solely for the purpose of calculating the finance charge, reduce the amount of the principal balance by 10%, with the understanding that that

portion of the principal is still owed by the borrower but that portion of the loan may not accrue interest or finance charges after that date;

(e) when the certificate of title is redeemed, the title lender shall release its security interest in the titled personal property and return the personal property certificate of title to the borrower;

(f) (i) upon failure of the borrower to redeem the certificate of title at the end of the original 30-day agreement period or at the end of any agreed-upon 30-day renewal ~~or subsequent renewals~~, the borrower shall deliver the titled personal property to the title lender at the location specified in the title loan agreement; and

(ii) the borrower shall deliver the titled personal property to the title lender in substantially the same condition that it was in at the time that the borrower entered into the loan, minus normal wear and tear;

(g) if the borrower fails to deliver the titled personal property to the title lender, the title lender must be allowed to take possession of the titled personal property;

(h) upon obtaining possession of the titled personal property, the title lender is authorized to sell the titled personal property and to convey to the buyer good title, subject to the waiting periods provided for in 31-1-820; and

(i) a borrower who does not redeem a pledged certificate of title is not personally liable to the title lender to repay principal, interest, or expenses incurred in connection with the title loan and that the title lender shall look solely to the titled personal property for satisfaction of the amounts owed under the title loan agreement.

(3) The security interest provided for in subsection (2)(a) is not perfected unless it is filed in accordance with 61-3-103.

(4) Any borrower who obtains a title loan from a title lender under false pretenses by hiding or not disclosing the existence of a valid prior lien or security interest affecting the titled personal property is personally liable to the title lender for the full amount stated in the title loan agreement, including interest and expenses incurred by the title lender in connection with the loan.

(5) (a) A loan agreement may not contain a mandatory arbitration clause that is oppressive, unconscionable, unfair, or in substantial derogation of a borrower's rights.

(b) A mandatory arbitration clause that complies with the applicable standards of the American arbitration association must be presumed to not violate the provisions of subsection (5)(a)."

Section 9. Section 31-1-817, MCA, is amended to read:

"31-1-817. Interest rates — fees charged. (1) The maximum rate of interest that a title lender ~~shall~~ *may* contract for and ~~must~~ receive for making and carrying any title loan authorized by this part may not exceed:

(a) 25% for each 30-day period for the portion of a loan that does not exceed $2,000;

(b) 18% for each 30-day period for the portion of a loan exceeding $2,000 but not exceeding $4,000; and

(c) ~~a~~ 10% ~~percentage rate~~ for each 30-day period, plus fees, on the portion of a loan that exceeds $4,000.

(2) Title lenders may charge their actual costs of recording liens on borrowers' certificates of title.

(3) Title lenders may charge a service charge, as provided in 27-1-717, if there are insufficient funds to pay a check on the date of presentment. Title lenders may not collect damages under 27-1-717(3) based upon the presentment of an insufficient funds check."

Section 10. Section 31-1-825, MCA, is amended to read:

"31-1-825. Prohibited acts. (1) A title lender may not:

(a) accept a pledge from a person under 18 years of age;

(b) make any title loan agreement giving the title lender any recourse against the borrower other than the rights granted title lenders under this part;

(c) accept any waiver, in writing or otherwise, of any right or protection accorded a borrower pursuant to this part;

(d) fail to exercise reasonable care to protect from loss or damage certificates of title or titled personal property in the physical possession of the title lender;

(e) purchase titled personal property for personal use that was repossessed from the borrower by the title lender;

(f) enter into a title loan agreement unless the borrower presents clear title to the titled personal property at the time that the loan is made and the title is retained in the physical possession of the title lender;

(g) hold a title for more than 30 calendar days without perfecting the title lender's security interest;

(h) threaten to use or use a criminal process in this or any other state to collect on the loan made to a consumer in this state or any civil process to collect the payment of titled loans not available to title lenders under this part;

(i) use any device or title loan agreement that would have the effect of charging or collecting more fees, charges, or interest than those allowed by this part;

(j) engage in unfair, deceptive, or fraudulent practices in the making or collection of a title loan;

(k) charge any fee that is not specifically allowed under the provisions of this part;

~~(k)~~*(l)* knowingly violate any provision of or rule promulgated pursuant to this part; or

~~(l)~~*(m)* include any of the following provisions in the title loan agreement:

(i) a hold harmless clause, provided that a title lender is not liable to the borrower or a third party for injuries to or damages sustained by the borrower or a third party as the result of an accident involving personal property to which the title lender holds the certificate of title;

(ii) a confession of judgment clause;

(iii) any assignment of or order for payment of wages or other compensation for services;

(iv) a provision in which the consumer agrees not to assert any claim or defense arising out of the contract; or

(v) a waiver of any provision of this part.

(2) If a title lender enters into a transaction contrary to this section, any lien or security interest obtained by the title lender is void."

Section 11. Codification instruction. [Sections 5 through 7] are intended to be codified as an integral part of Title 31, chapter 1, part 8, and the provisions of Title 31, chapter 1, part 8, apply to [sections 5 through 7].

Approved May 16, 2007

CHAPTER NO. 498

[SB 92]

AN ACT GENERALLY REVISING THE MONTANA MORTGAGE BROKER AND LOAN ORIGINATOR LICENSING ACT; ELIMINATING EXCEPTIONS TO THE EXPERIENCE AND EXAMINATION REQUIREMENTS FOR LICENSING; PROVIDING THAT AN INDIVIDUALLY LICENSED MORTGAGE BROKER MAY ONLY WORK FOR ONE EMPLOYING ENTITY; PROVIDING GUIDELINES IN CASES OF TERMINATION OF EMPLOYMENT OF INDIVIDUALLY LICENSED MORTGAGE BROKERS; REVISING RECORDKEEPING REQUIREMENTS; CLARIFYING WHO PAYS CERTAIN FEES; PROVIDING FOR INVESTIGATIONS BY THE DEPARTMENT OF ADMINISTRATION; ESTABLISHING REQUIREMENTS FOR CEASE AND DESIST ORDERS; REVISING LICENSE REVOCATION AND SUSPENSION PROVISIONS AND PENALTY PROVISIONS; AMENDING SECTIONS 32-9-103, 32-9-108, 32-9-109, 32-9-110, 32-9-115, 32-9-117, 32-9-121, 32-9-122, 32-9-123, 32-9-124, 32-9-125, 32-9-126, 32-9-130, AND 32-9-133, MCA; AND REPEALING SECTIONS 32-9-111 AND 32-9-131, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-9-103, MCA, is amended to read:

"32-9-103. Definitions. As used in this part, the following definitions apply:

(1) "Bona fide third party" means a person or entity that provides services relative to residential mortgage loan transactions. The term includes but is not limited to real estate appraisers and credit reporting agencies.

(2) "Borrower" means an individual who is solicited to purchase or who purchases the services of a mortgage broker for other than commercial mortgage lending.

(3) "Branch office" means a location other than a licensee's principal place of business.

~~(3)~~*(4)* "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

~~(4)~~*(5)* "Designated manager" means a person *located in this state* employed by a mortgage broker entity, other than a sole proprietorship, as the person responsible for operating the business at the location where the person is employed. A designated manager must be licensed as a mortgage broker.

~~(5)~~*(6)* "Entity" means a business organization, other than a sole proprietorship or an individual person, that provides mortgage broker services.

~~(6)~~*(7)* "Lender" means an entity that funds or services a residential mortgage loan.

~~(7)~~*(8)* "Loan originator" means a licensed individual employed by a mortgage broker to assist borrowers by originating a residential loan.

~~(8)~~*(9)* "Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.

~~(9)~~*(10)* "Mortgage banker" means a person or entity that makes, services, or buys and sells mortgage loans and that may be required to submit audited financial statements to the United States department of housing and urban development, the United States department of veterans affairs, the federal national mortgage association, the federal home loan mortgage corporation, or the government national mortgage association.

~~(10)~~*(11)* "Mortgage broker" means a person or entity that provides services for a fee as an intermediary between a borrower and a lender in obtaining financing for the borrower that is to be secured by a residential dwelling for between one and four families.

~~(11)~~*(12)* "Originate" means:

(a) to negotiate or arrange or to offer to negotiate or arrange a mortgage loan between a borrower and a person or entity that makes or funds mortgage loans;

(b) to issue a commitment for a mortgage loan to a borrower; or

(c) to place, assist in placing, or find a mortgage loan for a borrower.

~~(12)~~*(13)* "Trust account" means a depository account with a financial institution that provides deposit insurance that is separate and distinct from any personal, business, or other account of the mortgage broker and that is maintained solely for the holding and payment of bona fide third-party fees."

Section 2. Section 32-9-108, MCA, is amended to read:

"32-9-108. Overall licensing requirements. All persons and entities desiring to conduct business as a mortgage broker or to work as a loan originator shall apply to the department for a license and pay a license fee under the provisions of this part ~~on or after July 1, 2004~~. ~~Except as provided in 32-9-111, applicants~~ *Applicants* shall comply with all requirements of this part, including but not limited to requisite work experience, successful completion of an examination, and completion of an application approved by the department. All licenses issued under this section are nontransferable and nonassignable."

Section 3. Section 32-9-109, MCA, is amended to read:

"32-9-109. Experience requirements. (1) ~~Except as provided in 32-9-111:~~

(a) ~~an~~ *An* individual applying for a license as a mortgage broker must have a minimum of 3 years of experience working as a loan originator, as a mortgage banker, or in a related field~~; and~~.

(b) ~~an~~ *An* individual applying for a license as a loan originator must have a minimum of 6 months of experience working in a related field.

(2) The department shall by rule establish what constitutes work in a related field."

Section 4. Section 32-9-110, MCA, is amended to read:

"32-9-110. Examination requirements. (1) ~~Except as provided in 32-9-111, all individuals~~ *Individuals* seeking a mortgage broker's license and

individuals seeking a loan originator's license shall submit to an examination provided for by the department. The department may use a third party to perform examination and grading services.

(2) The examination must be designed to demonstrate that the applicant possesses competency to originate loans. The test may cover subject matter areas including but not limited to:

(a) knowledge of this part;

(b) knowledge of disclosures and protections that borrowers are entitled to by state and federal law;

(c) the ability to read, understand, and explain appraisal basics, credit reports, and title commitments; and

(d) the ability to evaluate credit, calculate a basic debt-to-income ratio, calculate loan-to-value ratios, and complete a basic loan application."

Section 5. Section 32-9-115, MCA, is amended to read:

"32-9-115. Application for mortgage broker license. (1) An application for a mortgage broker license must include:

(a) the proposed *principal* location of the business, with a photograph of ~~each~~ *the principal* location *and each branch office* at which business will be transacted. If the business is to be conducted out of a residence, verification must be supplied concerning compliance with all zoning laws and regulations. *The application for an individual mortgage broker intending to work as an employee of another mortgage broker must contain the name and principal address of the licensed employing mortgage broker.*

(b) (i) the name and address of the sole proprietor;

(ii) the name and address of each partner; or

(iii) the name and address of any person that owns 10% or more of a mortgage broker entity that is other than a sole proprietorship or partnership;

(c) evidence of an irrevocable letter of credit or surety bond required by 32-9-123;

(d) a statement as to whether the applicant or, to the best of the applicant's knowledge, any shareholder, member, partner, designated manager, or employee of the applicant is currently under investigation, has been convicted of or has pleaded guilty to any felony or criminal offense involving fraud or dishonesty, or has been subject to any adverse civil judgment for any conduct involving fraudulent or dishonest dealing; and

(e) evidence that the designated manager meets the requirements for licensure as a mortgage broker.

(2) The department shall investigate each individual applicant. The investigation shall include a criminal records check based on the fingerprints of each individual applicant and a civil records check. The department shall require each individual applicant to file a set of the applicant's fingerprints, taken by a law enforcement agency, and any other information necessary to complete a statewide and nationwide criminal check with the criminal investigation bureau of the department of justice for state processing and with the federal bureau of investigation for federal processing. All costs associated with the criminal history check are the responsibility of the applicant. Criminal history records provided to the department under this section are confidential, and the department may use the records only to determine if the applicant is

eligible for licensure. If an investigation outside this state is necessary, the department may require the applicant to advance sufficient funds to pay the actual expenses of the investigation. The department may deny the application if the applicant's criminal history demonstrates any felony criminal convictions or other convictions involving fraud or dishonesty or if the applicant has had any adverse civil judgments involving fraudulent or dishonest dealings."

Section 6. Section 32-9-117, MCA, is amended to read:

"32-9-117. Fees — license renewal — disposition of fees. (1) (a) Except as provided in subsection (1)(b), an individual mortgage broker or an entity seeking licensure as a mortgage broker shall pay an initial nonrefundable license application fee of $500. A loan originator shall pay an initial nonrefundable license application fee of $400. An applicant shall pay one-half of these initial nonrefundable license application fees for any license period of less than 6 months.

(b) An individual who is seeking licensure as a mortgage broker and who is the sole owner of an entity that is seeking licensure as a mortgage broker shall pay a single initial nonrefundable license application fee of $500.

(2) The license of a mortgage broker or loan originator is valid for a 1-year period and expires on June 30. Every licensee shall, on or before May 31 of the year, *submit a renewal application and* pay to the department a renewal fee in an amount set by the department by rule. *The department shall establish by rule the requirements for renewal applications.* The department shall establish a single renewal fee for individuals and entities described in subsection (1)(b) that are licensed as mortgage brokers. An individual described in subsection (1)(b) may act as a designated manager under 32-9-122 and is not subject to any additional license fees for acting in the capacity of a designated manager. The fees set by the department must be commensurate with the costs of the program. Failure to submit required information or fees within the time prescribed automatically revokes the license.

(3) An application for renewal must be accompanied by evidence that the continuing education requirements provided for in 32-9-118 have been met and that there has not been a material change in the status of the licensee in the preceding 12 months.

(4) All fees collected under this section must be deposited in the department's state special revenue fund to be used by the department in administering the provisions of this part."

Section 7. Section 32-9-121, MCA, is amended to read:

"32-9-121. In-state office requirement — records maintenance — advertising requirement. (1) *Except for an individual mortgage broker working as an employee of a licensed mortgage broker, a* ~~A~~ person or entity licensed as a mortgage broker shall maintain at least one physical office located in this state either on its own accord or in conjunction with another licensed mortgage broker or regulated lender located in this state. Licensees shall maintain *books, accounts, records, and* copies of residential mortgage loan files and trust account records *that are necessary to enable the department to determine whether a licensee is in compliance with the applicable laws and rules. The required materials must be maintained* at the Montana office location where services are provided *and the materials must be maintained in accordance with generally accepted accounting principles and good business*

practices. Each office location must have at least one phone line. Licensees shall pay state income tax on all income earned in Montana.

(2) A mortgage broker shall maintain a residential mortgage file for a minimum of 5 years from the date of the last activity pertaining to the file. A mortgage broker shall maintain trust account records for a minimum of 5 years.

(3) (a) In any printed, published, televised, e-mail, or internet advertisement for the provision of services, the following information must be included:

(i) a name, address, and license number for each mortgage broker or loan originator advertising as an individual; or

(ii) the name, address, and license number only of the licensed entity when the licensed entity is advertising on its own behalf or as an entity with one or more mortgage brokers or loan originators also listed.

(b) For the purposes of this subsection (3), advertising does not include stationery or business forms but does include business cards. A business card must include a mortgage broker's or loan originator's license number but is not required to list the entity's license number if the entity's name is listed."

Section 8. Section 32-9-122, MCA, is amended to read:

"32-9-122. Requirement for designated manager. (1) A mortgage broker that is not a sole proprietorship shall designate to the department an individual *within its organization who is located in this state and is* licensed as a mortgage broker ~~within its organization~~ as the designated manager of the organization.

(2) If the designated manager ceases to act in that capacity, within 15 days the mortgage broker shall designate another individual licensed as a mortgage broker as designated manager and shall submit information in writing to the department establishing that the subsequent designated manager is in compliance with the provisions of this part.

(3) If the employment of a designated manager is terminated, the mortgage broker shall return the designated manager's license to the department within 5 business days of the termination."

Section 9. Section 32-9-123, MCA, is amended to read:

"32-9-123. Irrevocable letter of credit or surety bond — notice of legal action. (1) Each ~~licensee other than a loan originator~~ *mortgage broker other than an individual mortgage broker working as an employee of a mortgage broker* shall maintain at all times an irrevocable letter of credit or surety bond, naming the department as a beneficiary, in the amount of $25,000 for each *principal* location *and branch office* identified in the application for licensure. The department shall use the proceeds of the letters of credit or surety bonds to reimburse borrowers or bona fide third parties who successfully demonstrate a financial loss because of an act of a licensee that violates the provisions of this part.

(2) A mortgage broker or loan originator shall give notice to the department by certified mail within 15 days of the mortgage broker's or loan originator's knowledge of the initiation of an investigation or the entry of a judgment in a criminal or civil action. The notice must be given if the investigation or the legal action is in any state and involves a mortgage broker, anyone having an ownership interest in a mortgage broker entity, or a loan originator. In the case of a legal action, the notice must include a copy of the criminal or civil judgment."

Section 10. Limitations on individual mortgage brokers — license display — termination. (1) An individual mortgage broker working as an employee may not transact business for more than one employing mortgage broker.

(2) The original license issued to an individual mortgage broker working as an employee must be provided to the employing mortgage broker and maintained at the employing mortgage broker's main office. A copy of the individual mortgage broker's license must be displayed at the office where the individual mortgage broker principally transacts business.

(3) (a) If the employment of an individual mortgage broker that is not a designated manager is terminated, the employing mortgage broker shall return the individual mortgage broker's license to the department within 5 business days after the termination.

(b) For a period of 6 months after the termination of employment, the individual mortgage broker may request the transfer of the license to another employing mortgage broker by submitting to the department a relocation application containing any information the department requires by rule, along with a fee established by the department by rule.

(c) The license of any individual mortgage broker that is not transferred to another mortgage broker within the 6-month period is terminated, and the individual may not engage in any residential mortgage loan origination activity until the individual complies with department procedures to reinstate the individual's license.

Section 11. Section 32-9-124, MCA, is amended to read:

"32-9-124. Prohibitions — required disclosure. (1) A mortgage broker or loan originator may not do any of the following:

(a) retain original documents owned by the borrower and submitted in connection with the loan application;

(b) directly or indirectly employ any scheme to defraud or mislead a borrower, a lender, or any other person;

(c) make any misrepresentation or deceptive statement in connection with a residential mortgage loan, including but not limited to interest rates, points, costs at closing, or other financing terms or conditions; ~~or~~

(d) fail to pay a bona fide third party later than 30 days after recording of the loan closing documents or 90 days after completion of the bona fide third-party service, whichever is earlier, unless otherwise agreed by the parties~~.~~*;*

(e) accept any fees or compensation at closing that were not disclosed as required by state or federal law;

(f) accept any fees or compensation in excess of those allowed by state or federal law; or

(g) sign a borrower's application or related documents on behalf of or in lieu of another mortgage broker or loan originator.

(2) Prior to providing mortgage broker services to a borrower, the licensee, in addition to other disclosures required by this part*, subsection (3) of this section,* and other state and federal laws, shall provide to the borrower at the time of application a written disclosure containing substantially the following language, which must be signed by the borrower:

"MORTGAGE LOAN ORIGINATION DISCLOSURE

(Name of licensee) is a licensed mortgage broker in Montana authorized to provide mortgage brokerage services to you in connection with your real estate loan. Lenders whose loan products we distribute generally provide their loan products to us at a wholesale rate. The rate you pay may be higher.

SECTION 1. NATURE OF RELATIONSHIP. In connection with this mortgage loan:

(1) (name of licensee) is acting as an independent contractor and not as your agent;

(2) (name of licensee) enters into separate independent contractor agreements with various lenders; and

(3) while (name of licensee) seeks to assist you in meeting your financial needs, (name of licensee) does not distribute products of all lenders or investors in the market and cannot guarantee the lowest price or best terms available.

SECTION 2. OUR COMPENSATION.

(1) The retail price (name of licensee) offers you, including the interest rate, total points, and fees, will include (name of licensee's) compensation.

(2) In some cases, (name of licensee) may be paid all of (name of licensee's) compensation by either you or the lender.

(3) Alternatively, (name of licensee) may be paid a portion of (name of licensee's) compensation by both you and the lender. For example, in some cases, if you would rather pay a lower interest rate, you may pay more money in upfront points and fees. Also, in some cases, if you would rather pay less money up front, you may be able to pay some or all of our compensation indirectly through a higher interest rate, in which case (name of licensee) will be paid directly by the lender.

(4) (Name of licensee) may also be paid by the lender based on the value of the mortgage loan or related servicing rights in the market place or based on other services, goods, or facilities performed or provided by (name of licensee) to the lender.

By signing below, you acknowledge that you have received a copy of this disclosure."

(3) The disclosure must include the address of the department's division of banking and financial institutions, the division's phone number and website, and a statement informing borrowers that the division can provide information about whether a mortgage broker or loan originator is licensed as well as other legally available information."

Section 12. Section 32-9-125, MCA, is amended to read:

"32-9-125. Trust accounts — ~~fees other than~~ bona fide third-party fees. (1) Every mortgage broker doing business in this state shall:

(a) maintain a trust account at a financial institution located in this state whose deposits or shares are insured, and the trust account funds may not be commingled with any other funds of the mortgage broker;

(b) deposit into the trust account any bona fide third-party fee that the mortgage broker receives ~~unless the borrower pays the bona fide third party directly~~; and

(c) pay third-party fees to a bona fide third party from the mortgage broker's trust account unless the borrower*, the seller, or another person involved in the transaction* pays the bona fide third party directly.

(2) A mortgage broker may not charge or receive, directly or indirectly, fees for assisting a borrower in obtaining a mortgage until all of the services that the mortgage broker has agreed to perform for the borrower are completed. A mortgage broker may not charge a residential loan application fee in excess of the amount allowed by federal law. Prior to completion of services, the fees provided for in subsection (3) incurred by a bona fide third party in assisting the borrower to obtain a mortgage must be paid.

(3) The following fees must be paid ~~directly~~ by the borrower*, the seller, or another person involved in the transaction directly* to the bona fide third party providing the services or must be ~~deposited~~ *paid* by the borrower, ~~if applicable, into the mortgage broker's trust account~~ *the seller, or another person involved in the transaction to the mortgage broker* for payment of services performed by the bona fide third party:

(a) credit report fees;

(b) notary fees;

(c) title search, appraisal, or survey fees;

(d) rate-lock fees not exceeding 3% of the mortgage loan amount; and

(e) fees paid directly by the borrower*, the seller, or another person involved in the transaction* to a state or federal government agency or instrumentality for purposes of processing a mortgage application relating to a government-sponsored or guaranteed mortgage program.

(4) The department shall by rule define the meaning of "another person involved in the transaction"."

Section 13. Investigations by department — subpoenas — oaths — examination of witnesses and evidence. (1) For the purposes of this part, the department or the department's authorized representatives must be given free access to the offices and places of business and files of all licensees. The department may investigate any matter, upon complaint or otherwise, if it appears that a person has engaged in or offered to engage in any act or practice that is in violation of any provision of this part or any rule adopted or order issued by the department pursuant to this part.

(2) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this part. The department may administer oaths and affirmations to a person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by the subpoena, a judge of the district court of Lewis and Clark County or the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated in the subpoena.

(4) If a person served with a subpoena refuses to obey the subpoena or to give testimony or produce evidence as required by the subpoena, the department may proceed under the contempt provisions of Title 3, chapter 1, part 5.

(5) Failure to comply with the requirements of a court-ordered subpoena is punishable pursuant to 45-7-309.

Section 14. Cease and desist orders. (1) If it appears to the department that a person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this part or any rule adopted or order issued by the department pursuant to this part, the department may issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The order may apply only to the alleged act or practice constituting a violation of this chapter. The department may issue a temporary order pending the hearing that:

(a) remains in effect until 10 days after the hearings examiner issues proposed findings of fact and conclusions of law and a proposed order; or

(b) becomes final if the person to whom notice is addressed does not request a hearing within 10 days after receipt of the notice.

(2) A violation of an order issued pursuant to this section is subject to the penalty provisions of this part.

Section 15. Section 32-9-126, MCA, is amended to read:

"32-9-126. Revocation, suspension, and reinstatement of licenses. (1) The department, upon giving the licensee 10 days' written notice, which includes a statement of the grounds for the proposed suspension or revocation, and informing the licensee that the licensee has the right to be heard at an administrative hearing if requested by the licensee, may suspend or revoke a license if it finds that the licensee has violated any provision of this part.

(2) All notices, hearing schedules, and orders must be mailed to the licensee by certified mail to the address for which the license was issued.

(3) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

~~(2)~~*(4)* The department may reinstate any suspended or revoked license ~~upon a showing that the licensee has corrected all deficiencies~~ *if there is not a fact or condition existing at the time of reinstatement that would have justified the department's refusal to originally issue the license. If a license has been revoked for cause, an application may not be made for the issuance of a new license or the reinstatement of a revoked license for a period of 6 months from the date of revocation*."

Section 16. Section 32-9-130, MCA, is amended to read:

"32-9-130. Department authority — rulemaking. (1) The department shall adopt rules necessary to carry out the intent and purposes of this part. The rules adopted are binding on all licensees and enforceable through the power of suspension or revocation of licenses.

(2) The rules must address:

(a) revocation or suspension of licenses for cause;

(b) investigation of applicants, ~~and~~ licensees*, and unlicensed persons alleged to have violated a provision of this part* and handling of complaints made by any person in connection with any business transacted by a licensee;

(c) holding contested case hearings pursuant to the Montana Administrative Procedure Act and issuing cease and desist orders, orders of restitution, and orders for the recovery of administrative costs;

~~(c)~~*(d)* prescribing forms for applications;

~~(d)~~*(e)* developing or approving tests to be given as a prerequisite for licensure;

~~(e)~~*(f)* approval of programs for continuing education; and

~~(f)~~*(g)* establishing fees for testing, continuing education programs, and license renewals.

(3) The department may seek a writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part.

(4) (a) The department may at any time examine any mortgage broker transaction and may examine the residential mortgage loan files, trust account records, and other information related to mortgage loan transactions of a licensee.

(b) When conducting a financial examination or an audit of a licensee, the department may require the licensee to pay a fee of $300 per day for each examiner performing the financial examination or audit.

(c) If any examination fees are not paid within 30 days of the department's mailing of an invoice, the license of the mortgage broker or designated manager for the mortgage broker entity may be suspended or revoked.

(5) (a) The department may:

(i) exchange information with federal and state regulatory agencies, the attorney general, the consumer protection office of the department, and the legislative auditor; ~~and~~

(ii) exchange information other than confidential information with the mortgage asset research institute, inc., and other similar organizations*; and*

(iii) refer any matter to the appropriate law enforcement agency for prosecution of a violation of this part.

(b) Except as provided in subsection (5)(a)(i), the department shall treat all confidential criminal justice information as confidential unless otherwise required by law.

(6) The department shall prepare, at least once each calendar year, a roster listing the name and locations for each mortgage broker and a roster of all loan originators and designated managers and the name of their employing brokers. *The roster must be available to interested persons and to the general public.*"

Section 17. Section 32-9-133, MCA, is amended to read:

"32-9-133. Penalties — *restitution.* (1) ~~A person who acts or offers to act in any capacity as a mortgage broker or loan originator without a license in this state or while a license is suspended or revoked is subject to the penalty provisions of subsections (3) and (5).~~

~~(2) Any person who violates a provision of this part or a rule adopted under this part is subject to the penalty provisions of subsection (3).~~ *If the department finds, after providing a 10-day written notice that includes a statement of alleged violations and a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure Act, that any person, licensee, or officer,*

agent, employee, or representative of the person or licensee, whether licensed or unlicensed, has violated any of the provisions of this part, has failed to comply with the rules, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a required license, the department may impose a civil penalty not to exceed $5,000 for the first violation and not to exceed $10,000 for each subsequent violation.

(2) The department may issue an order requiring restitution to borrowers and reimbursement of the department's cost in bringing the administrative action. In addition, the department may issue an order revoking or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee or to engage in the mortgage broker business.

(3) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or in the case of an unlicensed business to the last-known address of record.

~~(3) For a first violation of subsection (1) or (2), the department may impose a fine of not less than $5,000 or more than $10,000. For a second or subsequent violation, the department may impose a fine of not less than $10,000 or more than $20,000. Each violation of the provisions of subsection (1) or (2) constitutes a separate offense.~~

(4) The fines must be deposited in the state general fund.

(5) ~~A~~ *In addition to the penalties in subsection (1), a* person practicing as a mortgage broker or loan originator without being licensed as required under subsection (1) is guilty of a misdemeanor and may be punished by a fine of not less than $250 or more than $1,000, by imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of subsection (1) constitutes a separate offense."

Section 18. Repealer. Sections 32-9-111 and 32-9-131, MCA, are repealed.

Section 19. Codification instruction. [Sections 10, 13, and 14] are intended to be codified as an integral part of Title 32, chapter 9, part 1, and the provisions of Title 32, chapter 9, part 1, apply to [sections 10, 13, and 14].

Approved May 16, 2007

CHAPTER NO. 499

[SB 103]

AN ACT GENERALLY REVISING LOCAL GOVERNMENT FIRE PROTECTION LAWS; CHANGING THOSE WHO MAY PETITION FOR CREATION, ANNEXATION, DIVISION, AND DISSOLUTION OF RURAL FIRE DISTRICT FROM FREEHOLDERS TO OWNERS OF 40 PERCENT OR MORE OF THE REAL PROPERTY WITHIN THE PROPOSED DISTRICT AND OWNERS OF PROPERTY REPRESENTING 40 PERCENT OR MORE OF THE TAXABLE VALUE OF THE PROPERTY WITHIN THE PROPOSED DISTRICT AND CHANGING THE PERCENTAGE OF PETITIONERS REQUIRED; ALLOWING CERTAIN CITIES AND TOWNS TO BE INCLUDED IN A RURAL FIRE DISTRICT; PROHIBITING SIGNATURES FROM BEING WITHDRAWN FROM A PETITION AFTER A CERTAIN TIME PERIOD; REVISING THE POWERS AND DUTIES OF RURAL FIRE

DISTRICT TRUSTEES; REMOVING LIMITATIONS ON TRUSTEES' ABILITY TO ENTER INTO CONTRACTS FOR FIRE PROTECTION SERVICES; PROVIDING THAT TWO OR MORE RURAL FIRE DISTRICTS THAT CONSOLIDATE RESULT IN A NEW RURAL FIRE DISTRICT FOR MILL LEVY PURPOSES; REVISING HOW A RURAL FIRE DISTRICT MAY BE DIVIDED AND THE REQUIREMENTS FOR DIVISION; ALLOWING TERRITORY WITHIN CERTAIN CITIES AND TOWNS TO BE ANNEXED INTO A RURAL FIRE DISTRICT; REQUIRING A COUNTY GOVERNING BODY TO EITHER PROVIDE DIRECT FIRE PROTECTION TO COUNTY LAND OR TO ENTER INTO AN AGREEMENT FOR THAT PROTECTION; REMOVING THE PROHIBITION ON MORE THAN ONE FIRE COMPANY FOR CERTAIN LOCATIONS; REMOVING THE PROVISION THAT RURAL FIRE DISTRICT CHIEFS SERVE WITHOUT COMPENSATION; REMOVING THE PROVISION ALLOWING VOLUNTARY URBAN FIRE CREWS FOR USE IN RURAL AREAS; AMENDING SECTIONS 7-33-2101, 7-33-2102, 7-33-2103, 7-33-2104, 7-33-2105, 7-33-2106, 7-33-2107, 7-33-2109, 7-33-2120, 7-33-2121, 7-33-2123, 7-33-2124, 7-33-2125, 7-33-2126, 7-33-2127, 7-33-2128, 7-33-2202, 7-33-2205, 7-33-2206, 7-33-2210, 7-33-2311, 7-33-2313, AND 7-33-2401, MCA; AND REPEALING SECTIONS 7-33-2122, 7-33-2204, AND 7-33-2207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2101, MCA, is amended to read:

"7-33-2101. Rural fire districts authorized — petition. *(1)* The board of county commissioners is authorized to establish fire districts in any unincorporated territory or*, subject to subsection (2), incorporated third-class city or* town upon presentation of a petition in writing signed by ~~the owners of 50% or more of the area of the privately owned lands included within the proposed district who constitute a majority of the taxpayers who are freeholders of such area and whose names appear upon the last-completed assessment roll~~ *the owners of 40% or more of the real property in the proposed district and owners of property representing 40% or more of the taxable value of property in the proposed district.*

(2) (a) Third-class cities and towns may be included in the district upon approval by the city or town governing body.

(b) A third-class city or town may withdraw from a district 2 years after providing to the board of county commissioners notice of intent to withdraw."

Section 2. Section 7-33-2102, MCA, is amended to read:

"7-33-2102. Notice of hearing. The board shall, within 10 days after the receipt of the petition, give notice of the hearing at least 10 days prior to the hearing:

(1) by mailing a copy of the notice as provided in 7-1-2122 *or as provided in 7-1-4129 if the proposed district or a portion of the proposed district is in an incorporated third-class city or town* to each ~~freeholder~~ *registered voter and real property owner residing* in the *proposed* district ~~at the address shown in the assessment roll~~; and

(2) by publishing the notice as provided in 7-1-2121 *or as provided in 7-1-4127 if the proposed district or portion of the proposed district is in an incorporated third-class city or town.*"

Section 3. Section 7-33-2103, MCA, is amended to read:

"7-33-2103. Hearing on petition — decision. (1) *(a)* The board shall ~~proceed to~~ hear the petition at the time set or at any time within 5 days ~~thereafter to which the same is postponed or continued with due notice and may grant the same unless it is established thereat~~ *of the time set if reasonable notice of the postponement is given. The board may establish the district unless it determines* that the petition bears insufficient signatures ~~as above required~~ or, if originally sufficient, that by reason of written withdrawals ~~thereof~~ *of signatures* it has become insufficient.

(b) Signatures may not be withdrawn fewer than 20 days before the date set for adoption of the petition.

(2) The board may adjust the boundaries of the proposed district to reflect ~~any freeholder's~~ *the* written request *of any real property owner who resides in the proposed district* for subtraction or annexation of parcels of the ~~freeholder's~~ *property owner's* land adjacent to the boundary line of the proposed district. ~~Such~~ *The* written request must be submitted to the board prior to or on the date set for hearing on the petition.

(3) The board shall render its decision within 30 days after the hearing."

Section 4. Section 7-33-2104, MCA, is amended to read:

"7-33-2104. Operation of fire districts. ~~Whenever the~~ *When a* board of county commissioners ~~shall have established~~ *establishes* a fire district in any unincorporated territory~~,~~ *or incorporated third-class city or* town, ~~or village, said~~ *the* commissioners:

(1) may contract with a city, town, ~~or~~ private fire company*, or other public entity* to furnish *all* fire protection *services* for property within ~~said~~ *the* district; or

(2) shall appoint five qualified trustees to govern and manage the ~~affairs of the~~ fire district."

Section 5. Section 7-33-2105, MCA, is amended to read:

"7-33-2105. Powers and duties of trustees. (1) The trustees*:*

(a) shall prepare and adopt suitable bylaws~~.~~*;*

~~(2)~~*(b)* ~~The trustees~~ have the authority to provide adequate and standard firefighting and emergency response apparatus, equipment, personnel, housing, and facilities, including real property *and emergency medical services and equipment*, for the protection of the district*;*~~. They shall~~

(c) may appoint and form fire companies that have the same duties, exemptions, and privileges as other fire companies *for retirement purposes only;*~~.~~

~~(3) The trustees~~ *(d)* shall prepare annual budgets and request special levies for the budgets. The budget laws relating to county budgets must, as far as applicable, apply to fire districts.

(e) may enter into contracts as provided in 7-33-2107; and

(f) may pledge income to secure financing of the district as provided in 7-33-2109.

(2) All money received by the trustees must be deposited in the county treasurer's office and credited to the fire district."

Section 6. Section 7-33-2106, MCA, is amended to read:

"7-33-2106. Details relating to board of trustees of fire district. (1) (a) The five trustees initially appointed by the county commissioners hold

staggered terms of office until their successors are elected or appointed and qualified as provided in this section.

(b) The initial trustees' terms of office must be drawn by lot and include:

(i) 3 years for one trustee;

(ii) 2 years for two trustees; and

(iii) 1 year for two trustees.

(c) Upon expiration of the terms provided in subsection (1)(b), each trustee shall serve a 3-year term of office.

(2) Trustees must be elected as provided in 13-1-104(3), 13-1-401, and subsection (3) of this section or appointed as provided in subsection (4) of this section. The term of office is 3 years beginning at the first district meeting following their election or appointment and continuing until their successors are elected or appointed and qualified. Appointments to fill vacancies occurring during the term of office of a trustee must be made by the county governing body and appointees shall hold office until the next regular election. An elector, as defined in Title 13, who resides in the district or any holder of title to lands within the district who presents a proof of payment of taxes on the lands at the polling place is eligible to vote in the election.

(3) Candidates for the office of trustee of the fire district to be filled by election may be nominated by petition filed with the election administrator or deputy election administrator at least 75 days before the election day and signed by at least five electors of the district.

(4) If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held, the county governing body shall declare elected by acclamation each candidate who filed a nominating petition for a position. If a nomination is not made for one or more trustee offices, the county governing body shall appoint one or more trustees as necessary to fill those offices. A trustee taking office pursuant to this subsection serves the trustee term of office as if that trustee had been elected.

(5) The trustees shall organize by choosing ~~a~~ presiding ~~officer~~ *officers* and appointing one member to act as secretary."

Section 7. Section 7-33-2107, MCA, is amended to read:

"7-33-2107. Contracts for fire protection services. (1) The trustees of ~~such~~ *a* fire district~~, provided that the owners of 10% of the taxable value of the property in any such fire district may elect to make such a contract:~~

~~(a) may contract with the council of any city or town or with the trustees of any other fire district established in any unincorporated territory, town, or village which has any boundary line lying within 5 straight-line miles of any boundary line of such district, whether the city or town or other fire district shall lie within the same county or another county, for the extension of fire protection service by the city or town or by such other fire district to property included within such district; and~~

~~(b) may agree to pay a reasonable consideration therefor.~~

~~(2) Likewise, the trustees may contract to permit such fire district's equipment and facilities to be used by the cities, towns, or other fire districts which have any boundary lines lying within 5 straight-line miles of any boundary line of such district.~~

~~(3) Likewise, the trustees may enter into contracts with public or private parties under which such district fire company may extend fire protection to public or private property lying outside of such district or any other district or city limits but within 5 straight-line miles of any boundary line of such district, whether such public or private property shall lie within the same county or another county. Such district fire company may use such fire district's equipment and facilities outside of such district in the performance of such contracts~~ *may enter into contracts for fire protection services.*

~~(4)~~*(2)* All money received from ~~such~~ contracts ~~shall~~ *must* be deposited in the county treasurer's office and credited to the fire district fund holding ~~such~~ *the* contracts.

~~(5)~~*(3)* The relationship between the fire district and the ~~city, town, or private fire service shall be~~ *entity with which the district has contracted is* that of an independent contractor."

Section 8. Section 7-33-2109, MCA, is amended to read:

"7-33-2109. Tax levy, debt incurrence, and bonds authorized. (1) At the time of the annual levy of taxes, the board of county commissioners may, subject to 15-10-420, levy a special tax upon all property within a rural fire district for the purpose of buying or maintaining fire protection facilities, including real property, and apparatus, including emergency response apparatus, for the district or for the purpose of paying to a city, town, or private fire service the consideration provided for in any contract with the council of the city, town, or private fire service for the purpose of furnishing fire protection service to property within the district. The tax must be collected as are other taxes.

(2) The board of county commissioners or the trustees, if the district is governed by trustees, may pledge the income of the district, subject to the requirements and limitations of 7-33-2105~~(3)~~*(1)(d)*, to secure financing necessary to procure equipment and buildings, including real property, to house the equipment.

(3) In addition to the levy authorized in subsection (1), a district may borrow money by the issuance of bonds to provide funds for the payment of all or part of the cost of buying or maintaining fire protection facilities, including real property, and apparatus, including emergency response apparatus, for the district.

(4) The amount of debt incurred pursuant to subsection (2) and the amount of bonds issued pursuant to subsection (3) and outstanding at any time may not exceed 1.1% of the total assessed value of taxable property, determined as provided in 15-8-111, within the district, as ascertained by the most recent assessment for state and county taxes prior to the incurrence of debt or the issuance of the bonds.

(5) The bonds must be authorized, sold, and issued and provisions must be made for their payment in the manner and subject to the conditions and limitations prescribed for the issuance of bonds by counties under Title 7, chapter 7, part 22."

Section 9. Section 7-33-2120, MCA, is amended to read:

"7-33-2120. Consolidation of fire districts — *mill levy limitations.* (1) Two or more rural fire districts may consolidate to form a single rural fire district upon an affirmative vote of each rural fire district's board of trustees. At

the time they vote to consolidate, the boards of trustees ~~must~~ *shall* also adopt a consolidation plan. The plan must contain:

(a) a timetable for consolidation, including the effective date of consolidation, which must be after the time allowed for protests to the creation of the consolidated rural fire district under subsection (3);

(b) the name of the new rural fire district;

(c) a boundary map of the new rural fire district; and

(d) the estimated financial impact of consolidation on the average taxpayer within the proposed district.

(2) Within 14 days of the date that the trustees vote to consolidate, notice of the consolidation must be published as provided in 7-1-2121 *or as provided in 7-1-4127 if the district or part of the district is in an incorporated third-class city or town* in each county in which any part of the consolidated fire district will be located. A public hearing on the consolidation must be held within 14 days of the first publication of notice. The hearing must be held before the joint boards of trustees at a time and place set forth in the publication of notice.

(3) ~~Property owners of~~ *Real property owners in* each affected rural fire district may submit written protests opposing consolidation to the trustees of their district. If within 21 days of the first publication of notice ~~more than 50%~~ *the owners of 40% or more* of the ~~property owners~~ *real property in an existing district and owners of property representing 40% or more of the taxable value of property* in an existing district protest the consolidation, it is void.

(4) After consolidation, the former rural fire districts constitute a single rural fire district governed under the provisions of 7-33-2104 through 7-33-2106.

(5) The consolidation of two or more rural fire districts pursuant to this section results in the creation of a new rural fire district for the purposes of determining mill levy limitations."

Section 10. Section 7-33-2121, MCA, is amended to read:

"7-33-2121. Division of fire district authorized. Fire districts may be divided as provided in ~~7-33-2122 through~~ *7-33-2123,* 7-33-2124*, and [section 11]*."

Section 11. Division of district — petition — plan for division. (1) (a) A fire district's board of trustees may vote to divide the district upon an affirmative vote of the board and upon receipt of a petition signed by the owners of 40% or more of the real property within the area proposed to be detracted from the original district and owners of property representing 40% or more of the taxable value of property in the area proposed to be detracted from the original district.

(b) The petition must describe the boundaries of the proposed detracted area and the boundaries of the remaining area.

(2) At the time it votes to divide, the board shall adopt a division plan that contains:

(a) a timetable for division, including the effective date, that must be after the time allowed for protests to the division;

(b) the names of the new rural fire districts;

(c) the boundary maps of the new districts;

(d) the estimated financial impact of the division on an owner of a home valued at $100,000; and

(e) a method for the fair and equitable division of the assets and liabilities of the original district among the new districts.

(3) The board of trustees shall forward the plan to the board of county commissioners in the county where the districts are located.

(4) Within 21 days of receipt of the plan, the board of county commissioners shall set a date for a public hearing on the division and shall give notice of the hearing as provided in 7-1-2121 or as provided in 7-1-4127 if any part of the proposed detracted area is within the limits of an incorporated city or town.

Section 12. Section 7-33-2123, MCA, is amended to read:

"7-33-2123. Decision on petition for division — protest. The petition ~~shall~~ *must* be granted and the original districts ~~shall thereupon~~ *must* be divided into separate districts unless at the time of the hearing on ~~such~~ *the* petition protests ~~shall be~~ *are* presented by ~~the owners of 50% or more of the area of the privately owned lands included within the entire original district who constitute a majority of the taxpayers who are freeholders of~~ *the owners of 40% or more of the real property in the entire original district and owners of property representing 40% or more of the taxable value of property in* the entire original district ~~and whose names appear upon the last-completed assessment roll~~. If ~~such~~ *the* required ~~amount~~ *number* of protests are presented, the petition for division ~~shall be disallowed~~ *may not be approved*."

Section 13. Section 7-33-2124, MCA, is amended to read:

"7-33-2124. Distribution of assets and liabilities following division. (1) Upon the division of districts, ~~money on hand shall be apportioned between the divided areas according to their respective taxable valuations. All other assets of the original district shall become the property of the remaining area, but a reasonable value shall be placed upon such other assets, and the remaining area shall become indebted to the detracted area for its proportionate share thereof, based upon taxable valuations~~ *the assets and liabilities of the original rural fire district must be distributed in accordance with the division plan as provided in [section 11].*

(2) Any detracted area ~~shall remain~~ *is* liable for any existing warrant and bonded indebtedness of the original district."

Section 14. Section 7-33-2125, MCA, is amended to read:

"7-33-2125. Annexation of adjacent territory not contained in a fire district. (1) Adjacent territory *within or outside of the limits of an incorporated third-class city or town* that is not already a part of a fire district may be annexed in the following manner:

(a) A petition in writing by ~~the owners of 50% or more of the area of privately owned lands of the adjacent area proposed to be annexed who constitute a majority of the taxpaying freeholders~~ *the owners of 40% or more of the real property within the proposed area to be annexed and owners of property representing 40% or more of the taxable value of property* within the proposed area to be annexed ~~and whose names appear upon the last-completed assessment roll~~ must be presented to the board of trustees of the district for approval. If the proposed annexation is approved by the board of trustees, the petition must be presented to the board of county commissioners.

(b) At the first regular meeting of the board of county commissioners after the presentation of the petition, the commissioners shall set a date to hold a hearing on the petition. The date of the hearing may not be less than 4 weeks after the date of the presentation of the petition to the board of county commissioners. The board of county commissioners shall publish notice of the hearing as provided in 7-1-2121 *or as provided in 7-1-4127 if any part of the area proposed to be annexed is within an incorporated third-class city or town*.

(2) On the date set for the hearing, the board of county commissioners shall consider the petition and any objections to the annexation. The board shall approve the annexation unless a protest petition signed by ~~a majority of the landowners of~~ *at least 40% of the owners of real property in the area proposed for annexation and owners of property representing 40% or more of the taxable value of the property in* the area proposed for annexation is presented at the hearing, in which case the annexation must be disapproved.

(3) The annexed territory is liable for any outstanding warrant and bonded indebtedness of the original district.

(4) (a) Territory that is within the limits of an incorporated third-class city or town may only be annexed upon the approval of the city or town governing body.

(b) A third-class city or town may withdraw from the district territory that has been annexed under this section 2 years after providing to the board of county commissioners notice of intent to withdraw."

Section 15. Section 7-33-2126, MCA, is amended to read:

"7-33-2126. Annexation of adjacent territory contained in a fire district. (1) Adjacent territory that is already a part of a fire district may withdraw from ~~such~~ *the* fire district and become annexed to another fire district in the following manner:

(a) A petition in writing by ~~the owners of 50% or more of the privately owned lands of an area which is part of any organized fire district who constitute a majority of the taxpaying freeholders~~ *40% or more of the owners of real property within the area proposed to be transferred and owners of 40% or more of the taxable value of the property* within ~~such~~ *the* area ~~according to the last-completed assessment roll shall~~ *proposed to be transferred must* be presented to the county commissioners, asking that ~~such~~ *the* area be transferred to and included in any other organized fire district to which ~~said~~ *the* area is adjacent. The petition must ~~set forth~~ *describe* the change of boundaries to be affected by ~~such~~ *the* proposed transfer of area.

(b) The commissioners shall hold a hearing on the petition in accordance with the procedure outlined in ~~7-33-2122~~ *[section 11]*. The ~~withdrawal and annexation shall~~ *transfer must* be allowed unless protests are presented at the hearing by ~~the owners of 50% or more of the area of the privately owned lands included within either district affected who constitute a majority of the taxpaying freeholders of~~ *the owners of 40% or more of the real property in either district and owners of property representing 40% or more of the taxable value in* either district ~~according to the last-completed assessment roll~~.

(2) The ~~withdrawals and annexation shall~~ *transfer may* be allowed only upon a showing of more advantageous proximity and communications with the firefighting facilities of the other district."

Section 16. Section 7-33-2127, MCA, is amended to read:

"7-33-2127. Withdrawal by owner of individual tract adjacent to municipality. In lieu of the detraction procedure ~~set forth~~ *provided* in ~~7-33-2122 and~~ 7-33-2123 *and [section 11]*, whenever a person owns land adjacent to a city or town and wishes to have only that land annexed to the city or town, the land may be detracted as follows:

(1) The owner shall mail notice to the chairman of the trustees of the fire district or, if none, to the board of county commissioners of ~~his~~ *the owner's* intention to request annexation.

(2) The owner shall attach a copy of this notice of intention to ~~his~~ *the* petition to the municipal governing body requesting annexation.

(3) Following adoption of the annexation order under 7-2-4714, the land is detracted from the fire district."

Section 17. Section 7-33-2128, MCA, is amended to read:

"7-33-2128. Dissolution of fire district. ~~Any~~ *(1) Subject to subsection (2), a* fire district organized under this part may be dissolved by the board of county commissioners upon presentation of a petition ~~therefor~~ *for dissolution* signed by ~~the owners of 50% or more of the area of the privately owned lands included within such fire district who constitute a majority of the taxpayers who are freeholders of such~~ *the owners of 40% or more of the real property in the area and owners of property representing 40% or more of the taxable value of property in the* area ~~and whose names appear upon the last-completed assessment roll~~. The procedure and requirements ~~outlined~~ *provided* in 7-33-2101 through 7-33-2103 ~~shall~~ apply to ~~such~~ requests for dissolution of fire districts.

(2) A board of county commissioners may not dissolve a fire district that includes territory within the limits of an incorporated third-class city or town unless the dissolution is approved by the governing body of the city or town."

Section 18. Section 7-33-2202, MCA, is amended to read:

"7-33-2202. Functions of county governing body. *(1)* The county governing body, with respect to rural fire control, shall carry out the specific authorities and duties imposed in this section~~:~~.

~~(1)~~*(2)* The governing body shall:

(a) provide for the organization of volunteer rural fire control crews; and

(b) provide for the formation of county volunteer fire companies.

~~(2)~~*(3)* The governing body shall appoint a county rural fire chief and ~~such~~ *as many* district rural fire chiefs, subject to the direction and supervision of the county rural fire chief, as it considers necessary.

~~(3)~~*(4)* The county governing body shall, within the limitations of 7-33-2205, ~~through 7-33-2209~~ *7-33-2206, 7-33-2208, and 7-33-2209*, *either:*

(a) directly protect ~~the range, farm, and forest lands within the county~~ from fire *land in the county that is not in a forest fire protection district, as provided in 76-13-204, or under the protection of a municipality, state agency, or federal agency; or*

(b) enter into an agreement for forest fire protection with a recognized agency, as that term is defined in 76-13-102.

~~(4)~~*(5)* The county governing body may enter into mutual aid agreements for itself and for county volunteer fire companies with:

(a) other fire districts;

(b) unincorporated municipalities;

(c) incorporated municipalities;

(d) state agencies;

(e) private fire prevention agencies;

(f) federal agencies;

(g) fire service areas; or

(h) governing bodies of other political subdivisions.

~~(5)~~*(6)* If the county governing body has not concluded a mutual aid agreement, the county governing body, a representative of the county governing body, or an incident commander may request assistance pursuant to 10-3-209."

Section 19. Section 7-33-2205, MCA, is amended to read:

"7-33-2205. Establishment of fire season — permit requirements — reimbursement of costs. (1) The county governing body may in its discretion establish fire seasons annually, during which a person may not ignite or set a ~~forest~~ fire, *including a* slash-burning fire, land-clearing fire, debris-burning fire, or open fire within the county protection area on any residential or commercial property, forest, range, or croplands subject to the provisions of this part without having obtained an official written permit or permission to ignite or set a fire from the recognized protection agency for that protection area.

(2) A permit or permission is not needed for recreational fires measuring less than 48 inches in diameter that are surrounded by a nonflammable structure and for which a suitable source of extinguishing the fire is available.

(3) A person who purposely ignites a fire in violation of this section shall reimburse the county governing body or recognized protection agency for costs incurred for any fire suppression activities resulting from the illegal fire*, as provided in 50-63-103*."

Section 20. Section 7-33-2206, MCA, is amended to read:

"7-33-2206. Violations. A person who ignites or sets a ~~forest~~ fire, *including a* slash-burning fire, land-clearing fire, debris-burning fire, or open fire on any residential or commercial property, forest, range, or cropland subject to the provisions of this part without first having obtained a written permit or permission from the recognized protection agency for that protection area to ignite or set the fire is guilty of a misdemeanor."

Section 21. Section 7-33-2210, MCA, is amended to read:

"7-33-2210. State to be reimbursed for forest fire suppression activities in noncooperating counties. A county that has not entered into a cooperative or other written agreement with the state for forest protection shall reimburse the state for costs incurred by the state in connection with state fire suppression activities resulting from a forest fire emergency *on land* in that county *that is not in a forest fire protection district, as provided in 76-13-204, or protected through an agreement with a recognized agency, as provided in 7-33-2202(4)(b)*."

Section 22. Section 7-33-2311, MCA, is amended to read:

"7-33-2311. Fire companies authorized. (1) Fire companies in unincorporated towns and villages are organized by filing with the county clerk of the county in which they are located a certificate in writing, signed by the presiding officer and secretary, ~~setting forth~~ *providing* the date of organization,

name, officers, and roll of active and honorary members or a copy of the certificate provided for in 19-17-402. The certificate and filing must be renewed annually on or before September 1.

~~(2) A town or village is not allowed more than one company for each 1,000 inhabitants, but one company must be allowed in a city, town, or village in which the population is less than 1,000.~~

~~(3)~~*(2)* A fire company is not allowed more than 28 certificate members."

Section 23. Section 7-33-2313, MCA, is amended to read:

"7-33-2313. Powers and duties of chief — request for assistance — definitions. (1) The chief of every fire ~~department~~ *company* shall inquire into the cause of every fire occurring in the town in which the chief serves as the chief and shall keep a record of every fire. The chief shall aid in the enforcement of all fire ordinances, examine buildings in the process of erection, report violations of ordinances relating to prevention or extinguishment of fires and, when directed by the proper authorities, institute prosecutions for the violation of those ordinances, and perform other duties as may be imposed upon the chief by proper authority. The chief's compensation, if any, must be fixed and paid by the city or town authorities. The chief shall attend all fires, with the chief's badge of office conspicuously displayed. The chief shall prevent injury to, take charge of, and preserve all property rescued from fires and return it to the owner on the payment of the expenses incurred in saving and keeping it. The amount of the expenses, when not agreed to, must be fixed by a justice of the peace.

(2) The chief shall devise and formulate or cause to be devised and formulated a course or plan of instruction or training program making available to each regular member of the chief's ~~department~~ *company* not less than 30 hours of instruction each year in matters pertaining to firefighting. The chief shall supervise the operation of the training plan or program and maintain training records for each current and former firefighter for the purposes of the public employees' retirement board provided for in 2-15-1009.

(3) If the county commissioners, trustees of a fire district, or governing body of a fire service area have not concluded a mutual aid agreement to protect an unincorporated town or village against natural incidents, emergencies, or disasters or incidents, emergencies, or disasters caused by persons, the chief may request assistance pursuant to 10-3-209.

(4) As used in this section, ~~"incidents",~~ "disasters", ~~or~~ "emergencies"*, and "incidents" have* ~~has~~ the meaning provided in 10-3-103."

Section 24. Section 7-33-2401, MCA, is amended to read:

"7-33-2401. Fire service area — establishment — alteration — dissolution. (1) Upon receipt of a petition signed by at least 30 owners of real property in the proposed service area, or by a majority of the owners of real property if there are no more than 30 owners of real property in the proposed service area, the board of county commissioners may establish a fire service area within an unincorporated area not part of a rural fire district in the county to provide the services and equipment set forth in 7-33-2402.

(2) To establish a fire service area, the board shall:

(a) pass a resolution of intent to form the area, with public notice as provided in 7-1-2121 ~~and written notice as provided in 7-1-2122~~;

(b) hold a public hearing no earlier than 30 or later than 90 days after passage of the resolution of intent;

(c) at the public hearing:

(i) accept written protests from property owners of the area of the proposed area; and

(ii) receive general protests and comments relating to the establishment of the fire service area and its boundaries, rates, kinds, types, or levels of service, or any other matter relating to the proposed fire service area; and

(d) pass a resolution creating the fire service area. The area is created effective 60 days after passage of the resolution unless by that date more than 50% of the property owners of the proposed fire service area protest its creation.

(3) Based on testimony received in the public hearing, the board in the resolution creating the fire service area may establish different boundaries, establish a different fee schedule than proposed, change the kinds, types, or levels of service, or change the manner in which the area will provide services to its residents.

(4) The board of county commissioners may alter the boundaries or the kinds, types, or levels of service or dissolve a fire service area, using the procedures provided in subsection (2). The board of county commissioners shall alter the boundaries of a fire service area to exclude any area that is annexed by a city or town, using the procedures provided in subsection (2). Any existing indebtedness of a fire service area that is dissolved remains the responsibility of the owners of property within the area, and any assets remaining after all indebtedness has been satisfied must be returned to the owners of property within the area."

Section 25. Repealer. Sections 7-33-2122, 7-33-2204, and 7-33-2207, MCA, are repealed.

Section 26. Coordination instruction. If Senate Bill No. 145 and [this act] are both passed and approved, then 7-33-2202 must read as follows:

"**7-33-2202. Functions of county governing body.** *(1)* The county governing body, with respect to rural fire control, shall carry out the specific authorities and duties imposed in this section~~:~~.

~~(1)~~*(2)* The governing body shall:

(a) provide for the organization of volunteer rural fire control crews; and

(b) provide for the formation of county volunteer fire companies.

~~(2)~~*(3)* The governing body shall appoint a county rural fire chief and ~~such~~ *as many* district rural fire chiefs, subject to the direction and supervision of the county rural fire chief, as it considers necessary.

~~(3)~~*(4)* ~~The~~ *Pursuant to 76-13-105(3), the* county governing body shall, within the limitations of 7-33-2205*,* ~~through 7-33-2209~~ *7-33-2206, 7-33-2208, and 7-33-2209*, *either:*

(a) directly protect ~~the range, farm, and forest lands within the county~~ from fire *land in the county that is not in a forest fire protection district, as provided in 76-13-204, or under the protection of a municipality, state agency, or federal agency; or*

(b) enter into an agreement for forest fire protection with a recognized agency, as that term is defined in 76-13-102.

~~(4)~~*(5)* The county governing body may enter into mutual aid agreements for itself and for county volunteer fire companies with:

(a) other fire districts;

(b) unincorporated municipalities;

(c) incorporated municipalities;

(d) state agencies;

(e) private fire prevention agencies;

(f) federal agencies;

(g) fire service areas; or

(h) governing bodies of other political subdivisions.

~~(5)~~*(6)* If the county governing body has not concluded a mutual aid agreement, the county governing body, a representative of the county governing body, or an incident commander may request assistance pursuant to 10-3-209."

Section 27. Codification instruction. [Section 11] is intended to be codified as an integral part of Title 7, chapter 33, part 21, and the provisions of Title 7, chapter 33, part 21, apply to [section 11].

Approved May 16, 2007

CHAPTER NO. 500

[SB 115]

AN ACT DIRECTING THAT ALL MONEY COLLECTED BY COURTS AS RESTITUTION FOR THE ILLEGAL KILLING OR POSSESSION OF CERTAIN WILDLIFE BE CREDITED TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR HUNTER EDUCATION AND ENFORCEMENT; AMENDING SECTION 87-1-114, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Montana is experiencing an increase in the number of organized wildlife crimes and a corresponding need for additional indepth investigative and trial preparation support necessary for the successful prosecution of wildlife crimes in order to control the unlawful commercialization of the state's public wildlife resources; and

WHEREAS, directing all money collected as restitution for the illegal killing or possession of certain wildlife to the department of fish, wildlife, and parks for law enforcement or hunter education will assist in paying for additional criminal investigators needed to address the increase in organized wildlife crimes.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-114, MCA, is amended to read:

"87-1-114. Disposition of proceeds. ~~(1) Except as provided in subsection (2), all~~ *All* money collected by a court pursuant to 87-1-111 through 87-1-113 and 87-1-115 must be remitted to the department of revenue for deposit in the state special revenue fund account to the credit of the department for hunter education purposes or for enforcement.

~~(2) Money collected pursuant to subsection (1) in excess of $60,000 annually must be remitted to the department of revenue for deposit in the state general fund.~~"

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved May 16, 2007

CHAPTER NO. 501

[SB 127]

AN ACT TO REVISE LAWS RELATING TO THE SALE AND DISTRIBUTION OF WINE BY WINERIES; ALLOWING ALL LICENSED WINERIES TO MAKE LIMITED SALES TO LICENSED WINE RETAILERS; AMENDING SECTIONS 16-3-219, 16-3-301, 16-3-401, 16-3-402, 16-3-404, 16-3-411, 16-3-418, 16-4-107, 16-4-501, 16-4-906, 16-6-104, AND 16-6-314, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-219, MCA, is amended to read:

"16-3-219. Dock sales restricted. ~~A beer wholesaler or a table wine distributor may not deliver beer~~ *Beer* or wine *may not be delivered* to a licensed retailer at any location other than the retailer's licensed premises, except that a retailer located within the territory for which a wholesaler has been appointed to distribute a brand may personally or through ~~his~~ *an* employee obtain from the wholesaler's warehouse quantities of beer not exceeding three barrels in packaged or draft form. An all-beverages licensee may upon presentation of ~~his~~ *the licensee's* license or a photocopy of ~~his~~ *the* license personally obtain from any wholesaler's warehouse ~~such~~ *the* quantities of beer as ~~he~~ *the licensee* and the wholesaler may agree to buy and sell."

Section 2. Section 16-3-301, MCA, is amended to read:

"16-3-301. Unlawful purchases, transfers, sales, or deliveries — presumption of legal age. (1) It is unlawful for a licensed retailer to purchase or acquire beer *or wine* from anyone except a brewer*, winery,* or wholesaler licensed under the provisions of this code.

(2) It is unlawful for a licensed retailer to transport beer *or wine* from one licensed premises or other facility to any other licensed premises owned by the licensee.

(3) It is unlawful for a licensed wholesaler to purchase beer or wine from anyone except a brewery, wholesaler, or winery licensed or registered under the provisions of this code.

~~(3)~~*(4)* It is unlawful for any licensee, a licensee's employee, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

(a) any person under 21 years of age; or

(b) any person actually, apparently, or obviously intoxicated.

~~(4)~~*(5)* Any person under 21 years of age or any other person who knowingly misrepresents the person's qualifications for the purpose of obtaining an alcoholic beverage from the licensee is equally guilty with the licensee and, upon conviction, is subject to the penalty provided in 45-5-624. However, nothing in this section may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any federal law.

~~(5)~~*(6)* It is mandatory under the provisions of this code that all licensees display in a prominent place in their premises a placard, issued by the

department, stating fully the consequences for violations of the provisions of this code by persons under 21 years of age.

~~(6)~~*(7)* For purposes of 45-5-623 and this title, the establishment of the following facts by a person making a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of innocence and a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

(a) the purchaser falsely represented and supported with documentary evidence that an ordinary and prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;

(b) the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase alcoholic beverages; and

(c) the sale was made in good faith and in reasonable reliance upon the representation and appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages. (See compiler's comments for contingent termination of certain text.)"

Section 3. Section 16-3-401, MCA, is amended to read:

"16-3-401. Short title — public policy — purpose. (1) This part may be cited as the "Wine Distribution Act".

(2) The public policy of the state of Montana is to maintain a system to provide for, regulate, and control the acquisition, importation, and distribution of table wine ~~by licensed table wine distributors~~.

(3) This part governs ~~relationships between suppliers and table wine distributors~~ *wineries, table wine distributors, and wine retailers*~~, and because the legislature recognizes the public interest and the interests of suppliers and table wine distributors in the fair, efficient, and competitive distribution of table wine, this part is intended to:~~

~~(a) protect the table wine distributor's independence in managing the distributor's business, including the establishment of selling prices; and~~

~~(b) encourage table wine distributors to devote their best efforts to the sale and distribution of the table wines they sell and distribute~~."

Section 4. Section 16-3-402, MCA, is amended to read:

"16-3-402. Importation of wine — records. (1) ~~All~~ *Except as provided in 16-3-411 and 16-4-901, all* table wine manufactured outside of Montana and shipped into Montana must be consigned to and shipped to a licensed table wine distributor and be unloaded by the distributor into the distributor's warehouse in Montana or subwarehouse in Montana. The distributor shall distribute the table wine from the warehouse or subwarehouse.

(2) The distributor shall keep records at the distributor's principal place of business of all table wine, including the name or kind received, on hand, sold, and distributed. The records may at all times be inspected by the department.

(3) Table wine that has been shipped ~~into~~ *into* Montana ~~and that has not been shipped to and distributed from a warehouse of a licensed table wine distributor~~ *in violation of this code* must be seized by any peace officer or representative of the department and may be confiscated in the manner as provided for the confiscation of intoxicating liquor."

Section 5. Section 16-3-404, MCA, is amended to read:

"16-3-404. Monthly report of table wine distributor *and retailer.* *(1)* ~~Every~~ *Each* licensed table wine distributor shall, on or before the ~~fifteenth~~ *15th* day of each month, make an exact return to the department of revenue ~~of~~ *reporting* the amount of table wine purchased or acquired by ~~him~~ *the distributor* during the previous month, the amount of table wine sold and delivered by ~~him~~ *the distributor* during the previous month, and the amount of inventory on hand in the manner and form ~~as shall be~~ prescribed by the department. The department ~~shall have~~ *has* the right at any time to make an examination of the table wine distributor's books and ~~of his~~ premises and otherwise check the accuracy of ~~such~~ *the* return or check the alcoholic content of table wine ~~which he~~ *that the distributor* may have on hand.

(2) Each wine retailer licensed to do business in this state shall, on or before the 15th day of each month, in the manner and form prescribed by the department, make a return to the department reporting the amount of wine purchased directly from any out-of-state winery in the previous month."

Section 6. Section 16-3-411, MCA, is amended to read:

"16-3-411. ~~Domestic winery~~ *Winery.* (1) A winery located in Montana and licensed pursuant to 16-4-107 may:

(a) import in bulk, bottle, produce, blend, store, transport, or export wine it produces;

(b) sell wine it produces at wholesale to wine distributors;

(c) sell wine it produces at retail at the winery directly to the consumer for consumption on or off the premises;

(d) provide, without charge, wine it produces for consumption at the winery;

(e) purchase from the department or its licensees brandy or other distilled spirits for fortifying wine it produces;

(f) obtain a special event permit under 16-4-301; ~~or~~

(g) perform those operations and cellar treatments that are permitted for bonded winery premises under applicable regulations of the United States department of the treasury*; or*

(h) sell wine at the winery to a licensed retailer who presents the retailer's license or a photocopy of the license.

(2) (a) ~~A winery that is located in Montana and licensed pursuant to 16-4-107 and that has an annual production of 25,000 gallons or less of wine may sell wine to retail licensees that are licensed to sell wine under this code.~~ *A winery licensed pursuant to section 16-4-107 may sell and deliver wine produced by the winery directly to licensed retailers if the winery:*

(i) uses the winery's own equipment, trucks, and employees to deliver the wine and the wine delivered pursuant to this subsection (2)(a)(i) does not exceed 4,500 cases a year;

(ii) contracts with a licensed table wine distributor to ship and deliver the winery's wine to the retailer; or

(iii) contracts with a common carrier to ship and deliver the winery's wine to the retailer and:

(A) the wine shipped and delivered by common carrier is shipped directly from the producer's winery or bonded warehouse;

(B) individual shipments delivered by common carrier are limited to three cases a day for each licensed retailer; and

(C) the shipments delivered by common carrier do not exceed 4,500 cases a year.

(b) A winery making sales to retail licensees under the provisions of this subsection (2) is considered a table wine distributor for the purposes of collecting taxes on table wine, as provided in 16-1-411.

~~(b)~~*(c)* ~~The~~ *If a* winery ~~may use~~ *uses* a common carrier for delivery of the wine to licensed *table* wine distributors and retailers~~. A shipment by common carrier is subject to the provisions of 16-3-106 and~~ *the shipment* must be:

(i) in boxes that are marked with the words: "Wine Shipment From ~~Montana Licensee~~ *Montana-Licensed Winery* to Montana Licensee";

(ii) ~~made~~ *delivered* to the premises of a ~~Montana-licensed~~ *licensed table* wine distributor or *licensed* retailer ~~licensed by the state and~~ who is in good standing; and

(iii) signed for by the wine distributor or retailer or its employee or agent.

~~(c)~~*(d)* In addition to any records required to be maintained under 16-4-107, a winery that distributes wine within the state under this subsection (2) shall maintain records of all sales and shipments. The winery shall*, on or before the 15th day of each month, in the manner and form prescribed by the department, make a return reporting the amount of wine* ~~furnish monthly and other reports concerning quantities and prices of table wine~~ that it ~~ships~~ *shipped* in the state *during the preceding month*, names and addresses of consignees *or retailers*, and other information that the department may determine to be necessary to ensure that distribution of table wines within this state conforms to the requirements of this code."

Section 7. Section 16-3-418, MCA, is amended to read:

"16-3-418. Dual appointments — equal support — alternate supplier — dock sales. (1) (a) A supplier may appoint one or more table wine distributors to distribute its table wines in a specified territory. If the supplier appoints two or more table wine distributors to sell its table wines in the same or overlapping territories, the supplier shall offer the same prices, delivery, terms, and promotional support to each table wine distributor.

(b) A supplier may not appoint more than one table wine distributor to distribute its hard cider in a specified territory.

(c) For the purposes of this subsection (1), "table wine" has the meaning assigned in 16-1-106, but does not include hard cider.

(2) (a) The holder of an all-beverages license under chapter 4, part 2, may, upon presentation of the license or a photocopy of the license, personally obtain from any distributor's warehouse a quantity of table wine that the licensee may agree to buy and that the distributor may agree to sell.

(b) The holder of a license that permits on-premises consumption of alcoholic beverages under 16-4-401(2) may, upon presentation of the license or a photocopy of the license, personally or through an employee, obtain from ~~any~~ *a* winery*,* ~~described~~ *as provided* in ~~16-3-411(2)(a)~~ *16-3-411(1)(h),* a quantity of table wine that the licensee may agree to buy and that the winery may agree to sell."

Section 8. Section 16-4-107, MCA, is amended to read:

"16-4-107. ~~Domestic winery~~ *Winery* license — winery and importer registration. (1) (a) Wine, other than for personal consumption in conformity with federal exemptions from holding a basic permit as a bonded winery, may be manufactured *or directly distributed to retailers* within the state only by a licensed ~~domestic~~ winery. An application for a ~~domestic~~ winery license must be accompanied by a fee of $400, which constitutes the first annual license fee, and a licensee shall in each succeeding year pay an annual fee as provided in 16-4-501. ~~Domestic winery~~ *Winery* licensees *located in Montana* ~~shall~~ *must* hold the appropriate basic permit required by the United States department of the treasury and be qualified for a license in accordance with the provisions of 16-4-401(4). *Winery licensees located in another state must hold the appropriate basic permit required by the United States department of the treasury and the appropriate license to manufacture wine from the state in which the winery is located and shall provide all other information required by the department.*

(b) A ~~domestic~~ winery *located in Montana that is* licensed to do business in the state shall, each quarter and in the manner and form prescribed by the department, report to the department the amount of wine manufactured or imported by the winery in the previous quarter and the winery's inventory. The department may at any time examine a winery's books.

(2) A winery that is not located in the state or an importer of table wines that holds the appropriate license from the United States ~~of America~~ *department of the treasury* and that desires to distribute its table wines within this state *through licensed table wine distributors only* shall apply to the department of revenue for registration on forms to be prepared and furnished by the department. Each winery ~~will~~ *shall* furnish the department with a copy of each container label currently used by the winery on its products imported into Montana. The department shall require the winery or importer to agree to furnish monthly and other reports concerning quantities and prices of table wine *that* it ships into the state, names and addresses of consignees, and any other information that the department may determine to be necessary to ensure that importation and distribution of table wines within this state conform to the requirements of this code. A winery or importer of table wines may not ship table wines into this state until the registration is granted by the department. The registration may be canceled or suspended by the department upon a finding after notice and hearing that the registrant has not complied with the terms of its registration."

Section 9. Section 16-4-501, MCA, is amended to read:

"16-4-501. License and permit fees. (1) Each beer licensee licensed to sell either beer or table wine only~~,~~ or both beer and table wine~~,~~ under the provisions of this code~~,~~ shall pay a license fee. Unless otherwise specified in this section, the fee is an annual fee and is imposed as follows:

(a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, $500;

(ii) for each storage depot, $400;

(b) (i) each beer wholesaler, $400; each ~~domestic~~ winery ~~producing more than 25,000 gallons of wine, $400; each domestic winery producing 25,000 gallons or less of wine~~, $200; each table wine distributor, $400;

(ii) for each subwarehouse, $400;

(c) each beer retailer, $200;

(d) (i) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license;

(ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the following rate:

(a) $10 a day for each day that beer and table wine are sold at events, activities, or sporting contests, other than those applied for pursuant to 16-4-301(1)(c); and

(b) $1,000 a season for professional sporting contests or junior hockey contests held under the provisions of 16-4-301(1)(c).

(3) The permit fee under 16-4-301(2) is $10 for the sale of beer and table wine only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is $200.

(6) The annual renewal fee for:

(a) a brewer producing 20,000 or fewer barrels of beer, as defined in 16-1-406, is $200; and

(b) resort retail all-beverages licenses within a given resort area is $2,000 for each license.

(7) ~~Each~~ *Except as provided in this section, each* licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) ~~except as provided in this section,~~ for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $250 for a unit of a nationally chartered veterans' organization and $400 for all other licensees;

(b) ~~except as provided in this section,~~ for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $350 for a unit of a nationally chartered veterans' organization and $500 for all other licensees;

(c) ~~except as provided in this section,~~ for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $500 for a unit of a nationally chartered veterans' organization and $650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $650 for a unit of a nationally chartered veterans' organization and $800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of

the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsections (6) and (7)(d) shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a $20,000 license fee. A successful applicant shall pay a one-time original license fee of $20,000 for a license issued. The one-time license fee of $20,000 may not apply to any transfer or renewal of a license issued prior to July 1, 1974. ~~All~~ *However, all* licenses~~, however,~~ are subject to the specified annual renewal fees.

(8) The fee for one all-beverages license to a public airport is $800. This license is nontransferable.

(9) The annual fee for a retail beer and wine license to the Yellowstone airport is $400.

(10) The annual fee for a special beer and table wine license for a nonprofit arts organization under 16-4-303 is $250.

(11) The annual fee for a distillery is $600.

(12) The license fees provided in this section are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

(13) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year or 1 year after the licensee's anniversary date, 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month after the licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal year or 1 year and 2 months after the licensee's anniversary date.

(14) All license and permit fees collected under this section must be deposited as provided in 16-2-108."

Section 10. Section 16-4-906, MCA, is amended to read:

"16-4-906. Out-of-state brewery or winery registration — limitation on shipping — penalty. (1) Each out-of-state brewery or winery desiring to ship beer or wine to a person holding a connoisseur's license shall register with the department on forms provided by the department.

(2) The annual limit on out-of-state shipments to all connoisseur's license holders is:

(a) 1,440 bottles or 60 cases of beer for breweries; and

(b) 720 bottles or 60 cases of wine for wineries.

(3) For any shipment into the state that exceeds the limits provided for in subsection (2), the out-of-state brewery or winery shall distribute the brewery's or winery's product through a licensed wholesale distributor *or for a winery properly licensed pursuant to 16-4-107 through direct shipment to licensed retailers in accordance with the provisions of 16-3-411.*

(4) An out-of-state brewery or winery that violates the provisions of this section is subject to the penalties provided for in 16-6-302."

Section 11. Section 16-6-104, MCA, is amended to read:

"16-6-104. Unlawful alcoholic beverage — seizure — forfeiture. (1) Any investigator or peace officer who finds an alcoholic beverage ~~which he~~ *and who* has reasonable cause to believe ~~is had~~ *that the alcoholic beverage was obtained* or kept by any person in violation of the provisions of this code may ~~forthwith~~ seize and remove the ~~same~~ *alcoholic beverage* and the packages in which the alcoholic beverage is kept, and upon conviction of the person, the alcoholic beverage and all packages containing the ~~same shall~~ *alcoholic beverages are*, in addition to any other penalty prescribed by this code, ~~ipso facto be~~ forfeited to the state of Montana.

(2) Any beer *or wine* ~~which~~ *that* has been shipped into Montana ~~and has not been shipped to and distributed from a warehouse of a licensed wholesaler~~ *in violation of this code* ~~shall~~ *must* be seized by any peace officer or representative of the department and may be confiscated in the manner as provided for the confiscation of alcoholic beverages."

Section 12. Section 16-6-314, MCA, is amended to read:

"16-6-314. Penalty for violating code — revocation of license — penalty for violation by underage person. (1) A person who violates a provision of this code is guilty of a misdemeanor punishable as provided in 46-18-212, except as otherwise provided in this section.

(2) If a retail licensee is convicted of an offense under this code, the licensee's license must be immediately revoked or, in the discretion of the department, ~~such other~~ *another* sanction *must be* imposed as ~~may be authorized~~ *provided* under 16-4-406.

(3) A person under 21 years of age who violates ~~16-3-301(4)~~ *16-3-301(5)* or 16-6-305(3) is subject to the penalty provided in 45-5-624(2) or (3). (See compiler's comments for contingent termination of certain text.)"

Approved May 16, 2007

CHAPTER NO. 502

[SB 153]

AN ACT REVISING PROFESSIONAL AND OCCUPATIONAL LICENSING LAWS; CREATING EMERITUS STATUS FOR ARCHITECTS; CREATING A RETIREMENT LICENSE FOR PLUMBERS; REVISING THE BOARD OF REALTY REGULATION; REVISING THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; CLARIFYING THE DEFINITION OF "LICENSE"; PROVIDING BOARDS WITH PERMISSION TO REQUIRE STATE, REGIONAL, OR NATIONAL CERTIFICATION; EXPANDING THE UNPROFESSIONAL CONDUCT DESCRIPTION; ADDING ELEVATOR CONTRACTORS, MECHANICS, AND INSPECTORS TO THOSE COVERED BY THE UNPROFESSIONAL CONDUCT STATUTE; ADDING NATUROPATHIC PHYSICIAN, PHYSICIAN ASSISTANT, AND OPTOMETRIST TO DEFINITIONS RELATING TO NURSING; REMOVING THE OATH REQUIREMENT TO APPLY FOR A LICENSE AS A NURSE; CLARIFYING APPLICATION REQUIREMENTS FOR OPTOMETRISTS; CLARIFYING THE APPLICATION PROCESS FOR SPEECH-LANGUAGE

PATHOLOGISTS AND AUDIOLOGISTS; CLARIFYING TRAINEE LICENSE TERMS FOR HEARING AID DISPENSERS; REVISING TERMS FOR A VETERINARY LICENSE; REVISING RULEMAKING AUTHORITY FOR THE BOARD OF ALTERNATIVE HEALTH CARE; CLARIFYING LICENSING PROCEDURE FOR NATUROPATHIC PHYSICIANS; REVISING DISTRIBUTION OF CERTAIN LICENSEE FEES FOR OUTFITTERS; CLARIFYING CONDITIONS FOR DENYING, SUSPENDING, OR REVOKING AN OUTFITTER'S, GUIDE'S, OR PROFESSIONAL GUIDE'S LICENSE; REQUIRING PUBLICATION OF A LIST OF LICENSED OUTFITTERS; PROVIDING PENALTIES FOR NONCOMPLIANCE BY REAL ESTATE BROKERS OR PROPERTY MANAGERS WITH TRUST ACCOUNT PROVISIONS; CREATING ENDORSEMENT PROVISIONS FOR A SUPERVISING REAL ESTATE BROKER; CREATING A TEMPORARY LICENSE FOR ELEVATOR INSPECTORS; REVISING THE NAME OF AMBULATORY SURGICAL FACILITIES; PROVIDING ACUPUNCTURISTS WITH LIEN RIGHTS; AMENDING SECTIONS 2-15-1757, 2-15-1781, 25-1-1104, 33-36-103, 37-1-130, 37-1-131, 37-1-302, 37-1-401, 37-1-410, 37-8-102, 37-8-405, 37-8-415, 37-10-302, 37-15-302, 37-16-405, 37-18-306, 37-26-201, 37-26-403, 37-47-318, 37-47-341, 37-51-102, 37-51-301, 37-51-302, 37-60-101, 37-60-103, 37-60-202, 37-60-301, 37-60-302, 37-60-303, 37-60-304, 37-60-309, 37-60-310, 37-60-314, 37-60-402, 37-60-403, 37-60-409, 37-73-208, 50-32-314, 71-3-1111, 71-3-1112, 71-3-1113, 71-3-1114, 71-3-1115, 71-3-1117, AND 71-3-1118, MCA; AND REPEALING SECTIONS 37-60-315 AND 37-60-406, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Emeritus status. (1) A licensee who no longer practices architecture may apply to the department for emeritus status.

(2) Upon receiving an application for emeritus status accompanied by the fee established by the board, the department shall issue a license of emeritus status to the applicant and record the applicant's name in the appropriate database as an emeritus licensee, along with the date on which the licensee received emeritus status.

(3) An emeritus licensee may retain but may not use the licensee's seal and may not practice architecture.

(4) The department shall reissue an active license to an emeritus licensee who pays all application fees, meets all current requirements for licensure, and demonstrates to the board's satisfaction that for the 2 years preceding the application for active licensure, the applicant has met requirements set by the board for maintaining professional competence.

Section 2. License of retirement status. (1) A licensee who no longer practices plumbing may apply to the department for retirement status.

(2) Upon receiving an application for retirement status accompanied by the fee established by the board, the department shall issue a license of retirement status to the applicant and record the applicant's name in the appropriate database as a holder of a license of retirement status, along with the date on which the licensee received retirement status.

(3) A license of retirement status does not allow a holder to practice plumbing under this chapter.

(4) The department shall reissue an active license to a holder of a license of retirement status who pays the appropriate active license renewal fee and meets any competency requirements established by rule by the department.

Section 3. Section 2-15-1757, MCA, is amended to read:

"2-15-1757. Board of realty regulation. (1) There is a board of realty regulation.

(2) The board consists of ~~five~~ *seven* members appointed by the governor with the consent of the senate. ~~Three~~ *Five* members must be licensed real estate brokers ~~or~~*,* salespeople*, or property managers* who are actively engaged in the real estate business as a broker ~~or~~*, a* salesperson*, or a property manager* in this state. Two members must be representatives of the public who are not state government officers or employees and who are not engaged in business as a real estate broker*,* ~~or~~ *a* salesperson*, or a property manager*. The members must be residents of this state.

(3) Not more than ~~three~~ *five* members, including the presiding officer, may be from the same political party.

(4) The members shall serve staggered terms of 4 years. A member may not serve more than two terms or any portion of two terms.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 2-15-1781, MCA, is amended to read:

"2-15-1781. Board of private security ~~patrol officers and investigators~~. (1) There is a board of private security ~~patrol officers and investigators~~.

(2) The board consists of seven voting members appointed by the governor with the consent of the senate. The members shall represent:

(a) one contract security company *or proprietary security organization*, as defined by 37-60-101;

(b) one ~~proprietary security organization~~ *electronic security company*, as defined by 37-60-101;

(c) one city police department;

(d) one county sheriff's office;

(e) one member of the public;

(f) one member of the peace officers' standards and training advisory council; and

(g) a licensed private investigator.

(3) Members of the board must be at least 25 years of age and have been residents of this state for more than 5 years.

(4) The appointed members of the board shall serve for a term of 3 years. The terms of board members must be staggered.

(5) The governor may remove a member for misconduct, incompetency, neglect of duty, or unprofessional or dishonorable conduct.

(6) A vacancy on the board must be filled in the same manner as the original appointment and may only be for the unexpired portion of the term.

(7) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 5. Section 25-1-1104, MCA, is amended to read:

"25-1-1104. Handbook for process servers. (1) The department of labor and industry shall publish a handbook for process servers and levying officers.

(2) Each person who applies to the clerk of the district court of any county for registration as a process server shall demonstrate that the person has passed an examination based on the handbook and administered by the board of private security ~~patrol officers and investigators~~ provided for in 2-15-1781.

(3) The department of labor and industry may charge a reasonable examination fee to cover the costs of publishing the handbook and administering the examination provided for in this section."

Section 6. Section 33-36-103, MCA, is amended to read:

"33-36-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Closed plan" means a managed care plan that requires covered persons to use only participating providers under the terms of the managed care plan.

(2) "Combination plan" means an open plan with a closed component.

(3) "Covered benefits" means those health care services to which a covered person is entitled under the terms of a health benefit plan.

(4) "Covered person" means a policyholder, subscriber, or enrollee or other individual participating in a health benefit plan.

(5) "Department" means the department of public health and human services established in 2-15-2201.

(6) "Emergency medical condition" means a condition manifesting itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in any of the following:

(a) the covered person's health would be in serious jeopardy;

(b) the covered person's bodily functions would be seriously impaired; or

(c) a bodily organ or part would be seriously damaged.

(7) "Emergency services" means health care items and services furnished or required to evaluate and treat an emergency medical condition.

(8) "Facility" means an institution providing health care services or a health care setting, including but not limited to a hospital, medical assistance facility, or critical access hospital, as defined in 50-5-101, or other licensed inpatient center, an ~~ambulatory surgical or treatment center~~ *outpatient center for surgical services, a treatment center*, a skilled nursing center, a residential treatment center, a diagnostic~~,~~ laboratory, ~~an~~ *a diagnostic* imaging center, or a rehabilitation or other therapeutic health setting.

(9) "Health benefit plan" means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(10) "Health care professional" means a physician or other health care practitioner licensed, accredited, or certified pursuant to the laws of this state to perform specified health care services consistent with state law.

(11) "Health care provider" or "provider" means a health care professional or a facility.

(12) "Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(13) "Health carrier" means an entity subject to the insurance laws and rules of this state that contracts, offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a disability insurer, health maintenance organization, or health service corporation or another entity providing a health benefit plan.

(14) "Intermediary" means a person authorized to negotiate, execute, and be a party to a contract between a health carrier and a provider or between a health carrier and a network.

(15) "Managed care plan" means a health benefit plan that either requires or creates incentives, including financial incentives, for a covered person to use health care providers managed, owned, under contract with, or employed by a health carrier, but not preferred provider organizations or other provider networks operated in a fee-for-service indemnity environment.

(16) "Medically necessary" means services, medicines, or supplies that are necessary and appropriate for the diagnosis or treatment of a covered person's illness, injury, or medical condition according to accepted standards of medical practice and that are not provided only as a convenience.

(17) "Network" means the group of participating providers that provides health care services to a managed care plan.

(18) "Open plan" means a managed care plan other than a closed plan that provides incentives, including financial incentives, for covered persons to use participating providers under the terms of the managed care plan.

(19) "Participating provider" means a provider who, under a contract with a health carrier or with the health carrier's contractor, subcontractor, or intermediary, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly from the health carrier.

(20) "Primary care professional" means a participating health care professional designated by the health carrier to supervise, coordinate, or provide initial care or continuing care to a covered person and who may be required by the health carrier to initiate a referral for specialty care and to maintain supervision of health care services rendered to the covered person.

(21) "Quality assessment" means the measurement and evaluation of the quality and outcomes of medical care provided to individuals, groups, or populations.

(22) "Quality assurance" means quality assessment and quality improvement.

(23) "Quality improvement" means an effort to improve the processes and outcomes related to the provision of health care services within a health plan."

Section 7. Section 37-1-130, MCA, is amended to read:

"37-1-130. Definitions. As used in this part, the following definitions apply:

(1) "Administrative fee" means a fee established by the department to cover the cost of administrative services as provided for in 37-1-134.

(2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(3) "Board fee" means:

(a) a fee established by the board to cover program area costs as provided in 37-1-134; and

(b) any other legislatively prescribed fees specific to boards and department programs.

(4) "Department" means the department of labor and industry established in 2-15-1701.

(5) "Department program" means a program administered by the department pursuant to this title and not affiliated with a board.

(6) "Expired license" means a license that is not reactivated within the period of ~~45~~ *46* days to 2 years after the renewal date for the license.

(7) "Lapsed license" means a license that is not renewed by the renewal date and that may be reactivated within the first 45-day period after the renewal date for the license.

(8) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation*, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration*.

(9) "Terminated license" means a license that is not renewed or reactivated within 2 years of the license lapsing."

Section 8. Section 37-1-131, MCA, is amended to read:

"37-1-131. Duties of boards — quorum required. *(1)* A quorum of each board within the department shall:

~~(1)~~*(a)* set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

~~(2)~~*(b)* sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

~~(3)~~*(c)* suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection ~~(2)~~ *(1)(b)*, is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

~~(4)~~*(d)* pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

~~(5)~~*(e)* consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

~~(6)~~*(2)* A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

~~(7)~~*(4)* The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure*,* as provided in 37-1-306*, or require continued state, regional, or national certification for licensure.* ~~If~~ *Except as provided in subsection (3), if* the board or department requires continuing education *or continued state, regional, or national certification* for continued licensure, the board or department may not audit or ~~verify~~ *require proof of* continuing education *or continued state, regional, or national certification* requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits *after the lapsed date* of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement ~~after the renewal period closes~~.

~~(8)~~*(5)* A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board."

Section 9. Section 37-1-302, MCA, is amended to read:

"37-1-302. Definitions. As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of labor and industry.

(4) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the board;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation*, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration*.

(7) "Profession" or "occupation" means a profession or occupation regulated by a board."

Section 10. Section 37-1-401, MCA, is amended to read:

"37-1-401. Uniform regulation for licensing programs without boards — definitions. As used in this part, the following definitions apply:

(1) "Complaint" means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the department;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether the department should seek an injunction.

(4) "License" means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by:

(a) Title 37, chapter 35, 72, *73,* or 76; or

(b) Title 50, chapter 39, 74, or 76.

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of:

(a) Title 37, chapter 35, 72, *73,* or 76; or

(b) Title 50, chapter 39, 74, or 76."

Section 11. Section 37-1-410, MCA, is amended to read:

"37-1-410. Unprofessional conduct. *(1)* The following is unprofessional conduct for a licensee or license applicant *in a profession or occupation* governed by this chapter:

~~(1)~~*(a)* being convicted, including a conviction following a plea of nolo contendere and regardless of a pending appeal, of a crime relating to or committed during the course of practicing the person's profession or occupation or involving violence, the use or sale of drugs, fraud, deceit, or theft;

~~(2)~~*(b)* permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

~~(3)~~*(c) committing* fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

~~(4)~~*(d)* signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

~~(5)~~*(e)* making a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

~~(6)~~*(f)* offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

~~(7)~~*(g)* ~~the~~ *receiving a* denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal or under judicial review or has been satisfied.

~~(8)~~*(h)* ~~failure~~ *failing* to comply with a term, condition, or limitation of a license by final order of the department;

~~(9)~~*(i)* having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

~~(10)~~*(j)* misappropriating property or funds from a client or workplace or failing to comply with the department's rule regarding the accounting and distribution of a client's property or funds;

~~(11)~~*(k)* ~~interference~~ *interfering* with an investigation or disciplinary proceeding by willful misrepresentation of facts, failure to respond to department inquiries regarding a complaint against the licensee or license applicant, or the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action or use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

~~(12)~~*(l)* assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice the profession or occupation by use of the licensee's license.

(2) For the purposes of Title 37, chapters 72 and 73, and Title 50, chapters 74 and 76, the following additional practices are considered unprofessional conduct:

(a) addiction to or dependency on alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32;

(b) use of alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;

(c) conduct that does not meet generally accepted standards of practice. A certified copy of a judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring within the scope of

practice and the course of the practice is considered conclusive evidence of, but is not needed to prove, conduct that does not meet generally accepted standards."

Section 12. Section 37-8-102, MCA, is amended to read:

"37-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202.

(2) "Board" means the board of nursing provided for in 2-15-1734.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) "Medication aide" means a person who in an assisted living facility uses standardized procedures in the administration of drugs, as defined in 37-7-101, that are prescribed by a physician, an advanced practice registered nurse with prescriptive authority, a dentist, an osteopath, or a podiatrist authorized by state law to prescribe drugs.

(5) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a junior college, college, or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

(6) "Practice of nursing" embraces the practice of practical nursing and the practice of professional nursing.

(7) (a) "Practice of practical nursing" means the performance of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. The practice of practical nursing uses standardized procedures in the observation and care of the ill, injured, and infirm, in the maintenance of health, in action to safeguard life and health, and in the administration of medications and treatments prescribed by a physician, *naturopathic physician, physician assistant, optometrist,* advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, *naturopathic physician, physician assistant, optometrist,* dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(b) These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

(8) "Practice of professional nursing" means the performance of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health, the prevention, casefinding, and management of illness, injury, or infirmity, and the restoration of optimum function. The term also

includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, *naturopathic physicians, physician assistants, optometrist,* advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (8):

(a) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(b) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals."

Section 13. Section 37-8-405, MCA, is amended to read:

"37-8-405. Professional nursing — qualifications of applicants for license. An applicant for a license to practice as a registered professional nurse shall submit to the department written evidence~~, verified by oath,~~ that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) has completed the basic professional curriculum in an approved school of nursing and holds a diploma ~~therefrom~~ *from that school*; and

(3) meets other qualification requirements the board prescribes."

Section 14. Section 37-8-415, MCA, is amended to read:

"37-8-415. Licensed practical nursing — qualifications of applicants. An applicant for a license to practice as a licensed practical nurse shall submit to the board written evidence~~, verified by oath,~~ that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) is a graduate of an approved practical nursing education program that is authorized to prepare persons for licensure as practical nurses; and

(3) meets other qualification requirements the board prescribes in its rules."

Section 15. Section 37-10-302, MCA, is amended to read:

"37-10-302. Qualifications — application. (1) The board shall adopt rules relative to and governing the qualifications of applicants for licensure as optometrists.

(2) A person is not eligible to receive a license unless that person is ~~18 years of age or older and~~ of good moral character.

(3) A person is not eligible to receive a license unless that person has graduated from an accredited ~~high school and from a~~ school of optometry in which the practice and science of optometry is taught in a course of study that is accredited by the international association of boards of examiners in optometry.

(4) ~~A person desiring~~ *An applicant for* a license shall file a completed application on a form provided by the department and pay a fee prescribed by the board."

Section 16. Section 37-15-302, MCA, is amended to read:

"37-15-302. Application forms. ~~Application~~ *An application* for examination for licensing a speech-language pathologist or audiologist ~~shall~~ *must* be made upon forms prescribed by the ~~board~~ *department*."

Section 17. Section 37-16-405, MCA, is amended to read:

"37-16-405. Trainee license. (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take a practical examination may apply to the board for a trainee license.

(2) On receiving an application under subsection (1), accompanied by a fee fixed by the board and verification that the applicant has passed the written portion of the examination with a passing score as determined by board rule, the board shall issue a trainee license that entitles the applicant to engage in a 180-day training period during which the applicant:

(a) is required to pass the practical examination administered by the board before being issued a hearing aid dispenser's license; and

(b) shall work under the direct supervision of the sponsoring licensed hearing aid dispenser. During this time the applicant may do the testing necessary for proper selection and fitting of hearing aids and related devices and make necessary impressions. However, the delivery and final fitting of the hearing aid and related devices must be made by the trainee and the supervisor.

(3) The training period must consist of a continuous 180-day term. Any break in training requires application for another trainee license under rules that the board may prescribe.

(4) A trainee license may not be issued unless the board has on file an unrevoked statement from a qualified licensed hearing aid dispenser accepting responsibility for the trainee. Every licensed hearing aid dispenser supervising a trainee license holder shall submit a report every 90 days of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate any responsibilities to the trainee by mailing by certified mail written notice to the board and the trainee.

(5) If a person who holds a trainee license takes and fails to pass the practical examination ~~during the training period, the board may authorize the department to renew the trainee license for a period of 180 days, during which the provisions of subsection (2)(b) apply. More than one renewal is not permitted~~*, the trainee license expires, and the person may not practice as a trainee.*

(6) A person licensed as an audiologist under the provisions of Title 37, chapter 15, or a person practicing pursuant to 37-1-305 is exempt from the 180-day training period but is required to pass the examinations prescribed in this chapter.

(7) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the licensee's own.

(8) For the purposes of this section, "direct supervision" means the direct and regular observation and instruction of a trainee by a licensed hearing aid dispenser who is available at the same location for prompt consultation and treatment."

Section 18. Section 37-18-306, MCA, is amended to read:

"37-18-306. Display of license and certificate. A person may not practice veterinary medicine in this state without possessing and displaying prominently in ~~his~~ *the person's* principal office ~~a license and~~ a current and valid ~~certificate of registration~~ *license* issued under this part."

Section 19. Section 37-26-201, MCA, is amended to read:

"37-26-201. Powers and duties of board. The board shall:

(1) adopt rules necessary or proper to administer and enforce this chapter;

(2) adopt rules that specify the scope of practice of naturopathic medicine stated in 37-26-301, that are consistent with the definition of naturopathic medicine provided in 37-26-103, and that are consistent with the education provided by approved naturopathic medical colleges;

(3) adopt rules that endorse equivalent licensure examinations of another state or territory of the United States, the District of Columbia, or a foreign country and that may include licensure by reciprocity;

(4) adopt rules that set nonrefundable fees for application, and licensure;

(5) approve naturopathic medical colleges as defined in 37-26-103;

(6) issue certificates of specialty practice;

(7) adopt rules that, in the discretion of the board, appropriately restrict licenses to a limited scope of practice of naturopathic medicine, which may exclude the use of minor surgery allowed under 37-26-301; *and*

(8) adopt rules that contain the natural substance formulary list created by the alternative health care formulary committee provided for in 37-26-301~~; and~~

~~(9) adopt rules to implement the provisions in 37-1-138~~."

Section 20. Section 37-26-403, MCA, is amended to read:

"37-26-403. Application for licensure ~~— examination — temporary license~~. (1) A person who desires a license to practice naturopathic medicine in Montana shall apply to the department.

(2) The application must be accompanied by the license fees, the application fees, and the documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by 37-26-402. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the necessary qualifications and whether the applicant has committed unprofessional conduct that would be a basis for licensure denial.

(3) At the board's request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the department's investigation.

~~(2) A person who applies for licensure but who has not passed a licensure examination prescribed or endorsed by the board shall apply to the board for authorization to take the prescribed licensure examination. If the board finds that all other qualifications for licensure except that of examination have been met, the board shall authorize the applicant to take the licensure examination.~~"

Section 21. Section 37-47-318, MCA, is amended to read:

"37-47-318. Fees in addition to annual license fee — allocation. (1) In addition to the fees required in 37-47-306 for an outfitter providing hunting services, the following fees apply:

(a) An outfitter shall pay an annual fee of $2 for each client served.

(b) An outfitter who is granted a net client hunter use expansion shall pay a fee of $500 for each new client added to that outfitter's operations plan.

(c) *(i)* An outfitter who operates hunting camps in more than one department of fish, wildlife, and parks administrative region shall pay an annual fee of $5,000 for each camp that is located beyond a 100-mile radius of the outfitter's base of operations and that is in an administrative region other than the region containing the outfitter's base of operations.

(ii) A fee is not required for the following:

~~(i)~~*(A)* an outfitter's base of operations camp;

~~(ii)~~*(B)* camps established before January 1, 1999;

~~(iii)~~*(C)* camps established on public land when use is directly regulated by public land use policies; or

~~(iv)~~*(D)* camps on corporate timberlands where public access is not restricted.

(d) An outfitter who desires a net client hunter use expansion shall pay a nonrefundable fee of $2,000 for each expansion request.

(2) Fees collected pursuant to this section must be expended by the board, pursuant to the authority in 37-47-306, and by the department of fish, wildlife, and parks, pursuant to the authority in 87-1-601, and used to fund administrative costs related to implementation of this chapter. The fees collected must be allocated as follows:

(a) Revenue generated by the $2 fee imposed in subsection (1)(a)*, the $500 fee imposed in subsection (1)(b), and the $2,000 fee imposed in subsection (1)(d)* must be split equally between the board and the department of fish, wildlife, and parks.

~~(b) Revenue generated by the $500 fee imposed in subsection (1)(b) must be allocated between the board and the department of fish, wildlife, and parks in the following order:~~

~~(i) the amount necessary to cover the department's administrative expenses that exceed the revenue generated by subsection (2)(a); and~~

~~(ii) the remaining amount to be deposited in the state special revenue fund to the credit of the board.~~

~~(c)~~*(b)* Revenue generated by the $5,000 fee imposed in subsection (1)(c) must be deposited in the state special revenue fund to the credit of the board.

~~(d) Revenue generated by the $2,000 fee imposed in subsection (1)(d) must be split equally between the board and the department of fish, wildlife, and parks.~~"

Section 22. Section 37-47-341, MCA, is amended to read:

"37-47-341. Grounds for denial, suspension, or revocation of license. A license or right to apply for and hold a license issued under this part may be denied, suspended, or revoked or other disciplinary conditions may be applied upon any of the following grounds:

(1) having ceased to meet all of the qualifications for holding a license, as required under this chapter and rules adopted pursuant to this chapter;

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

(4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law. ~~A person may not apply for or hold an outfitter's, guide's, or professional guide's license during any period of time in which a sentence for a felony has been deferred or suspended.~~

(5) one conviction or bond forfeiture as to a violation of the fish and game or outfitting laws or regulations of any state or the United States;

(6) a substantial breach of a contract with a participant provided that the breach is established as a matter of final judgment in a court of law;

(7) the willful employment of or contracting with an unlicensed guide or professional guide by an outfitter;

(8) negligence or misconduct while acting as an outfitter, guide, or professional guide that causes an accident or injury to the person or property of a participant;

(9) misconduct as defined by board rule; or

(10) any violation of this chapter or a rule adopted pursuant to this chapter."

Section 23. Publication of license information. (1) The department shall prepare and publish an information pamphlet that contains the names and addresses of all licensed outfitters.

(2) The pamphlet described in subsection (1) must be available for free distribution as early as possible each calendar year but not later than the second Friday in March of each year.

(3) The pamphlet must contain the names, license numbers, and addresses of only those outfitters who have a currently valid license.

Section 24. Penalty for failure to comply with trust account requirements. (1) An employee of the department may issue a citation to a broker or property manager responsible for maintenance of a trust account for failure to comply with trust account maintenance requirements as provided by rule under 37-1-319(4).

(2) The citation must include:

(a) the time and date on which the citation is issued;

(b) the name, title, mailing address, and signature of the person issuing the citation;

(c) reference to the statute or rule violated;

(d) the name, title, and mailing address of the person to whom the citation is being sent, along with information explaining the procedure for the person receiving the citation to follow to pay the fine or dispute the violation; and

(e) the amount of the applicable fine.

(3) The applicable civil fine for failure to comply with trust account maintenance requirements is $50 for each cited violation.

(4) The person who issues the citation is authorized to collect the fine and deposit the proceeds in the state special revenue account to the credit of the board.

(5) The person who is issued a citation may pay the fine or file a written dispute of the violation with the board within 5 business days of the date of issuance.

(6) A person who refuses to sign and accept a citation but who does not file a written dispute of the violation is demonstrating unprofessional conduct.

Section 25. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

(3) "Board" means the board of realty regulation provided for in 2-15-1757.

(4) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a prospective buyer or seller of real property; or

(g) advertises or represents to the public that the individual is engaged in any of the activities referred to in subsections (4)(a) through (4)(f).

(5) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an

interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

(6) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

(7) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

(8) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

(9) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(10) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a dual agent.

(11) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(12) "In-house buyer agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

(13) "In-house seller agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.

(14) "Listing agreement" means a written agreement between a seller and broker for the sale of real estate, with the terms and conditions set out in the agreement.

(15) "Negotiations" means:

(a) efforts to act as an intermediary between parties to a real estate transaction;

(b) facilitating and participating in contract discussions;

(c) completing forms for offers, counteroffers, addendums, and other writings; and

(d) presenting offers and counteroffers.

(16) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(17) "Property manager" includes a person who for a salary, commission, or compensation of any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

(18) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(19) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

(20) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(21) "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

(22) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

(23) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

(24) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker.

(25) "Supervising broker" means a licensed broker with whom a licensed salesperson is associated, either directly, indirectly, regularly, or occasionally, to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(26) "Supervising broker endorsement" means an endorsement to a broker license that is required of any licensed broker who supervises licensed salespersons performing real estate activity."

Section 26. Section 37-51-301, MCA, is amended to read:

"37-51-301. License required — limited to persons. (1) It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or ~~hold himself out~~ *represent to the public* as engaging in or conducting the business or acting in the capacity of a real estate broker or a real estate salesperson within this state without a license as a broker or salesperson or otherwise complying with this chapter.

(2) It is unlawful for a person to supervise licensed salespersons or to act in the capacity of a supervising broker unless the person has a valid and active Montana broker license and a supervising broker endorsement.

~~(2)~~*(3)* Corporations, partnerships, and associations may not be licensed under this chapter. A corporation or a partnership may act as a licensee if every corporate officer and every partner performing the functions of a licensee is licensed under this chapter. All officers of a corporation or all members of a partnership acting as a licensee are in violation of this chapter unless there is full compliance with this subsection."

Section 27. Section 37-51-302, MCA, is amended to read:

"37-51-302. Broker or salesperson license — qualifications of applicant — *supervising broker endorsement.* (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesperson in a manner ~~as to safeguard~~ *that safeguards* the interests of the public.

(2) An applicant for a broker's license:

(a) must be at least 18 years of age;

(b) must have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) must have been actively engaged as a licensed real estate salesperson for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesperson because of conditions existing in the area where the applicant resides, the board may waive this experience requirement;

(d) shall file an application for a license with the department; and

(e) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours, in addition to those required to secure a salesperson's license, in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesperson's license:

(i) must be at least 18 years of age;

(ii) must have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;

(iii) shall file an application for a license with the department; and

(iv) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

(b) The application must be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesperson a license and a pocket card in a form and size that the board prescribes.

(6) (a) An applicant for a supervising broker endorsement shall meet the education and experience requirements established by the board by rule except that:

(i) any broker licensed prior to October 1, 2007, is entitled to a supervising broker endorsement provided that the broker indicates on the broker's license renewal form for the 2008 calendar year the broker's intention to obtain the endorsement;

(ii) a broker who obtains a supervising broker endorsement pursuant to subsection (6)(a)(i) is subject to the endorsement renewal requirements adopted by the board by rule in order to supervise one or more licensed salespersons;

(iii) continuing education requirements for a supervising broker endorsement may not be in addition to the continuing education requirements for a licensed broker with respect to the total number of hours or credits required.

(b) The board may not assess a licensing fee for obtaining or renewing a supervising broker endorsement."

Section 28. Section 37-60-101, MCA, is amended to read:

"37-60-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means ~~any~~ *an* individual employed by *an electronic security company,* a contract security company, or a proprietary security organization to respond to security alarm system signals.

(2) "Armed" means an individual who at any time wears, carries, or possesses a firearm in the performance of professional duties.

~~(2)~~*(3)* "Armed carrier service" means any person *or security company* who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

~~(3)~~*(4)* "Armed private investigator" means a private investigator who at any time wears, carries, *or* possesses~~, or has access to~~ a firearm in the performance of the individual's duties.

~~(4)~~*(5)* "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, *or* carrier service guard~~, or alarm response runner~~ and who at any time wears or carries a firearm in the performance of the individual's duties.

~~(5)~~*(6)* "Armored car service" means any person *or security company* who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

~~(6)~~*(7)* "Board" means the board of private security ~~patrol officers and investigators~~ provided for in 2-15-1781.

~~(7)~~*(8)* "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

~~(8)~~*(9)* "Contract security company" means any person who ~~installs or maintains a security alarm system,~~ undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.

~~(9)~~*(10)* "Department" means the department of labor and industry provided for in 2-15-1701.

(11) (a) "Electronic security company" means a person who installs, services, or maintains a security alarm system and who undertakes to hire, employ, and provide alarm response runners and security alarm installers on a contractual basis to another person who does not exercise direction and control over the performance of the services rendered.

(b) The term does not include a person whose primary business is that of a locksmith and who may also install closed circuit television cameras and battery-operated door devices.

(12) (a) "Fire investigator" means a person other than an individual identified in subsection (12)(b) who for any consideration:

(i) makes or agrees to make an investigation with reference to:

(A) a fire to identify evidence and determine cause of the fire; or

(B) accidents involving suspected negligence or arson for criminal or civil action;

(ii) testifies as an expert witness for investigations identified under this subsection (12); or

(iii) cooperates with law enforcement agencies in conducting fire investigations and collecting evidence relating to fires.

(b) The term does not mean an insurance adjuster, an individual designated as the state fire marshal under 2-15-2005, or a member of:

(i) a fire department as described in 7-3-1345;

(ii) law enforcement; or

(iii) an entity organized under Title 7, chapter 33.

(13) "Firearms course" means the course approved by the board and conducted by a firearms instructor.

(14) "Firearms instructor" means an individual who has been approved by the board to instruct firearms courses in the use of weapons.

~~(10)~~*(15)* "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration ~~whatsoever~~ conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes ~~or wrongs committed or threatened~~ against the United States or any state or territory of the United States.

~~(11)~~*(16)* "Licensee" means a person licensed under this chapter.

~~(12)~~*(17)* "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.

~~(13)~~*(18)* "Person" ~~includes any~~ *means an* individual, firm, company, association, organization, partnership, ~~and~~ *or* corporation.

~~(14)~~*(19)* "Private investigator" means a person other than an insurance adjuster who for any consideration ~~whatsoever~~ makes or agrees to make any investigation with reference to:

(a) crimes ~~or wrongs done or threatened~~ against the United States or any state or territory of the United States;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, ~~whereabouts~~ *location*, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for ~~fires,~~ libels, losses, accidents, or injury to persons or property; or

(e) ~~securing~~ *gathering* evidence to be used before any court, board, officer, or investigating committee.

~~(15)~~*(20)* "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property or the direction of the movements of the public in public areas.

~~(16)~~*(21)* "Proprietary security organization" means any person who employs a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

~~(17) "Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable.~~

~~(18)~~*(22)* "Resident manager" means the person appointed to exercise direct supervision, control, charge, management, or operation of each branch office located in this state where the business of the licensee is conducted.

(23) (a) "Security alarm installer" means an individual who installs, services, or maintains security alarm systems to detect and signal unauthorized intrusion, movement, break-in, or criminal acts and is employed by an electronic security company.

(b) The term does not include a person whose primary business is that of a locksmith and who may also install closed circuit television cameras and battery-operated door devices.

~~(19)~~*(24)* (a) "Security alarm system" means an assembly of equipment and devices or a single device~~, such as a solid state unit that plugs directly into a 110-volt AC line, designed~~ *or a portion of a system intended* to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a ~~protected premises and to which signals police, private security guards, or alarm response runners are expected to respond~~ *location*.

(b) The term does not include ~~alarm systems and alarm~~ systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a ~~premises~~ *location*.

(25) "Security company" means an electronic security company, a proprietary security organization, or a contract security company.

~~(20)~~*(26)* "Street patrol service" means ~~any contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares~~ *a person providing patrols by means of foot, vehicle, or other method of transportation using public street, thoroughfares, or property in the performance of the person's duties and responsibilities*.

~~(21)~~*(27)* "Unarmed private investigator" means a private investigator who does not wear, carry, *or* possess~~, or have access to~~ a firearm in the performance of the individual's duties.

~~(22)~~*(28)* "Unarmed private security guard" means an individual who is employed by a contract security company or a proprietary security organization, whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, and who does not wear ~~or~~*,* carry*, or possess* a firearm in the performance of those duties."

Section 29. Section 37-60-103, MCA, is amended to read:

"37-60-103. Purpose. The purpose of this chapter is to increase the levels of integrity, competency, and performance of ~~private~~ security ~~personnel~~ *companies and their employees who are required to be licensed, firearms instructors, fire investigators,* and private investigators ~~in order~~ to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by ~~private~~ security ~~personnel~~ *companies and their licensed employees, firearms instructors, fire investigators,* or private investigators."

Section 30. Section 37-60-202, MCA, is amended to read:

"37-60-202. Rulemaking power. The board shall adopt and enforce rules:

(1) fixing the qualifications of resident managers, ~~qualifying agents,~~ licensees, and holders of identification cards, in addition to those prescribed in this chapter, necessary to promote and protect the public welfare;

(2) establishing, in accordance with 37-1-134, application fees for original ~~or renewal~~ licenses and identification cards, and providing for refunding of any fees;

(3) (a) ~~prohibiting~~ *requiring approval of the board prior to* the establishment of branch offices of any licensee~~, except a proprietary security organization, without approval by the board~~; and

(b) establishing qualification requirements and license fees for branch offices identified in subsection (3)(a);

(4) for the certification of private investigator ~~and~~*,* private security guard*, security alarm installer, and alarm response runner* training programs, including the certification of firearms training programs;

(5) for the licensure of firearms instructors;

(6) for the approval of weapons;

(7) requiring the maintenance of records;

(8) requiring licensees to file an insurance policy with the board; and

(9) providing for the issuance of probationary identification cards for private investigators *and security alarm installers* who do not meet the requirements for age, employment experience, ~~and~~ *or* written examination."

Section 31. Section 37-60-301, MCA, is amended to read:

"37-60-301. License required. (1) Except as provided in 37-60-105 ~~and 37-60-315~~, it is unlawful for any person to act as or perform the duties, as defined in 37-60-101, of a contract security company ~~or~~*, a* proprietary security organization, *an electronic security company, a branch office,* a private investigator*, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor,* or a private security guard without having first obtained a license from the board. ~~Those persons licensed on April 18, 1983, shall retain their current licensure status and shall renew their licenses on the renewal date as prescribed by the department.~~

(2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that the person is licensed as ~~a private investigator,~~ a contract security company, a proprietary security organization, *an electronic security company, a branch office, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor,* or a private security guard.

(3) A person appointed by the court as a confidential intermediary under 42-6-104 is not required to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential intermediary, as defined in 42-1-103, without meeting the requirements of 42-6-104.

(4) A person who knowingly engages an unlicensed ~~private investigator, private security guard, or~~ contract security company*, proprietary security organization, electronic security company, branch office, private investigator, fire investigator, security alarm installer, alarm response runner, resident manager, certified firearms instructor, or private security guard* is guilty of a misdemeanor punishable under 37-60-411."

Section 32. Section 37-60-302, MCA, is amended to read:

"37-60-302. ~~Qualifying agent and resident~~ *Resident* manager required ~~— substitution~~. (1) Any ~~out-of-state~~ contract security company*, electronic security company,* or proprietary security organization that applies for a license under this chapter shall~~, before application to the board,~~ appoint for the duration of the license ~~a qualifying agent and~~ a resident manager. ~~Every~~

~~qualifying agent and~~ *Each* resident manager shall satisfy the appropriate licensing requirements of this chapter.

(2) A *separate* resident manager must be appointed for each branch office located in this state, and the business of the applicant or licensee must be conducted under the resident manager's direct supervision and control.

(3) If a ~~qualifying agent or~~ resident manager for any reason ceases to perform the duties of a ~~qualifying agent or~~ resident manager on a regular basis, the licensee shall promptly notify the board of that fact ~~and of the name of a substitute individual, who shall apply to the board for continuation of the license. Pending application by and board action upon the application of the substitute, the board may suspend the license or extend it for a reasonable time~~."

Section 33. Section 37-60-303, MCA, is amended to read:

"37-60-303. License qualifications. (1) Except as provided in subsection (7)*(a)*, an applicant for licensure under this chapter is subject to the provisions of this section and shall submit evidence under oath that the applicant:

(a) is at least 18 years of age;

(b) is a citizen of the United States *or a legal, permanent resident of the United States*;

(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

(d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

(f) is of good moral character; and

(g) has complied with other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard*, security alarm installer, or alarm response runner* shall:

(a) complete the ~~training~~ requirements of a ~~private security guard~~ training program certified by the board and provide, on a form prescribed by the board, written notice of satisfactory completion of the training; and

(b) fulfill other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that the applicant:

(a) is at least 21 years of age;

(b) has at least a high school education or the equivalent;

(c) has not been dishonorably discharged from any branch of the United States military service; and

(d) has fulfilled any other requirements as the board may by rule prescribe.

(4) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.

(5) An applicant who will wear, ~~or~~ carry, *or possess* a firearm in performance of the applicant's duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as the board may by rule prescribe.

(6) Except for an applicant subject to the provisions of subsection (7)*(a)*, the board shall require a background investigation of each applicant for licensure under this chapter that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.

(7) (a) A firm, company, association, partnership, limited liability company, corporation, or other entity that intends to engage in business governed by the provisions of this chapter must be incorporated under the laws of this state or qualified to do business within this state and must be licensed by the board.

(b) Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (7)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant to the requirements of this part."

Section 34. Section 37-60-304, MCA, is amended to read:

"37-60-304. Licenses — application form and content. (1) ~~Except as provided in 37-60-303(7), an~~ *An* application for a license must be submitted to the department and accompanied by the application fee set by the board.

(2) An application must be made under oath and must include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, *an electronic security company, a branch office, a certified firearms instructor,* a private investigator, *a fire investigator, a security alarm installer, an alarm response runner, a resident manager,* or a private security guard;

(e) *except for an applicant pursuant to 37-60-303(7)(a),* one recent photograph of the applicant, of a type prescribed by the department, and one classifiable set of the applicant's fingerprints;

(f) a statement of the applicant's age and experience qualifications*, except for an applicant pursuant to 37-60-303(7)(a)*; and

(g) other information, evidence, statements, or documents as may be prescribed by the rules of the board.

(3) The board shall verify the statements in the application ~~and the applicant's moral character~~.

(4) The submittal of fingerprints is a prerequisite to the issuance of a license*, except under 37-60-303(7)(a),* by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation."

Section 35. Section 37-60-309, MCA, is amended to read:

"37-60-309. Form of license and identification cards. The license~~,~~ *and* identification card~~, and temporary identification card for temporary security guards~~ must be in a form determined by the board."

Section 36. Section 37-60-310, MCA, is amended to read:

"37-60-310. Display of license and identification card. (1) A license must at all times be posted in a conspicuous place in the principal place of business of the licensee.

(2) A holder of an identification card ~~or a temporary identification card~~ shall carry the card while performing the cardholder's duties. A peace officer of this state or any of its political subdivisions may request to see the card at any reasonable time, and the card must be shown."

Section 37. Section 37-60-314, MCA, is amended to read:

"37-60-314. Nontransferability of license — record changes. (1) ~~No~~ *A* license issued under this chapter is *not* transferable.

(2) A licensee shall notify the board within 5 days of any change in its officers or directors*, name, address, employment,* or other material change in the information previously furnished or required to be furnished to the board or any other material change or occurrence that could reasonably be expected to affect the licensee's right to a license. Upon ~~such~~ *the* change or occurrence, the board may suspend or revoke the license or may allow the business to be carried on for a temporary period under terms and conditions as the board may require.

(3) This section may not be applied to restrict the sale of a business if the buyer qualifies for a license under the provisions of this chapter."

Section 38. Section 37-60-402, MCA, is amended to read:

"37-60-402. Confidentiality of information — false reports — badges and uniforms — illegal entry. (1) A licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or county attorney or ~~his~~ representative *of the county attorney* any information ~~he~~ *that the licensee or officer, director, partner, or manager of a licensee* may acquire as to any criminal offense~~,~~ but ~~he~~ may not divulge to any other person, except as required by law, any information acquired ~~by him~~ except at the direction of the employer or client for whom the information was obtained.

(2) ~~No~~ *A* licensee or officer, director, partner, manager, or employee of a licensee may *not* knowingly make any false report to ~~his~~ *an* employer or client for whom information was being obtained.

(3) ~~No~~ *A* written report may *not* be submitted to a client except by the licensee~~, qualifying manager,~~ or a person authorized by ~~either of them~~ *the licensee,* and the person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in the report are true and correct.

(4) ~~No~~ *A* licensee or officer, director, partner, manager, or employee of a licensee may *not* use a title, wear a uniform, use an identification card, or make any statement with the intent to give an impression that ~~he~~ *the licensee or officer, director, partner, manager, or employee of a licensee* is connected in any way with the federal government, a state government, *a law enforcement agency,* or any political subdivision of a state government *unless the licensee has a contract with the agency*.

(5) ~~No~~ *A* licensee or officer, director, partner, manager, or employee of a licensee may *not* enter any private building or portion ~~thereof~~ *of a private building* without the consent of the owner or of the person in legal possession ~~thereof~~ *of the private building*."

Section 39. Section 37-60-403, MCA, is amended to read:

"37-60-403. Licensee advertising. Every advertisement by a licensee soliciting or advertising business ~~shall~~ *must* contain ~~his~~ *the licensee's* name ~~and~~, address*, and license number* as they appear in the records of the board."

Section 40. Section 37-60-409, MCA, is amended to read:

"37-60-409. Installation of new security alarm systems by electrician. An electrician who has received a license from the department pursuant to 37-68-301 may install new security alarm systems under the direction of a ~~journeyman~~ *licensed* security alarm installer~~, but such work~~. *Work* performed by an electrician *under this section* is subject to inspection and approval by a security alarm installer licensed under 37-60-303."

Section 41. Section 37-73-208, MCA, is amended to read:

"37-73-208. Elevator inspector's license — *temporary license.* (1) A person intending to engage in work as an elevator inspector shall apply for a license as an elevator inspector on forms provided by the department.

(2) The department may not grant an applicant an elevator inspector's license unless the applicant demonstrates that the applicant meets the current national standards for the qualifications of elevator inspectors. The department shall designate by rule the national standards that must be met by an applicant.

(3) A newly hired elevator inspector who is not properly certified may conduct inspections for up to 6 months under a temporary license if the elevator inspector is supervised during the 6-month period of temporary licensure by appropriately certified personnel."

Section 42. Section 50-32-314, MCA, is amended to read:

"50-32-314. Board to adopt rules for registration of ~~ambulatory~~ *outpatient center for* surgical ~~facilities~~ *services.* (1) The board shall~~, by October 1, 1999,~~ adopt rules to provide for the registration of ~~ambulatory~~ *any outpatient center for* surgical ~~facilities~~ *services* pursuant to this part. The rules must categorize ~~ambulatory~~ *the outpatient center for* surgical ~~facilities~~ *services* as a "distributor" pursuant to 50-32-101(12) or other category of registrant as determined by the board.

(2) If the board determines that ~~ambulatory~~ *an outpatient center for* surgical ~~facilities require~~ *services requires* the services of a pharmacist in order to be registered, the board shall allow ~~those facilities~~ *that center* to use the services of a consulting pharmacist to satisfy the obligation imposed by the board.

(3) This section does not affect any existing *registration* requirement ~~that~~ *pursuant to this part for* persons providing dangerous drugs to an ~~ambulatory~~ *outpatient center for* surgical ~~facility~~ *services* or persons administering dangerous drugs within or as the result of procedures performed at an ~~ambulatory~~ *outpatient center for* surgical ~~facility be registered pursuant to this part~~ *services*."

Section 43. Section 71-3-1111, MCA, is amended to read:

"71-3-1111. Short title. This part may be cited as the "Physician, Nurse, Physical Therapist, Occupational Therapist, *Acupuncturist,* Chiropractor, Dentist, Psychologist, Licensed Social Worker, Licensed Professional Counselor, Hospital, and ~~Ambulatory~~ *Outpatient Center for* Surgical ~~Facility~~ *Services* Lien Act"."

Section 44. Section 71-3-1112, MCA, is amended to read:

"71-3-1112. Purpose. The purpose of this part is to establish lien rights for physicians, nurses, physical therapists, occupational therapists, *acupuncturists,* chiropractors, dentists, hospitals, and ~~ambulatory~~ *outpatient centers for* surgical ~~facilities~~ *services* for the value of services rendered and products provided for the diagnosis and treatment of medical conditions and to establish lien rights for psychologists, licensed social workers, and licensed professional counselors for services rendered and products provided when a person receiving treatment:

(1) is injured through the fault or neglect of another; or

(2) is either insured or a beneficiary under insurance."

Section 45. Section 71-3-1113, MCA, is amended to read:

"71-3-1113. Definitions. As used in this part, the following definitions apply:

~~(1) "Ambulatory surgical facility" means a facility registered as provided in 50-32-314.~~

~~(2)~~*(1)* "Beneficiary" means a person entitled to insurance benefits.

~~(3)~~*(2)* "Dentist" means a person practicing dentistry as provided in 37-4-101.

~~(4)~~*(3)* "Insurance" means a contract ~~whereby~~ *through which* a person, the insurer, undertakes to indemnify another, the insured, or pay or provide a determinable amount or benefit upon determinable contingencies.

~~(5)~~*(4)* "Insurer" includes a health service corporation.

(5) "Outpatient center for surgical services" means a facility registered as provided in 50-32-314.

(6) "Person" means an individual, a corporation, an organization, or other legal entity."

Section 46. Section 71-3-1114, MCA, is amended to read:

"71-3-1114. Liens of physicians, nurses, physical therapists, occupational therapists, *acupuncturists,* chiropractors, dentists, hospitals, and ~~ambulatory~~ *outpatient center for* surgical ~~facilities~~ *services* and liens of psychologists, licensed social workers, and licensed professional counselors. (1) (a) Upon the required notice of a lien being given, there is a lien as provided in subsection (1)(b) whenever:

(i) a physician, nurse, physical therapist, occupational therapist, *acupuncturist,* chiropractor, dentist, hospital, or ~~ambulatory~~ *outpatient center for* surgical ~~facility~~ *services* renders services or provides products for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor renders services or provides products; and

(iii) the services rendered or products provided under subsection (1)(a)(i) or (1)(a)(ii) are rendered or provided to a person injured through the fault or neglect of another.

(b) The physician, nurse, physical therapist, occupational therapist, *acupuncturist,* chiropractor, dentist, hospital, ~~ambulatory~~ *outpatient center for* surgical ~~facility~~ *services*, psychologist, licensed social worker, or licensed professional counselor has a lien for the value of services rendered or products provided on:

(i) any claim or cause of action that the injured person or the injured person's estate or successors may have for injury, disease, or death;

(ii) any judgment that the injured person or the estate or successors may obtain for injury, disease, or death; and

(iii) all money paid in satisfaction of the judgment or in settlement of the claim or cause of action.

(2) (a) If a person is an insured or a beneficiary under insurance that provides coverage in the event of injury or disease, there is a lien as provided in subsection (2)(b) upon required notice of a lien being given by:

(i) a physician, nurse, physical therapist, occupational therapist, *acupuncturist,* chiropractor, dentist, hospital, or ~~ambulatory~~ *outpatient center for* surgical ~~facility~~ *services* for the value of services rendered or products provided for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor for services rendered or products provided.

(b) The lien is on all proceeds or payments, except payments for property damage, payable by the insurer.

(3) A physician, nurse, physical therapist, occupational therapist, *acupuncturist,* chiropractor, dentist, hospital, ~~ambulatory~~ *outpatient center for* surgical ~~facility~~ *services*, psychologist, licensed social worker, or licensed professional counselor claiming a lien under this part is not liable for attorney fees and costs incurred by the injured person, the injured person's estate or successors, or a beneficiary in connection with obtaining payments or benefits subject to a lien under this part. The lien of an attorney provided for in 37-61-420 has priority over a lien created by this part."

Section 47. Section 71-3-1115, MCA, is amended to read:

"71-3-1115. Notice of lien. (1) A physician, nurse, physical therapist, occupational therapist, *acupuncturist,* chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ *outpatient center for* surgical ~~facility~~ *services* claiming a lien shall serve written notice upon the person and upon the insurer, if any, against whom liability for injury, disease, counseling service, or death is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed.

(2) A physician, nurse, physical therapist, occupational therapist, *acupuncturist,* chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ *outpatient center for* surgical ~~facility~~ *services* claiming a lien upon proceeds or payments payable by an insurer shall serve written notice upon the insurer against whom the lien is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed."

Section 48. Section 71-3-1117, MCA, is amended to read:

"71-3-1117. Liability for failure to recognize lien. If any insurer or person, after receiving notice of *a* lien, makes payment on account of injury, disease, counseling service, or death and the amount of the lien claimed by any physician, nurse, physical therapist, occupational therapist, *acupuncturist,* chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ *outpatient center for* surgical ~~facility~~ *services* has not been paid, the insurer or person is liable to the physician, nurse,

physical therapist, occupational therapist, *acupuncturist,* chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ *outpatient center for* surgical ~~facility~~ *services* for the reasonable value of the services."

Section 49. Section 71-3-1118, MCA, is amended to read:

"71-3-1118. Applicability. (1) Except as provided in subsection (2), this part does not apply to compensation awarded to workers for injury, disease, or death pursuant to the Workers' Compensation Act.

(2) This part applies to all payments awarded for medical, therapy, *acupuncture,* chiropractic, dentistry, counseling, and hospital services pursuant to the acts referred to in subsection (1).

(3) This part does not apply to any benefits payable under:

(a) a policy of life insurance or group life insurance;

(b) a contract of disability insurance, except benefits payable in reimbursement for services rendered by a physician, nurse, physical therapist, occupational therapist, *acupuncturist,* chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ~~ambulatory~~ *outpatient center for* surgical ~~facility~~ *services*; or

(c) an annuity contract or to pension benefits payable under a qualified pension plan."

Section 50. Repealer. Sections 37-60-315 and 37-60-406, MCA, are repealed.

Section 51. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 37, chapter 65, and the provisions of Title 37, chapter 65, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 37, chapter 69, and the provisions of Title 37, chapter 69, apply to [section 2].

(3) [Section 23] is intended to be codified as an integral part of Title 37, chapter 47, and the provisions of Title 37, chapter 47, apply to [section 23].

(4) [Section 24] is intended to be codified as an integral part of Title 37, chapter 51, part 3, and the provisions of Title 37, chapter 51, part 3, apply to [section 24].

Section 52. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved May 16, 2007

CHAPTER NO. 503

[SB 168]

AN ACT REVISING THE MANDATORY CASH PAYMENT FOR VACATION LEAVE UPON TERMINATION; CLARIFYING THE USE OF VACATION LEAVE PAYMENTS UPON TERMINATION AS PERMISSIBLE CONTRIBUTIONS FOR A VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION; AMENDING SECTIONS 2-18-601, 2-18-617, AND 2-18-1311, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-601, MCA, is amended to read:

"2-18-601. Definitions. For the purpose of this part, except 2-18-620, the following definitions apply:

(1) (a) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision of the state.

(b) The term does not mean the state compensation insurance fund.

(2) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

(3) "Common association" means an association of employees established pursuant to 2-18-1310 for the purposes of employer and employee participation in the plan.

~~(3)~~*(4)* "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(5) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with the department of administration to participate in the plan.

~~(4)~~*(6)* "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, persons contracted as independent contractors or hired under personal services contracts, and student interns.

~~(5)~~*(7)* "Full-time employee" means an employee who normally works 40 hours a week.

~~(6)~~*(8)* "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

(9) "Member" means an employee who belongs to a voluntary employees' beneficiary association established under 2-18-1310.

~~(7)~~*(10)* "Part-time employee" means an employee who normally works less than 40 hours a week.

~~(8)~~*(11)* "Permanent employee" means a permanent employee as defined in 2-18-101.

(12) "Plan" means the employee welfare benefit plan established under Internal Revenue Code section 501(c)(9) pursuant to 2-18-1304.

~~(9)~~*(13)* "Seasonal employee" means a seasonal employee as defined in 2-18-101.

~~(10)~~*(14)* "Short-term worker" means:

(a) for the executive and judicial branches, a short-term worker as defined in 2-18-101; or

(b) for the legislative branch, an individual who:

(i) is hired by a legislative agency for an hourly wage established by the agency;

(ii) may not work for the agency for more than 6 months in a continuous 12-month period;

(iii) is not eligible for permanent status;

(iv) may not be hired into another position by the agency without a competitive selection process; and

(v) is not eligible to earn the leave and holiday benefits provided in this part or the group insurance benefits provided in part 7.

~~(11)~~*(15)* "Sick leave" means a leave of absence with pay for:

(a) a sickness suffered by an employee or a member of the employee's immediate family; or

(b) the time that an employee is unable to perform job duties because of:

(i) a physical or mental illness, injury, or disability;

(ii) maternity or pregnancy-related disability or treatment, including prenatal care, birth, or medical care for the employee or the employee's child;

(iii) parental leave for a permanent employee as provided in 2-18-606;

(iv) quarantine resulting from exposure to a contagious disease;

(v) examination or treatment by a licensed health care provider;

(vi) short-term attendance, in an agency's discretion, to care for a relative or household member not covered by subsection ~~(11)(a)~~ *(15)(a)* until other care can reasonably be obtained;

(vii) necessary care for a spouse, child, or parent with a serious health condition, as defined in the Family and Medical Leave Act of 1993; or

(viii) death or funeral attendance of an immediate family member or, at an agency's discretion, another person.

~~(12)~~*(16)* "Student intern" means a student intern as defined in 2-18-101.

~~(13)~~*(17)* "Temporary employee" means a temporary employee as defined in 2-18-101.

~~(14)~~*(18)* "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

~~(15)~~*(19)* "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."

Section 2. Section 2-18-617, MCA, is amended to read:

"2-18-617. Accumulation of leave — cash for unused — transfer. (1) (a) Except as provided in subsection (1)(b), annual vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued.

(b) It is the responsibility of the head of an employing agency to provide reasonable opportunity for an employee to use rather than forfeit accumulated vacation leave. If an employee makes a reasonable written request to use excess vacation leave before the excess vacation leave must be forfeited under subsection (1)(a) and the employing agency denies the request, the excess vacation leave is not forfeited and the employing agency shall ensure that the employee may use the excess vacation leave before the end of the calendar year in which the leave would have been forfeited under subsection (1)(a).

(2) An employee who terminates employment for a reason not reflecting discredit on the employee *and who has worked the qualifying period set forth in 2-18-611* is entitled upon the date of termination to *either:*

(a) cash compensation for unused vacation leave~~, assuming that the employee has worked the qualifying period set forth in 2-18-611~~ *if the employee is not subject to subsection (2)(b); or*

(b) conversion of the employee's unused vacation leave balance to an employer contribution to an employee welfare benefit plan health care expense trust account established pursuant to 2-18-1304 if:

(i) the employee is a member who belongs to a voluntary employees' beneficiary association established under 2-18-1310; and

(ii) the contracting employer has entered into an agreement with members of the common association for an employer contribution based on unused vacation leave provided for in 2-18-611.

(3) However, if an employee transfers between agencies of the same jurisdiction, cash compensation may not be paid for unused vacation leave. In a transfer, the receiving agency assumes the liability for the accrued vacation credits transferred with the employee.

(4) This section does not prohibit a school district from providing cash compensation for unused vacation leave in lieu of the accumulation of the leave, either through a collective bargaining agreement or, in the absence of a collective bargaining agreement, through a policy."

Section 3. Section 2-18-1311, MCA, is amended to read:

"2-18-1311. Contributions of unused sick leave — other contributions not prohibited. (1) In a manner prescribed by the department, a contracting employer shall provide for a plan member to annually designate how many hours, if any, of the member's sick leave will be automatically converted to an employer contribution to the member's account each pay period as provided for in this section.

(2) (a) Except as provided in subsection (2)(b), a member may annually convert only the sick leave hours in excess of 240 hours and no more than the maximum prescribed by the contracting employer.

(b) When the member's employment is terminated, the member's ~~entire~~ unused sick leave balance ~~must~~ *may* be ~~automatically~~ converted*, in whole or in part,* to an employer contribution to the member's account pursuant to this section. ~~and may not be paid as a lump sum~~ *For those amounts of sick leave not converted to employer contributions, the balance is allocated as required* under 2-18-618(6).

(3) The amount of the employer contribution to a member's account for hours converted under this section must be equal to one-fourth of the pay attributed to the accumulated sick leave. The attributable pay must be computed on the basis of the employee's salary or wage at the time that the sick leave is converted. A member may not later receive as sick leave credit or as a lump-sum payment amounts contributed to the member's account pursuant to this section.

(4) This section does not prohibit an employer from entering into an agreement with a member for employer contributions to a member account in addition to the contributions provided for under this section."

Section 4. Effective date. [This act] is effective July 1, 2007.

Approved May 16, 2007

CHAPTER NO. 504

[SB 206]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CONDUCT A STUDY TO DETERMINE THE FEASIBILITY, IMPACT, AND COST OF PROVIDING EMPLOYER-SPONSORED HEALTH INSURANCE TO PERSONAL-CARE ATTENDANTS AND DIRECT-CARE EMPLOYEES OF ORGANIZATIONS THAT RECEIVE THE MAJORITY OF THEIR REVENUE AS A RESULT OF PROVIDING MEDICAID-FUNDED LONG-TERM CARE SERVICES BY INCREASING CERTAIN MEDICAID PAYMENTS TO THEIR EMPLOYERS AND REQUIRING THE INCREASED PAYMENTS BE USED TO FUND THE HEALTH INSURANCE; AUTHORIZING THE DEPARTMENT TO ESTABLISH A PILOT PROGRAM; REQUIRING A REPORT TO THE LEGISLATURE; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Department to conduct study of increasing reimbursement to medicaid direct-care service providers in order to provide employee health insurance — policy — pilot program — report to legislature — rulemaking. (1) The department of public health and human services, in conjunction with the commissioner of insurance, health insurers, persons providing medicaid personal assistance and other direct-care services and their employers, and other interested parties, shall conduct and coordinate a study that, at a minimum:

(a) (i) examines the feasibility of increasing medicaid payments to employers of personal-care attendants and other organizations that employ direct-care employees and that receive the majority of their revenue as a result of providing medicaid-funded long-term care services, with the increase in payments earmarked to pay the cost of providing employer-sponsored health insurance to those employees;

(ii) identifies organizations that employ personal-care attendants and direct-care employees and that receive the majority of their revenue for providing medicaid-funded long-term care services, including organizations such as personal-assistance providers, private-duty nursing providers, licensed nursing facilities, developmental disability community services providers, and providers of certain child and adult mental health services;

(iii) determines the number of employees that would be eligible for coverage;

(iv) calculates the cost to the state of the increased payments after recognizing that nearly 70% of the increase will be covered by the federal government's portion of the payments; and

(v) calculates, to the extent possible, the cost incurred by other government programs, such as temporary assistance to needy families and medicaid, due to the lack of health insurance on the part of personal-care attendants and other direct-care employees and calculates the projected impact, if any, that providing

these employees with adequate health insurance would have on future utilization of and costs incurred by other government programs;

(b) determines, in conjunction with the commissioner of insurance, the health insurance coverage that employers would be required to provide to personal-care attendants and direct-care employees in order to be eligible to receive the earmarked increase in medicaid payments;

(c) determines the cost, if any, to individual employees for the proposed health insurance;

(d) calculates the increased need for and projected availability of personal-care attendants and direct-care employees in Montana over the next 20 to 30 years as a result of the aging population and examines whether the provision of health insurance for those workers has the potential to increase the number and quality of workers available in the future;

(e) explores the possibility of combining any health insurance program developed for personal-care attendants and direct-care employees with other state programs designed to provide Montanans with increased access to affordable health insurance, such as the small business health insurance pool; and

(f) calculates, to the extent possible, the health care costs that are shifted to the insurance premiums and other health care expenses paid by privately insured Montanans and their employers or that are incurred by hospitals as uncompensated care due to the lack of health insurance for personal-care attendants and direct-care employees.

(2) (a) The department of public health and human services may, to the extent that funds are available, establish a pilot program to provide employer-sponsored health insurance to a portion of the personal-care attendants and direct-care employees who are determined by the department to be eligible for the pilot program by increasing medicaid payments to their employers with the requirement that the increased payments be used to provide those employees with health insurance that meets the requirements established by the department.

(b) The purpose of the pilot program is to test the feasibility, impact, and cost of providing health insurance payments to the employers of personal-care attendants and direct-care employees. The pilot program may require partial payment of health insurance costs by an employee if necessary.

(c) In establishing and conducting the pilot program, the department of public health and human services shall consult with the commissioner of insurance, persons providing medicaid personal assistance and direct-care services and their employers, and other interested parties.

(3) If a pilot program is established, the department of public health and human services shall monitor the pilot program, shall report its study findings and pilot program results, if any, to the legislature, and shall report on the feasibility, impact, and cost of providing health insurance to personal-care attendants and direct-care employees who provide medicaid-funded long-term care services, as designated in subsection (1)(a). The report must be made to the legislature as provided in 5-11-210.

(4) The department of public health and human services may adopt rules to implement this section.

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Termination. [This act] terminates January 1, 2009.

Approved May 16, 2007

CHAPTER NO. 505

[SB 233]

AN ACT PROVIDING FOR THE CREATION OF COUNTY MUSEUM DISTRICTS AND ALLOWING FOR A MUSEUM DISTRICT TO BE LOCATED IN MORE THAN ONE COUNTY; PROVIDING FOR PROTEST OF CREATION OF THE DISTRICT; ALLOWING FOR A LEVY OF TAXES ON PROPERTY LOCATED WITHIN A DISTRICT; REQUIRING CERTAIN PROCEDURES IF THE DISTRICT INCLUDES TERRITORY FROM MORE THAN ONE COUNTY; AND AMENDING SECTIONS 7-6-2527 AND 7-16-2205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Authorization to create district. (1) A board of county commissioners may create a museum district, composed of a building, collection of buildings, or an area of which a principal purpose is the exhibition, display, or performance of matters of historical, artistic, cultural, or scientific interest.

(2) (a) A district may include territory from more than one county if:

(i) the majority of the members of the board of county commissioners of each county in which the proposed district is located approve the resolution of intention to create the district and the resolution to create the district; and

(ii) the required notice is provided, protest is allowed, and hearings are properly held in all of the counties in which the district will be located.

(b) If there is sufficient protest to bar further proceedings in one county, as provided in [section 5], then territory from that county may not be included in the district.

Section 2. Resolution of intention to create district. (1) Before creating a museum district, the board of county commissioners shall pass a resolution of intention to create the district.

(2) The resolution must designate:

(a) the name of the proposed district;

(b) the reasons for creating the district;

(c) a description of the area to be included in the proposed district, including a map of the proposed boundaries;

(d) the type of museum facility or facilities to be included in the proposed district; and

(e) the estimated cost of the proposed district.

Section 3. Notice of resolution of intention to create district — hearing. (1) The board of county commissioners shall give notice of the passage of its intention to create the museum district.

(2) The notice must be published as provided in 7-1-2121, and a copy of the notice must be mailed, as provided in 7-1-2122, to every person, firm, or corporation or the agent of the person, firm, or corporation owning property

within the proposed district, at the last-known place of residence, on the same day on which the notice is first published or posted.

(3) The notice must describe the reasons for the district, state the estimated cost, and indicate the time when and place where the board will hear all protests that may be made against creating the district. The notice must refer to the resolution on file in the office of the county clerk and recorder for the description of the boundaries.

Section 4. Right to protest. (1) At any time within 30 days after the date of the first publication of the passage of the resolution of intention to create a museum district, an owner of property liable to be taxed under 7-16-2205 may make written protest against the proposed district.

(2) The protest must be delivered to the county clerk and recorder, who shall endorse on the protest the date of receipt.

Section 5. Consideration of protest — sufficient protest to bar proceedings. (1) At the next regular meeting of the board of county commissioners after final publication of the notice required in [section 3], the board shall hold a hearing to consider the written protests and hear the objections of the protestors.

(2) If the board of county commissioners finds that the owners of 50% or more of the property liable to be taxed under 7-16-2205 have protested creation of a museum district, the board may not hold any further proceedings on creation of the district for a period of at least 6 months from the date of the hearing.

Section 6. Resolution creating district. The board of county commissioners may pass a resolution to create the museum district in accordance with the resolution of intention passed under [section 2] if:

(1) no protests are received by the county clerk and recorder within the time period provided in [section 4]; or

(2) the board finds that the area represented by the protests is insufficient to bar proceedings.

Section 7. Administration of district funds. (1) Once a museum district is created, the board of county commissioners may either administer the district funds or appoint a board of trustees, subject to the provisions of 7-1-201 through 7-1-203, to administer the district funds.

(2) If a district contains territory from more than one county and if:

(a) the boards of county commissioners administer the district funds, all decisions regarding funds must be made upon an affirmative vote of the majority of the members of each board;

(b) a board of trustees is appointed, the board of county commissioners of each county in which the district is located shall appoint members of the board of trustees. The number of members appointed by each board of county commissioners must be proportional to the county's share of taxable value in the entire district.

Section 8. Authorization to acquire facilities — authorization for mill levy. The board of county commissioners may execute the provisions of 7-16-2202 and 7-16-2205 for a museum district created as provided in [sections 1 through 9]. If a district contains territory in more than one county, the affirmative vote of the majority of the members of each board of county

commissioners is required to take any action authorized by 7-16-2202 and 7-16-2205.

Section 9. Alteration of boundaries or dissolution of district. The board of county commissioners may alter the boundaries or dissolve a museum district using the same procedures required for creation of a district. Any existing indebtedness of a district that is dissolved remains the responsibility of the owners of property within the district, and any assets remaining after all indebtedness has been satisfied must be returned to the owners of property within the district.

Section 10. Section 7-6-2527, MCA, is amended to read:

"7-6-2527. Taxation — public and governmental purposes. A county may impose a property tax levy for any public or governmental purpose not specifically prohibited by law. Public and governmental purposes include but are not limited to:

(1) district court purposes as provided in 7-6-2511;

(2) county-owned or county-operated health care facility purposes as provided in 7-6-2512;

(3) county law enforcement services and maintenance of county detention center purposes as provided in 7-6-2513 and search and rescue units as provided in 7-32-235;

(4) multijurisdictional service purposes as provided in 7-11-1106;

(5) transportation services for senior citizens and persons with disabilities as provided in 7-14-111;

(6) support for a port authority as provided in 7-14-1132;

(7) county road, bridge, and ferry purposes as provided in 7-14-2101, 7-14-2501, 7-14-2502, 7-14-2503, 7-14-2801, and 7-14-2807;

(8) recreational, educational, and other activities of the elderly as provided in 7-16-101;

(9) purposes of county fair activities, parks, cultural facilities, and any county-owned civic center, youth center, recreation center, or recreational complex as provided in 7-16-2102, 7-16-2109, and 7-21-3410;

(10) programs for the operation of licensed day-care centers and homes as provided in 7-16-2108 and 7-16-4114;

(11) support for a museum, facility for the arts and the humanities, ~~or~~ collection of exhibits*, or a museum district* as provided in 7-16-2205;

(12) extension work in agriculture and home economics as provided in 7-21-3203;

(13) weed control and management purposes as provided in 7-22-2142;

(14) insect control programs as provided in 7-22-2306;

(15) fire control as provided in 7-33-2209;

(16) ambulance service as provided in 7-34-102;

(17) public health purposes as provided in 50-2-111 and 50-2-114;

(18) public assistance purposes as provided in 53-3-115;

(19) indigent assistance purposes as provided in 53-3-116;

(20) developmental disabilities facilities as provided in 53-20-208;

(21) mental health services as provided in 53-21-1010;

(22) airport purposes as provided in 67-10-402 and 67-11-302;

(23) purebred livestock shows and sales as provided in 81-8-504;

(24) economic development purposes as provided in 90-5-112; and

(25) prevention programs, including programs that reduce substance abuse."

Section 11. Section 7-16-2205, MCA, is amended to read:

"7-16-2205. Authorization for mill levy. (1) The board of county commissioners of any county owning, acquiring, contributing, or making a grant to any museum, facility for the arts and the humanities, or collection of exhibits as set forth in 7-16-2202*, whether countywide or as part of a museum district created under [sections 1 through 9]*:

(a) (i) may make an appropriation in its annual budget for the upkeep, care, maintenance, operation, and support of the museum, facility, or collection;

(ii) may make an appropriation in its annual budget for a grant program for private, nonprofit museums and private, nonprofit facilities for the arts and the humanities; and

(b) in order to fund the appropriation or grant program, may, subject to 15-10-420, annually levy a tax on the taxable valuation of the property subject to taxation in the county *or the district*.

(2) The levy must be made at the same time as other levies are made for county and school purposes.

(3) The proceeds from the collection of the levy must be kept in a special fund by the county treasurer and used, at the discretion of the board of county commissioners, solely for the purpose for which the levy was made.

(4) A board of trustees of a museum district appointed as provided in [section 7] may request the board of county commissioners to submit to the voters of the district at the next general or special election a levy on taxable property in the district for operation of the district or for maintenance or construction within the district."

Section 12. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 7, chapter 16, part 22, and the provisions of Title 7, chapter 16, part 22, apply to [sections 1 through 9].

Section 13. Coordination instruction. If Senate Bill No. 299 and [this act] are both passed and approved and they contain a section amending 7-16-2205, then the sections amending 7-16-2205 are void and 7-16-2205 must be amended as follows:

"7-16-2205. Authorization for mill levy. (1) The board of county commissioners of any county ~~owning, acquiring, contributing, or making a grant to any museum, facility for the arts and the humanities, or collection of exhibits as set forth in 7-16-2202~~:

(a) ~~(i)~~ may make an appropriation in its annual budget for*:*

(i) the upkeep, care, maintenance, operation, and support of ~~the~~ *a* museum, *including a museum district created under [sections 1 through 9 of Senate Bill No. 233]*, *a* facility *for the arts and the humanities*, or *a* collection *of exhibits as set forth in 7-16-2202*;

(ii) the support of a heritage preservation and cultural tourism commission and for heritage and cultural tourism resources;

~~(ii)~~*(iii)* ~~may make an appropriation in its annual budget for~~ a grant program for private, nonprofit museums, ~~and~~ *for* private, nonprofit facilities for the arts and the humanities*, or for a heritage preservation and cultural tourism commission*; and

(b) ~~in order to fund the appropriation or grant program,~~ may, subject to 15-10-420, annually levy a tax on the taxable valuation of the property subject to taxation in the county *for the purposes described in subsection (1)(a) of this section. However, a levy for a museum district applies only to the property subject to taxation in the district*.

(2) The levy must be made at the same time as other levies are made for county and school purposes.

(3) The proceeds from the collection of the levy must be kept in a special fund by the county treasurer and used, at the discretion of the board of county commissioners, solely for the purpose for which the levy was made.

(4) A board of trustees of a museum district appointed as provided in [section 7 of Senate Bill No. 233] may request the board of county commissioners to submit to the voters of the district at the next general or special election a levy on taxable property in the district for operation of the district or for maintenance or construction within the district."

Approved May 16, 2007

CHAPTER NO. 506

[SB 273]

AN ACT GENERALLY REVISING ADMINISTRATION OF STANDARDS AND TRAINING CRITERIA FOR PUBLIC SAFETY PROFESSIONALS; ESTABLISHING A MONTANA PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL AS A QUASI-JUDICIAL BOARD IN PLACE OF THE PEACE OFFICERS' STANDARDS AND TRAINING ADVISORY COUNCIL UNDER THE BOARD OF CRIME CONTROL; PROVIDING THAT THE NEW COUNCIL BE ALLOCATED TO THE DEPARTMENT OF JUSTICE FOR ADMINISTRATIVE PURPOSES; AUTHORIZING RULEMAKING; SPECIFYING MEMBERSHIP; PROVIDING DEFINITIONS AND DUTIES; SPECIFYING RESPONSIBILITY FOR APPLYING THE STANDARDS AND TRAINING REQUIREMENTS; PROVIDING INSTRUCTIONS FOR THE TRANSITION; TRANSFERRING RESPONSIBILITY FOR CONDUCTING TRAINING FOR JUVENILE PROBATION OFFICERS TO THE OFFICE OF COURT ADMINISTRATOR; AMENDING SECTIONS 7-4-2905, 7-31-201, 7-31-202, 7-31-203, 7-32-201, 7-32-214, 7-32-303, 7-32-4112, 19-7-101, 41-5-1706, 44-4-301, 44-4-305, 44-4-902, AND 46-23-1003, MCA; REPEALING SECTION 44-4-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Montana public safety officer standards and training council — administrative attachment — rulemaking. (1) (a) There is a Montana public safety officer standards and training council. The council is a quasi-judicial board, as provided for in 2-15-124, and is allocated to the

department of justice, established in 2-15-2001, for administrative purposes only as provided in 2-15-121, except as provided in subsection (1)(b) of this section.

(b) The council may hire its own personnel and independently administer the conduct of its business, and 2-15-121(2)(a), (2)(d), and (3)(a) do not apply.

(2) The council may adopt rules to implement the provisions of [sections 2 through 5]. Rules must be adopted pursuant to the Montana Administrative Procedure Act.

Section 2. Definitions. For the purposes of [sections 2 through 5], the following definitions apply:

(1) "Council" means the Montana public safety officer standards and training council established in [section 1].

(2) "Public safety officer" means:

(a) a corrections officer who is employed by the department of corrections, established in 2-15-2301, and who has full-time or part-time authority or responsibility for maintaining custody of inmates in a state correctional facility for adults or juveniles;

(b) a detention officer who is employed by a county and who has full-time or part-time authority or responsibility for maintaining custody of inmates in a detention center, as defined in 7-32-2241, or a juvenile detention center, as defined in 44-4-302;

(c) a peace officer, as defined in 46-1-202;

(d) a department of transportation employee appointed as a peace officer pursuant to 61-12-201;

(e) a law enforcement officer or reserve officer, as the terms are defined in 7-32-201;

(f) a public safety communications officer, as defined in 7-31-201;

(g) a probation or parole officer who is employed by the department of corrections pursuant to 46-23-1002;

(h) a person subject to training requirements pursuant to 44-2-113 or 44-4-902; and

(i) any other person required by law to meet the qualification or training standards established by the council.

Section 3. Membership — compensation. (1) The council consists of no more than 13 voting members appointed by the governor in accordance with 2-15-124 and as provided in this section.

(2) Membership must include but is not limited to:

(a) one state government law enforcement representative;

(b) one chief of police, who may be appointed based on recommendations from the Montana association of chiefs of police;

(c) one sheriff, who may be appointed based on recommendations from the Montana sheriffs and peace officers association;

(d) one representative from the department of corrections established in 2-15-2301;

(e) one local law enforcement officer in a nonadministrative position, who may be appointed based on recommendations from the Montana police protective association;

(f) one detention center administrator or detention officer;

(g) one Montana-certified tribal law enforcement representative;

(h) one county attorney, who may be appointed based on recommendations from the Montana county attorneys association;

(i) two members of the board of crime control established in 2-15-2006; and

(j) three Montana citizens at large who are informed and experienced in the subject of law enforcement.

Section 4. Council duties — determinations — appeals. (1) The council shall:

(a) establish basic and advanced qualification and training standards for employment;

(b) conduct and approve training; and

(c) provide for the certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers.

(2) The council may waive or modify a qualification or training standard for good cause.

(3) A person who has been denied certification or recertification or whose certification or recertification has been suspended or revoked is entitled to a contested case hearing before the council pursuant to Title 2, chapter 4, part 6, except that a decision by the council may be appealed to the board of crime control, as provided for in 44-4-301. A decision of the board of crime control is a final agency decision subject to judicial review.

Section 5. Appointing authority responsible for applying standards. It is the responsibility of a public safety officer's appointing authority to apply the employment standards and training criteria established by the council pursuant to [sections 2 through 5], including but not limited to requiring the successful completion of minimum training standards within 1 year of the public safety officer's hire date and terminating the employment of a public safety officer for failure to meet the minimum standards established by the council pursuant to [sections 2 through 5].

Section 6. Section 7-4-2905, MCA, is amended to read:

"7-4-2905. Coroner education and continuing education. (1) Coroner education must be conducted by the ~~board of crime control~~ *Montana public safety officer standards and training council established in [section 1].* The ~~board~~ *council* may adopt rules establishing standards and procedures for basic and advanced education. The cost of conducting the education must be borne by the department of justice from money appropriated for the education. The county shall pay the salary, mileage, and per diem of each coroner-elect, coroner, and deputy coroner attending from that county.

(2) (a) The ~~board~~ *council* shall conduct a 40-hour basic coroner course of study after each general election. The course, or an equivalent course approved by the ~~board~~ *council*, must be completed before the first Monday in January following the election. The ~~board~~ *council* may conduct other basic coroner courses at times it considers appropriate.

(b) The ~~board~~ *council* shall annually conduct a 16-hour advanced coroner course. Unless there are exigent circumstances, failure of any coroner or deputy coroner to satisfactorily complete the advanced coroner course, or an equivalent course approved by the ~~board~~ *council*, at least once every 2 years results in forfeiture of office. The ~~board~~ *council* may adopt rules providing a procedure to extend the 2-year period ~~due to~~ *because of* exigent circumstances."

Section 7. Section 7-31-201, MCA, is amended to read:

"7-31-201. Definitions. As used in this part, the following definitions apply:

(1) "~~Board~~ *Council*" means the Montana ~~board of crime control~~ *public safety officer standards and training council* provided for in ~~2-15-2006~~ *[section 1]*.

(2) "Public safety communications officer" means a person who receives requests for emergency services, as defined in 10-4-101, dispatches the appropriate emergency service units, and is certified under 7-31-203."

Section 8. Section 7-31-202, MCA, is amended to read:

"7-31-202. Qualifications for public safety communications officers. To be appointed a public safety communications officer, a person:

(1) must be a citizen of the United States;

(2) must be at least 18 years of age;

(3) must be fingerprinted and a search must be made of local, state, and national fingerprint files to disclose any criminal record;

(4) may not have been convicted of a crime for which ~~he~~ *the person* could have been imprisoned in a federal or state penitentiary;

(5) must be of good moral character, as determined by a thorough background investigation;

(6) must be a high school graduate or have passed the general education development test and have been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government; and

(7) ~~shall~~ *must* meet any additional qualifications established by the ~~board~~ *council*."

Section 9. Section 7-31-203, MCA, is amended to read:

"7-31-203. Certification of public safety communications officers — suspension or revocation — penalty — notification requirements. (1) A local government shall require that a person, unless exempt under subsection (3), appointed to receive requests for emergency services, as defined in 10-4-101, and to dispatch the appropriate emergency service units be certified by the ~~board~~ *council* as a public safety communications officer.

(2) (a) The ~~board~~ *council* shall determine the certification standards for public safety communications officers as provided in 7-31-202.

(b) The certification standards must contain a requirement that an applicant for certification attend and successfully complete a basic course for public safety communications officers conducted by the Montana law enforcement academy within 1 year of date of hire.

(3) (a) A person certified by the ~~board~~ *council* prior to July 1, 2001, and employed as a public safety communications officer as of July 1, 2001, is not subject to the requirement of subsection (2)(b).

(b) A person under permanent appointment as a public safety communications officer as of July 1, 2001, is not subject to the requirements of subsection (2).

(4) A public safety communications officer who has successfully met the certification standards set by the ~~board~~ *council*, or who is exempt from certain certification standards pursuant to subsection (3), who has met the qualification requirements in 7-31-202, and who has completed a 6-month probationary term and 1 year of employment must, upon application to the ~~board~~ *council*, be issued a basic public safety communications officer certificate.

(5) Failure by any person appointed as a public safety communications officer after July 1, 2001, unless exempt under the provisions of subsection (3), to meet the minimum requirements in 7-31-202 or to satisfy the certification requirements provided for in subsection (2) of this section is cause to terminate that person's employment as a public safety communications officer.

(6) It is unlawful for a person whose certification as a public safety communications officer has been suspended or revoked by the ~~board~~ *council* to act as a public safety communications officer. A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the county jail or by a fine in an amount not to exceed $500, or both.

(7) Within 10 days of the appointment, termination, resignation, or death of any public safety communications officer, written notice must be given to the ~~board~~ *council* by the employing authority."

Section 10. Section 7-32-201, MCA, is amended to read:

"7-32-201. Definitions. As used in this part, the following definitions apply:

(1) "Auxiliary officer" means an unsworn, part-time, volunteer member of a law enforcement agency who may perform but is not limited to the performance of such functions as civil defense, search and rescue, office duties, crowd and traffic control, and crime prevention activities.

(2) "Council" means the Montana public safety officer standards and training council established in [section 1].

~~(2)~~*(3)* "General law enforcement duties" means patrol operations performed for detection, prevention, and suppression of crime and the enforcement of criminal and traffic codes of this state and its local governments.

~~(3)~~*(4)* "Law enforcement agency" means a law enforcement service provided directly by a local government.

~~(4)~~*(5)* "Law enforcement officer" means a sworn, full-time, employed member of a law enforcement agency who is a peace officer, as defined in 46-1-202, and has arrest authority, as described in 46-6-210.

~~(5)~~*(6)* "Reserve officer" means a sworn, part-time, volunteer member of a law enforcement agency who is a peace officer, as defined in 46-1-202, and has arrest authority, as described in 46-6-210, only when authorized to perform these functions as a representative of the law enforcement agency.

~~(6)~~*(7)* "Special services officer" means an unsworn, part-time, volunteer member of a law enforcement agency who may perform functions, other than general law enforcement duties, that require specialized skills, training, and

qualifications, who may be required to train with a firearm, and who may carry a firearm while on assigned duty as provided in 7-32-239."

Section 11. Section 7-32-214, MCA, is amended to read:

"7-32-214. Basic training program required. (1) ~~No~~ *A* reserve officer may *not* be authorized to function as a representative of a law enforcement agency performing general law enforcement duties after 2 years from the original appointment unless the reserve officer has satisfactorily completed a minimum 88-hour basic training program ~~which~~ *that* must include but need not be limited to the following course content:

(a) introduction and orientation—1 hour;

(b) police ethics and professionalism—1 hour;

(c) criminal law—4 hours;

(d) laws of arrest—4 hours;

(e) criminal evidence—4 hours;

(f) administration of criminal law—2 hours;

(g) communications, reports, and records—2 hours;

(h) crime investigations—3 hours;

(i) interviews and interrogations—2 hours;

(j) patrol procedures—6 hours;

(k) crisis intervention—4 hours;

(l) police human and community relations—3 hours;

(m) juvenile procedures—2 hours;

(n) defensive tactics—4 hours;

(o) crowd control tactics—4 hours;

(p) firearms training—30 hours;

(q) first aid—10 hours; and

(r) examination—2 hours.

(2) The law enforcement agency is responsible for training its reserve officers in accordance with minimum training standards established by the ~~Montana board of crime control~~ *council*."

Section 12. Section 7-32-303, MCA, is amended to read:

"7-32-303. Peace officer employment, education, and certification standards — suspension or revocation — penalty. (1) For purposes of this section, unless the context clearly indicates otherwise, "peace officer" means a deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, park ranger, campus security officer, or airport police officer.

(2) ~~No~~ *A* sheriff of a county, mayor of a city, board, *or* commission~~,~~ or other person authorized by law to appoint peace officers in this state ~~shall~~ *may not* appoint any person as a peace officer who does not meet the following qualifications plus any additional qualifying standards for employment promulgated by the ~~board of crime control~~ *Montana public safety officer standards and training council established in [section 1]*:

(a) be a citizen of the United States;

(b) be at least 18 years of age;

(c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;

(d) not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary;

(e) be of good moral character, as determined by a thorough background investigation;

(f) be a high school graduate or have passed the general education development test and have been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;

(g) be examined by a licensed physician, who is not the applicant's personal physician, appointed by the employing authority to determine if the applicant is free from any mental or physical condition that might adversely affect performance by the applicant of the duties of a peace officer;

(h) successfully complete an oral examination conducted by the appointing authority or its designated representative to demonstrate the possession of communication skills, temperament, motivation, and other characteristics necessary to the accomplishment of the duties and functions of a peace officer; and

(i) possess or be eligible for a valid Montana driver's license.

(3) At the time of appointment*,* a peace officer shall take a formal oath of office.

(4) Within 10 days of the appointment, termination, resignation, or death of any peace officer, written notice thereof must be given to the ~~board of crime control~~ *Montana public safety officer standards and training council* by the employing authority.

(5) (a) Except as provided in subsections (5)(b) and (5)(c), it is the duty of an appointing authority to cause each peace officer appointed under its authority to attend and successfully complete, within 1 year of the initial appointment, an appropriate peace officer basic course certified by the ~~board of crime control~~ *Montana public safety officer standards and training council*. Any peace officer appointed after September 30, 1983, who fails to meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic course as required by this subsection *(5)*(a) forfeits the position, authority, and arrest powers accorded a peace officer in this state.

(b) A peace officer who has been issued a basic certificate by the ~~board of crime control~~ *Montana public safety officer standards and training council* and whose last date of employment as a peace officer was less than 36 months prior to the date of the person's present appointment as a peace officer is not required to fulfill the basic educational requirements of subsection (5)(a). If the peace officer's last date of employment as a peace officer was 36 or more but less than 60 months prior to the date of present employment as a peace officer, the peace officer may satisfy the basic educational requirements as set forth in subsection (5)(c).

(c) A peace officer under the provisions of subsection (5)(b) or a peace officer who has completed a basic peace officer's course in another state and whose last date of employment as a peace officer was less than 60 months prior to the date of present appointment as a peace officer may, within 1 year of the peace officer's present employment or initial appointment as a peace officer within this state,

satisfy the basic educational requirements by successfully passing a basic equivalency test administered by the Montana law enforcement academy and successfully completing a legal training course conducted by the academy. If the peace officer fails the basic equivalency test, the peace officer shall complete the basic course within 120 days of the date of the test.

(6) The ~~board of crime control~~ *Montana public safety officer standards and training council* may extend the 1-year time requirements of subsections (5)(a) and (5)(c) upon the written application of the peace officer and the appointing authority of the officer. The application must explain the circumstances that make the extension necessary. Factors that the ~~board~~ *council* may consider in granting or denying the extension include but are not limited to illness of the peace officer or a member of the peace officer's immediate family, absence of reasonable access to the basic course or the legal training course, and an unreasonable shortage of personnel within the department. The ~~board~~ *council* may not grant an extension to exceed 180 days.

(7) A peace officer who has successfully met the employment standards and qualifications and the educational requirements of this section and who has completed a 1-year probationary term of employment must, upon application to the ~~board of crime control~~ *Montana public safety officer standards and training council*, be issued a basic certificate by the ~~board~~ *council*, certifying that the peace officer has met all the basic qualifying peace officer standards of this state.

(8) It is unlawful for a person whose certification as a peace officer, detention officer, or detention center administrator has been revoked or suspended by the ~~board of crime control~~ *Montana public safety officer standards and training council* to act as a peace officer, detention officer, or detention center administrator. A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the county jail or by a fine not to exceed $500, or both."

Section 13. Section 7-32-4112, MCA, is amended to read:

"7-32-4112. Qualifications of police officers. A member of a police department on the active list of any city at the time of appointment under this part may not be less than 18 years of age, must be a citizen of the United States, and ~~shall~~ *must* meet the minimum qualifying standards for employment promulgated by the ~~board of crime control~~ *Montana public safety officer standards and training council established in [section 1].*"

Section 14. Section 19-7-101, MCA, is amended to read:

"19-7-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid from funds controlled by an employer for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include maintenance, allowances, and expenses.

(2) "Detention officer" means any detention officer, as defined in 44-4-302, who is hired by a sheriff, employed in a detention center, and acting as a detention officer for the sheriff and who has received or is expected to receive training to meet the employment standards set ~~by the board of crime control pursuant to 44-4-301~~ for detention officers *by the Montana public safety officer standards and training council established in [section 1].*

(3) "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership service or, ~~in the event~~ *if* a member has not served at least 36 months, the total compensation earned divided by the number of months of service. Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(4) "Investigator" means a person who is employed as a criminal investigator or as a gambling investigator for the department of justice.

(5) "Sheriff" means any elected or appointed county sheriff or undersheriff or any appointed, lawfully trained, appropriately salaried, and regularly acting deputy sheriff with the requisite professional certification and licensing."

Section 15. Section 41-5-1706, MCA, is amended to read:

"41-5-1706. Juvenile probation officer training. (1) The ~~department of justice~~ *office of court administrator* may conduct a 40-hour juvenile probation officer basic training program and other training programs and courses for juvenile probation officers. ~~A 40-hour juvenile probation officer basic training program and other training programs and courses for juvenile probation officers may be offered by another public agency or by a private entity if the program or course is approved by the board of crime control. If funding is available, the department shall conduct a 40-hour basic training program once a year.~~

(2) A juvenile probation officer who successfully completes the 40-hour basic training program or another program or course must be issued a certificate by the ~~board~~ *office of court administrator*.

(3) Each chief probation officer and deputy probation officer shall obtain 16 hours a year of training in subjects relating to the powers and duties of probation officers ~~in a program or course conducted by the department of justice or approved by the board of crime control.~~

~~(4) The board may adopt rules to implement this section~~."

Section 16. Section 44-4-301, MCA, is amended to read:

"44-4-301. Functions. ~~(1)~~*(1)* As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the board of crime control shall perform the functions assigned to it under that act. The board shall also provide to criminal justice agencies technical assistance and supportive services that are approved by the board or assigned by the governor or legislature.

(2) The board shall consider all appeals brought from decisions of the Montana public safety officer standards and training council pursuant to [section 4]. A board member designated as a member of the Montana public safety officer standards and training council, as provided in [section 3], may not participate in appeals brought to the board from decisions of the council. The board shall promulgate rules governing the manner and method of the appeals.

~~(2) The board may:~~

~~(a) establish minimum qualifying standards for employment of peace officers, as defined in 7-32-303, detention officers, detention center~~

~~administrators, juvenile detention center administrators, juvenile detention or juvenile corrections officers, public safety communications officers, probation and parole officers, corrections officers, and employees of the department of transportation designated or appointed as peace officers under 61-10-154 or 61-12-201; and~~

~~(b) develop procedures for revoking or suspending the certification of peace officers, as defined in 7-32-303, detention officers, detention center administrators, juvenile detention center administrators, juvenile detention or juvenile corrections officers, public safety communications officers, probation and parole officers, corrections officers, and employees of the department of transportation designated or appointed as peace officers under 61-10-154 or 61-12-201.~~

~~(3) The board may require basic training for officers, establish minimum standards for equipment and procedures and for advanced inservice training for officers, establish minimum standards for the certification of public safety communications officers, establish minimum standards for the certification of employees of the department of transportation designated or appointed as peace officers under 61-10-154 or 61-12-201, and establish minimum standards for law enforcement, detention officer, and juvenile detention or juvenile corrections officer training schools administered by the state or any of its political subdivisions or agencies, to ensure the public health, welfare, and safety.~~

~~(4) The board may waive the minimum qualification standard provided in subsection (2) for good cause shown.~~

~~(5) The board shall establish minimum standards for training of probation and parole officers, pursuant to 46-23-1003.~~

~~(6) The board shall establish minimum standards for training corrections officers and employees of the department of transportation designated or appointed as peace officers under 61-10-154 or 61-12-201.~~

~~(7) It is the duty of the appointing authority to cause each probation and parole officer, corrections officer, juvenile detention or juvenile corrections officer, and employee of the department of transportation designated or appointed as a peace officer under 61-10-154 or 61-12-201 to attend and successfully complete within 1 year of employment, an appropriate basic course certified by the board. The appointing authority may terminate a probation and parole officer's, corrections officer's, or juvenile detention or juvenile corrections officer's employment or the employment of an employee of the department of transportation designated or appointed as a peace officer under 61-10-154 or 61-12-201 for failure to:~~

~~(a) meet the minimum standards established by the board; or~~

~~(b) satisfactorily complete the appropriate basic course.~~"

Section 17. Section 44-4-305, MCA, is amended to read:

"44-4-305. Juvenile detention or juvenile corrections officer training. A juvenile detention or juvenile corrections officer shall, in the first year of employment, complete a basic training course as required in ~~44-4-301~~ *[section 4]*. The training must be done under the auspices of the Montana law enforcement academy but does not have to occur at the academy."

Section 18. Section 44-4-902, MCA, is amended to read:

"44-4-902. Application for appointment. A class I railroad corporation, as defined by the interstate commerce commission in part 1201 of 49 CFR, desiring the appointment of an officer or employee as a special peace officer shall apply to the attorney general. The application must state the name, age, and place of residence of the person applying for appointment. The applicant must have at least 3 years of experience as a class I railroad peace officer or have completed a training course at an approved law enforcement academy, or meet the qualifications described in 7-32-303 and adopted ~~under 44-4-301~~ *pursuant to [sections 2 through 5]*. The application must be signed by the applicant and a managing officer of the railroad corporation. The managing officer signing the application shall at the same time submit an affidavit to the effect that ~~he~~ *the officer* is acquainted with the person seeking appointment, that ~~he~~ *the officer* believes ~~him~~ *the applicant* to be of good moral character, and that ~~he~~ *the applicant* is of ~~such~~ *good moral* character and *has* experience *such* that ~~he~~ *the applicant* can be safely entrusted with the powers and duties of a special peace officer."

Section 19. Section 46-23-1003, MCA, is amended to read:

"46-23-1003. Qualifications of probation and parole officers. (1) Probation and parole officers ~~shall~~ *must* have at least a college degree and some formal training in behavioral sciences. Exceptions to this rule must be approved by the department. Related work experience in the areas listed in 2-15-2302(2) may be substituted for educational requirements at the rate of 1 year of experience for 9 months formal education if approved by the department. All present employees ~~will be~~ *are* exempt from this requirement but are encouraged to further their education at the earliest opportunity.

(2) Each probation and parole officer ~~must~~ *shall*, through a source approved by ~~his~~ *the officer's* employer, obtain 16 hours a year of training in subjects relating to the powers and duties of probation officers. In addition, each probation and parole officer must receive training in accordance with standards adopted by the ~~board of crime control, as provided in 44-4-301~~ *Montana public safety officer standards and training council established in [section 1]*. The training must be at the Montana law enforcement academy unless the ~~board~~ *council* finds that training at some other place is more appropriate."

Section 20. Repealer. Section 44-4-302, MCA, is repealed.

Section 21. Transition. (1) The peace officers' standards and training advisory council under the board of crime control, established in 2-15-2006, must become the Montana public safety officer standards and training council, established in [section 1], on [the effective date of this act].

(2) Appointment pursuant to [section 3] to replace a member of the peace officers' standards and training advisory council who was a member on the day before [the effective date of this act] may be made immediately upon the expiration of the member's term.

(3) All members of the Montana public safety officer standards and training council are entitled to compensation pursuant to 2-15-124 beginning [the effective date of this act].

Section 22. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 23. Codification instruction — directions to code commissioner. (1) [Section 1] is intended to be codified as an integral part of

Title 2, chapter 15, part 20, and the provisions of Title 2, chapter 15, part 20, apply to [section 1].

(2) [Sections 2 through 5] are intended to be codified as an integral part of Title 44, chapter 4, and the provisions of Title 44, chapter 4, apply to [sections 2 through 5].

(3) The code commissioner is instructed to renumber and codify 44-4-305 as an integral part of Title 41, chapter 5, part 18.

Section 24. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 25. Effective date. [This act] is effective July 1, 2007.

Approved May 16, 2007

CHAPTER NO. 507

[SB 276]

AN ACT ALLOWING FUNERAL DIRECTORS, UNDERTAKERS, AND MORTICIANS TO SELL CERTAIN TYPES OF FUNERAL INSURANCE SUBJECT TO CERTAIN CONDITIONS IF LICENSED; DEFINING "FUNERAL INSURANCE"; AMENDING SECTIONS 33-17-211, 33-17-214, AND 33-18-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Funeral insurance. (1) (a) "Funeral insurance" means an insurance policy or certificate that requires a one-time payment or the payment of premiums to provide for the costs of a funeral and burial for the policyholder or a named individual.

(b) Funeral insurance is a type of life insurance provided for in 33-1-208 and regulated under Title 33, chapter 20. The terms "burial insurance" and "preneed funeral insurance" have the same meaning as funeral insurance.

(c) Funeral insurance may be:

(i) included in a life insurance policy. This form of funeral insurance may not be sold by or through a person licensed under Title 37, chapter 19, regardless of whether a person licensed under Title 37, chapter 19, also has an insurance producer's license in this state.

(ii) a limited policy or certificate with a guaranteed death benefit that may be sold by:

(A) a licensed insurance producer; or

(B) a person licensed under Title 37, chapter 19, parts 3 and 4, if that person also is licensed as a life insurance producer in this state.

(d) Unless otherwise provided by Title 33, chapter 20, the policy or certificate limit under subsection (1)(c)(ii) is up to $15,000.

(2) Funeral insurance for the purposes of Title 33 is not a fixed amount prepaid into a trust or escrow fund, called a prearranged funeral plan, as described in 37-19-827, or a preneed arrangement, as defined in 37-19-101, and regulated under Title 37, part 19.

(3) A funeral insurance policy and any solicitation material for the policy must clearly indicate that:

(a) the policy is a life insurance product;

(b) the applicant may designate the beneficiary, including but not limited to a funeral director, mortician, mortuary, or undertaker, if the applicant has an insurable interest in the life of the insured; and

(c) subject to the provisions of [section 2] and this section, the beneficiary may use the proceeds for any purpose.

(4) The funeral insurance policy must state that the insurance company shall, as a condition of paying the benefits of the insurance policy, require from the funeral director, mortician, mortuary, or undertaker:

(a) a certified copy of the certificate of death of the insured or other evidence of death satisfactory to the insurance company; and

(b) a certificate of completion signed by the funeral director, mortician, or undertaker stating that the funeral director, mortician, undertaker, or mortuary has delivered all the goods and performed all the services contracted for, by, or on behalf of the insured.

(5) (a) Notwithstanding the provisions of 33-15-414, the funeral insurance policy must contain an assignability clause that allows the policy or certificate to be assigned or otherwise transferred to another funeral director, mortician, mortuary, or undertaker licensed to do business in this state in conjunction with the assumption of the contractual obligation to provide the funeral goods or services to the extent permitted by state or federal law for the purpose of the insured's eligibility for supplemental security income benefits, medicaid, or other public assistance benefits.

(b) The assignability clause may not be used by a funeral director, mortician, mortuary, or undertaker to pledge, assign, transfer, borrow from, or otherwise encumber an insurance policy assigned to it for purposes of purchasing funeral goods or services prior to delivering all of the goods and performing all of the services contracted for, by, or on behalf of the insured.

(6) After the death of a person who at any time received medicaid benefits, a funeral director, mortician, mortuary, undertaker, or other person, including but not limited to the decedent's spouse, heir, devisee, or personal representative, who is the beneficiary of funeral insurance in excess of $5,000 in value designated to pay for the disposition of the medicaid recipient's remains and for related expenses shall, after paying for the disposition and related expenses, pay all remaining funds to the department of public health and human services within 30 days following the receipt of the funeral insurance death benefit. The funds must be paid to the department regardless of any provision in a written contract, insurance policy, or other agreement entered into on or after [the effective date of this act] directing a different disposition of the funds. Funds paid to the department under this section are not considered to be property of the deceased medicaid recipient's estate, and the provisions of 53-6-167 do not apply to recovery of the funds by the department.

Section 2. Excess funeral insurance proceeds. Funeral insurance proceeds that exceed the cost of the funeral goods and services provided must be paid in accordance with the beneficiary designation in the insurance policy or certificate.

Section 3. Rules. The commissioner may adopt rules to regulate funeral insurance, including but not limited to rules regarding licensure of producers, form review, and consumer protection.

Section 4. Section 33-17-211, MCA, is amended to read:

"33-17-211. General qualifications — application for license. (1) An individual applying for a license shall apply in a form approved by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for refusal, suspension, or revocation as set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each kind of insurance for which the individual has applied within 12 months of application;

(e) is a resident of this state or of another state that grants similar privileges to residents of this state. Licenses issued based upon Montana state residency terminate if the licensee relocates to another state.

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which the applicant applies to be licensed and is reasonably familiar with the provisions of this code that govern the applicant's operations as an insurance producer;

(h) if applying for a license as to ~~life or disability~~ *life or disability insurance,* ~~insurance~~ *except as permitted by [section 1(1)(c)(ii)]*:

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state; and

(i) has completed a background examination pursuant to 33-17-220.

(2) A resident or nonresident business entity acting as an insurance producer is required to obtain an insurance producer's license. Application must be made in a form approved by the commissioner. To approve the application, the commissioner shall verify that:

(a) the business entity has paid the appropriate fee; and

(b) the business entity has designated an individual licensed insurance producer who is responsible for the business entity's compliance with the insurance laws of this state.

(3) A person acting as an insurance producer shall obtain a license. A person shall apply for a license in a form approved by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer to be responsible for the person's compliance with the insurance laws and rules of this state;

(d) each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation who is acting as an insurance producer in this state has obtained a license;

(e) (i) if the person is a partnership or corporation, the transaction of insurance business is within the purposes stated in the partnership agreement or the articles of incorporation; and

(ii) if the person is a corporation, the secretary of state has issued a certificate of existence or authority under 35-1-1312 or filed articles of incorporation under 35-1-220.

(4) *(a)* The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance.

(b) The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement.

(c) The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in the association's name alone.

(d) The fee for the license is the same as that required by 33-2-708(1)(a).

(e) The commissioner may, after a hearing with notice to the association, revoke the license if the commissioner finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

(5) An insurance producer using an assumed business name shall register the name with the commissioner before using the name."

Section 5. Section 33-17-214, MCA, is amended to read:

"33-17-214. Issuance of license — insurance producer lines of authority — license data — lapse of license — change of address. (1) A person who has met the requirements of 33-17-211 and 33-17-212 must be issued a license, unless that person has been denied a license pursuant to 33-17-1001.

(2) An insurance producer may receive a license qualifying the insurance producer in one or more of the following lines of authority:

(a) life insurance coverage on human lives, including benefits of endowment and annuities, and the coverage may include*:*

(i) funeral insurance as defined in [section 1];

(ii) benefits in the event of death or dismemberment by accident*;* and

(iii) benefits for disability income;

(b) accident and health or sickness insurance coverage providing for sickness, bodily injury, or accidental death, and the coverage may provide benefits for disability income;

(c) property insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) casualty insurance coverage against legal liability, including liability for death, injury, or disability or damage to real or personal property;

(e) variable life and variable annuity products insurance coverage provided under variable life insurance contracts and variable annuities;

(f) personal lines of property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(g) limited line credit insurance; or

(h) any other line of insurance permitted under Title 33.

(3) The license must state the name and address of the licensee, personal identification number, date of issuance, general conditions relative to expiration or termination, kind of insurance covered, and other information that the commissioner considers necessary.

(4) The license of a partnership, corporation, or association must also state the name of each individual authorized to exercise the license powers.

(5) Each license remains in effect, unless it is suspended, revoked, or terminated or the license lapses.

(6) A person shall inform the commissioner in writing of a change of address within 30 days of the change."

Section 6. Section 33-18-301, MCA, is amended to read:

"33-18-301. Prohibited relations with mortuaries. (1) A life insurer and its board of directors, officers, employees, or representatives *that sell any life insurance, other than funeral insurance, as defined in [section 1(1)(c)(ii)],* may not own, manage, supervise, operate, or maintain any mortuary, funeral, or undertaking establishment in Montana.

(2) *(a)* A life insurer may not contract or agree with any funeral director, *mortician,* ~~mortuary,~~ or undertaker that the funeral director, *mortician,* ~~undertaker, or mortuary~~ *or undertaker* shall conduct the funeral or be named beneficiary of any person insured by the insurer.

(b) This subsection *(2)* does not prohibit a life insurer from ~~making insurance, designated as funeral insurance, available~~ *selling, soliciting, or negotiating funeral insurance, as defined in [section 1(1)(c)(ii)], through a funeral director, mortician, undertaker, or any employee of a mortuary or undertaker if the funeral director, mortician, undertaker or employee of a mortuary or undertaker, through whom the sale, solicitation, or negotiation occurs, is an insurance producer licensed and qualified under 33-17-214. A life insurer that sells, solicits, or negotiates funeral insurance, as defined in [section 1(1)(c)(ii)], through a funeral director, mortician, undertaker, or any employee of a mortuary or undertaker shall comply with the provisions of [sections 1 and 2].*

~~(3) A funeral insurance policy and any solicitation material for the policy must clearly indicate that:~~

~~(a) the policy is a life insurance product;~~

~~(b) the applicant may designate the beneficiary if there is an appropriate and insurable interest;~~

~~(c) the beneficiary may use the proceeds for any purpose; and~~

(3) A funeral insurance policy or certificate and any solicitation material for the policy must comply with [section 1].

~~(d)~~*(4)* ~~any~~ *An* attempt by the insurer or its representative to ~~have~~ *require* the insured *to* designate a specific beneficiary, including but not limited to a funeral director, *mortician,* mortuary, or undertaker, constitutes a violation of this section punishable as a misdemeanor pursuant to subsection ~~(4)~~ *(5)*.

~~(4)~~*(5)* Each violation of this section constitutes a misdemeanor punishable by a fine of not more than $1,000 or by imprisonment for not more than 6 months, or both."

Section 7. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 33, chapter 20, and the provisions of Title 33, chapter 20, apply to [sections 1 through 3].

Section 8. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 9. Effective date. [This act] is effective January 1, 2008.

Approved May 16, 2007

CHAPTER NO. 508

[SB 279]

AN ACT ESTABLISHING THE CLEAN CAMPAIGN ACT; REQUIRING CANDIDATES AND COMMITTEES SUPPORTING CANDIDATES TO PROVIDE CANDIDATES IN PRIMARY AND GENERAL ELECTIONS WITH COPIES OF CERTAIN CAMPAIGN ADVERTISING INTENDED TO BE DISTRIBUTED IN THE 10 DAYS PRIOR TO AN ELECTION; PROVIDING CIVIL PENALTIES FOR VIOLATIONS; AND AMENDING SECTION 13-37-128, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 3] may be referred to as the "Clean Campaign Act".

Section 2. Fair notice period before election — definition. (1) A candidate, a political committee that has filed a certification under 13-37-201, and an independent political committee shall at the time specified in subsection (3) provide to candidates listed in subsection (2) any final copy of campaign advertising in print media, in printed material, or by broadcast media that is intended for public distribution in the 10 days prior to an election unless:

(a) identical material was already published or broadcast; or

(b) the material does not identify or mention the opposing candidate.

(2) The material must be provided to all other candidates who have filed for the same office and who are individually identified or mentioned in the advertising, except candidates mentioned in the context of endorsements.

(3) Final copies of material described in subsection (1) must be provided to the candidates listed in subsection (2) at the following times:

(a) at the time the material is published or broadcast or disseminated to the public;

(b) if the material is disseminated by direct mail, on the date of the postmark; or

(c) if the material is prepared and disseminated by hand, on the day the material is first being made available to the general public.

(4) The copy of the material that must be provided to the candidates listed in subsection (2) must be provided by electronic mail, facsimile transmission, or hand delivery, with a copy provided by direct mail if the recipient does not have available either electronic mail or facsimile transmission. If the material is for broadcast media, the copy provided must be a written transcript of the broadcast.

(5) For the purposes of this section, an "independent political committee" is a committee that is not specifically organized on behalf of a particular candidate or that is not controlled either directly or indirectly by a candidate or a candidate's committee in conjunction with the making of expenditures or accepting contributions.

Section 3. Penalties. A person who violates [section 2] is liable in a civil action pursuant to 13-37-128.

Section 4. Section 13-37-128, MCA, is amended to read:

"13-37-128. Cause of action created. (1) A person who intentionally or negligently violates any of the reporting provisions of this chapter, *a provision of [sections 1 through 3], or 13-35-225* is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to $500 or three times the amount of the unlawful contributions or expenditures, whichever is greater.

(2) A person who makes or receives a contribution or expenditure in violation of ~~13-35-225,~~ 13-35-227, 13-35-228, or this chapter or who violates 13-35-226 is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to $500 or three times the amount of the unlawful contribution or expenditure, whichever is greater."

Section 5. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 13, chapter 35, and the provisions of Title 13, chapter 35, apply to [sections 1 through 3].

Approved May 16, 2007

CHAPTER NO. 509

[SB 281]

AN ACT ALLOWING MARRIED TAXPAYERS WHO FILE SEPARATE MONTANA INCOME TAX RETURNS TO USE FEDERAL DETERMINATIONS OF ADJUSTED GROSS INCOME REPORTED ON FEDERAL JOINT RETURNS IN DETERMINING MONTANA ADJUSTED GROSS INCOME FOR CERTAIN INCOME ITEMS; AMENDING SECTIONS 15-30-111, 15-62-207, AND 15-62-208, MCA; AND PROVIDING AN

IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by ~~persons~~ *a person* for services rendered ~~by them~~ to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303; and

(r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and who file separate Montana income tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the

Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

~~(6)~~*(10)* A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

~~(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.~~

~~(8)~~*(11)* An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

~~(9)~~*(12)* (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection ~~(9)(a)(iv)~~ *(12)(a)(iv)*, not to exceed $5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing

shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection ~~(9)(b)~~ *(12)(b)* as an incentive to practice in Montana.

(b) For the purposes of subsection ~~(9)(a)~~ *(12)(a)*, a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional.(Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)"

Section 2. Section 15-62-207, MCA, is amended to read:

"15-62-207. Deductions for contributions. An individual who contributes to one or more accounts in a tax year is entitled to reduce the individual's adjusted gross income, in accordance with 15-30-111~~(8)~~*(11)*, by the total amount of the contributions, but not more than $3,000. The contribution must be made to an account owned by the contributor, the contributor's spouse, or the contributor's child or stepchild if the contributor's child or stepchild is a Montana resident."

Section 3. Section 15-62-208, MCA, is amended to read:

"15-62-208. Tax on certain withdrawals of deductible contributions. (1) There is a recapture tax at a rate equal to the highest rate of tax provided in 15-30-103 on the recapturable withdrawal of amounts that reduced adjusted gross income under 15-30-111~~(8)~~*(11)*.

(2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted gross income, all withdrawals must be allocated between income and contributions in accordance with the principles applicable under section 529(c)(3)(A) of the Internal Revenue Code of 1986, 26 U.S.C. 529(c)(3)(A). The portion of a recapturable withdrawal that is allocated to contributions must be treated as derived first from contributions, if any, that did not reduce adjusted gross income, to the extent of those contributions, and then to contributions that reduced adjusted gross income. The portion of any other withdrawal that is allocated to contributions must be treated as first derived from contributions that reduced adjusted gross income, to the extent of the contributions, and then to contributions that did not reduce adjusted gross income.

(3) (a) The recapture tax imposed by this section is payable by the owner of the account from which the withdrawal or contribution was made. The tax liability must be reported on the income tax return of the account owner and is payable with the income tax payment for the year of the withdrawal or at the time that an income tax payment would be due for the year of the withdrawal. The account owner is liable for the tax even if the account owner is not a Montana resident at the time of the withdrawal.

(b) The department may require withholding on recapturable withdrawals from an account that was at one time owned by a Montana resident if the account owner is not a Montana resident at the time of the withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an account that was

at one time owned by a Montana resident must be treated as if the account is owned by a resident of Montana.

(4) For the purposes of this section, all contributions made to accounts by residents of Montana are presumed to have reduced the contributor's adjusted gross income unless the contributor can demonstrate that all or a portion of the contributions did not reduce adjusted gross income. Contributors who claim deductions for contributions shall report on their Montana income tax returns the amount of deductible contributions made to accounts for each designated beneficiary and the social security number of each designated beneficiary.

(5) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a nonqualified withdrawal or a withdrawal or distribution from an account that was opened after the later of:

(a) April 30, 2001; or

(b) the date that is 3 years prior to the date of the withdrawal or distribution.

(6) The department shall use all means available for the administration and enforcement of income tax laws in the administration and enforcement of this section."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2006.

Approved May 16, 2007

CHAPTER NO. 510

[SB 316]

AN ACT ALLOWING A PARCEL OF LAND LESS THAN 20 ACRES TO QUALIFY AS AGRICULTURAL LAND IF THE PARCEL HAD PREVIOUSLY TOTALED 20 ACRES OR MORE AND WAS QUALIFIED AS AGRICULTURAL LAND BUT THE SIZE OF THE PARCEL WAS REDUCED TO LESS THAN 20 ACRES FOR A PUBLIC USE BY THE FEDERAL GOVERNMENT, THE STATE, OR A LOCAL GOVERNMENT AND THE PARCEL HAS NOT BEEN FURTHER SPLIT; AMENDING SECTION 15-7-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-202, MCA, is amended to read:

"15-7-202. Eligibility of land for valuation as agricultural. (1) (a) Contiguous parcels of land totaling 160 acres or more under one ownership are eligible for valuation, assessment, and taxation as agricultural land each year that none of the parcels is devoted to a residential, commercial, or industrial use.

(b) (i) Contiguous parcels of land of 20 acres or more but less than 160 acres under one ownership are eligible for valuation, assessment, and taxation as agricultural land if the land is used primarily for raising and marketing, as defined in subsection (1)(c), products that meet the definition of agricultural in 15-1-101. A parcel of land is presumed to be used primarily for raising agricultural products if the owner or the owner's immediate family members, agent, employee, or lessee markets not less than $1,500 in annual gross income

from the raising of agricultural products produced by the land. The owner of land that is not presumed to be agricultural land shall verify to the department that the land is used primarily for raising and marketing agricultural products.

(ii) Noncontiguous parcels of land that meet the income requirement of subsection (1)(b)(i) are eligible for valuation, assessment, and taxation as agricultural land under subsection (1)(b)(i) if:

(A) the land is an integral part of a bona fide agricultural operation undertaken by the persons set forth in subsection (1)(b)(i) as defined in this section; and

(B) the land is not devoted to a residential, commercial, or industrial use.

(iii) Parcels of land of 20 acres or more but less than 160 acres that do not meet the income requirement of subsection (1)(b)(i) may also be valued, assessed, and taxed as agricultural land if the owner:

(A) applies to the department requesting classification of the parcel as agricultural;

(B) verifies that the parcel of land is greater than 20 acres but less than 160 acres and that the parcel is located within 15 air miles of the family-operated farming entity referred to in subsection (1)(b)(iii)(C); and

(C) verifies that:

(I) the owner of the parcel is involved in agricultural production by submitting proof that 51% or more of the owner's Montana annual gross income is derived from agricultural production; and

(II) property taxes on the property are paid by a family corporation, family partnership, sole proprietorship, or family trust that is involved in Montana agricultural production and 51% of the entity's Montana annual gross income is derived from agricultural production; or

(III) the owner is a shareholder, partner, owner, or member of the family corporation, family partnership, sole proprietorship, or family trust that is involved in Montana agricultural production and 51% of the person's or entity's Montana annual gross income is derived from agricultural production.

(c) For the purposes of this subsection (1):

(i) "marketing" means the selling of agricultural products produced by the land and includes but is not limited to:

(A) rental or lease of the land as long as the land is actively used for grazing livestock or for other agricultural purposes; and

(B) rental payments made under the federal conservation reserve program or a successor to that program;

(ii) land that is devoted to residential use or that is used for agricultural buildings and is included in or is contiguous to land under the same ownership that is classified as agricultural land, other than nonqualified agricultural land described in 15-6-133(1)(c), must be classified as agricultural land, and the land must be valued as provided in 15-7-206.

(2) Contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use are eligible for valuation, assessment, and taxation as agricultural each year that the parcels meet any of the following qualifications:

(a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of agricultural products as defined in 15-1-101; ~~or~~

(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent, intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice*; or*

(c) in a prior year, the parcels totaled 20 acres or more and qualified as agricultural land under this section, but the number of acres was reduced to less than 20 acres for a public use described in 70-30-102 by the federal government, the state, a county, or a municipality, and since that reduction in acres, the parcels have not been further divided.

(3) Parcels that do not meet the qualifications set out in subsections (1) and (2) may not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

(4) Land may not be classified or valued as agricultural land or nonqualified agricultural land if it has stated covenants or other restrictions that effectively prohibit its use for agricultural purposes.

(5) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise is not considered a bona fide agricultural operation.

(6) The department may not classify land less than 160 acres as agricultural unless the owner has applied to have land classified as agricultural land. Land of 20 acres or more but less than 160 acres for which no application for agricultural classification has been made is valued as provided in 15-6-133(1)(c) and is taxed as provided in 15-6-133(3). If land has been valued, assessed, and taxed as agricultural land in any year, it must continue to be valued, assessed, and taxed as agricultural until the department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111.

(7) For the purposes of this part, growing timber is not an agricultural use."

Section 2. Coordination instruction. If House Bill No. 488 and [this act] are both passed and approved, then [section 2] of House Bill No. 488 relating to the appropriation for the study of the revaluation of certain property, including agricultural land, must read as follows:

"NEW SECTION. **Section 2. Appropriation.** There is appropriated $50,000 from the general fund to the legislative services division for the 2009 biennium for the operating expenses and personnel expenses related to the study required by [section 1] of House Bill No. 488."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability — retroactive applicability. (1) [This act] applies to parcels reduced to less than 20 acres because of a public use proceeding by the federal government, the state, a county, or a municipality regardless of when the proceeding occurred if those parcels have not been further divided since the proceeding.

(2) [This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2006. Taxpayers are not

allowed refunds of taxes resulting from a reclassification of parcels under [this act].

Approved May 16, 2007

CHAPTER NO. 511

[SB 348]

AN ACT ELIMINATING THE REQUIREMENT FOR THE APPOINTMENT OF AN ATTORNEY FOR A GUARDIAN AD LITEM IN A CHILD ABUSE AND NEGLECT CASE; ALLOWING AN APPOINTMENT FOR A GUARDIAN AD LITEM OR COURT-APPOINTED SPECIAL ADVOCATE WHEN APPROPRIATE; AMENDING SECTION 41-3-425, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-425, MCA, is amended to read:

"41-3-425. Right to counsel. (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsection (3), the court shall immediately appoint or have counsel assigned for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422;

(b) any child~~,~~ *or* youth~~, or guardian ad litem~~ involved in a proceeding under a petition filed pursuant to 41-3-422; and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

(3) When appropriate, the court may appoint or have counsel assigned for a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422.

~~(3)~~*(4)* ~~Beginning July 1, 2006, the~~ *The* court's action pursuant to subsection (2) *or (3)* must be to order the office of state public defender, provided for in 47-1-201, to immediately assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, pending a determination of eligibility pursuant to 47-1-111."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 16, 2007

CHAPTER NO. 512

[SB 363]

AN ACT PROVIDING THAT PRIVATE PROPERTY MAY BE CONDEMNED THROUGH THE USE OF EMINENT DOMAIN FOR URBAN RENEWAL PROJECTS ONLY IF THE PROPERTY IS DETERMINED TO BE BLIGHTED AND MAY NOT BE ACQUIRED BY EMINENT DOMAIN IF THE PURPOSE OF THE PROJECT IS TO INCREASE TAX REVENUE; PROVIDING THAT

THE CONDEMNED PROPERTY MUST BE APPLIED TO A DEMONSTRATED PUBLIC USE; PROVIDING PROCEDURES IF THE PROPERTY IS SOLD; AND AMENDING SECTIONS 7-15-4259, 70-30-102, 70-30-111, AND 70-30-322, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-4259, MCA, is amended to read:

"7-15-4259. Exercise of power of eminent domain. (1) After the adoption by the local governing body of a resolution declaring that the acquisition of the real property described in the resolution is necessary for an urban renewal project under this part, a municipality may acquire by condemnation, as provided in Title 70, chapter 30, any interest in real property that it considers necessary for urban renewal.

(2) Condemnation for urban renewal of blighted areas*, as defined in 7-15-4206(2)(a), (2)(h), (2)(k), or (2)(n),* is a public use, and property already devoted to any other public use or acquired by the owner or the owner's predecessor in interest by eminent domain may be condemned for the purposes of this part.

(3) The award of compensation for real property taken for an urban renewal project may not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction or proposed assembly, clearance, or reconstruction in the project area. An allowance may not be made for the improvements begun on real property after notice to the owner of the property of the institution of proceedings to condemn the property. Evidence is admissible bearing upon the unsanitary, unsafe, or substandard condition of the premises or the unlawful use of the premises."

Section 2. Section 70-30-102, MCA, is amended to read:

"70-30-102. Public uses enumerated. Subject to the provisions of this chapter, the right of eminent domain may be exercised for the following public uses:

(1) all public uses authorized by the government of the United States;

(2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;

(3) public buildings and grounds for the use of any county, city, town, or school district;

(4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town;

(5) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen, or straighten stream channels;

(6) water and water supply systems as provided in Title 7, chapter 13, part 44;

(7) roads, streets, alleys, controlled-access facilities, and ~~all~~ other ~~public uses~~ *publicly owned buildings and facilities* for the benefit of a county, city, or town or the inhabitants of a county, city, or town;

(8) acquisition of road-building material as provided in 7-14-2123;

(9) stock lanes as provided in 7-14-2621;

(10) parking areas as provided in 7-14-4501 and 7-14-4622;

(11) airport purposes as provided in 7-14-4801, 67-2-301, 67-7-210, and Title 67, chapters 10 and 11;

(12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43*, except that private property may be acquired for urban renewal through eminent domain only if the property is determined to be a blighted area, as defined in 7-15-4206(2)(a), (2)(h), (2)(k), or (2)(n), and may not be acquired for urban renewal through eminent domain if the purpose of the project is to increase government tax revenue*;

(13) housing authority purposes as provided in Title 7, chapter 15, part 44;

(14) county recreational and cultural purposes as provided in 7-16-2105;

(15) city or town athletic fields and civic stadiums as provided in 7-16-4106;

(16) county cemetery purposes as provided in 7-35-2201, cemetery association purposes as provided in 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;

(17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);

(18) public assistance purposes as provided in 53-2-201;

(19) highway purposes as provided in 60-4-103 and 60-4-104;

(20) common carrier pipelines as provided in 69-13-104;

(21) water supply, water transportation, and water treatment systems as provided in 75-6-313;

(22) mitigation of the release or threatened release of a hazardous or deleterious substance as provided in 75-10-720;

(23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;

(24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;

(25) water conservation and flood control projects as provided in 76-5-1108;

(26) acquisition of natural areas as provided in 76-12-108;

(27) acquisition of water rights for the natural flow of water as provided in 85-1-204;

(28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;

(29) conservancy district purposes as provided in 85-9-410;

(30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and railroads;

(31) canals, ditches, flumes, aqueducts, and pipes for:

(a) supplying mines, mills, and smelters for the reduction of ores;

(b) supplying farming neighborhoods with water and drainage;

(c) reclaiming lands; and

(d) floating logs and lumber on streams that are not navigable;

(32) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(33) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;

(34) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores;

(35) an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However, the reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(36) private roads leading from highways to residences or farms;

(37) telephone or electrical energy lines;

(38) telegraph lines;

(39) sewerage of any:

(a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or unincorporated;

(b) settlement consisting of not less than 10 families; or

(c) public buildings belonging to the state or to any college or university;

(40) tramway lines;

(41) logging railways;

(42) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However, the grounds of state institutions may not be used for this purpose.

(43) underground reservoirs suitable for storage of natural gas;

(44) projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath or upon the surface of property where the title to the surface vests in others. However, the use of the surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose.

(45) projects to restore and reclaim lands that were strip mined or underground mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse affects of strip or underground mining on those lands."

Section 3. Section 70-30-111, MCA, is amended to read:

"70-30-111. Facts necessary to be found before condemnation. Before property can be taken, the condemnor shall show by a preponderance of the evidence that the public interest requires the taking based on the following findings:

(1) the use to which the property is to be applied is a *public* use ~~authorized by law~~ *pursuant to 70-30-102*;

(2) the taking is necessary to the *public* use;

(3) if already being used for a public use, that the public use for which the property is proposed to be used is a more necessary public use;

(4) an effort to obtain the property interest sought to be taken was made by submission of a written offer and the offer was rejected."

Section 4. Section 70-30-322, MCA, is amended to read:

"70-30-322. Option of original owner or successor in interest to purchase at sale price. (1) Except as provided in subsection (3), the owner from whom the real property interest was originally acquired by eminent domain or otherwise or the owner's successor in interest, if there is a successor in interest, must be notified by the seller by certified mail and has a 30-day option from the date of a sale provided for in 70-30-321 to purchase the interest by offering an amount of money equal to the highest bid received for the interest at the sale. ~~If more than one person claims an equal entitlement, the option may not be exercised.~~

(2) If bids are not received by the seller and the optionholder indicates in writing to the seller that the optionholder wishes to exercise the option, the seller ~~shall~~ *must* have the real property interest appraised and *shall* sell the interest at that price to the optionholder.

(3) When an interest, other than a fee simple interest, in property that has been acquired for a public purpose by right of eminent domain, or otherwise, is abandoned or when the purpose for which it was acquired is terminated, the property reverts to the original owner or the original owner's successor in interest."

Approved May 16, 2007

CHAPTER NO. 513

[SB 365]

AN ACT REVISING LAWS RELATED TO WATER COMMISSIONERS; PROVIDING THAT AT THE DISTRICT COURT'S DISCRETION A BILL MAY BE ISSUED PRIOR TO THE BEGINNING OF A DISTRIBUTION SEASON FOR THE PURPOSE OF OFFSETTING COSTS ASSOCIATED WITH DISTRIBUTING WATER; PROVIDING THAT A BILLING BEFORE A DISTRIBUTION SEASON MAY NOT EXCEED 80 PERCENT OF THE AMOUNT THAT WAS PAID BY A WATER USER DURING THE PRIOR DISTRIBUTION SEASON; AMENDING SECTIONS 85-5-107, 85-5-201, 85-5-204, AND 85-5-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-5-107, MCA, is amended to read:

"85-5-107. Record of ~~daily~~ distribution of water. *(1)* Each water commissioner ~~must~~ *shall* keep a ~~daily~~ *daily* record*, unless a different recording schedule is ordered by the district judge,* of the amount of water distributed to each water user and ~~must~~ *shall* file a summary of ~~such~~ *the* record with the clerk of the court monthly or seasonally, at the discretion of the district judge during ~~his~~ *the judge's* term of service.~~, showing~~ *The report must show* in detail the total amount of water distributed ~~each day~~ to each water user during ~~such~~ *the* month or *the* season and the ~~amount of~~ cost ~~therefor~~ *of distributing the water*, based

upon the water commissioner's or commissioners' *daily* salary, ~~per day and~~ other costs of the water commissioner *or commissioners* approved by the district judge, and the proportionate amount of water distributed. When two or more water commissioners serve under the same decree or decrees by order of the judge, they may file a joint summary of their ~~record~~ *records* with the clerk of the court, or the chief commissioner, if one has been appointed by the judge, may file a summary ~~in~~ *on* behalf of all of them.

(2) If the district court judge determines that it is necessary to establish a billing cycle prior to a distribution season, as provided in 85-5-204, the report or reports must serve as the basis for the amounts billed."

Section 2. Section 85-5-201, MCA, is amended to read:

"85-5-201. Distribution of water and related expenses. *(1)* ~~Every~~ *Each* water commissioner appointed by the judge of the district court for ~~that~~ *the* purpose *of distributing water has* ~~shall have~~ the authority to ~~admeasure~~ *determine the appropriate quantity* and distribute to the parties interested, under ~~such~~ *a* decree, permit, or certificate, the water to which those who are parties to the decree or holders of a permit or certificate~~, or privy thereto,~~ are entitled~~,~~ according to their priority as established by the decree, permit, or certificate.

(2) The water commissioner~~, in case the parties fail or refuse to do so,~~ may incur necessary expenses in the making of headgates or dams for the distribution of the waters *if the parties fail or refuse to do so.* ~~Such expense shall~~ *Expenses associated with making headgates or dams for the distribution of water must* be assessed against and paid by the party or parties for whom ~~such~~ *the* services in the repair of the ditch or ditches and the making of any dams or headgates were necessary. In the discretion of the court, ~~such~~ *the* costs or expenses may be assessed against the land upon which or for the benefit of which ~~such~~ *the* expense had been incurred.

(3) (a) At the district court's discretion, a water commissioner may bill water users prior to the beginning of a distribution season for the purpose of offsetting costs associated with distributing water and water commissioner duties by submitting the information necessary for the billing to the clerk of district court. A billing issued prior to the beginning of a distribution season:

(i) must be assessed on a per-user basis;

(ii) must be based on the report provided for in 85-5-107 for the prior year; and

(iii) may not exceed 80% of the amount that was provided to the district court pursuant to 85-5-107 for the prior distribution season on a per-user basis.

(b) Upon receipt of the information from the water commissioner, the clerk of district court shall proceed as provided in 85-5-204."

Section 3. Section 85-5-204, MCA, is amended to read:

"85-5-204. Apportionment of fees and expenses. (1) Upon the filing of the report by the water commissioner or water commissioners, the clerk of court shall ~~forthwith~~ notify by letter each person mentioned in ~~such~~ *the* report:

(a) of the amount ~~he~~ *the water user* is made liable for by ~~such~~ *the* report;

(b) that objections to ~~such~~ *the* report and the amount ~~so~~ taxed against ~~him~~ *the water user* may be made by any person interested ~~therein~~ *in the report or the amount assessed against the water user* within 20 days after the date of the mailing of ~~said~~ *the* notice; and

(c) *that,* unless objections ~~thereto~~ are filed, an order will be made by the judge of ~~said~~ *the district* court finally fixing and determining the amount due from each of ~~said~~ *the* water users.

(2) The affidavit of the clerk that ~~he~~ *the clerk* has mailed a notice to each person mentioned in the report at ~~such~~ *the* person's ~~last known~~ *last-known* post-office address, in the usual manner, ~~shall~~ *must* be ~~deemed~~ *considered* prima facie evidence that the person received ~~that~~ *the* notice provided for in this section.

(3) At the discretion of the district judge, the water commissioner may issue a bill prior to the beginning of a distribution season for the purpose of offsetting costs associated with distributing water and water commissioner duties by submitting the information necessary for the billing to the clerk of district court. The bill for each water user may not exceed 80% of the amount that was provided to the district court pursuant to 85-5-107 for the prior distribution season.

(4) If the cost of distributing water during a distribution season is less than the amount that was collected through a bill issued prior to a distribution season, the water commissioner shall refund the money to the water user based on the amount of water that the water user received during the distribution season. The water commissioner shall submit a refund report, along with proof that any refunds were issued, to the clerk of district court for filing."

Section 4. Section 85-5-206, MCA, is amended to read:

"85-5-206. Effect of order fixing fees. After the order of the court fixing the fees and compensation and expenses of the water commissioner is final, ~~it shall have all~~ *the order has* the force and effect of a judgment ~~as~~ against the person to whom the water was *or will be* ~~admeasured~~ *distributed* and for whose benefit it was used *or will be used*. When ~~such expense~~ *the expenses* of *a* commissioner or commissioners has been assessed against the land for which ~~such~~ *the* service of the commissioner or commissioners has been rendered, ~~it shall constitute~~ *the assessment is* a lien against ~~said~~ *the* land. ~~Execution may issue upon the order, as upon a judgment, by direction of the court or judge upon the application of any person interested therein.~~ *The lien has the same effect as a judgment. The lien may be executed in the same manner as a judgment upon order of the court.* The water commissioner, at ~~his~~ *the water commissioner's* discretion, may withhold further ~~admeasurement~~ *determinations of quantity* or distribution of water to any person ~~otherwise~~ entitled ~~thereto~~ *to the water* until ~~such~~ *the* person ~~shall have~~ *has* paid all fees, compensation, and expenses of ~~such~~ *the* water commissioner or commissioners ~~so~~ fixed by the court and apportioned and charged to ~~such~~ *the* person*, including bills sent prior to the beginning of a distribution season.* ~~and likewise~~ *The commissioner* may withhold the ~~admeasurement~~ *determination of quantity* and distribution of water from any land against which there exists any ~~such~~ lien ~~as aforesaid,~~ *that is the result of lack of payment pursuant to this section* until ~~such~~ *the* lien ~~shall have~~ *has* been fully discharged."

Section 5. Effective date. [This act] is effective on passage and approval.

Approved May 16, 2007

CHAPTER NO. 514

[SB 382]

AN ACT AUTHORIZING THE CREATION OF MENTAL HEALTH TREATMENT COURTS FOR OFFENDERS WITH A MENTAL DISORDER; PROVIDING FOR IMPLEMENTATION OF ACCOUNTABILITY AND TREATMENT PROGRAMS; CREATING PROCEDURAL GUIDELINES FOR DISTRICT COURT JUDGES; AMENDING SECTION 3-10-303, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 8] may be cited as the "Mental Health Treatment Court Act".

Section 2. Purpose. The purpose of [sections 1 through 8] is to recognize that state courts have a jurisdictional basis to implement mental health treatment courts to reduce recidivism and restore persons with a mental disorder who are charged with a criminal offense to being productive, law-abiding, and taxpaying citizens.

Section 3. Definitions. As used in [sections 1 through 8], the following definitions apply:

(1) "Assessment" means a diagnostic evaluation to determine whether and to what extent a person is an offender with a mental disorder under [sections 1 through 8] and would benefit from the provisions of [sections 1 through 8].

(2) "Continuum of care" means a seamless and coordinated course of mental health counseling and treatment designed to meet the needs of participants as they move through the criminal justice system and beyond, maximizing self-sufficiency.

(3) "Drug" has the meaning provided in 46-1-1103.

(4) "Memorandum of understanding" means a written document setting forth an agreed-upon procedure.

(5) "Mental health treatment court" means a court established by a court pursuant to [sections 1 through 8] implementing a program of incentives and sanctions intended to assist a participant, whose conduct has resulted in a criminal violation, in receiving the needed treatment and life skills to prevent further criminal behavior associated with a mental disorder.

(6) "Mental health treatment court coordinator" means an individual who, under the direction of the mental health treatment court judge, is responsible for coordinating the establishment, staffing, operation, evaluation, and integrity of the mental health treatment court.

(7) "Mental health treatment court team" means a group of individuals appointed by the mental health treatment court that:

(a) must include the following members:

(i) the judge, which may include a magistrate or other hearing officer;

(ii) the prosecutor;

(iii) the public defender or defense attorney;

(iv) the participant; and

(v) the mental health treatment court coordinator; and

(b) may include the following additional members:

(i) a law enforcement officer;

(ii) a probation and parole officer;

(iii) a mental health professional;

(iv) a substance abuse treatment provider;

(v) a representative from the department of public health and human services;

(vi) a mental health advocate; and

(vii) any other person selected by the mental health treatment court.

(8) "Mental health treatment program" means a program designed by the mental health treatment court team to provide prevention, education, and therapy directed toward ending criminal behavior and preventing a return to a condition leading to criminal behavior. Mental health treatment programs may consist of but are not limited to housing assistance, job training, mental health counseling, and psychiatric treatment.

(9) "Participant" means a person charged with a criminal offense or an offense in which a mental disorder, as defined in 53-21-102, is determined to have been a significant factor in the commission of the offense.

(10) "Staff meeting" means the meeting before a participant's appearance in mental health treatment court in which the mental health treatment court team discusses a coordinated response to the participant's behavior.

(11) "Substance abuse" means the illegal or improper consumption of a drug, but does not include inadvertent error in the use of medication.

(12) "Substance abuse treatment" means a program designed to provide prevention, education, and therapy directed toward ending substance abuse and preventing a return to substance use.

Section 4. Mental health treatment court structure. (1) Each judicial district or court of limited jurisdiction may establish a mental health treatment court under which persons with a mental disorder who are charged with a criminal offense may be processed to address an identified mental health problem as a condition of pretrial release, pretrial diversion under 46-16-130, probation, incarceration, parole, or other release from a detention or correctional facility.

(2) Participation in mental health treatment court is voluntary and is subject to the consent of the prosecutor, the defense attorney, and the court pursuant to a written agreement.

(3) A mental health treatment court may grant reasonable incentives under a written agreement. Reasonable incentives may include but are not limited to:

(a) graduation certificates;

(b) early graduation;

(c) fee reduction or waiver of fees;

(d) record expungement of the underlying case; or

(e) reduced contact with a probation officer.

(4) The court may impose reasonable sanctions under the agreement for failure to comply with the agreement. Prior to imposition of a sanction, the mental health treatment court team shall review the participant's individual

treatment program and the participant's conduct. If the mental health treatment court team determines that the participant's failure to comply:

(a) was not willful, was a symptom of a mental disorder, or was a result of an inappropriate treatment plan, the court may impose sanctions, including:

(i) fines;

(ii) extension of time in the program;

(iii) peer review; or

(iv) geographical restrictions; or

(b) was willful, not a symptom of a mental disorder, and not the result of an inappropriate treatment plan, the court may impose sanctions, including:

(i) a short-term jail sentence;

(ii) termination of participation in the program; or

(iii) contempt of court.

(5) Upon successful completion of mental health treatment court, a participant's case must be disposed of by the judge in the manner prescribed by the agreement and by the applicable policies and procedures adopted by the mental health treatment court. This may include but is not limited to pretrial diversion under 46-16-130, dismissal of criminal charges, probation, deferred sentencing, suspended sentencing, or a reduced period of incarceration. A participant who successfully completes the program must be given credit for the time the participant served in the mental health treatment program by the judge upon disposition.

(6) Each local jurisdiction that intends to establish a mental health treatment court or to continue the operation of an existing mental health treatment court shall establish a local mental health treatment court team.

(7) The mental health treatment court team shall, when practicable, conduct a staff meeting prior to each mental health treatment court session to discuss and provide updated information regarding participants. After determining the participant's progress or lack of progress, the mental health treatment court team shall agree on the appropriate incentive or sanction to be applied. If the mental health treatment court team cannot agree on the appropriate action, the court shall make the decision based on information presented in the staff meeting. The provisions of [sections 1 through 8] apply only to persons with a mental disorder who are charged with a criminal offense who qualify for participation based on qualifications established by each mental health treatment court. The provisions of [sections 1 through 8] do not apply to participants who have been convicted of a sexual or violent offense, as defined in 46-23-502. [Sections 1 through 8] do not confer a right or expectation of a right to participate in a mental health treatment court and does not obligate a mental health treatment court to accept any offender. The establishment of a mental health treatment court may not be construed as limiting the discretion of a prosecutor to act on any criminal case that the prosecutor considers advisable to prosecute. Each mental health treatment court judge may establish rules and may make special orders and necessary rules that do not conflict with rules adopted by the Montana supreme court.

(8) Each participant shall contribute to the cost of treatment and the program in accordance with [section 6(2)]. A mental health treatment court coordinator is responsible for the general administration of a mental health

treatment court under the direction of the mental health treatment court judge. The supervising agency shall timely forward information to the mental health treatment court concerning the participant's progress and compliance with any court-imposed terms and conditions.

(9) A department of corrections probation and parole officer may participate in a mental health treatment court team if authorized by the department. The department may authorize participation if it determines, in its discretion, that the caseloads of local probation and parole officers permit participation. If necessitated by a change in caseloads, the department may withdraw authorization for participation by its probation and parole officers in a mental health treatment court. The department of corrections may not authorize its probation and parole officers to supervise a participant of a mental health treatment program who has not been convicted of a felony offense and committed to the supervision of the department.

Section 5. Treatment and support services. (1) As part of a diagnostic assessment, each jurisdiction shall establish a system to ensure that participants are placed into a clinically approved mental health treatment program. To accomplish this, the program conducting the individual assessment shall make specific recommendations to the mental health treatment court team regarding the type of treatment program and duration necessary so that a participant's individualized needs are addressed. The assessments and recommendations must be based upon evidence-based treatment principles. Treatment recommendations accepted by the mental health treatment court pursuant to [sections 1 through 8] must be considered to be reasonable and necessary.

(2) An adequate continuum of care for participants must be established in response to [sections 1 through 8].

(3) The mental health treatment court shall, when practicable, ensure that one agency may not provide both assessment and treatment services for the mental health treatment court to avoid potential conflicts of interest or the appearance that a diagnostic assessment agency might benefit by determining that a participant is in need of the particular form of treatment that the agency provides.

(4) A mental health treatment court making a referral for mental health services or substance abuse treatment shall refer the participant to a program that is licensed, certified, or approved by the court.

(5) The court shall determine which treatment programs are authorized to provide the recommended treatment to participants. The relationship between the treatment program and the court must be governed by a memorandum of understanding, which must include the timely reporting of the participant's progress or lack of progress to the mental health treatment court.

Section 6. Funding. (1) There is a mental health treatment court federal resources account in the federal special revenue fund that is administered by the office of court administrator. Any federal money received for funding mental health treatment courts must be deposited in the mental health treatment court federal resources account and may be used only for purposes of [sections 1 through 8]. The money in the fund may not be transferred at the end of each year but must remain deposited to the credit of the mental health treatment court federal resources account.

(2) A participant shall pay the total cost or a reasonable portion of the cost to participate. The cost paid by a participant may not exceed $300 a month. The costs assessed must be compensatory and not punitive in nature and must take into account the participant's ability to pay. Upon a showing of indigency, the mental health treatment court may reduce or waive costs under this subsection. Any fees received by the court from a participant are not court costs, charges, or fines.

(3) All federal funds received from grants for purposes of funding mental health treatment courts must be exhausted before money is spent from other appropriations for that purpose.

(4) [Sections 1 through 8] do not prohibit mental health treatment court teams from obtaining supplemental funds.

Section 7. Statutory construction — combination with drug treatment court. (1) The provisions of [sections 1 through 8] must be construed to effectuate its remedial purposes.

(2) A mental health treatment court may be combined with a drug treatment court authorized in Title 46, chapter 1, part 11, and a mental health treatment court may serve an individual with co-occurring disorders.

Section 8. Enforcement by removal to criminal court. Failure of the participant to comply with the terms of the mental health treatment program will be referred upon the order of the mental health treatment court judge to the appropriate criminal court.

Section 9. Section 3-10-303, MCA, is amended to read:

"3-10-303. Criminal jurisdiction. (1) The justices' courts have jurisdiction of public offenses committed within the respective counties in which the courts are established as follows:

(a) except as provided in subsection (2), jurisdiction of all misdemeanors punishable by a fine not exceeding $500 or imprisonment not exceeding 6 months, or both;

(b) jurisdiction of all misdemeanor violations of fish and game statutes punishable by a fine of not more than $1,000 or imprisonment for not more than 6 months, or both;

(c) concurrent jurisdiction with district courts of all misdemeanors punishable by a fine exceeding $500 or imprisonment exceeding 6 months, or both;

(d) concurrent jurisdiction with district courts of all misdemeanor violations of fish and game statutes punishable by a fine exceeding $1,000 or imprisonment exceeding 6 months, or both;

(e) jurisdiction to act as examining and committing courts and for that purpose to conduct preliminary hearings;

(f) jurisdiction of all violations of Title 61, chapter 10; and

(g) all misdemeanor violations of Title 81, chapter 8, part 2.

(2) In any county that has established a drug *treatment* court *or a mental health treatment court*, the district court, with the consent of all judges of the courts of limited jurisdiction in the county, has concurrent jurisdiction of all misdemeanors punishable by a fine not exceeding $500 or imprisonment not exceeding 6 months, or both."

Section 10. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 46, chapter 1, and the provisions of Title 46, chapter 1, apply to [sections 1 through 8].

Section 11. Effective date. [This act] is effective July 1, 2007.

Approved May 16, 2007

CHAPTER NO. 515

[SB 433]

AN ACT ALLOWING A JUDGE TO TERMINATE A DEFERRED OR SUSPENDED SENTENCE UNDER CERTAIN CONDITIONS; AMENDING SECTION 46-18-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Termination of remaining portion of deferred or suspended sentence — petition. (1) When imposition of a sentence has been deferred or execution of a sentence has been suspended, the prosecutor or defendant may file a petition to terminate the time remaining on the sentence if:

(a) in the case of a deferred imposition of sentence, the defendant has served one-half of the sentence and has demonstrated compliance with supervision requirements; or

(b) in the case of a suspended sentence:

(i) the defendant has served two-thirds of the time suspended; and

(ii) the defendant has been granted a conditional discharge from supervision under 46-23-1011 and has demonstrated compliance with the conditional discharge for a minimum of 12 months.

(2) The court may hold a hearing on the petition on its own motion or upon request of the prosecutor or the defendant.

(3) The court may grant the petition if it finds that:

(a) termination of the remainder of the sentence is in the best interests of the defendant and society;

(b) termination of the remainder of the sentence will not present an unreasonable risk of danger to the victim of the offense; and

(c) the defendant has paid all restitution and court-ordered financial obligations in full.

Section 2. Section 46-18-204, MCA, is amended to read:

"46-18-204. Dismissal after deferred imposition. Whenever the court has deferred the imposition of sentence and after termination of the time period during which imposition of sentence has been deferred *or upon termination of the time remaining on a deferred sentence under [section 1]*, upon motion of the court, the defendant, or the defendant's attorney, the court may allow the defendant to withdraw a plea of guilty or nolo contendere or may strike the verdict of guilty from the record and order that the charge or charges against the defendant be dismissed. A copy of the order of dismissal must be sent to the prosecutor and the department of justice, accompanied by a form prepared by the department of justice and containing identifying information about the

defendant. After the charge is dismissed, all records and data relating to the charge are confidential criminal justice information, as defined in 44-5-103, and public access to the information may ~~only~~ be obtained only by district court order upon good cause shown."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 18, part 2, and the provisions of Title 46, chapter 18, part 2, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved May 16, 2007

CHAPTER NO. 516

[SB 524]

AN ACT REVISING LAWS RELATING TO THE SALE AND DISTRIBUTION OF BEER BY BREWERIES AND WINE BY WINERIES; ALLOWING ALL LICENSED BREWERIES TO MAKE LIMITED SALES TO LICENSED BEER RETAILERS; AND AMENDING SECTIONS 16-3-211, 16-3-214, 16-3-301, 16-4-906, 16-6-104, AND 16-6-314, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-211, MCA, is amended to read:

"16-3-211. Monthly report of brewer, ~~or~~ beer importer, *or retailer* — inspection of books and premises. *(1)* Every brewer and every beer importer licensed to do business in this state shall, on or before the 15th day of each month, ~~in the manner and form~~ as ~~shall be~~ prescribed by the department, make an exact return to the department of the amount of beer manufactured or imported by ~~him~~ *the brewer or importer,* ~~and~~ the amount sold by ~~him~~ *the brewer or importer* in the previous month, and ~~of his~~ *the* inventory *of the brewer or importer*. The department ~~shall have the right at any time to~~ *may* make an examination of any brewer's or beer importer's books and of ~~his~~ *the brewer's or importer's* premises and otherwise check the accuracy of any ~~such~~ return or ~~to~~ check the alcoholic content of beer manufactured or imported by ~~him~~ *the brewer or importer*.

(2) Every retailer licensed to do business in this state shall, on or before the 15th day of each month, as prescribed by the department, make an exact return to the department of the amount of beer purchased in the previous month directly from any brewery not located in the state of Montana."

Section 2. Section 16-3-214, MCA, is amended to read:

"16-3-214. Beer sales by brewers — sample room exception. (1) Subject to the limitations and restrictions contained in this code, a brewer who manufactures less than 60,000 barrels of beer a year, upon payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the department as required by 16-4-101, must be licensed by the department, in accordance with the provisions of this code and rules prescribed by the department, to:

(a) sell and deliver beer from its storage depot or brewery ~~located in Montana~~ to:

(i) a wholesaler; ~~or~~

(ii) ~~any retail licensees who are entitled to purchase beer from a brewer under this code~~ *licensed retailers if the brewer uses the brewer's own equipment, trucks, and employees to deliver the beer and if:*

(A) individual deliveries, other than draught beer, are limited to the case equivalent of 8 barrels a day to each licensed retailer; and

(B) the total amount of beer sold or delivered directly to all retailers does not exceed 10,000 barrels a year; or

(iii) the public; ~~or~~

(b) provide its own products for consumption on its licensed premises without charge or, if it is a small brewery, provide its own products at a sample room as provided in 16-3-213; or

(c) do any one or more of the acts of sale and delivery of beer as provided in this code.

(2) A brewery may not use a common carrier for delivery of the brewery's product to the public *or to licensed retailers*.

(3) An additional license fee may not be imposed on a brewery providing its own products on its licensed premises for consumption on the premises.

(4) This section does not prohibit a *licensed* brewer ~~located outside of Montana~~ from shipping and selling beer directly to a wholesaler in this state under the provisions of 16-3-230."

Section 3. Section 16-3-301, MCA, is amended to read:

"16-3-301. Unlawful purchases, transfers, sales, or deliveries — presumption of legal age. (1) It is unlawful for a licensed retailer to purchase or acquire beer *or wine* from anyone except a brewer*, winery,* or wholesaler licensed under the provisions of this code.

(2) It is unlawful for a licensed retailer to transport beer *or wine* from one licensed premises or other facility to any other licensed premises owned by the licensee.

(3) It is unlawful for a licensed wholesaler to purchase beer or wine from anyone except a brewery, winery, or wholesaler licensed or registered under this code.

~~(3)~~*(4)* It is unlawful for any licensee, a licensee's employee, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

(a) any person under 21 years of age; or

(b) any person actually, apparently, or obviously intoxicated.

~~(4)~~*(5)* Any person under 21 years of age or any other person who knowingly misrepresents the person's qualifications for the purpose of obtaining an alcoholic beverage from the licensee is equally guilty with the licensee and, upon conviction, is subject to the penalty provided in 45-5-624. However, nothing in this section may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any federal law.

~~(5)~~*(6)* ~~It is mandatory under the provisions of this code that all~~ *All* licensees *must* display in a prominent place in their premises a placard, issued by the department, stating fully the consequences for violations of the provisions of this code by persons under 21 years of age.

~~(6)~~*(7)* For purposes of 45-5-623 and this title, the establishment of the following facts by a person making a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of innocence and a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

(a) the purchaser falsely represented and supported with documentary evidence that an ordinary and prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;

(b) the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase alcoholic beverages; and

(c) the sale was made in good faith and in reasonable reliance upon the representation and appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages. (See compiler's comments for contingent termination of certain text.)"

Section 4. Section 16-4-906, MCA, is amended to read:

"16-4-906. Out-of-state brewery or winery registration — limitation on shipping — penalty. (1) Each out-of-state brewery or winery desiring to ship beer or wine to a person holding a connoisseur's license shall register with the department on forms provided by the department.

(2) The annual limit on out-of-state shipments to all connoisseur's license holders is:

(a) 1,440 bottles or 60 cases of beer for breweries; and

(b) 720 bottles or 60 cases of wine for wineries.

(3) For any shipment into the state that exceeds the limits provided for in subsection (2), the out-of-state brewery or winery ~~shall~~ *may:*

(a) distribute the brewery's or winery's product through a licensed wholesale distributor*;*

(b) distribute through direct shipment to licensed retailers in accordance with the provisions of 16-3-411 if the winery is licensed pursuant to 16-4-107; or

(c) distribute as a brewery in accordance with the provisions of 16-3-214.

(4) An out-of-state brewery or winery that violates the provisions of this section is subject to the penalties provided for in 16-6-302."

Section 5. Section 16-6-104, MCA, is amended to read:

"16-6-104. Unlawful alcoholic beverage — seizure — forfeiture. (1) ~~Any~~ *An* investigator or peace officer who finds an alcoholic beverage ~~which he~~ *and who* has reasonable cause to believe ~~is had~~ *that the alcoholic beverage was obtained* or kept by any person in violation of the provisions of this code may ~~forthwith~~ seize and remove the ~~same~~ *alcoholic beverage* and the packages in which the alcoholic beverage is kept, and upon conviction of the person, the alcoholic beverage and all packages containing the ~~same shall~~ *alcoholic beverages are*, in addition to any other penalty prescribed by this code, ~~ipso facto be~~ forfeited to the state of Montana.

(2) Any beer *or wine* ~~which~~ *that* has been shipped into Montana ~~and has not been shipped to and distributed from a warehouse of a licensed wholesaler shall~~ *in violation of this code must* be seized by any peace officer or representative of the department and may be confiscated in the manner as provided for the confiscation of alcoholic beverages."

Section 6. Section 16-6-314, MCA, is amended to read:

"16-6-314. Penalty for violating code — revocation of license — penalty for violation by underage person. (1) A person who violates a provision of this code is guilty of a misdemeanor punishable as provided in 46-18-212, except as otherwise provided in this section.

(2) If a retail licensee is convicted of an offense under this code, the licensee's license must be immediately revoked or, in the discretion of the department, ~~such other~~ *another* sanction *must be* imposed as ~~may be authorized~~ *provided* under 16-4-406.

(3) A person under 21 years of age who violates ~~16-3-301(4)~~ *16-3-301(5)* or 16-6-305(3) is subject to the penalty provided in 45-5-624(2) or (3). (See compiler's comments for contingent termination of certain text.)"

Approved May 16, 2007

CHAPTER NO. 517

[SB 118]

AN ACT ELIMINATING THE JUNE 30, 2007, TERMINATION DATE FOR THE HOSPITAL FACILITY UTILIZATION FEE; SETTING NEW FEE PROVISIONS; UPDATING A DEFINITIONAL CITE; AMENDING SECTIONS 15-66-101, 15-66-102, AND 15-66-201, MCA, AND SECTION 20, CHAPTER 390, LAWS OF 2003, AND SECTIONS 4 AND 7, CHAPTER 606, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-66-101, MCA, is amended to read:

"15-66-101. (Temporary) Definitions. For purposes of this chapter, the following definitions apply:

(1) (a) "Hospital" means a facility licensed as a hospital pursuant to Title 50, chapter 5, and includes a critical access hospital.

(b) The term does not include Montana state hospital.

(2) (a) "Inpatient bed day" means a day of inpatient care provided to a patient in a hospital. A day begins at midnight and ends 24 hours later. A part of a day, including the day of admission, counts as a full day. The day of discharge or death is not counted as a day. If admission and discharge or death occur on the same day, the day is considered a day of admission and is counted as one inpatient bed day. Inpatient bed days include all inpatient hospital benefit days as defined for medicare reporting purposes in section ~~216~~ *20.1 of chapter 3* of the centers for ~~medicaid and~~ medicare *and medicaid* services publication ~~10~~ *100-02*, the ~~Hospital~~ *Medicare Benefit Policy* Manual. Inpatient bed days also include all nursery days during which a newborn infant receives care in a nursery.

(b) The term does not include observation days or days of care in a swing bed, as defined in 50-5-101.

(3) "Patient" means an individual obtaining skilled medical and nursing services in a hospital. The term includes newborn infants.

(4) "Report" means the report of inpatient bed days required in 15-66-201.

(5) "Utilization fee" or "fee" means the fee required to be paid for each inpatient bed day, as provided in 15-66-102. (Void on occurrence of contingency—sec. 18, Ch. 390, L. 2003. ~~Terminates June 30, 2007—secs. 4, 7, Ch. 606, L. 2005.~~)"

Section 2. Section 15-66-102, MCA, is amended to read:

"15-66-102. (Temporary) Utilization fee for inpatient bed days. (1) Each hospital in the state shall pay to the department a utilization fee:

(a) in the amount of ~~$19.43~~ *$27.70* for each inpatient bed day between January 1, ~~2004~~ *2006*, and June 30, ~~2005~~ *2007*;

(b) in the amount of ~~$29.75~~ *$47* for each inpatient bed day between July 1, ~~2005~~ *2007*, and December 31, ~~2005~~ *2007*;

(c) in the amount of ~~$27.70~~ *$43* for each inpatient bed day between January 1, ~~2006~~ *2008*, and December 31, ~~2006~~ *2008*; *and*

(d) in the amount of $48 for each inpatient bed day beginning January 1, 2009 ~~and~~

~~(d) after January 1, 2007, in an amount determined by rule as provided in subsection (2)~~ .

~~(2) Prior to each calendar year that will be subject to the fee, the department by rule shall determine the amount of the fee, not to exceed $50, based upon:~~

~~(a) an estimate of the unpaid medicaid hospital costs, total inpatient days, and the federal medical assistance percentages;~~

~~(b) an estimate of any federal limit on federal financial participation for hospital services; and~~

~~(c) an estimate of federal disproportionate share funds not matched by state general funds.~~

~~(3)~~*(2)* ~~(a)~~ All proceeds from the collection of utilization fees, including penalties and interest, must be deposited to the credit of the department of public health and human services in a state special revenue account as provided in 53-6-149.

~~(b) A hospital may not place a fee created in this chapter on a patient's bill.~~ (Void on occurrence of contingency—sec. 18, Ch. 390, L. 2003. ~~Terminates June 30, 2007—secs. 4, 7, Ch. 606, L. 2005.~~)"

Section 3. Section 15-66-201, MCA, is amended to read:

"15-66-201. (Temporary) Reporting and collection of fee. ~~(1) On or before January 31, 2006, a hospital shall file with the department an annual report of the number of inpatient bed days in the hospital during each of the 6-month periods beginning January 1, 2005, and ending June 30, 2005, and beginning July 1, 2005, and ending December 31, 2005. The report must be in the form prescribed by the department. The report must be accompanied by a payment in an amount equal to the appropriate fee required to be paid under 15-66-102.~~

~~(2)~~ ~~(a)~~*(1)* ~~Except as provided in subsection (1), on~~ *On* or before January 31 of each year, a hospital shall file with the department an annual report of the number of inpatient bed days during the preceding year beginning January 1 and ending December 31. The report must be in the form prescribed by the department. The report must be accompanied by a payment in an amount equal to the fee required to be paid under 15-66-102.

~~(b)~~*(2)* On or before January 31 of each year, the department of public health and human services shall provide the department with a list of hospitals licensed and operating in the state during the preceding year beginning January 1 and ending December 31. (Void on occurrence of contingency—sec. 18, Ch. 390, L. 2003. ~~Terminates June 30, 2007—secs. 4, 7, Ch. 606, L. 2005.~~)"

Section 4. Section 20, Chapter 390, Laws of 2003, is amended to read:

"**Section 20. Termination.** [This act] terminates June 30, ~~2005~~ *2009*."

Section 5. Section 4, Chapter 606, Laws of 2005, is amended to read:

"**Section 4.** Section 20, Chapter 390, Laws of 2003, is amended to read:

"**Section 20. Termination.** [This act] terminates June 30, ~~2005~~ ~~*2007*~~ *2009*.""

Section 6. Section 7, Chapter 606, Laws of 2005, is amended to read:

"**Section 7. Termination.** [This act] terminates June 30, ~~2007~~ *2009*."

Section 7. Effective date. [This act] is effective on passage and approval.

Section 8. Termination. [Sections 1 through 3] terminate June 30, 2009.

Approved May 18, 2007

CHAPTER NO. 518

[SB 161]

AN ACT GENERALLY REVISING CAPTIVE INSURANCE LAWS; ESTABLISHING A CAPTIVE INSURANCE REGULATORY AND SUPERVISION ACCOUNT; REVISING DEFINITIONS; EXPANDING THE DEFINITION OF "PURE CAPTIVE INSURANCE COMPANY" TO INCLUDE CONTROLLED UNAFFILIATED BUSINESS ENTITIES; PROVIDING FOR INVESTMENTS BY PROTECTED CELL CAPTIVE INSURANCE COMPANIES; REVISING LICENSING AND MINIMUM CAPITAL SURPLUS REQUIREMENTS; REVISING PROCEDURES FOR FORMING CAPTIVE INSURANCE COMPANIES; REVISING FILING AND EXAMINATION REQUIREMENTS FOR CAPTIVE RISK RETENTION GROUPS; CLARIFYING TAX COMPUTATION FOR PROTECTED CELL CAPTIVE INSURANCE COMPANIES; SUBSTITUTING THE TERM "PROTECTED CELL CAPTIVE INSURANCE COMPANY" FOR "SPONSORED CAPTIVE INSURANCE COMPANY"; AND AMENDING SECTIONS 33-28-101, 33-28-102, 33-28-104, 33-28-105, 33-28-106, 33-28-107, 33-28-108, 33-28-201, 33-28-202, 33-28-205, 33-28-206, 33-28-207, 33-28-301, 33-28-302, 33-28-303, 33-28-304, AND 33-28-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-28-101, MCA, is amended to read:

"33-28-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Affiliated company" means any company in the same corporate system as a parent, an industrial insured, or a member ~~organization~~ by virtue of common ownership, control, operation, or management.

(2) "Association" means any legal association of sole proprietorships~~, corporations, partnerships, limited liability companies, or associations~~ *or*

business entities that has been in continuous existence for at least 1 year unless the 1-year requirement is waived by the commissioner~~, the member organizations~~ *and the members* of which collectively, or the association itself:

(a) owns, controls, or holds with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer;

(b) has complete voting control over an association captive insurance company incorporated as a mutual insurer; or

(c) constitutes all of the subscribers of an association captive insurance company formed as a reciprocal insurer.

(3) "Association captive insurance company" means any company that insures risks of the ~~member organizations of an association~~ *members* and ~~their~~ *the* affiliated companies *of members*.

(4) "Branch business" means any insurance business transacted by a branch captive insurance company in this state.

(5) "Branch captive insurance company" means any foreign captive insurance company licensed by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.

(6) "Branch operations" means any business operations of a branch captive insurance company in this state.

(7) (a) "Business entity" means a corporation, limited liability company, partnership, limited partnership, limited liability partnership, or other legal entity formed by an organizational document.

(b) The term does not include a sole proprietor.

~~(7)~~*(8)* "Captive insurance company" means any pure captive insurance company, association captive insurance company, ~~sponsored~~ *protected cell* captive insurance company, or industrial insured captive insurance company formed or licensed under the provisions of this chapter.

(9) "Captive reinsurance company" means a captive insurance company licensed in this state that reinsures the risk ceded by any other insurer.

(10) "Captive risk retention group" means a captive insurance risk retention group formed under the laws of this chapter and pursuant to Title 33, chapter 11.

~~(8)~~*(11)* "Cash equivalent" means any short-term, highly liquid investment that is:

(a) readily convertible to known amounts of cash; and

(b) so near to its maturity that it presents insignificant risk of changes in value because of changes in interest rates. Only an investment with an original maturity of 3 months or less qualifies as a cash equivalent.

(12) (a) "Controlled unaffiliated business entity" means a business entity or sole proprietorship:

(i) that is not in a parent's corporate system consisting of the parent and affiliated companies;

(ii) that has an existing, controlling contractual relationship with the parent or an affiliated company; and

(iii) whose risks are managed by a pure captive insurance company.

(b) The commissioner may promulgate rules that further define a controlled unaffiliated business entity.

~~(9)~~*(13)* "Excess workers' compensation insurance" means, in the case of an employer that has insured or self-insured its workers' compensation risks in accordance with applicable state or federal law, insurance that is in excess of a specified ~~perincident~~ *per-incident* or aggregate limit established by the commissioner.

~~(10)~~*(14)* "Foreign captive insurance company" means any captive insurance company formed under the laws of any jurisdiction other than this state.

~~(11)~~*(15)* "Industrial insured" means an insured:

(a) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer;

(b) whose aggregate annual premiums for insurance on all risks total at least $25,000; and

(c) who has at least 25 full-time employees.

~~(12)~~*(16)* "Industrial insured captive insurance company" means any company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

~~(13)~~*(17)* "Industrial insured group" means any group ~~of industrial insureds that collectively~~ *that meets either of the following:*

(a) the group collectively:

~~(a)~~*(i)* owns, controls, or holds with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer; or

~~(b)~~*(ii)* has complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer*; or*

(b) the group is a captive risk retention group.

~~(14)~~*(18)* "Member ~~organization~~" means a sole proprietorship~~, corporation, partnership, or association~~ *or business entity* that belongs to an association.

(19) "Mutual insurer" means a business entity without capital stock and with a governing body elected by the policyholders.

(20) "Organizational document" means articles of incorporation, articles of organization, a partnership agreement, a subscribers' agreement, a charter, or any other document that establishes a business entity.

~~(15)~~*(21)* "Parent" means a ~~corporation, partnership~~ *sole proprietorship, business entity*, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50% of the outstanding voting securities of a ~~pure~~ captive insurance company.

~~(16)~~*(22)* "Participant" means ~~an~~ *a sole proprietorship or business* entity~~, as enumerated in 33-28-304,~~ and any affiliates ~~of the entity~~ that are insured by a ~~sponsored~~ *protected cell* captive insurance company in which the losses of the participant are limited through a participant contract to the participant's pro rata share of the assets of one or more protected cells identified in the participant contract.

~~(17)~~*(23)* "Participant contract" means a contract by which a ~~sponsored~~ *protected cell* captive insurance company insures the risks of a participant and limits the losses of each participant in the contract.

~~(18)~~*(24)* "Protected cell" means a separate account established by a ~~sponsored~~ *protected cell* captive insurance company formed or licensed under the provisions of this chapter, in which assets are maintained for one or more participants in accordance with the terms of one or more participant contracts to fund the liability of the ~~sponsored~~ *protected cell* captive insurance company with respect to the participants as set forth in the participant contracts.

(25) "Protected cell captive insurance company" means any captive insurance company:

(a) in which the minimum capital and surplus required by applicable law are provided by one or more sponsors;

(b) that is formed or licensed under the provisions of this chapter;

(c) that insures the risks of separate participants through participant contracts; and

(d) that funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the protected cell captive insurance company's general account.

~~(19)~~*(26)* "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies *and controlled unaffiliated business entities*.

(27) "Sole proprietorship" means an individual doing business in a noncorporate form.

~~(20)~~*(28)* "Sponsor" means any entity that meets the requirements of 33-28-301 and 33-28-302 and is approved by the commissioner to provide all or part of the capital and surplus required by the applicable law and to organize and operate a ~~sponsored~~ *protected cell* captive insurance company.

~~(21) "Sponsored captive insurance company" means any captive insurance company:~~

~~(a) in which the minimum capital and surplus required by applicable law are provided by one or more sponsors;~~

~~(b) that is formed or licensed under the provisions of this chapter;~~

~~(c) that insures the risks of separate participants through participant contracts; and~~

~~(d) that funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the sponsored captive insurance company's general account.~~"

Section 2. Captive insurance regulatory and supervision account. (1) There is an account in the state special revenue fund called the captive insurance regulatory and supervision account, which may be referred to as the captive account.

(2) The purpose of the captive account is to provide the financial means for the commissioner to administer this chapter and for reimbursement of reasonable expenses incurred in promoting captive insurance in this state.

(3) (a) Five percent of the premium tax collected under 33-28-201 and all fees and assessments received by the commissioner pursuant to the administration of this chapter must be deposited in the captive account.

(b) All fines and administrative penalties collected pursuant to this chapter must be deposited in the general fund.

(4) All payments from the captive account for the maintenance of staff and associated expenses, including necessary contractual services, may only be disbursed from the state treasury upon warrants issued by the commissioner, after receipt by the commissioner of proper documentation regarding services rendered and expenses incurred.

(5) At the end of each fiscal year, the balance in the captive account must be transferred to the general fund.

Section 3. Investments by protected cell captive insurance companies. The assets of two or more protected cells may be combined for the purposes of investment by a protected cell captive insurance company, and the combination of the protected cells may not be construed as defeating the segregation of the assets for accounting or other purposes.

Section 4. Section 33-28-102, MCA, is amended to read:

"33-28-102. Licensing — authority. (1) A captive insurance company, when permitted by its ~~articles of incorporation, charter, or other~~ organizational document, may apply to the commissioner for a license to provide property insurance, casualty insurance, life insurance, disability income insurance, and health insurance coverage *or a group health plan* as defined in 33-22-140, except that:

(a) a pure captive insurance company may not insure any risks other than those of its parent and affiliated companies *and controlled unaffiliated business entities*;

(b) an industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;

(c) an association captive insurance company may not insure any risks other than those of the ~~member organizations of its association or their~~ *members or* affiliated companies *of members*;

(d) a captive insurance company *or a branch captive insurance company* may not:

(i) provide personal lines of insurance, including but not limited to motor vehicle or homeowner's insurance coverage or any component of those coverages;

(ii) accept or cede reinsurance except as provided in 33-28-203; ~~or~~

(iii) provide health insurance coverage~~,~~ or a group health plan unless the captive insurance company *or branch captive insurance company* is ~~a pure captive insurance company~~ *only providing health insurance coverage or a group health plan for the parent company and its affiliated companies*; ~~and~~ *or*

(iv) write workers' compensation insurance on a direct basis; and

(e) a ~~sponsored~~ *protected cell* captive insurance company may not insure any risks other than those of its ~~participants~~ *participant affiliated companies and controlled unaffiliated business entities*.

(2) A captive insurance company may not ~~do~~ *write* any insurance business ~~in this state~~ unless:

(a) it first obtains from the commissioner a license authorizing it to do insurance business in this state;

(b) its board of directors or a reciprocal insurer's subscribers' advisory committee holds at least one meeting each year in this state; ~~and~~

(c) it maintains its principal place of business in this state*; and*

(d) (i) it appoints a registered agent to accept service of process;

(ii) the name and contact information and any subsequent changes regarding the registered agent are filed with the commissioner; and

(iii) it agrees that whenever the registered agent cannot be found with reasonable diligence, the commissioner's office may act as an agent of the captive insurance company with respect to any action or proceeding and may be served in accordance with 33-1-603.

(3) (a) Before receiving a license, a captive insurance company shall:

(i) with respect to a captive insurance company formed as a corporation:

(A) file with the commissioner a certified copy of its charter and bylaws, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the commissioner; and

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require;

(ii) with respect to a captive insurance company formed as a reciprocal insurer:

(A) file with the commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition, and any other statements or documents required by the commissioner; and

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require.

(b) In the event of any subsequent material change in any of the items in the description provided for in subsection (3)(a), the captive insurance company shall submit to the commissioner for approval an appropriate revision and may not offer any additional kinds of insurance until a revision of the description is approved by the commissioner. The captive insurance company shall inform the commissioner of any change in rates within 30 days of the adoption of the change.

(c) In addition to the information required by subsections (3)(a) and (3)(b), each applicant captive insurance company shall file with the commissioner evidence of the following:

(i) the amount and liquidity of its assets relative to the risks to be assumed;

(ii) the adequacy of the expertise, experience, and character of the person or persons who will manage it;

(iii) the overall soundness of its plan of operation;

(iv) the adequacy of the loss prevention programs of its parent, ~~member organizations~~ *members*, or industrial insureds as applicable; and

(v) any other factors considered relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(d) In addition to the information required by this section, each applicant that is a ~~sponsored~~ *protected cell* captive insurance company shall file with the commissioner the following:

(i) a business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner and how it will report the experience to the commissioner;

(ii) a statement acknowledging that all financial records of the ~~sponsored~~ *protected cell* captive insurance company, including records pertaining to any protected cells, must be made available for inspection or examination by the commissioner or the commissioner's designated agent;

(iii) all contracts or sample contracts between the ~~sponsored~~ *protected cell* captive insurance company and any participants; and

(iv) evidence that expenses will be allocated to each protected cell in a fair and equitable manner.

(e) Information submitted pursuant to this subsection (3) must remain confidential and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except that:

(i) the information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a showing by the party seeking to discover the information that the information sought is relevant to and necessary for the furtherance of the action or case, the information sought is unavailable from other nonconfidential sources, and a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner;

(ii) the commissioner may, in the commissioner's discretion, disclose the information to a public officer having jurisdiction over the regulation of insurance in another state or to a public official of the federal government, as long as the public official agrees in writing to maintain the confidentiality of the information and the laws of the state in which the public official serves, if applicable, require the information to be and to remain confidential.

(4) (a) Each captive insurance company shall pay to the commissioner a nonrefundable fee of $200 for the examining, investigating, and processing of its application for license, and the commissioner is authorized to retain legal, financial, and examination services from outside the department, the reasonable cost of which may be charged to the applicant.

(b) The provisions of Title 33, chapter 1, part 4, apply to examinations, investigations, and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a license fee for the year of registration and a renewal fee for each subsequent year of $300.

(5) If the commissioner is satisfied that the documents and statements that the applicant captive insurance company has filed comply with the provisions of this chapter and applicable provisions of Title 33, the commissioner may grant a license authorizing the company to do insurance business in this state. The

license is effective until March 1 of each year and may be renewed upon proper compliance with this chapter."

Section 5. Section 33-28-104, MCA, is amended to read:

"33-28-104. Minimum capital surplus — letter of credit. (1) A captive insurance company may not be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of:

(a) in the case of a pure captive insurance company, not less than $250,000;

(b) in the case of an industrial insured captive insurance company, not less than $500,000;

(c) in the case of an association captive insurance company, not less than $750,000;

(d) in the case of a ~~sponsored~~ *protected cell* captive insurance company, not less than ~~$1 million~~ *$500,000*~~; or~~. *However, if the protected cell captive insurance company does not assume any risks, the risks insured by the protected cells are homogenous, and if there are not more than 10 cells, the commissioner may reduce the amount required in this subsection (1)(d) to an amount not less than $250,000.*

(e) *(i)* in the case of a branch captive insurance company, not less than the applicable amount of capital and surplus required in subsections (1)(a) through (1)(d), as determined based upon the organizational form of the foreign captive insurance company*; and*

(ii) the minimum capital and surplus must be jointly held by the commissioner and the branch captive insurance company in a bank of the federal reserve system approved by the commissioner; or

(f) in the case of a captive reinsurance company, not less than 50% of the capital that would be required for that type of captive reinsurance company.

(2) The commissioner may require additional capital and surplus based upon the type, volume, and nature of insurance business transacted.

(3) Capital and surplus may be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by the state of Montana or a member bank of the federal reserve system and approved by the commissioner.

~~(4) Despite the requirements of subsection (1), a captive insurance company organized as a reciprocal insurer under this chapter may not be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of $1 million.~~

~~(5) In the case of a branch captive insurance company, security in an amount not less than the minimum capital and surplus required in this section must be jointly held by the commissioner and the branch captive insurance company in a bank of the federal reserve system approved by the commissioner.~~"

Section 6. Section 33-28-105, MCA, is amended to read:

"33-28-105. Formation of captive insurance companies. (1) A ~~pure~~ captive insurance company ~~or a sponsored captive insurance company~~ must be ~~incorporated as a stock insurer with its capital divided into shares and held by the stockholders~~ *formed or organized as a business entity as provided in this chapter*.

(2) An association captive insurance company or an industrial insured captive insurance company may be:

(a) incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

(b) incorporated as a mutual insurer without capital stock, the governing body of which is elected by the ~~member organizations~~ *members* of its association or associations; or

(c) organized as a reciprocal insurer under Title 33, chapter 5.

(3) A captive insurance company incorporated or organized in this state may not have less than three incorporators, at least one of whom must be a resident of this state.

(4) (a) In the case of a captive insurance company formed as a ~~corporation~~ *business entity* and before the ~~articles of incorporation~~ *organizational documents* are transmitted to the secretary of state, the ~~incorporators~~ *organizers* shall file a copy of the proposed ~~articles of incorporation~~ *organizational documents* and a petition with the commissioner requesting the commissioner to issue a certificate that finds that the establishment and maintenance of the proposed ~~corporation~~ *business entity* will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the ~~incorporators~~ *organizers*;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of ~~the~~ *any* officers and directors; and

(iii) any other factors that the commissioner considers appropriate.

(b) If the commissioner does not issue a certificate or finds that the proposed ~~articles of incorporation~~ *organizational documents* of the captive insurance company do not meet the requirements of the applicable laws, including but not limited to 33-2-112, the commissioner shall refuse to approve the draft of the ~~articles of incorporation~~ *organizational documents* and shall return the draft to the proposed ~~incorporators~~ *organizers*, together with a written statement explaining the refusal.

(c) If the commissioner issues a certificate and approves the draft ~~articles of incorporation~~ *organizational documents*, the commissioner shall forward the certificate and an approved draft of ~~articles of incorporation~~ *organizational documents* to the proposed ~~incorporators~~ *organizers*. The ~~incorporators~~ *organizers* shall prepare two sets of the approved ~~articles of incorporation~~ *organizational documents* and shall file one set ~~of articles of incorporation~~ with the secretary of state as required by the applicable law and one set with the commissioner.

(5) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(6) *(a)* At least one of the members of the board of directors of a captive insurance company must be a resident of this state.

(b) In the case of a captive insurance company formed as a limited liability company, at least one of the managers must be a resident of the state.

(c) In case of a reciprocal insurer, at least one of the members of the subscribers' advisory committee must be a resident of the state.

(7) (a) A captive insurance company formed as a corporation *or another business entity* has the privileges and is subject to the provisions of general corporation law *or the laws governing other business entities*, as well as the applicable provisions contained in this chapter.

(b) In the event of conflict between the provisions of general corporation law *or the laws governing other business entities* and this chapter, the provisions of this chapter control.

(8) (a) With respect to a captive insurance company formed as a reciprocal insurer, the organizers shall petition and request that the commissioner issue a certificate that finds that the establishment and maintenance of the proposed association will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the organizers;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the attorney-in-fact; and

(iii) any other factors that the commissioner considers appropriate.

(b) The commissioner may either approve the petition and issue the certificate or reject the petition in a written statement of the reasons for the rejection.

(c) *(i)* A captive insurance company formed as a reciprocal insurer has the privileges and is subject to the provisions of Title 33, chapter 5, in addition to the applicable provisions of this chapter. If there is a conflict between Title 33, chapter 5, and this chapter, the provisions of this chapter control.

~~(d)~~*(ii)* The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of at least one-third of the number of its members.

(d) A captive risk retention group has the privileges and is subject to the provisions of Title 33, chapter 11, and this chapter. If there is a conflict between Title 33, chapter 11, and this chapter, the provisions of this chapter prevail.

(9) Except as provided in 33-28-306, the provisions of Title 33*, chapter 3,* pertaining to mergers, consolidations, conversions, mutualizations, *and* voluntary dissolutions~~, and redomestications~~ apply in determining the procedures to be followed by captive insurance companies in carrying out any of those transactions.

(10) *(a)* With respect to a branch captive insurance company, the foreign captive insurance company shall petition and request that the commissioner issue a certificate that finds that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the foreign captive insurance company, the licensing and maintenance of the branch operation will promote the general good of the state. The foreign captive insurance company ~~may~~ *shall* apply to the secretary of state for a certificate of authority to transact business in this state after the commissioner's certificate is issued.

(b) A branch captive insurance company established pursuant to the provisions of this chapter to write in this state only insurance or reinsurance of the employee benefit business of its parent and affiliated companies is subject to provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C.

1001, et seq. In addition to the general provisions of this chapter, the provisions of this section apply to branch captive insurance companies.

(c) A branch captive insurance company may not do any insurance business in this state unless it maintains the principal place of business for its branch operations in this state."

Section 7. Section 33-28-106, MCA, is amended to read:

"33-28-106. Dividends. (1) A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus ~~in excess of the limitations set forth in 33-2-1114~~ without the prior approval of the commissioner.

(2) Approval of an ongoing plan for the payment of dividends or other distributions must be conditioned upon retention, at the time of each payment, of capital surplus in excess of the amounts specified by or determined in accordance with formulas approved by the commissioner."

Section 8. Section 33-28-107, MCA, is amended to read:

"33-28-107. Reports and statements. (1) A captive insurance company is not required to make an annual report except as provided in this section.

(2) (a) ~~On~~ *Except as provided in subsection (2)(b), on* or before March 1 of each year, each captive insurance company shall submit to the commissioner a report of its financial condition in a form and manner as required by the commissioner, verified by oath of two of its executive officers.

(b) A pure captive insurance company, branch captive insurance company, or industrial insured captive company, excluding captive risk retention groups, may make written application for filing the required report on a fiscal yearend basis. If an alternative reporting date is granted:

(i) the required report is due 60 days after fiscal yearend; and

(ii) in order to provide sufficient information to support the premium tax return, a pure captive insurance company or industrial insured insurance company shall file a report acceptable to the commissioner prior to March 1 of each year for the prior calendar yearend.

~~(b)~~*(c)* Each captive insurance company shall report using generally accepted accounting principles, unless the commissioner requires the use of statutory accounting principles, with any necessary or useful modifications or additions required by the commissioner. The commissioner may also require the report to be supplemented by additional information.

~~(c)~~*(d)* On or before March 1 of each year, each branch captive insurance company shall submit to the commissioner a copy of all reports and statements required to be filed under the laws in which the foreign captive insurance company is formed, verified by oath of two of its executive officers. If the commissioner is satisfied that the annual report filed by the foreign captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the foreign captive insurance company, the commissioner may waive the requirement for completion of the captive annual statement for business written in the foreign jurisdiction.

(3) The commissioner shall consider financial statements filed pursuant to this section as confidential.

(4) (a) Captive risk retention groups shall file reports and statements in accordance with Title 33, chapter 2, part 7, except that a captive risk retention group:

(i) may file using generally accepted accounting principles; and

(ii) the filing may include letters of credit that are established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if that state-chartered bank is acceptable to the commissioner.

(b) The filings are required on an annual and quarterly basis."

Section 9. Section 33-28-108, MCA, is amended to read:

"33-28-108. Examinations and investigations. (1) (a) At least once in 3 years, or more frequently if the commissioner considers it prudent, the commissioner or some competent person appointed by the commissioner shall visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with the provisions of this chapter.

(b) The commissioner, upon application and in the commissioner's discretion, may enlarge the 3-year period to 5 years if the captive insurance company is:

(i) subject to a comprehensive annual audit during the 5-year period of a scope satisfactory to the commissioner; and

(ii) the audit is conducted by independent auditors approved by the commissioner.

(c) The expenses and charges of the examination must be paid to the commissioner by the company or companies examined.

(2) The provisions of Title 33, chapter 1, part 4, apply to examinations conducted under this section.

(3) Except as provided in subsection (4), all examination reports, preliminary examination reports or results, working papers, recorded information, documents, and their copies produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential, are not subject to subpoena, and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company or upon court order.

(4) *(a)* Subsection (3) does not prevent the commissioner from using information obtained pursuant to this section in furtherance of the commissioner's regulatory authority under Title 33. The commissioner may, in the commissioner's discretion, grant access to information obtained pursuant to this section to public officers having jurisdiction over the regulation of insurance in any other state or country or to law enforcement officers of this state or any other state or agency of the federal government at any time, as long as the officers receiving the information agree in writing to hold it in a manner consistent with this section.

(b) Captive risk retention group reports produced pursuant to the examination requirements of this section are public writings as defined in 2-6-101.

(5) ~~(a)~~ Except as provided in subsection ~~(5)(b)~~ *(6)*, the provisions of this section apply to all business written by a captive insurance company.

~~(b)~~*(6)* The examination for a branch captive insurance company may only be of branch business and branch operations if the branch captive insurance company has satisfied the requirements of 33-28-107~~(2)(c)~~*(2)(d)* to the satisfaction of the commissioner.

(7) As a condition of licensure of a branch captive insurance company, the foreign captive insurance company shall grant authority to the commissioner for examination of the affairs of the foreign captive insurance company in the jurisdiction in which the foreign captive insurance company is formed."

Section 10. Section 33-28-201, MCA, is amended to read:

"33-28-201. Tax on premiums collected. (1) (a) Each captive insurance company shall pay to the commissioner, on or before March 1 of each year, a tax on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December 31, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, including dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

(b) The tax on direct premiums collected in this state must be calculated as follows:

(i) 0.4% on the first $20 million;

(ii) 0.3% on the next $20 million;

(iii) 0.2% on the next $20 million; and

(iv) 0.075% on each subsequent dollar collected.

(2) (a) Each captive insurance company shall pay to the commissioner on or before March 1 of each year a tax on assumed reinsurance premiums.

(b) A reinsurance tax does not apply to premiums for risks or portions of risks that are subject to taxation on a direct basis pursuant to subsection (1).

(c) A reinsurance premium tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer and if the intent of the parties to the transaction is to renew or maintain the business with the captive insurance company.

(d) The amount of the reinsurance tax must be calculated as follows:

(i) 0.225% on the first $20 million of assumed reinsurance premiums;

(ii) 0.150% on the next $20 million of assumed reinsurance premiums; and

(iii) 0.050% on each subsequent dollar of assumed reinsurance premiums.

(3) (a) If the aggregate taxes to be paid by a captive insurance company calculated under subsections (1) and (2) amount to less than $5,000 in any year, the captive insurance company shall pay a tax of $5,000 for that year.

(b) Aggregate taxes to be paid by a captive insurance company under this section may not exceed $100,000 in any year.

(c) Each protected cell in a protected cell captive insurance company must be considered separately in determining the aggregate tax to be paid by the protected cell captive insurance company. If the protected cell captive insurance company insures any risks in addition to the protected cells, the determination of

the aggregate tax to be paid by the protected cell captive insurance company must also include the premium on those risks.

(4) Two or more captive insurance companies under common ownership and control must be taxed as though they were a single captive insurance company.

(5) For the purposes of this section, "common ownership and control" means:

(a) in the case of stock corporations, the direct or indirect ownership of 80% or more of the outstanding voting stock of two or more corporations by the same shareholder or shareholders; and

(b) in the case of mutual ~~corporations~~ *insurers*, the direct or indirect ownership of 80% or more of the surplus and the voting power of two or more ~~corporations~~ *insurers* by the same member or members.

(6) Only the branch business of a branch captive insurance company is subject to taxation under the provisions of this section.

(7) The tax provided for in this section must be calculated on an annual basis notwithstanding policies or contracts of insurance or contracts of reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the premium must be prorated for the purposes of determining the tax."

Section 11. Section 33-28-202, MCA, is amended to read:

"33-28-202. Legal investments. (1) An industrial insured captive insurance company*,* ~~and~~ an association captive insurance company*, and a captive risk retention group* shall comply with the investment requirements contained in Title 33, chapter 12, and the rules promulgated in accordance with these provisions. ~~Notwithstanding any other provision of this title, the~~ *The* commissioner may approve the use of alternative reliable methods of valuation and rating.

(2) A pure captive insurance company is not subject to any restrictions on allowable investments, except that the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the company.

(3) Only a pure captive insurance company may make loans to its parent company or affiliates. Loans to a parent company or any affiliate may not be made without prior written approval of the commissioner and must be evidenced by a note in a form approved by the commissioner. Loans of minimum capital and surplus funds required by 33-28-104 are prohibited."

Section 12. Section 33-28-205, MCA, is amended to read:

"33-28-205. Exemption from compulsory organizations. A captive insurance company may not join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this state, and a captive insurance company, its insureds, its parent, any affiliated company, or any member ~~organization~~ of an association may not receive any benefit from the plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of the captive insurance company."

Section 13. Section 33-28-206, MCA, is amended to read:

"33-28-206. Rules. The commissioner may adopt rules necessary to implement the provisions of this chapter. The rules may include but are not limited to rules relating to forms, payment of fees, licensing, capital and surplus, formation of companies, reports, examinations, investigations, *redomestications, captive risk retention groups, risk-based capital and holding company systems, letters of credit, risks managed by pure captive insurance*

companies, standards to ensure that parent or affiliated companies are able to exercise control of the risk management function of any controlled unaffiliated entities to be insured by the pure captive insurance companies, the use of deductible reimbursement with workers' compensation, and suspension and revocation of licenses."

Section 14. Section 33-28-207, MCA, is amended to read:

"33-28-207. Applicable laws. (1) The following apply to captive insurance companies:

(a) *the* definitions of property insurance provided in 33-1-210, casualty insurance provided in 33-1-206, life insurance provided in 33-1-208, health insurance coverage *and group health plans* provided in 33-22-140, and disability income insurance provided in 33-1-235;

(b) the limitation provided in 33-2-705 on the imposition of other taxes;

(c) the provisions relating to supervision, rehabilitation, and liquidation of insurance companies as provided for in Title 33, chapter 2, part 13; and

(d) the provisions of *33-1-603,* 33-18-201, 33-18-203, 33-18-205, and 33-18-242.

(2) This chapter may not be construed as exempting:

~~(a)~~ a captive insurance company, its parent, or affiliated companies from compliance with the laws governing workers' compensation insurance~~; or~~

~~(b) a captive insurance company that is a risk retention group from complying with the provisions of Title 33, chapter 11~~.

(3) A captive insurance company or branch captive insurance company that writes health insurance coverage or group health plans as defined in 33-22-140 shall comply with applicable state and federal laws.

~~(3)~~*(4)* Except as expressly provided in this chapter, the provisions of Title 33 do not apply to captive insurance companies."

Section 15. Section 33-28-301, MCA, is amended to read:

"33-28-301. ~~Sponsored~~ *Protected cell* captive insurance company. (1) One or more sponsors may form a ~~sponsored~~ *protected cell* captive insurance company.

(2) A ~~sponsored~~ *protected cell* captive insurance company formed or licensed under the provisions of this chapter may establish and maintain one or more protected cells to insure risks of one or more participants, subject to the following conditions:

(a) The shareholders of the ~~sponsored~~ *protected cell* captive insurance company must be limited to its participants and sponsors.

(b) Each protected cell must be accounted for separately on the books and records of the ~~sponsored~~ *protected cell* captive insurance company to reflect the financial condition and result of operations of the protected cell, including but not limited to the net income or loss, dividends or other distributions to participants, and any other factor provided in the participant contract or required by the commissioner.

(c) The assets of a protected cell may not be chargeable with liabilities arising from any other insurance business of the ~~sponsored~~ *protected cell* captive insurance company.

(d) A sale, exchange, or other transfer of assets may not be made by a ~~sponsored~~ *protected cell* captive insurance company among any of its protected cells without the consent of the participants of each affected protected cell.

(e) A sale, exchange, transfer of assets, dividend, or distribution may not be made from a protected cell to a sponsor or a participant without the commissioner's prior written approval, which may not be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to the protected cell.

(f) Each ~~sponsored~~ *protected cell* captive insurance company shall file annually with the commissioner any financial reports required by the commissioner and shall include, without limitation, accounting statements detailing the financial experience of each protected cell.

(g) Each ~~sponsored~~ *protected cell* captive insurance company shall notify the commissioner in writing within 20 business days from the time that a protected cell has become impaired or insolvent or is otherwise unable to meets its claim or expense obligations.

(h) A participant contract may not take effect without the commissioner's prior written approval.

(i) An addition of each new protected cell or the withdrawal of any participant of an existing protected cell constitutes a change in the business plan of the ~~sponsored~~ *protected cell* captive insurance company and may not be effective without the commissioner's prior written approval.

(j) The business written by a ~~sponsored~~ *protected cell* captive insurance company, with respect to each cell, must be:

(i) fronted by an insurance company licensed under the laws of any state;

(ii) reinsured by a reinsurer authorized or approved by the commissioner; or

(iii) secured by a trust fund in the United States for the benefit of policyholders and claimants, which must be funded by an irrevocable letter of credit or other asset that is acceptable to the commissioner, and with the following requirements:

(A) the amount of the security provided by the trust fund may not be less than the reserves associated with the liabilities that are not fronted or reinsured, including but not limited to reserves for losses that are allocated for loss adjustment expenses, incurred but not reported losses, and unearned premiums for business written through the participant's protected cell;

(B) the commissioner may require the ~~sponsored~~ *protected cell* captive insurance company to increase the funding of any trust;

(C) if the form of security in the trust is a letter of credit, the letter of credit must be established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if that state-chartered bank is acceptable to the commissioner; and

(D) the trust and trust instrument must be in a form and with terms approved by the commissioner."

Section 16. Section 33-28-302, MCA, is amended to read:

"33-28-302. Qualification of sponsors. A sponsor of a ~~sponsored~~ *protected cell* captive insurance company must be an insurer licensed under the laws of any state, a reinsurer licensed under the laws of any state, a captive insurance

company formed or licensed under this chapter, or an insurance producer licensed under chapter 17 of this title and approved by the commissioner."

Section 17. Section 33-28-303, MCA, is amended to read:

"33-28-303. Delinquency of ~~sponsored~~ *protected cell* captive insurance company. If delinquency proceedings have been taken against a ~~sponsored~~ *protected cell* captive insurance company:

(1) the assets of a protected cell may not be used to pay any expenses other than those attributable to the protected cell; and

(2) the capital and surplus of the ~~sponsored~~ *protected cell* captive insurance company must be available at all times to pay expenses of or claims against the ~~sponsored~~ *protected cell* captive insurance company."

Section 18. Section 33-28-304, MCA, is amended to read:

"33-28-304. Participants in ~~sponsored~~ *protected cell* captive insurance companies. (1) ~~An association, corporation, limited liability company, partnership, trust, or other~~ *A* business entity may be a participant in a ~~sponsored~~ *protected cell* captive insurance company.

(2) A sponsor may be a participant in a ~~sponsored~~ *protected cell* captive insurance company.

(3) A participant is not required to be a shareholder of a ~~sponsored~~ *protected cell* captive insurance company or its affiliate.

(4) A participant shall insure only its own risks through a ~~sponsored~~ *protected cell* captive insurance company."

Section 19. Section 33-28-306, MCA, is amended to read:

"33-28-306. Conversion to or merger with reciprocal insurer. (1) An association captive insurance company or industrial insured group formed as a stock or mutual ~~corporation~~ *insurer* may be converted to or merged with a reciprocal insurer in accordance with the provisions of this section.

(2) A plan for conversion or merger must:

(a) be fair and equitable to the shareholders, in the case of a stock insurer, or the policyholders, in the case of a mutual insurer; and

(b) provide for the purchase of the shares of any nonconsenting shareholder of a stock insurer or the policyholder interest of any nonconsenting policyholder of a mutual insurer.

(3) In order to convert to a reciprocal insurer, the conversion must be accomplished under a reasonable plan and procedure approved by the commissioner. The commissioner may not approve the plan unless it:

(a) provides for a hearing upon notice to the insurer, directors, officers, and stockholders or policyholders who have the right to appear at the hearing, unless the commissioner waives or modifies the requirements for the hearing;

(b) provides for the conversion of the existing stockholder or policyholder interests into subscriber interests in the resulting reciprocal insurer proportionate to stockholder or policyholder interests;

(c) (i) in the case of a stock insurer, is approved, by a majority of the shareholders who are entitled to vote and who are represented at a regular or special meeting at which a quorum is present either in person or by proxy; or

(ii) in the case of a mutual insurer, by a majority of the voting interests of the policyholders who are represented at a regular or special meeting at which a quorum is present either in person or by proxy; and

(d) meets the requirements of 33-28-105.

(4) If the commissioner approves a plan of conversion, the certificate of authority for the converting insurer must be amended to state that it is a reciprocal insurer. The conversion is effective and the corporate existence of the converting entity ceases to exist ~~upon~~ *on* the date on which the amended certificate is issued to the attorney-in-fact of the reciprocal insurer. The resulting reciprocal insurer shall notify the secretary of state of the conversion.

(5) The commissioner may not approve a plan for a merger unless it:

(a) meets the requirements of:

(i) 33-3-217, with respect to the merger with a captive stock insurer; or

(ii) 33-3-218, with respect to the merger with a captive mutual insurer; and

(b) meets the requirements of 33-28-105."

Section 20. Codification instruction. (1) [Section 2] is intended to be codified as an integral part of Title 33, chapter 28, part 1, and the provisions of Title 33, chapter 28, part 1, apply to [section 2].

(2) [Section 3] is intended to be codified as an integral part of Title 33, chapter 28, part 3, and the provisions of Title 33, chapter 28, part 3, apply to [section 3].

Section 21. Directions to code commissioner. (1) Section 33-28-305 is intended to be renumbered and codified as an integral part of Title 33, chapter 28, part 1.

(2) In any enacted legislation that refers to a sponsored captive insurance company, the code commissioner shall change the reference to a protected cell captive insurance company.

Approved May 17, 2007

CHAPTER NO. 519

[SB 205]

AN ACT TO EXEMPT AUTHORIZED GAME WARDEN POSITIONS FROM THE IMPOSITION OF VACANCY SAVINGS WHEN ESTABLISHING THE BUDGET FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Game warden positions exempt from vacancy savings — report to audit committee. (1) Vacancy savings may not be imposed on authorized game warden positions in the department.

(2) For purposes of this section:

(a) "authorized game warden positions" means those game warden positions included in the list of current authorized positions that the department of fish, wildlife, and parks is required to maintain under 2-18-206;

(b) "department" means the department of fish, wildlife, and parks established in 2-15-3401; and

(c) "vacancy savings" means the difference between the cost of fully funding authorized positions for an entire fiscal year and the actual cost of funding those authorized positions during that fiscal year.

(3) Each fiscal year, the department shall provide to the legislative audit committee provided for in 5-13-201 a detailed report on all authorized game warden positions in the department. At a minimum, the report must include the following information:

(a) the number of authorized game warden positions that were filled during the year and the average salary paid at hire;

(b) the total number of vacancies incurred during the year broken out by position title, the cause of each vacancy, and the length of time the authorized game warden position remained vacant;

(c) the total number of hours worked in authorized game warden positions during the year broken out by enforcement activity and position title.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 17, chapter 7, part 1, and the provisions of Title 17, chapter 7, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved May 20, 2007

CHAPTER NO. 520

[SB 222]

AN ACT REQUIRING A REDUCTION IN SPEED OF AT LEAST 20 MILES PER HOUR BELOW THE POSTED SPEED LIMIT IN CERTAIN SITUATIONS WHEN APPROACHING AN EMERGENCY OR POLICE VEHICLE ON A PUBLIC HIGHWAY WITH A POSTED SPEED LIMIT OF 50 MILES PER HOUR OR GREATER; AND AMENDING SECTIONS 61-8-346 AND 61-9-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-346, MCA, is amended to read:

"61-8-346. Operation of vehicles on approach of authorized emergency vehicles or police vehicles — approaching stationary emergency vehicles or police vehicles. (1) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of 61-9-402 or of a police vehicle properly and lawfully making use of an audible signal only, the operator of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle or police vehicle has passed, except when otherwise directed by a police officer or highway patrol officer.

(2) This section does not relieve the driver of an authorized emergency vehicle or police vehicle from the duty to drive with due regard for the safety of all persons using the highway.

(3) *Except as provided in subsection (4),* ~~Upon~~ *upon* approaching a stationary authorized emergency vehicle or police vehicle that is displaying visible signals

of flashing or rotating amber, blue, red, or green lights, the operator of the approaching vehicle shall:

(a) reduce the vehicle's speed, proceed with caution, and, if possible considering safety and traffic conditions, move to a lane that is not adjacent to the lane in which the authorized emergency vehicle or police vehicle is located or move as far away from the authorized emergency vehicle or police vehicle as possible; or

(b) if changing lanes is not possible or is determined to be unsafe, reduce the vehicle's speed, proceed with caution, and maintain a reduced speed, appropriate to the road and the conditions, through the area where the authorized emergency vehicle or police vehicle is stopped.

(4) Upon approaching a stationary authorized emergency vehicle or police vehicle that is displaying visible signals of flashing or rotating amber, blue, red, or green lights on a public highway with a posted speed limit of 50 miles per hour or greater, when driving in a lane that is directly next to the emergency vehicle or police vehicle, the operator of the approaching vehicle shall reduce the vehicle's speed by at least 20 miles per hour below the posted speed limit."

Section 2. Section 61-9-402, MCA, is amended to read:

"61-9-402. Audible and visual signals on police, emergency vehicles, and on-scene command vehicles — immunity. (1) A police vehicle must be equipped with a siren capable of giving an audible signal and may be equipped with alternately flashing or rotating red or blue lights as specified in this section.

(2) An authorized emergency vehicle must be equipped:

(a) with a siren and an alternately flashing or rotating red light as specified in this section; and

(b) with signal lamps mounted as high and as widely spaced laterally as practicable that are capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight.

(3) A bus used for the transportation of school children must be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two red and two amber alternating flashing lights and to the rear two red and two amber alternating flashing lights. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. The warning lights must be as prescribed by the board of public education and approved by the department.

(4) A police vehicle and an authorized emergency vehicle may, and an emergency service vehicle must, be equipped with alternately flashing or rotating amber lights as specified in this section.

(5) The use of signal equipment as described in this section imposes upon the operators of other vehicles the obligation to yield right-of-way or to stop and to proceed past the signal or light ~~only with caution and at a speed that is no greater than is reasonable and proper under the conditions existing at the point of operation~~ *as provided in 61-8-346 and* subject to the provisions of 61-8-209 and 61-8-303.

(6) An employee, agent, or representative of the state or a political subdivision of the state or of a fire department who is operating a police vehicle,

an authorized emergency vehicle, or an emergency service vehicle and using signal equipment in rendering assistance at a highway crash scene or in response to any other hazard on the roadway that presents an immediate hazard or an emergency or life-threatening situation is not liable, except for willful misconduct, bad faith, or gross negligence, for injuries, costs, damages, expenses, or other liabilities resulting from a motorist operating a vehicle in violation of subsection (5).

(7) Blue, red, and amber lights required in this section must be mounted as high as and as widely spaced laterally as practicable and capable of displaying to the front two alternately flashing lights of the specified color located at the same level and to the rear two alternately flashing lights of the specified color located at the same level or one rotating light of the specified color, mounted as high as is practicable and visible from both the front and the rear. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. Except as provided in 61-9-204(6), only police vehicles as defined in 61-8-102 may display blue lights, lenses, or globes.

(8) A police vehicle and authorized emergency vehicle may be equipped with a flashing signal lamp that is green in color, visible from 360 degrees, and attached to the exterior roof of the vehicle for purposes of designation as the on-scene command and control vehicle in an emergency or disaster. The green light must have sufficient intensity to be visible at 500 feet in normal sunlight. Only the on-scene command and control vehicle may display green lights, lenses, or globes.

(9) Only a police vehicle or an authorized emergency vehicle may be equipped with the means to flash or alternate its headlamps or its backup lights.

(10) A violation of subsection (5) is considered reckless endangerment of a highway worker, as provided in 61-8-301(4), and is punishable as provided in 61-8-715."

Approved May 18, 2007

CHAPTER NO. 521

[SB 550]

AN ACT REVISING THE LAWS GOVERNING LOCAL GOVERNMENT STUDY COMMISSIONS; AUTHORIZING THE IMPOSITION OF A MILL LEVY AND PROVIDING FOR AN EXCEPTION FROM THE MILL LEVY LIMITS FOR A LEVY FOR FUNDING LOCAL GOVERNMENT STUDY COMMISSIONS; CLARIFYING THE PROCEDURES FOR PROPOSALS FOR ALTERNATIVE FORMS OR PLANS OF GOVERNMENT MADE BY PETITION OR BY A STUDY COMMISSION; PROVIDING THAT ELECTED OFFICIALS REMAIN IN OFFICE UNLESS THE NEW FORM OR PLAN ELIMINATES THE OFFICE FOR WHICH THEY WERE ELECTED; AND AMENDING SECTIONS 7-3-122, 7-3-141, 7-3-142, 7-3-149, 7-3-151, 7-3-152, 7-3-153, 7-3-155, 7-3-156, 7-3-157, 7-3-158, 7-3-160, 7-3-161, 7-3-175, 7-3-178, 7-3-184, 7-3-187, 7-3-192, 7-3-193, AND 15-10-420, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-3-122, MCA, is amended to read:

"7-3-122. Definitions. As used in 7-3-121 through 7-3-161, unless the context indicates otherwise, the following definitions apply:

(1) "Authority" means:

(a) a municipal or regional airport authority as provided in Title 67, chapter 11;

(b) a conservancy district as provided in Title 85, chapter 9;

(c) a conservation district as provided in Title 76, chapter 15;

(d) a drainage district as provided in Title 85, chapter 8;

(e) an irrigation district as provided in Title 85, chapter 7;

(f) a hospital district as provided in Title 7, chapter 34, part 21;

(g) a flood control and water conservation district as provided in Title 76, chapter 5, part 11;

(h) a county water and sewer district as provided in Title 7, chapter 13, part 22; or

(i) an urban transportation district as provided in Title 7, chapter 14, part 2.

(2) "Finance administrator" means the individual responsible for the financial administration of the local government and generally means the county or city treasurer or town clerk unless the alternative form or governing body specifies a different individual.

(3) "Form of government" or "form" means one of the types of local government enumerated in 7-3-102 and the type of government described in 7-3-111.

~~(3)~~*(4)* "Governing body" means the commission or the town meeting legislative body established in the alternative form of a local government under Title 7, chapter 3, parts 1 through 7.

~~(4)~~*(5)* "Local improvement district" means an improvement district in which property is assessed to pay for specific capital improvements benefiting the assessed property.

(6) "Plan of government" has the meaning provided in 7-1-4121.

~~(5)~~*(7)* "Records administrator" means the individual responsible for keeping the public records of the local government and generally means the county, city, or town clerk unless the alternative form or governing body specifies a different individual.

~~(6)~~*(8)* "Subordinate service district" means a special district within a local government in which certain services are provided and in which taxes may be levied to finance the services."

Section 2. Section 7-3-141, MCA, is amended to read:

"7-3-141. Permissible recommendations. (1) A petition proposing to alter an existing ~~form of~~ county government may:

(a) recommend amendments to the existing plan of government;

(b) recommend any ~~plan~~ *form* of government authorized by Title 7, chapter 3, parts 1 through ~~6~~ *5*;

(c) draft a charter;

(d) recommend municipal-county consolidation or amendments to an existing consolidation; or

(e) in cooperation with a similar petition calling for an election on county merger circulated in an adjoining county, recommend county merger.

(2) A petition proposing to alter ~~an existing form of~~ *a* municipal government may:

(a) recommend amendments to the existing plan of government;

(b) recommend any ~~plan~~ *form* of government authorized by Title 7, chapter 3, parts 1 through 6;

(c) draft a charter; or

(d) recommend disincorporation."

Section 3. Section 7-3-142, MCA, is amended to read:

"7-3-142. Requirements for petition. A petition proposing an alteration of ~~an existing form of~~ *a* local government must contain:

(1) a certificate containing the ~~"~~plan of government~~"~~ of the existing form of local government;

(2) a certificate containing the ~~"~~plan of government~~"~~ of the proposed new form of ~~local~~ government or amendments to the existing plan;

(3) a certificate containing the ~~"~~plan of apportionment~~"~~ of commissioner districts if districts are contained in the ~~"~~plan of government~~"~~; and

(4) a comparison of the existing *form of government and* plan *of government* and proposed *form of government and* plan of ~~local~~ government, including, if desired, a statement of the strengths and weaknesses of the existing and proposed *forms and* plans of ~~local~~ government, information that supports the adoption of the proposed *form and* plan, and information that supports retention of the present *form and* plan."

Section 4. Section 7-3-149, MCA, is amended to read:

"7-3-149. Election on ~~alternative~~ *alteration of* form *of government.* (1) The governing body shall call a special election on the question of an ~~alternative~~ *alteration of the* form of government *or change in a plan of government proposed by petition* to be held at the next regular or primary election that is at least 75 days after the call and the date of filing with the records administrator under 7-3-146. The records administrator shall prepare and print notices of the election.

(2) The cost of the election must be paid for by the local government.

(3) (a) The affirmative vote of a simple majority of those voting on the question is required for adoption.

(b) In any election involving the question of consolidation, each question must be submitted to the electors in the county and requires an affirmative vote of a simple majority of the votes cast in the county on the question for adoption. There is no requirement for separate majorities in local governments voting on consolidation.

(c) In any election involving the question of county merger, the questions must be submitted to the electors in the counties affected and require a majority of the votes cast on the questions in each affected county for adoption.

(d) If the electors disapprove the proposed new form of local government, amendments, or consolidation plan, the local government retains its existing form."

Section 5. Section 7-3-151, MCA, is amended to read:

"7-3-151. Treatment of suboptions for *proposed* alternative forms. (1) *A* ~~No~~ petition recommendation may *not* involve more than three separate suboptions, and ~~no~~ *a* suboption may *not* contain more than two alternatives. If a suboption is submitted to the voters, only the ballot alternatives within that suboption receiving the highest number of affirmative votes are considered approved and included in the alternative form of government. If the alternative form of government fails, a suboption is of no effect.

(2) A proposed *change of the form of government or change in a* plan *of government* ~~shall~~ *must* be submitted to the voters as a single question, except that the suboptions within the ~~alternative plan~~ *form* of local government authorized in Title 7, chapter 3, parts 1 through 6, and the suboptions authorized in a charter may be submitted to the electors as separate questions. The question of adopting a suboption ~~shall~~ *must* be submitted to the electors in substantially the following form:

Vote for one:

A legal officer (who may be called the "county attorney"):

☐ ~~Shall~~ *To* be elected for a term of 4 years.

☐ ~~Shall~~ *To* be appointed for a term of 4 years by the ~~chairman~~ *presiding officer* of the local governing body."

Section 6. Section 7-3-152, MCA, is amended to read:

"7-3-152. Effect of adoption of new form of government *or change in plan of government*. The adoption of a new *form of government or a change in a* plan of government does not affect the validity of any bond, debt, contract, obligation, or cause of action accrued or established under the prior form of government."

Section 7. Section 7-3-153, MCA, is amended to read:

"7-3-153. Filing of approved plan. (1) A copy of the ~~existing or proposed~~ *new form of government or change in a* plan of government *that is proposed by petition and that is* ratified by the voters and any apportionment plan or consolidation or merger plan must be certified by the presiding officer of the governing body and filed with the department of administration, the county records administrator, and the municipal records administrator if it is a municipal plan.

(2) The approved *form of government or change in a* plan *of government* filed with the department of administration is the official plan and is a public record open to inspection by the public and judicially noticeable by all courts."

Section 8. Section 7-3-155, MCA, is amended to read:

"7-3-155. Three-year moratorium. (1) Unless the constitution requires otherwise, the electors of any unit of local government ~~which~~ *that* has voted upon the question of changing the form of local government, charter, or consolidation plan ~~or upon the question of amending the alternative form, charter, or consolidation plan~~ may not vote on the question of changing ~~or amending~~ the form of local government for 3 years.

(2) For the purposes of this section, general election dates are considered to be 1 year apart and may be used in computing the 3-year moratorium. ~~No~~ *An* election on the question of changing an alternative form of a unit of local government may *not* be challenged as failing to conform with the moratorium provisions of this section because 3 full calendar years may not have elapsed."

Section 9. Section 7-3-156, MCA, is amended to read:

"7-3-156. Effective date of alternative ~~plan~~ *form* or amendment — *officers.* (1) ~~An alternative plan~~ *A change in form* of ~~local~~ government *or plan of government* approved by the electors takes effect when the new officers take office *pursuant to 7-3-161*, except as otherwise provided in any charter or ~~consolidation~~ *transition* plan. A consolidation or merger plan adopted by the electors takes effect in the same manner.

(2) Provisions creating offices and establishing qualifications for office under any apportionment plan become effective immediately for the purpose of electing officials.

~~(3)~~*(3)* An amendment to *the plan of* an existing ~~plan~~ *form* of government becomes effective at the beginning of the local government's fiscal year commencing after the election results are officially declared *unless the plan provides for an increase in the number or type of elective officers, in which case the amendment takes effect when the new officers take office*."

Section 10. Section 7-3-157, MCA, is amended to read:

"7-3-157. General transition provisions. (1) The governing body shall prepare an advisory plan for orderly transition to a new *form of government or* plan of ~~local~~ government *proposed by petition*. The transition plan may propose necessary ordinances, plans for consolidation of services and functions, and a plan for reorganizing boards, departments, and agencies.

(2) The governing body of a local government may enact and enforce ordinances to bring about an orderly transition to the new *form of government or* plan of government, including transfer of powers, records, documents, properties, assets, funds, liabilities, or personnel. These ordinances are to be consistent with the approved plan and necessary or convenient to place it into full effect. Whenever a question arises concerning transition ~~which~~ *that* is not provided for, the governing body may provide for the transition by ordinance, rule, or resolution not inconsistent with law."

Section 11. Section 7-3-158, MCA, is amended to read:

"7-3-158. Transition provisions affecting personnel. (1) The members of the governing body holding office on the date the new plan of government is adopted by the electors of the local government continue in office and in the performance of their duties until the governing body authorized by the plan has been elected and qualified~~, whereupon the prior governing body is abolished~~.

(2) An officer, including a member of the governing body, elected under an existing form of government or plan of government continues to hold office under a new form of government or change to a plan of government if the new form or plan continues to have that office, whether the new officer is to be elected or appointed. A successor may be elected or appointed, as appropriate, to fill the office at the end of the term for which the holdover officer was elected.

~~(2)~~*(3)* All other employees holding offices or positions~~, whether elective or appointive,~~ under the government of the county or municipality continue in the performance of the duties of their respective offices and positions until provisions are made for the performance or discontinuance of the duties or the discontinuance of the offices or positions.

~~(3)~~*(4)* A ~~charter or a petition proposing an alteration to an existing form of local government~~ *change in a form of government or a plan of government* may provide that existing elected officers ~~shall~~ *of an office that is abolished may*

continue in office until the end of the term for which they were elected or may provide that *the* existing elected officers ~~shall~~ be retained as local government employees until the end of the term for which they were elected, and their salaries may not be reduced."

Section 12. Section 7-3-160, MCA, is amended to read:

"7-3-160. Election of new officials. (1) Within 20 days after an election at which ~~the~~ *a* new ~~plan~~ *form* of government *or change in a plan of government* is approved by the electors, the governing body of the local government shall meet and order a special primary and general election for the purpose of electing the officials required by the new form *or plan* of government. The elections for officials ~~may~~ *must* be held in conjunction with any other election *of that government*.

(2) The order ~~shall~~ *must* specify:

(a) a date for the primary election to be held no later than the *government's* next regularly scheduled ~~city or county~~ primary election; and

(b) a date for the general election to be held no later than the next regularly scheduled city or county general election following the primary election date established under subsection (2)(a)."

Section 13. Section 7-3-161, MCA, is amended to read:

"7-3-161. Organization of new governing body. (1) The first meeting of a new governing body for a ~~new plan~~ *different form* of government ~~shall~~ *must* be held at 10 a.m., 60 days after the election of the new officers. At that time, newly elected ~~members~~ *officers* shall take the oath of office prior to assuming the duties of office.

(2) If the terms of the commissioners are to be overlapping, ~~they shall~~ *newly elected commissioners shall* draw lots to establish their respective terms of office."

Section 14. Section 7-3-175, MCA, is amended to read:

"7-3-175. Election on question of establishing study commission. (1) The question of conducting a local government review and establishing a study commission ~~shall~~ *must* be submitted to the electors in substantially the following form:

Vote for one:

☐ FOR the review of the government of (insert name of local government) and the establishment *and funding, not to exceed (insert dollar or mill amount),* of a local government study commission consisting of (insert number of members) members to examine the government of (insert name of local government) and submit recommendations ~~thereon~~ *on the government*.

☐ AGAINST the review of the government of (insert name of local government) and the establishment *and funding, not to exceed (insert dollar or mill amount),* of a *local government* study commission *consisting of (insert number of members) members to examine the government of (insert name of local government) and submit recommendations on the government*.

(2) The question of conducting a local government review and establishing a study commission requires an affirmative vote of a majority of those voting on the question for passage.

(3) Except for elections to be conducted pursuant to 7-3-173(2), a special election on the question of reviewing a local government and establishing a study commission ~~shall~~ *must* be held no sooner than 60 days and no later than 90 days after the passage of a resolution or the certification of a petition calling for an election on the question."

Section 15. Section 7-3-178, MCA, is amended to read:

"7-3-178. Term of office — vacancies — compensation. (1) The term of office of study commission members begins on the day *that* their election to the study commission is declared or certified under 13-15-405 or on the day of their appointment and ends on the day of the vote on the alternative plan. If the alternative plan is adopted, the term continues for 90 days after the day of the vote on the alternative plan. If the commission recommends no alternative plan, the term ends 30 days after submission of the final report in accordance with 7-3-187.

(2) Except as provided in subsection (1), the term of office of study commission members terminates on the date of the first statewide general election following the election required by 7-3-176.

~~(2)~~*(3)* A vacancy on a study commission, including an ex officio member vacancy, ~~shall~~ *must* be determined in the same manner as a vacancy in municipal office as provided in 7-4-4111. A vacancy on a study commission ~~shall~~ *must* be filled by appointment by the governing body of the local government being studied by the commission. The appointment ~~shall~~ *must* be made within 30 days of the date the vacancy occurs.

~~(3)~~*(4)* Members of the study commission may *not* receive ~~no~~ compensation other than for actual and necessary expenses incurred in their official capacity."

Section 16. Section 7-3-184, MCA, is amended to read:

"7-3-184. Financial administration. (1) A study commission shall prepare a budget for each fiscal year *that* it is in existence and *shall* submit it to the local governing body for approval.

(2) (a) ~~Subject to 15-10-420~~ *For the support of the study commission*, for each fiscal year *that* the study commission is in existence, each local government under study ~~may~~ *shall* appropriate an amount necessary to fund the study*, and the local government may levy mills in excess of all other mill levies authorized by law to fund the appropriation for the support of the study commission*.

(b) The local government shall provide office and meeting space and clerical assistance to the study commission. The cost of clerical assistance and other in-kind services provided by the local government may be used to partially fulfill the appropriation provision of subsection (2)(a).

(c) The local government may provide additional funds and other assistance.

(3) The study commission may apply for and accept available private, state, and federal money and may accept donations from any source.

(4) All money received by the study commission must be deposited with the local government finance administrator. The finance administrator is authorized to disburse appropriated money of the study commission on the study commission's order after approval of the budget by the governing body. Unexpended money of the study commission does not revert to the general fund of the local government at the end of the fiscal year but carries over to the study commission's appropriation for the following fiscal year. Upon termination of

the study commission, unexpended money reverts to the general fund of the local government."

Section 17. Section 7-3-187, MCA, is amended to read:

"7-3-187. Final report. (1) A study commission shall adopt a final report. If the study commission recommends an ~~alternative form of~~ *alteration of a local* government, the final report must contain the following materials and documents, each signed by a majority of the study commission members:

(a) those materials and documents required of a petition proposing an alteration of ~~an existing form of~~ *a local* government in 7-3-142;

(b) a certificate establishing the date of the special election, which must be held in conjunction with a regular or primary election, at which the alternative form *of government or change in a plan* of government is presented to the electors and a certificate establishing the form of the ballot question or questions; and

(c) a certificate establishing the dates of the first primary and general elections for officers of a new government if the proposal is approved and establishing the effective date of the proposal if approved.

(2) The final report must contain any minority report signed by members of the commission who do not support the majority proposal.

(3) If the study commission is not recommending any changes, its final report must indicate that changes are not recommended.

(4) The study commission shall file two copies of the final report with the department of administration, one of which the department shall forward to the state library. A copy of the final report must be certified by the study commission to the municipal or county records administrator within 30 days after the adoption of the final report.

(5) Sufficient copies of the final report must be prepared for public distribution. The final report must be available to the electors not later than 30 days prior to the election on the issue of adopting the alternative *form or* plan *of government*. Copies of the final report may be distributed to electors or residents of the local government or governments affected.

(6) After submission of the final report, the commission shall deposit copies of its minutes and other records with the county clerk and recorder."

Section 18. Section 7-3-192, MCA, is amended to read:

"7-3-192. Election on recommendation. (1) An alternative *form or* plan of government recommended by a study commission must be submitted to the voters as provided in 7-3-149. The election must be held in conjunction with any regularly scheduled election.

(2) General ballot requirements and treatment of suboptions on an alternative *form or* plan of government recommended by a study commission must be the same as for recommendations by petition as provided in 7-3-150 and 7-3-151."

Section 19. Section 7-3-193, MCA, is amended to read:

"7-3-193. Application of other sections. (1) Except as provided in subsection (2) *of this section*, *the provisions of* 7-3-122 and 7-3-152 through 7-3-161 apply to the adoption of an alternative *form or* plan of government upon recommendation by a study commission.

(2) (a) The ~~chairman~~ *presiding officer* of the study commission and not the ~~chairman~~ *presiding officer* of the governing body shall certify documents under 7-3-153.

(b) The study commission and not the governing body shall prepare an advisory plan for orderly transition to a new *form or* plan of ~~local~~ government under 7-3-157.

(c) A study commission plan may provide for existing elected officers under 7-3-158~~(3)~~*(4)*."

Section 20. Section 15-10-420, MCA, is amended to read:

"15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) (a) For purposes of this section, newly taxable property includes:

(i) annexation of real property and improvements into a taxing unit;

(ii) construction, expansion, or remodeling of improvements;

(iii) transfer of property into a taxing unit;

(iv) subdivision of real property; and

(v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

(i) a change in the boundary of a tax increment financing district;

(ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

(iii) the termination of a tax increment financing district.

(b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

(c) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as nonqualified agricultural land as described in 15-6-133(1)(c).

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

(a) school district levies established in Title 20; or

(b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402; ~~or~~

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326*; or*

(iv) a levy for the support of a study commission under 7-3-184.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

(11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Approved May 20, 2007

RESOLUTIONS

Adopted by the

SIXTIETH LEGISLATURE
IN REGULAR SESSION

Held at Helena, the Seat of Government
January 3, 2007, through April 27, 2007

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

House Joint Resolutions

HOUSE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO DEVELOP HEALTH CARE REFORMS ADDRESSING THE INCREASING COSTS OF HEALTH CARE, THE INCREASING NUMBER OF PEOPLE WITHOUT HEALTH INSURANCE, A LACK OF UNIFORM QUALITY, AND DISPARATE HEALTH CARE LEGISLATION AMONG STATES THAT IMPACTS THE NATION'S ECONOMY AND AMERICANS' HEALTH.

WHEREAS, the cost of health care is increasing at a rate higher than the rate of consumer inflation and driving up costs of businesses, workers, retirees, and state government for health insurance or health care coverage and workers' compensation health care costs; and

WHEREAS, the impacts of rising health care costs decrease profits for companies that provide health insurance for employees and lower profits from what they otherwise might have been, thus decreasing investment income for retirement funds that invest in these companies; and

WHEREAS, access to health care can be considered one of the many ways that government, in the words of the preamble to the U.S. Constitution, promotes "the common welfare" and helps Americans to avoid needless early mortality and lost productivity; and

WHEREAS, an estimated 19% of the Montana population is without health insurance coverage and yet still needs access to health care whether through insurance coverage, subsidized health care, incentives, or other methods of increasing access; and

WHEREAS, quality of health care may be uneven between rural and urban areas, income groups, or regions of the country because of separate state laws, lack of uniform guidelines of care, or other disparate reasons.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States be urged to:

(1) increase its work with states, businesses, labor groups, health insurers, health benefit plans, health care providers, and consumers to address strategies that provide all Americans with basic health care coverage in a manner that positively addresses the increasing costs of health care, the increasing numbers of Americans without health insurance coverage or access to health care, and the uneven quality of health care;

(2) include in its objectives for health care reform a simplification of the current complex system of health care;

(3) work with states, businesses, labor groups, health insurers, health benefit plans, health care providers, and consumers to determine best practice health care guidelines and health care administration guidelines;

(4) look at a health care financing system that recognizes inequity in ability to pay as well as the tendency to shift costs to others if pricing is out of line with ability to pay or impairs competitiveness; and

(5) encourage states to be the laboratory of innovation regarding health care reform and not preempt innovative state laws.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the United States Congress and, specifically, to Montana's Congressional Delegation.

Adopted March 29, 2007

HOUSE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING 24-HOUR SERVICE AT THE PORT OF ENTRY-WILD HORSE.

WHEREAS, there is only one 24-hour port of entry on the border between the State of Montana and the Canadian Province of Alberta; and

WHEREAS, an escalating amount of commercial traffic serving the oil sands region of Alberta hauls freight from manufacturers and suppliers located in the midwestern and southern United States; and

WHEREAS, the findings of a report prepared for Alberta's Legislative Assembly documented the need for an alternate trade corridor and the economic development potential that such a passage would have on communities along the corridor by routing that commercial traffic through Montana by way of Secondary Highway 232 and into Alberta on Provincial Highway 41; and

WHEREAS, on April 10, 2006, Alberta's Legislative Assembly unanimously approved Motion 506 that states: "Be it resolved that the Legislative Assembly urge the Government to promote the use of Highway 41, up to and including Highway 63, from Wildhorse to Fort McMurray, as an alternate north-south transportation corridor from the United States"; and

WHEREAS, Alberta Highway 41 connects to Montana Secondary Highway 232 at the Port of Entry-Wild Horse and serves as an arterial connector to U.S. Highway 2 in Havre; and

WHEREAS, the practicality of this alternate trade corridor is contingent on a 24-hour border crossing facility at the Port of Entry-Wild Horse on Montana Secondary Highway 232; and

WHEREAS, 24-hour service at the Port of Entry-Wild Horse and the development of an alternate trade corridor between Montana and eastern Alberta would remove a barrier to trade and travel for oil and gas, coal, bioenergy, wind, agriculture, tourism, and other industries that require efficient access to markets, thus encouraging new investment and thereby supporting the economic development vision for Montana by promoting investment in central and eastern Montana, including six of the state's Indian reservations.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the House of Representatives and Senate of the State of Montana urge Governor Schweitzer and Montana's Congressional Delegation, as well as the

Governor's Office of Economic Development and the Montana Department of Transportation, to work with the U.S. Department of Homeland Security and the Federal Highway Administration to develop 24-hour service at the Port of Entry-Wild Horse and to fund the necessary expansion of infrastructure that would make that service possible.

BE IT FURTHER RESOLVED, that the Montana Secretary of State forward copies of this resolution to the President of the United States, the Prime Minister of Canada, the Governor of Montana, the Premier of Alberta, Montana's Congressional Delegation, the Canadian Minister of Citizenship and Immigration, the Canadian Minister of Public Safety and Emergency Preparedness, the Director of the U.S. Department of Homeland Security, the Director of the U.S. Federal Highway Administration, the Alberta Minister of International and Intergovernmental Relations, the Alberta Minister of Economic Development, the Director of the Montana Department of Transportation, the Director of the Montana Department of Commerce, the Chief Development Officer of the Governor's Office of Economic Development, the Speaker of the Legislative Assembly of Alberta, and the Mayors of Medicine Hat, Alberta, and Havre, Montana.

Adopted February 9, 2007

HOUSE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA OPPOSING THE RELAXATION OF MAIL DELIVERY STANDARDS UNDER CONSIDERATION BY THE PRESIDENT'S COMMISSION ON THE UNITED STATES POSTAL SERVICE; REQUESTING THAT THE UNITED STATES POSTAL SERVICE MAINTAIN CURRENT LEVELS OF SERVICE; AND REQUESTING THAT THE UNITED STATES POSTAL SERVICE MAINTAIN CURRENT OVERNIGHT DELIVERY STANDARDS AND NOT CENTRALIZE MONTANA'S MAIL-SORTING OPERATIONS.

WHEREAS, the United States Postal Service, founded in 1775, provides dependable, affordable mail service to Montana communities; and

WHEREAS, the United States Postal Service remains an important part of the nation's economic infrastructure through which nearly $1 trillion of economic activity is conducted each year and in which 9 million people are employed; and

WHEREAS, many Montanans, especially in rural areas, do not have easy access to the Internet or to electronic banking and bill paying and are heavily dependent on the United States Postal Service for communication and conducting business transactions; and

WHEREAS, Americans currently enjoy the most extensive postal service at the lowest postage rates of any major industrialized nation in the world; and

WHEREAS, the President's Commission on the United States Postal Service has recommended changes to postal operations that could sever postal employees from federal employee health, retirement, and workers' compensation programs and has recommended repeal of laws that could pave the way toward reducing rank-and-file wages and benefits while simultaneously eliminating the current salary cap on executive level postal positions; and

WHEREAS, the Commission has recommended a new Presidentially appointed, corporate-style board of directors and a new postal regulatory board and has proposed giving these new politically appointed governing bodies broad authority to set rates; and

WHEREAS, the Commission has proposed to refine the scope of the United States Postal Service's "universal service" obligation and uniform rate structure and change and restrict the scope of services currently protected under postal monopoly regulations; and

WHEREAS, the new board's broad authority could allow post offices to be closed and prices to be set with a complicated postage rate structure or could turn over postal operations to private, for-profit enterprises; and

WHEREAS, replacing the United States Postal Service's public service obligation with a profit-seeking mandate would undermine the United States Postal Service's historical "universal service" obligation and weaken its national infrastructure; and

WHEREAS, in the interim period prior to legislated postal reform, the United States Postal Service may move forward with initiatives to close postal facilities in Montana; and

WHEREAS, the United States Postal Service is requesting that the United States Postal Rate Commission investigate relaxation of overnight delivery standards; and

WHEREAS, the United States Postal Service could consolidate the processing of mail in Montana, including moving all Helena outgoing mail-sorting operations to Great Falls; and

WHEREAS, this consolidation would not serve the public's best interest because of the decrease in productivity compared to the current processing of mail in Helena; and

WHEREAS, the consolidation could result in the elimination of the agency's current obligation to deliver local mail overnight and could relax other mail delivery standards across Montana; and

WHEREAS, the economy of the Helena area would be negatively impacted as a result of the relaxation of overnight delivery standards; and

WHEREAS, the public health and the public services provided by state agencies would be negatively impacted as a result of the relaxation of overnight delivery standards.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature urges the President, the Congress of the United States, and the United States Postal Service to continue to maintain affordable, dependable mail service at current levels because of its social and economic importance to our nation.

BE IT FURTHER RESOLVED, that any recommendation from the President's Commission on the United States Postal Service or the United States Postal Rate Commission that curtails public services in the current postal service be rejected.

BE IT FURTHER RESOLVED, that the Legislature of the State of Montana opposes any changes that would harm the public and workers of the United States Postal Service, including legislated or United States Postal Service

initiatives to close or consolidate postal facilities, relax overnight delivery standards, centralize mail-sorting operations, take away or modify the collective bargaining system of postal workers, or change the current bargaining system for employee benefits.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the Honorable George W. Bush, President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the Majority and Minority Leaders of the United States Senate and House of Representatives, the Postmaster General of the United States Postal Service, the United States Postal Rate Commission, the President's Commission on the United States Postal Service, the Committee on Ways and Means, the Committee on Rules, and the Committee on the Budget of the United States House of Representatives, the Budget Committee of the United States Senate, and each member of the Montana Congressional Delegation.

Adopted March 29, 2007

HOUSE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING MONTANA'S CONGRESSIONAL DELEGATION TO INTRODUCE AND SUPPORT LEGISLATION REQUIRING THE U.S. ARMY CORPS OF ENGINEERS TO INCREASE AND MAINTAIN A MINIMUM POOL ELEVATION IN FORT PECK RESERVOIR OF 2226 FEET ABOVE MEAN SEA LEVEL AND TO PROTECT MONTANA'S WATER RIGHTS.

WHEREAS, due to management of downstream barge traffic by the U.S. Army Corps of Engineers, the water levels of Fort Peck Reservoir have reached historic lows; and

WHEREAS, the low water levels have had an adverse impact on recreational uses of Fort Peck Reservoir; and

WHEREAS, the declining water levels have had an adverse effect on fisheries management of Fort Peck Reservoir; and

WHEREAS, declining reservoir levels are affecting the availability of water for irrigation and other agricultural uses; and

WHEREAS, the ability of Montana water users to exercise their water rights is adversely affected; and

WHEREAS, reduced reservoir levels have exposed thousands of acres of land, resulting in an accelerated spread of noxious weeds; and

WHEREAS, the reduced water levels have caused a severe economic impact on all of central and eastern Montana in that marinas have closed, most boat ramps no longer reach the water and are unusable, and recreational boaters have limited use of the reservoir, thereby causing an economic disaster to the service industries of central and eastern Montana that provide food, lodging, fuel, sporting goods, boats, and marinas; and

WHEREAS, studies have concluded that the economic value of barge traffic is approximately $7 million annually, and the economic value of recreational uses of upstream dams is estimated to be $85 million annually; and

WHEREAS, the drawdown of the reservoirs on the Missouri River will have an impact on the cost of electricity to customers that receive power from the Western Area Power Administration; and

WHEREAS, restoring the lake level to 2226 feet above mean sea level will restore most of the recreational uses and will still allow for future flood control.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Montana's Congressional Delegation be strongly urged to introduce and support legislation requiring the U.S. Army Corps of Engineers to increase and maintain a minimum pool elevation in Fort Peck Reservoir of 2226 feet above mean sea level.

Adopted April 5, 2007

HOUSE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE "25 X 25" INITIATIVE TO INCREASE PRODUCTION OF RENEWABLE ENERGY BY THE AGRICULTURAL COMMUNITY.

WHEREAS, having an affordable, clean, reliable, and plentiful energy supply is critical to Montana's economy, as well as the national and international food supply; and

WHEREAS, current and future risks to national energy security are mounting while domestic and global energy demands are growing exponentially; and

WHEREAS, Montana and the United States have tremendous renewable energy resources; and

WHEREAS, the development of a broad spectrum of renewable energy resources, including wind power, biofuels, biomass, methane digesters, ethanol, and solar, benefit the environment and will have a direct economic benefit to agricultural landowners and rural communities; and

WHEREAS, rural communities and agriculture will experience multiple benefits, including establishing additional markets for agricultural commodities, increasing farm income, creating added-value uses for crops, livestock, and their byproducts, encouraging more productive use of marginal lands, resolving air, water, and soil quality problems that may arise from agricultural operations, improving wildlife habitat, and creating many new job opportunities; and

WHEREAS, American agriculture is well positioned to play an expanded role in the development and implementation of new energy solutions and with appropriate technological innovation, incentives, and investments, America's farms and ranches can become the factories that produce a new generation of fuels to help meet the nation's energy needs; and

WHEREAS, "25 x 25" is an agriculturally led initiative that envisions America's farms and ranches producing 25% of America's energy supply by the year 2025 while continuing to produce abundant, safe, and affordable food and fiber; and

WHEREAS, agriculture's role as an energy producer will have a positive effect on national security and trade imbalances and will serve as a catalyst for rural development in Montana and the United States; and

WHEREAS, Governor Brian Schweitzer (D-MT), Governor Dave Heineman (R-NE), Governor Tim Pawlenty (R-MN), Governor Mitch Daniels (R-IN), Governor Ed Rendell (D-PA), former Governor Jeb Bush (R-FL), Governor Kathleen Sebelius (D-KS), former Governor Tom Vilsack (D-IA), former Governor George Pataki (R-NY), former Governor Robert Ehrlich (R-MD), Governor Jennifer Granholm (D-MI), former Governor James Risch (R-ID), Governor Jim Doyle (D-WI), Governor Jim Douglas (R-VT), Governor Ernie Fletcher (R-KY), Governor John Lynch (D-NH), former Governor Bob Taft (R-OH), Governor Tim Kaine (D-VA), Governor Arnold Schwartzenegger (R-CA), and Governor Rod Blagojevich (D-IL) have endorsed "25 x 25"; and

WHEREAS, state legislatures from Colorado, Nebraska, Kansas, and Vermont have endorsed "25 x 25".

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature endorses the "25 x 25" vision of agriculture providing 25% of the total energy consumed in the United States by the year 2025, while continuing to produce abundant, safe, and affordable food and fiber.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the Honorable George W. Bush, President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the Majority and Minority Leaders of the United States Senate and House of Representatives, and each member of the Montana Congressional Delegation.

Adopted March 8, 2007

HOUSE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE EXECUTIVE AND JUDICIAL BRANCHES OF STATE GOVERNMENT TO IMPLEMENT TELECOMMUTING, ALSO KNOWN AS "TELEWORK", WITHIN BRANCH AGENCIES BY IDENTIFYING FUNCTIONS THAT MAY BE PERFORMED BY EMPLOYEES WHO TELEWORK, ADOPTING POLICIES AND PROCEDURES FOR TELEWORK, AND IMPLEMENTING THOSE POLICIES.

WHEREAS, one of the most important issues to the citizens of Montana is the energy issue in all its facets; and

WHEREAS, telecommuting, also known as "telework", keeps more vehicles parked and reduces energy waste, foreign oil dependence, and even terrorist funding; and

WHEREAS, telework reduces stress and wasted time behind the wheel and improves highway safety by reducing traffic; and

WHEREAS, telework has been shown to increase employee productivity, improve retention, and bring efficiency to the use of employer assets; and

WHEREAS, telework reduces the number of children without parents at home; and

WHEREAS, Chapter 56, Laws of 2005, authorized and directed the Department of Administration to adopt policies to encourage agencies to implement telework for agency employees when in the state's best interest.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Executive and Judicial Branches of the government of the State of Montana be urged to:

(1) assess each function within each branch agency and identify which functions could be performed through telework;

(2) develop and adopt policies and procedures necessary to implement telework for the identified functions; and

(3) implement telework for the identified functions.

BE IT FURTHER RESOLVED, that the Secretary of State provide a copy of this resolution to the Governor and the Chief Justice of the Montana Supreme Court.

Adopted March 29, 2007

HOUSE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO INCLUDE A RIGHT OF FIRST REFUSAL FOR A STATE IN WHICH FEDERAL LAND PROPOSED FOR SALE IS LOCATED.

WHEREAS, the President's budget proposed the reauthorization of the Secure Rural Schools and Community Self-Determination Act of 2000 for another 5 years and, to help fund this initiative, recommended selling a number of acres of National Forest System lands around the nation; and

WHEREAS, the western states contain vast tracts of federal land that have helped shape the economic and recreational cultures of those states; and

WHEREAS, public land management should not be subject to the whims of temporary budget cycles; and

WHEREAS, the western states have vast experience in managing the public lands that were granted to them through the Enabling Acts under which they were admitted to statehood; and

WHEREAS, the retention of public land creates economic opportunities, preserves the rich western tradition of outdoor activity, and enhances a clean and healthy environment.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Congress include in any legislation considering the sale of federal land a right of first refusal at the appraised value for the state in which the federal land proposed for sale is located.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the United States Congress and, specifically, to Montana's Congressional Delegation.

Adopted April 5, 2007

HOUSE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THAT THE REVISION OF THE CRIMINAL CODES WITHIN TITLE 87 OF THE MONTANA CODE ANNOTATED BE GIVEN PRIORITY .

WHEREAS, the hunting and fishing heritage of Montana recreationists means that a large number of Montanans are subject to the fish and game laws; and

WHEREAS, there are a large number of fish and game bills every session and significant changes to the fish and game laws are enacted at each session; and

WHEREAS, the law school and other entities have expressed the desire to assist the Legislative Branch in long-term projects related to Montana law; and

WHEREAS, practitioners, judges, and citizens find that the criminal codes intertwined within Title 87 of the Montana Code Annotated are difficult to read, understand, and prosecute.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That priority be given to a revision of the criminal codes regarding fish, wildlife, and parks violations that are contained in Title 87 of the Montana Code Annotated and that the revision be proposed to the 2009 Legislature.

BE IT FURTHER RESOLVED, that entities interested in a proposed revision of the criminal codes in Title 87 are encouraged to participate in the proposed revision.

BE IT FURTHER RESOLVED, that revisions will not include policy changes to current laws and will adhere to the intent of the legislatures that crafted the laws.

BE IT FURTHER RESOLVED, that the Department of Fish, Wildlife, and Parks, the Attorney General, and the Montana Magistrates Association join in requesting the Montana Supreme Court to appoint a Fish, Wildlife, and Parks Criminal Code Revision Commission to oversee and direct a revision.

BE IT FURTHER RESOLVED, that the Attorney General's Office, the Legislative Services Division, the Department of Fish, Wildlife, and Parks, the Montana Magistrates Association, and the Montana County Attorneys Association assist and participate in the proposed revision.

BE IT FURTHER RESOLVED, that the Law School at the University of Montana-Missoula be requested to provide assistance and participate in the proposed revision.

BE IT FURTHER RESOLVED, that funding for the revision project and the Fish, Wildlife, and Parks Criminal Code Revision Commission will be absorbed by the Department of Fish, Wildlife, and Parks without additional funds.

Adopted April 12, 2007

HOUSE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES GOVERNMENT TO ALLOW THE INTERSTATE SHIPMENT OF MEAT THAT IS PROCESSED IN APPROVED STATE-INSPECTED MEAT PROCESSING AND PACKING FACILITIES, AS ALLOWED BY UNITED STATES DEPARTMENT OF AGRICULTURE REGULATIONS.

WHEREAS, agriculture is Montana's top industry and Montana's cattle ranchers produce beef of exceptional quality that is desired nationally and around the world; and

WHEREAS, the continued success of agriculture is dependent on the economic development practice of adding value to existing products; and

WHEREAS, the input cost of transporting meat for processing places an additional burden on Montana's ranchers, who are already struggling to remain viable in a volatile marketplace; and

WHEREAS, United States Department of Agriculture (USDA) regulations allow for state-inspected meat processing and packing plants, and the USDA considers state-inspected plants to be commensurate with federally inspected plants; and

WHEREAS, the USDA thoroughly inspects and approves state-inspected meat processing and packing plants every 3 years; and

WHEREAS, the USDA pays one-half of the cost of state inspection for state meat processing and packing plants, provided that state standards equal or exceed federal standards; and

WHEREAS, Montana's meat processing standards are more stringent than federal standards; and

WHEREAS, state-inspected meat processing and packing plants have been operating successfully and safely in Montana for over 20 years; and

WHEREAS, the market for specialized meat products is expanding, and producers need access to processing plants to capitalize on these new consumer tastes; and

WHEREAS, consumers appreciate the right to choose agricultural products that are produced and processed in Montana; and

WHEREAS, despite USDA regulations that allow the interstate shipment of state-inspected meat, federal law restricts state-inspected meat from interstate commerce.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States government be urged to lift its ban on the interstate shipment of meat processed in approved state-inspected meat processing and packing plants.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to Montana's Congressional Delegation and to the Governor of Montana.

Adopted March 29, 2007

HOUSE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING MEDICAL AND MENTAL HEALTH CARE PROVIDERS TO ASSIST PERSONS WITH A CHRONIC ILLNESS AND THEIR FAMILIES TO FACILITATE METHODS OF ACCESS TO HEALTH CARE INFORMATION OR TO BRING A STATE LAW THAT PREVENTS ACCESS TO THE ATTENTION OF THE LEGISLATURE, THE GOVERNOR, OR THE ATTORNEY GENERAL.

WHEREAS, persons who are receiving or in need of treatment for chronic illness need the support of their families and their medical providers; and

WHEREAS, the U.S. Department of Health and Human Services issued the Privacy Rule to implement the privacy requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and Privacy Rule standards address the use and disclosure of individuals' health information, called "protected health information", by organizations subject to the Privacy Rule, called "covered entities", such as medical providers and health care insurers, and address individuals' privacy rights, including the right to understand and control how their health information is used; and

WHEREAS, if a state law is contrary to the Privacy Rule, a state has the ability to seek a HIPAA exception to the general rule of federal preemption in which the Secretary of the U.S. Department of Health and Human Services may make a determination that a contrary provision of state law will not be preempted by HIPAA when the intrusion into privacy is warranted when balanced against the need to be served; and

WHEREAS, there are other steps that individuals may take to share their protected health information with family members, such as by agreement or by designating a personal representative through a health care or general power of attorney, legal guardianship, or advanced health care directive; and

WHEREAS, there are provisions for medical care providers to share information with family when it is in the best interest of the individual and when the family member is involved with or responsible for their family member's care; and

WHEREAS, protected health information may be used or disclosed to assist in the notification of a family member of the individual's location or general condition; and

WHEREAS, professional organizations for health care providers and third-party payors have developed sophisticated systems to share information between entities for medical and payment purposes but have not concentrated on efforts to assist persons with chronic illness and their families in sharing information and participating in the persons' care.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That medical and mental health professionals, advocates, associations, and the Department of Public Health and Human Services endeavor to understand the provisions of HIPAA, to assist persons with chronic illness and their families to understand the provisions, and to encourage, facilitate, and make available to them the information that would allow them to create and use methods to support persons with chronic illness with their treatment and provide respect for their privacy rights and independence.

BE IT FURTHER RESOLVED, that if there are provisions of state law that persons with chronic illness, family members, or medical and mental health care professionals believe to be contrary to HIPAA and worthy of an exception, they bring it to the attention of the Legislature, the Governor, or the Attorney General to seek an exception to the general rule of federal preemption.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to all of the Divisions of the Department of Public Health and Human Services, the Montana chapter of the National Alliance on Mental Illness, the Montana Advocacy Program, the Montana Medical Association, the Montana Psychological Association, the Montana Nurses' Association, the Montana Psychiatric Association, the Montana Primary Care Association, community health centers and clinics, community mental health centers, the National Association of Social Workers - Montana chapter, the Montana Children's Initiative Provider Association, and MHA - An Association of Montana Health Care Providers.

Adopted April 5, 2007

HOUSE JOINT RESOLUTION NO. 20

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE U.S. DEPARTMENT OF DEFENSE TO REQUIRE MALMSTROM AIR FORCE BASE TO TAKE FINANCIAL RESPONSIBILITY FOR REMEDIATION OF SEDIMENT IN THE MISSOURI RIVER RESULTING FROM STORM WATER.

WHEREAS, Montana conservation districts are political subdivisions of the State of Montana created by the Legislature in 1939; and

WHEREAS, conservation districts' main function is to conduct local activities to promote conservation of natural resources; and

WHEREAS, the Whitmore ravine is a natural drainage located on the east end of Great Falls between Malmstrom Air Force Base and the Missouri River; and

WHEREAS, two feasibility studies completed in 2003 and 2005 estimate that 470,000 tons of sediment have entered the Missouri River through the Whitmore ravine; and

WHEREAS, the feasibility studies note that Malmstrom Air Force Base is the only major developed area contributing storm water discharges to the ravine; and

WHEREAS, Malmstrom Air Force Base has a valid storm water discharge permit from the Department of Environmental Quality; and

WHEREAS, the Cascade County conservation district has diligently worked to form a Whitmore ravine task force to include the participation of all stakeholders; and

WHEREAS, current contributions total $48,700 from private sources and from local and state governments to fund the feasibility studies, with $30,000 representing the state share from the coal tax trust fund; and

WHEREAS, the feasibility studies estimate a minimum construction cost of $2.3 million to remedy the erosion problem and sediment pollution to the Missouri River; and

WHEREAS, Malmstrom Air Force Base expresses a goal to be a good steward of the land.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the State of Montana formally request the U.S. Department of Defense to acknowledge the damage that storm water from Malmstrom Air Force Base has caused and require Malmstrom Air Force Base to take financial responsibility for any remediation actions and to work in close cooperation with affected landowners and the Cascade County conservation district to effectively resolve this major natural resource problem.

Adopted March 20, 2007

HOUSE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN APPROPRIATE INTERIM COMMITTEE TO STUDY REPAYMENT PROGRAMS AND OTHER INCENTIVE PROGRAMS TO SUPPORT ACCESS TO DENTAL CARE IN THE STATE, WITH EMPHASIS ON RURAL AREAS.

WHEREAS, access to a dentist in the rural or sparsely populated areas of Montana is difficult or nonexistent; and

WHEREAS, Montana's population of practicing dentists is growing older and concern exists in the dental profession in Montana that the supply of dentists is not being replenished; and

WHEREAS, it is anticipated that a large percentage of Montana dentists currently practicing will retire or reduce practice in the coming decade, severely restricting many Montanans' access to dental care; and

WHEREAS, Montana has no dental school of its own and must rely upon dental programs at other out-of-state educational institutions to provide Montana with graduate dental students; and

WHEREAS, for the medical profession, the state has created the Montana Rural Physician Incentive Program and the Montana Family Practice Residency Program, but no similar programs exist to bring new dentists into the state; and

WHEREAS, the University of Washington Dental School proposes a regional dental educational program entitled "the Regional Initiatives in Dental Education (RIDE) program" for Montana students; and

WHEREAS, proponents of the RIDE program request funding for the program from the State of Montana; and

WHEREAS, there is a need to determine whether requiring students who receive funding from the program to repay all or a portion of the funds or creating other incentive programs may increase access to dental care within the state by attracting and retaining dentists.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study and make recommendations on issues regarding:

(1) initiatives to increase the supply of dental care professionals, especially in rural and underserved areas in Montana;

(2) programs that require students who receive educational support through the Regional Initiatives in Dental Education program to repay all or a portion of the funds appropriated by the State of Montana for their education; and

(3) dental loan forgiveness programs administered through the Office of the Commissioner of Higher Education.

BE IT FURTHER RESOLVED, that the committee request participation in the study by the Office of the Commissioner of Higher Education, the Office of Economic Development, the Department of Labor and Industry, the Department of Public Health and Human Services, and representation from dental health professionals.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2008.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 61st Legislature.

Adopted April 2, 2007

HOUSE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO BAN THE SALE, DISTRIBUTION, TRANSFER, OR EXPORT OF ELEMENTAL MERCURY.

WHEREAS, the free trade of mercury and mercury compounds on the world market, at relatively low prices and in ready supply, encourages the continued use of mercury outside of the United States, often involving highly dispersive activities such as small-scale gold mining in developing countries; and

WHEREAS, although the intentional use of mercury is declining in the United States as a consequence of process changes in the manufacturing of products, including batteries, paints, switches, and measuring devices, those uses remain substantial in the developing world, where releases from the products are extremely likely due to the limited pollution control and waste management infrastructures in those countries; and

WHEREAS, according to the United States Geologic Survey, during the period from 2000 through 2004, the United States exported 506 metric tons of mercury more than it imported, making it a net exporter of mercury; and

WHEREAS, the Environmental Council of the States has adopted a resolution requesting the President of the United States to issue to federal agencies, including the Department of Defense and the Environmental Protection Agency, that are involved in the storage and management of mercury a directive to work to recommend a plan to manage the long-term storage of mercury; and

WHEREAS, banning exports of mercury from the United States will have a notable effect worldwide on the market availability of mercury and will facilitate switching to affordable mercury alternatives throughout the developing world.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That Congress is encouraged to enact legislation that:

(a) prohibits the sale, distribution, or transfer of elemental mercury by the Department of Defense and the Department of Energy to any other department or agency of the federal government, any state or local government, or any private person or entity;

(b) prohibits the export of elemental mercury from the United States;

(c) authorizes the President, subject to notification and justification requirements, to prohibit the export of any mercury compound from the United States, as necessary to avoid subversion of the export ban; and

(d) requires the President to establish sufficient storage capacity to safely store quantities of elemental mercury and any mercury compounds covered by the prohibitions that are in excess of quantities necessary for domestic consumption and to establish necessary regulations with respect to the establishment and operation of these storage facilities.

(2) That copies of this resolution be sent by the Secretary of State to the President of the United States and the Montana Congressional Delegation.

Adopted April 5, 2007

HOUSE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA OPPOSING ANY EFFORT TO IMPLEMENT A TRINATIONAL POLITICAL, GOVERNMENTAL ENTITY AMONG THE UNITED STATES, CANADA, AND MEXICO; OPPOSING THE SECURITY AND PROSPERITY PARTNERSHIP OF NORTH AMERICA AND INITIATIVES PURSUED IN CONJUNCTION WITH THE PARTNERSHIP THAT THREATEN THE

SOVEREIGNTY OF THE UNITED STATES; OPPOSING A NORTH AMERICAN UNION; AND OPPOSING THE NORTH AMERICAN FREE TRADE AGREEMENT SUPERHIGHWAY SYSTEM.

WHEREAS, the Security and Prosperity Partnership of North America was launched in March of 2005 as a trilateral effort among the United States, Canada, and Mexico to share information and streamline traffic across shared borders; and

WHEREAS, in meeting Security and Prosperity Partnership initiatives, the security and prosperity ministers are examining opportunities to open the borders between the United States, Canada, and Mexico; and

WHEREAS, the gradual creation of such a North American Union from a merger of the United States, Mexico, and Canada would be a direct threat to the Constitution and national independence of the United States and imply an eventual end to national borders within North America; and

WHEREAS, according to the Department of Commerce, United States trade deficits with Mexico and Canada have significantly widened since the implementation of the North American Free Trade Agreement (NAFTA); and

WHEREAS, the economic and physical security of the United States is impaired by the potential loss of control of its borders attendant to the full operation of NAFTA; and

WHEREAS, a NAFTA Superhighway System from the west coast of Mexico through the United States and into Canada has been suggested as part of a North American Union and the broader plan to advance the Security and Prosperity Partnership; and

WHEREAS, it would be particularly difficult for Americans to collect insurance from Mexican companies that employ Mexican drivers involved in accidents in the United States, which would increase the insurance rates for American drivers; and

WHEREAS, future unrestricted foreign trucking into the United States can pose a safety hazard due to inadequate maintenance and inspection and can act collaterally as a conduit for the entry into the United States of illegal drugs, illegal human smuggling, and terrorist activities; and

WHEREAS, a NAFTA Superhighway System would be funded by foreign consortiums and controlled by foreign management, which threatens the sovereignty of the United States; and

WHEREAS, the Security and Prosperity Partnership aims to integrate United States laws with Mexico and Canada on a broad range of issues such as e-commerce, transportation, environment, health, agriculture, financial services, and national security, which may lead to negative changes in United States administrative laws; and

WHEREAS, state and local governments throughout the United States would be negatively impacted by the Security and Prosperity Partnership or a North American Union process, such as an open borders vision, eminent domain takings of private property along potential superhighways, and increased law enforcement problems along such superhighways; and

WHEREAS, this trilateral partnership to develop a North American Union has never been presented to Congress as an agreement or treaty and has had virtually no congressional oversight; and

WHEREAS, initiatives advancing the Security and Prosperity Partnership will lead to the erosion of United States sovereignty and could lead to integrated continental court systems and currency; and

WHEREAS, United States policy, not foreign consortiums, should be used to control our national borders and to ensure that national security is not compromised.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature urge the President and the Congress of the United States to withdraw the United States from any further participation in the Security and Prosperity Partnership, any efforts to implement a trinational political, governmental entity among the United States, Canada, and Mexico, or any other efforts used to accomplish any form of a North American Union.

BE IT FURTHER RESOLVED, that the Montana Legislature urge the President and the Congress of the United States not to engage in the construction of a North American Free Trade Agreement Superhighway System.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the Honorable George W. Bush, President of the United States, the Vice President of the United States, the United States Secretary of Commerce, and each member of the United States Congress.

Adopted April 18, 2007

HOUSE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN INTERIM COMMITTEE OR STAFF STUDY AND DEVELOP AN IMPLEMENTATION PLAN FOR MENTAL HEALTH CARE FOR ADULTS AND YOUTH IN THE CRIMINAL AND JUVENILE JUSTICE SYSTEMS.

WHEREAS, criminal justice research data revealed that more than half of jail inmates and state prisoners have mental health problems, based on symptoms within the past 12 months, which is significantly more prevalent than in the general population; and

WHEREAS, a number of youth in the juvenile justice system suffer from mental health problems, some experiencing disorders so severe that their ability to function is significantly impaired; and for some youth, contact with the juvenile justice system is often their first and only chance to get help; and

WHEREAS, appropriate and early intervention and treatment of adults and youth with mental disorders may divert them from costly incarceration and future crime and assist them to become productive members of society; and

WHEREAS, community treatment options for adult and juvenile offenders may require supervision, housing, and employment supports toward a recovery-based life, and a study of the issue of mental health care for adult and juvenile offenders is needed to determine ways to improve the criminal and juvenile justice systems; and

WHEREAS, the Law and Justice Interim Committee of the Montana Legislature studied the "disproportionate minority contact in the Montana

criminal justice system" and found that a significant number of individuals in the corrections system have mental health issues; and

WHEREAS, at least one previous interim study of the Montana Legislature addressed the mental health of individuals in the juvenile justice system but did not study the criminal justice system as a whole; and

WHEREAS, there is a need for a comprehensive interim study that would include a review of all previous studies and laws related to mental health issues in the criminal and juvenile justice systems for the purposes of development of a plan to implement priorities to deal with those issues.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to address mental health care in the criminal and juvenile justice systems.

BE IT FURTHER RESOLVED, that the goal be to study and develop an implementation plan to provide mental health care in the criminal and juvenile justice systems that includes:

(1) mental health care of youth who are adjudicated as delinquent;

(2) mental health care of convicted adult defendants;

(3) addressing options for supervising adjudicated youth and convicted adults in the community, including mental health probation options;

(4) developing a continuum of care encompassing community placements and inpatient treatment options and addressing the interplay between community placements and treatment options; and

(5) the availability and use of mental health treatment prior to adjudication of juvenile or conviction of adult defendants.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2008.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 61st Legislature.

Adopted April 2, 2007

HOUSE JOINT RESOLUTION NO. 28

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF BUSINESSES INFRASTRUCTURE IN MONTANA AS IT RELATES TO ECONOMIC DEVELOPMENT INITIATIVES.

WHEREAS, Montana is a part of the global marketplace as technology bridges the divide between local businesses and the vibrant national economy and the world; and

WHEREAS, it is the innovation and initiative of entrepreneurs in the private sector that drive our economy and provide for the quality of life that Americans enjoy; and

WHEREAS, even the most recent invention or well-crafted business plan needs an infrastructure in which to prosper.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources:

(1) to analyze and study the state of "business infrastructure" in Montana, including:

(a) traditional land and air transportation systems, both internal to the state and with adjoining states, to determine feasibility for movement of merchandise manufactured within Montana and materials needed by existing and potential businesses in the state;

(b) communication and technological systems, including but not limited to traditional and cell phone coverage, Internet and wireless access, and teleconferencing, both statewide and at a microlevel in each of Montana's urban centers; and

(c) current and potential businesses designed to assist entrepreneurship and provide logistical support to small businesses, including but not limited to office parks designed for shared usage of administrative support; computers, technology, and meeting space; firms designed to allow for outsourcing of human resources, payroll, and accounting functions; and printing and shipping functions;

(2) to identify areas in which legislatively initiated programs in other states have addressed the development of any business infrastructure components listed in subsection (1), to be viewed by leaders in the businesses community and included in subsequent public policy considerations.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentations and review requirements, be concluded prior to September 15, 2008.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 61st Legislature.

Adopted April 19, 2007

HOUSE JOINT RESOLUTION NO. 31

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA OPPOSING THE ROCKIES PROSPERITY ACT.

WHEREAS, bills with the same content have been introduced in the Congress for the past three sessions, named successively the Northern Rockies Ecosystem Protection Act of 2001, the Northern Rockies Ecosystem Protection Act of 2003, and the Rockies Prosperity Act of 2005; and

WHEREAS, these acts would designate more than 15.4 million acres as new wilderness, more than 1.4 million acres as park preserves, more than 1 million acres as recovery areas, and an additional 8.51 million acres as biological connecting corridors; and

WHEREAS, the proposed wilderness, preserves, and recovery areas would impose severe restrictions on access and human activities in violation of existing laws such as the Multiple-Use Sustained-Yield Act; and

WHEREAS, severe restrictions on the management of the private property within the corridors would lead to prohibition of even-aged silvicultural management, prohibition of timber harvesting, prohibition of mineral, oil, and gas exploration, prohibition of road construction or reconstruction with the goal of achieving zero miles of road in the corridors over a short time period, causing loss of value to private property even to the point of forcing landowners to abandon their properties, hopes, and dreams and causing extreme hardship and anguish; and

WHEREAS, additional taking of private property would occur with the reduction of water rights on National Forest land and the reduction of grazing rights on National Forest land, causing hardship and loss of business to ranchers, farmers, and residents in the region; and

WHEREAS, the requirements for implementation of the management plans set forth in the acts are extremely unbalanced in their approach to conservation, focus entirely on plant, animal, and ecological effects and leave out the social, economic, and cultural impacts on people who also are part of the natural environment, and are in violation of existing law, such as the National Environmental Policy Act; and

WHEREAS, the Montana Legislature does not believe these acts, drafted by extreme special interest groups funded by international foundations and other sources that do not represent the majority of Montana residents, should be allowed to subject land in Montana to this sort of unbalanced, unnecessary control; and

WHEREAS, the placing of environmental or other restrictions upon the use of private lands has been held by a number of recent United States Supreme Court decisions to constitute a taking of the land for public purposes; and

WHEREAS, these acts do not include proposals to purchase the private lands; and

WHEREAS, the restrictions contemplated constitute an unlawful taking of that land in violation of Article I, section 8, clause 17, of the Constitution of the United States, which provides that before any state land can be purchased, the consent of the state Legislature and not the state Executive Branch must be obtained; and

WHEREAS, Article IV, section 3, clause 2, of the Constitution of the United States provides that "nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state"; and

WHEREAS, Article IV, section 4, of the Constitution of the United States provides that "the United States shall guarantee to every state in this union a republican form of government"; and

WHEREAS, Amendment V of the Constitution of the United States provides that no person shall "be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation".

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature is opposed to the passage of these acts.

BE IT FURTHER RESOLVED, that the Montana Legislature urge the members of Congress, especially the Montana delegation, to vigorously oppose these acts and any revisions of these acts and to vote against these acts at every opportunity.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the Secretary of State of the United States, the President of the Senate and the Speaker of the House of Representatives of the United States, and Montana's Congressional Delegation.

Adopted April 27, 2007

HOUSE JOINT RESOLUTION NO. 33

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF ISSUES RELATED TO POLIO AND POSTPOLIO SEQUELAE IN MONTANA, THEIR IMPACTS IN MONTANA, AND WAYS TO ADDRESS POLIO-RELATED ISSUES TO IMPROVE THE LONG-TERM HEALTH OF MONTANANS.

WHEREAS, the injectable polio vaccine first developed in the 1950s eliminated naturally occurring polio cases in the United States but has not yet eliminated polio in other parts of the world; and

WHEREAS, as few as 57% of American children receive all doses of necessary vaccines during childhood, including the polio vaccine; and

WHEREAS, the success of the polio vaccines has caused people to forget the 1.6 million Americans who were born before the development of the vaccines and who contracted polio during the epidemics in the middle of the 20th century; and

WHEREAS, at least 70% of the paralytic polio survivors and 40% of nonparalytic polio survivors are developing postpolio sequelae, which are unexpected and often disabling symptoms that occur up to 35 years after the poliovirus attack, including overwhelming fatigue, muscle weakness, muscle and joint pain, sleep disorders, heightened sensitivity to anesthesia, and difficulty in swallowing and in breathing; and

WHEREAS, research and clinical work have discovered that postpolio sequelae can be treated, and even prevented, if polio survivors are taught to conserve energy and use assistive devices to stop damaging and killing the reduced number of overworked, poliovirus-damaged neurons in the spinal cord and brain that survived the polio attack; and

WHEREAS, many medical professionals and polio survivors do not know of the existence of postpolio sequelae or of the available treatments.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study and make recommendations on:

(1) the number of Montana children who do not receive recommended childhood vaccinations, including the polio vaccination, and the number of Montanans who contracted polio and are suffering or may in the future suffer from postpolio sequelae;

(2) ways to increase the number of Montanans vaccinated against polio and other diseases, including but not limited to improved education about the need to follow the recommended schedule of vaccinations for infants, children, and adults and measures that the state could take to encourage and ensure that children receive the vaccinations that they need;

(3) issues regarding postpolio sequelae, including but not limited to improved education on the risk factors, the signs and symptoms of the syndrome, and the ways to treat and prevent postpolio sequelae; and

(4) additional efforts that could be undertaken through the collaborative efforts of the Department of Public Health and Human Services, local boards of health, groups promoting childhood vaccinations, and groups working on issues related to postpolio sequelae, to improve the long-term health of Montana's children and adults as it relates to polio and postpolio sequelae.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2008.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 61st Legislature.

Adopted April 2, 2007

HOUSE JOINT RESOLUTION NO. 34

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING MONTANA'S CONGRESSIONAL DELEGATION AND THE UNITED STATES BUREAU OF RECLAMATION TO ACT IN SUPPORT OF PROTECTING FLOWS IN THE MONTANA STRETCH OF THE BIGHORN RIVER.

WHEREAS, the Bighorn River is an internationally famous blue-ribbon trout fishery; and

WHEREAS, the Bighorn River is the backbone of a vibrant economy in Montana and for the Crow Indian nation; and

WHEREAS, the Bighorn River is a popular recreation destination; and

WHEREAS, the Bighorn River is a highly diversified and fragile natural resource.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature recognizes the importance of the Bighorn River to Montana's economy and to the Crow Indian nation's economy.

BE IT FURTHER RESOLVED, that the Montana Legislature recognizes the Bighorn River's value as a natural resource.

BE IT FURTHER RESOLVED, that the Montana Legislature strongly disapproves of efforts to reduce the flow of the Bighorn River downstream of Yellowtail Reservoir below 2,500 cubic feet per second.

BE IT FURTHER RESOLVED, that Montana's Congressional Delegation and the United States Bureau of Reclamation be urged to act in support of protecting flows in the Montana stretch of the Bighorn River.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to Montana's Congressional Delegation and Secretary of Interior Kempthorne.

Adopted April 5, 2007

HOUSE JOINT RESOLUTION NO. 35

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RESOLVING THAT THE LEGISLATIVE AUDIT COMMITTEE PRIORITIZE A PERFORMANCE AUDIT OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS' WEED MANAGEMENT PROGRAM AND THAT THE LEGISLATIVE AUDITOR PRESENT FINDINGS FROM THE PERFORMANCE AUDIT, WITH RECOMMENDATIONS FOR PROPOSED LEGISLATION, TO THE 61ST LEGISLATURE.

WHEREAS, the Good Neighbor Policy set out in section 23-1-126, MCA, requires the Department of Fish, Wildlife, and Parks to seek a goal of no impact upon adjoining private and public lands by preventing impact on those adjoining lands from noxious weeds, trespass, litter, noise and light pollution, streambank erosion, and loss of privacy; and

WHEREAS, section 23-1-127, MCA, requires implementation of the Good Neighbor Policy in regard to state parks and fishing access sites and requires that priority be given to maintenance of existing facilities, including weed control, rather than capital development; and

WHEREAS, the Parks Division of the Department of Fish, Wildlife, and Parks has received substantial increases in funding through license plate fees; and

WHEREAS, the Governor has proposed an increase of $15 million in funding for the purchase of more land for state parks and fishing access sites without reference to maintenance.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Audit Committee prioritize a performance audit of the Department of Fish, Wildlife, and Parks' weed management program and that, as part of the performance audit, the Legislative Auditor shall:

(1) evaluate the effectiveness and efficiency of the department's weed management program and program compliance with applicable state weed laws, particularly sections 23-1-126 and 23-1-127, MCA;

(2) present findings from the performance audit and any recommendations for proposed legislation or restrictions on the Department of Fish, Wildlife, and Parks' budget to the 61st Legislature; and

(3) present findings from the performance audit in a readily accessible format for use by the Legislature and any interested parties.

Adopted March 26, 2007

HOUSE JOINT RESOLUTION NO. 36

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO DE-COUPLE FEDERAL MINERAL ROYALTY REVENUE PAYMENTS FROM STATES TO COUNTIES WHEN CALCULATING PAYMENT IN LIEU OF TAX PAYMENTS.

WHEREAS, the federal Mineral Leasing Act intended for states to share mineral royalties with counties, giving priority to those taxing jurisdictions with impact and infrastructure needs incurred by the industry that pays the royalty; and

WHEREAS, payment in lieu of tax (PILT) payments are payments in lieu of taxes on federal lands; and

WHEREAS, federal mineral royalty revenue is considered prior year payments in the current PILT formula; and

WHEREAS, federal mineral royalty revenue that is passed on from the states to counties is currently being deducted from their PILT payments as prior year payments; and

WHEREAS, prior year payments connected to the PILT formula are a detriment to any economic development in which federal natural resources are extracted in that local government jurisdiction; and

WHEREAS, the decision to extract natural resources owned by the federal government should be based only on the economic and scientific data available and not on other programs such as PILT; and

WHEREAS, local governments may not have increased nontax revenue because of increased prior year payments because PILT is deducted proportionately; and

WHEREAS, the federal mineral royalties are derived not only from minerals held under federal land but from under private land as well; and

WHEREAS, a county should not be penalized when the state shares royalty revenue with the county for offsetting the impacts of the industry.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Congress de-couple federal mineral royalty revenue payments from states to counties when calculating payment in lieu of tax payments.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the United States Congress and, specifically, to Montana's Congressional Delegation.

Adopted April 5, 2007

HOUSE JOINT RESOLUTION NO. 38

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA STATING FINDINGS OF THE LEGISLATURE; REPEALING, RESCINDING, CANCELING, VOIDING, AND SUPERSEDING ANY AND ALL EXTANT APPLICATIONS BY THE LEGISLATURE OF THE STATE OF MONTANA PREVIOUSLY MADE DURING ANY LEGISLATIVE SESSION TO THE CONGRESS OF THE UNITED STATES OF AMERICA TO CALL A CONVENTION PURSUANT TO THE TERMS OF ARTICLE V OF THE UNITED STATES CONSTITUTION FOR PROPOSING ONE OR MORE AMENDMENTS TO THE CONSTITUTION; URGING THE LEGISLATURES OF THE OTHER STATES TO DO THE SAME; AND DIRECTING COPIES OF THIS RESOLUTION BE SENT TO SPECIFIED PERSONS.

WHEREAS, the Legislature of the State of Montana, acting with the best of intentions, has, at various times and during various sessions, previously made applications to the Congress of the United States of America to call one or more conventions to propose either a single amendment concerning a specific subject or to call a general convention to propose an unspecified and unlimited number of amendments to the United States Constitution, pursuant to the provisions of Article V of the United States Constitution; and

WHEREAS, former Chief Justice of the United States of America Warren E. Burger, former Associate Justice of the United States Supreme Court Arthur J. Goldberg, and other leading constitutional scholars agree that such a convention may propose sweeping changes to the Constitution, any limitations or restrictions purportedly imposed by the states in applying for a convention or conventions to the contrary notwithstanding, thereby creating an imminent peril to the well-established rights of the citizens and the duties of various levels of government; and

WHEREAS, the Constitution of the United States of America has been amended many times in the history of this nation and may be amended many more times, without the need to resort to a constitutional convention, and has been interpreted for more than 200 years and has been found to be a sound document that protects the lives and liberties of the citizens; and

WHEREAS, there is no need for, and rather there is great danger in, a new Constitution or in opening the Constitution to sweeping changes, the adoption of which would only create legal chaos in this nation and only begin the process of another 2 centuries of litigation over its meaning and interpretation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature does hereby repeal, rescind, cancel, nullify, and supersede to the same effect as if they had never been passed any and all extant

applications by the Legislature of the State of Montana to the Congress of the United States of America to call a convention to propose amendments to the Constitution of the United States of America, pursuant to the terms of Article V of the Constitution, regardless of when or by which session or sessions of the Montana Legislature the applications were made and regardless of whether the applications were for a limited convention to propose one or more amendments regarding one or more specific subjects and purposes or for a general convention to propose an unlimited number of amendments upon an unlimited number of subjects.

BE IT FURTHER RESOLVED, that the following resolutions and memorials are specifically repealed, rescinded, canceled, nullified, and superseded: Joint Concurrent Resolution No. 2, 1901; House Joint Resolution No. 1, 1905; Senate Joint Resolution No. 1, 1907; House Joint Memorial No. 7, 1911; House Joint Resolution No. 13, 1963; and Senate Joint Resolution No. 5, 1965.

BE IT FURTHER RESOLVED, that the Legislature of the State of Montana urges the Legislatures of each and every state that has applied to Congress to call a convention for either a general or a limited constitutional convention to repeal and rescind the applications.

BE IT FURTHER RESOLVED, that the Secretary of State is directed to send copies of this resolution to the Secretary of State of each state in the Union, to the presiding officers of both houses of the Legislatures of each state in the Union, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to the Montana Congressional Delegation.

Adopted April 5, 2007

HOUSE JOINT RESOLUTION NO. 39

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY ON THE ECONOMIC BENEFITS OF PURSUING COMMERCIALIZATION PROJECTS WITH EXISTING RESEARCH UNITS WITHIN THE MONTANA UNIVERSITY SYSTEM.

WHEREAS, Montana's economy has a long history of expansion and retraction that continues to the present day because of the volatility of extraction and agricultural markets; and

WHEREAS, Montana has one of the lowest levels of per capita income in the nation and has the fifth worst rate of net outmigration of young, single, college-educated adults, according to the U.S. Bureau of the Census; and

WHEREAS, research universities across the country have proved that academic research in sciences and technology can be commercialized into products and businesses that provide high paying jobs that retain and recruit the brightest minds; and

WHEREAS, the University System in the State of Montana is not in a competitive position relative to other state's university systems with regard to research facilities and infrastructure; and

WHEREAS, businesses born out of research and commercialization efforts are typically light manufacturers, including those that produce solely an

intellectual product, thus bringing in much needed financial gains to the state with little impact to natural amenities; and

WHEREAS, the creation of high paying jobs in the high-tech sector will have a positive economic satellite effect to other job sectors and the state economy as a whole.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources:

(1) to study the potential economic development that can arise from high-tech and biotech research; and

(2) to include as a component of this study the appropriate degree of state financial contribution to research projects in the Montana University System, including:

(a) building research buildings and core facilities and providing for the maintenance of these structures;

(b) providing support for technically trained personnel to provide service on and to maintain state-of-the-art equipment necessary for research;

(c) providing fellowships to support postdoctoral personnel and graduate students in research programs; and

(d) providing startup funds for new research faculties to allow those faculties to initially equip and start research laboratories.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentations and review requirements, be concluded prior to September 15, 2008.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 61st Legislature.

Adopted April 12, 2007

HOUSE JOINT RESOLUTION NO. 40

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO APPROVE INCREASED FUNDING FOR REGIONAL WATER PROJECTS IN MONTANA.

WHEREAS, some communities in Montana are plagued with drinking water that contributes to debilitating physical conditions or diseases because of elevated levels of dissolved minerals in the water; and

WHEREAS, some communities face a drastic shortage of drinking water, as well as significant cost increases for treatment facility repairs and mandated upgrades; and

WHEREAS, four regional water projects that are planned or under construction in Montana would provide Indian tribes, farms, ranches, and rural communities with clean and plentiful water; and

WHEREAS, regional water systems, through a centralized water treatment plant, provide for a more economical means of upgrading and updating water treatment processes in response to more stringent federal and state regulations; and

WHEREAS, the Montana Legislature has supported regional water projects through establishment of the treasure state endowment regional water system fund, using coal severance tax money to fund the state portion of the projects; and

WHEREAS, the Fort Peck-Dry Prairie rural water system and the Rocky Boy-North Central Montana system have congressional approval, yet federal funding is not keeping up with inflation for systems with an estimated cost of more than $250 million each; and

WHEREAS, the Fort Peck-Dry Prairie rural water system and the Rocky Boy-North Central Montana system are each capable of expending up to $30 million of federal funding a year for construction of system infrastructure.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the United States Congress approve increased funding for regional water projects in Montana.

(2) That copies of this resolution be sent by the Secretary of State to the Montana Congressional Delegation.

(3) That the Secretary of State send a copy of this resolution to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Adopted April 5, 2007

HOUSE JOINT RESOLUTION NO. 41

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING THE SERVICE OF MONTANANS IN THE ARMED FORCES OF THE UNITED STATES.

WHEREAS, all Americans have the right, by virtue of wearing the noble title of citizen, to great personal freedoms in the pursuit of life, liberty, and happiness; and

WHEREAS, the history of our young country demonstrates countless examples of bravery and personal sacrifice in order to preserve the freedoms and liberties of the collective citizenry; and

WHEREAS, since September 11, 2001, the nation has once again called upon those who have dedicated their lives to the defense of the nation to stand up against forces that wish ill upon the United States; and

WHEREAS, Montanans have always answered the call to defend the nation, and Montanans will continue to serve and lead in the global war on terror; and

WHEREAS, Montanans serving in every branch of service, both active duty and guard and reserves, have been deployed in the global war on terror at great personal sacrifice to themselves and their families; and

WHEREAS, a number of Montanans have made the ultimate sacrifice in Operation Enduring Freedom and Operation Iraqi Freedom; and

WHEREAS, we as Montanans will continue to support these heroes as they return home to face the challenge of rejoining family, friends, and community.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature recognize the dedication, professionalism, and bravery of all Montanans who have served and will serve in the armed forces of the United States as a part of the global war on terror.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation and to Montana service personnel informing them that the heartfelt thanks of all Montanans are extended to them, that we are proud of them, that they are in our prayers, and that we send them best wishes for a safe return.

Adopted April 12, 2007

HOUSE JOINT RESOLUTION NO. 42

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DESIGNATING APRIL 28 THROUGH MAY 5, 2007, AS SAFE KIDS WEEK IN MONTANA.

WHEREAS, unintentional injury is the number one killer of children 14 years of age and younger; and

WHEREAS, each year, more than 5,000 children 14 years of age and younger die from unintentional injuries; and

WHEREAS, emergency rooms experience nearly 2.4 million visits from children 14 years of age and younger each summer; and

WHEREAS, 90% of these injuries are preventable; and

WHEREAS, 41% of deaths from injuries occur during "trauma season", the months of May, June, July, and August; and

WHEREAS, the risk activities that show the greatest seasonal surge in injuries and deaths between May and August compared to the rest of the year are biking, water-related activities, pedestrian-related activities, motor vehicle-related activities, and falls; and

WHEREAS, Safe Kids Worldwide and Safe Kids USA promote childhood injury prevention by uniting diverse groups into local and state coalitions, developing innovative educational tools and strategies, initiating public policy changes, promoting new technology, and raising awareness through the media; and

WHEREAS, Safe Kids Worldwide, with the support of founding sponsor Johnson & Johnson, is launching Safe Kids Week 2007, "Make it a Safe Summer", which focuses on five of the deadliest warm weather risk activities; and

WHEREAS, Safe Kids USA has planned special childhood injury prevention activities and community-based events for Safe Kids Week 2007 in an effort to educate families about summer safety.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Governor call upon all the residents of the State of Montana to join the Governor in supporting the efforts and activities of safe kids to prevent childhood injury and proclaim April 28 through May 5, 2007, as Safe Kids Week in Montana.

Adopted April 4, 2007

HOUSE JOINT RESOLUTION NO. 44

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING THE IMPORTANCE OF THE MONTANA CHILDREN'S HEALTH INSURANCE PROGRAM; AND URGING THE TIMELY CONGRESSIONAL REAUTHORIZATION OF FEDERAL FUNDS FOR THE PROGRAM.

WHEREAS, the Legislature of the State of Montana regards the health of children to be of paramount importance to families in our state; and

WHEREAS, there are approximately 228,000 children under the age of 19 in Montana, and 37,000 children or 1 in 6 children have no health insurance; and

WHEREAS, Montana's uninsured children could stretch 28 miles if they held hands, fill 673 school buses, and form 4,111 Little League teams; and

WHEREAS, uninsured children are nearly five times more likely than insured children to have at least one delayed or unmet health care need; and

WHEREAS, the Legislature of the State of Montana regards poor child health as a threat to the educational achievement and social and psychological well-being of the children of our state; and

WHEREAS, the Legislature of the State of Montana considers protecting the health of our children to be essential to the well-being of our youngest citizens and to the quality of life in our state; and

WHEREAS, the Legislature of the State of Montana considers the Montana Children's Health Insurance Program, which insures 13,130 children a month, to be an integral part of the arrangements for health benefits for the children of the State of Montana; and

WHEREAS, the Legislature of the State of Montana recognizes the value of the Montana Children's Health Insurance Program in preserving child wellness, preventing and treating childhood disease, improving health outcomes, and reducing overall health costs; and

WHEREAS, insurance costs consume 32% of the median family income in Montana for a family of four; and

WHEREAS, 83% of Montanans polled in a January 2007 Lee Newspaper poll supported the expansion of the state Children's Health Insurance Program; and

WHEREAS, the Legislature of the State of Montana considers the federal funding available for the state Children's Health Insurance Program to be indispensable for providing health benefits for children of modest means.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature of the State of Montana urge the members of Montana's Delegation to the United States Congress to ensure that Congress timely reauthorize the Montana Children's Health Insurance Program to ensure federal funding for the state Children's Health Insurance Program.

(2) That the Legislature of the State of Montana urge the Governor to use the Governor's best efforts to work with Montana's Congressional Delegation to ensure that the state Children's Health Insurance Program is reauthorized in a timely manner.

(3) That the Legislature of the State of Montana proclaim that all components of state government should work together with educators, health care providers, social workers, and parents to ensure that all available public and private assistance for providing health benefits to uninsured children in this state be used to the maximum extent possible.

(4) That the Legislature of the State of Montana urge the Governor to use the Governor's best efforts to provide meaningful assistance to help identify and enroll children who qualify for Medicaid or the Montana Children's Health Insurance Program.

Adopted April 4, 2007

HOUSE JOINT RESOLUTION NO. 45

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO IDENTIFY INADEQUACIES IN AND PROPOSE OPTIONS TO IMPROVE STATE SYSTEMS THAT DO NOT ALLOW FOR THE ACCURATE AND CONSISTENT SPELLING AND USE OF EVERY CITIZEN'S FULL LEGAL NAME; REQUESTING THAT THE STUDY ENGAGE THE EXPERTISE AVAILABLE WITHIN THE DEPARTMENT OF ADMINISTRATION; AND REQUIRING A REPORT OF THE STUDY'S FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS.

WHEREAS, Montana residents periodically experience delays or difficulties in conducting their business or personal affairs if there is a discrepancy between the resident's name as presented on a state-issued document and the name as it appears on other identification or business documents that a resident may be asked to present, particularly regarding the proper or customary use of spacing, uppercase and lowercase letters, apostrophes, hyphens, and other symbols; and

WHEREAS, name formats on some state-issued documents may be constrained because of limitations in the information technology or other systems used by state agencies or because of external requirements arising from interfaces between state information technology systems and information technology systems maintained by other governmental entities or third parties.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to identify issues and develop options to ensure that whenever state agency information technology systems are upgraded or replaced or whenever

business processes for issuing state-authorized driver's licenses, identification cards, permits, certificates, or other similar credentials specific to an individual person are reviewed and revised, state agencies use "best practices" and alternatives that record or present a person's full legal name in a consistent format or manner that includes such typographical characters as apostrophes, hyphens, and other symbols as part of the person's name and that uses customary style conventions, such as uppercase and lowercase lettering, as appropriate.

BE IT FURTHER RESOLVED, that the committee work closely with the Department of Administration, particularly the Information Technology Services Division, to identify the cost-effective application of technology in other public jurisdictions and the private sector that potentially is adaptable for use by the state to address the challenges posed by inadequate or antiquated technology currently used by the state.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2008.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 61st Legislature.

Adopted April 11, 2007

HOUSE JOINT RESOLUTION NO. 46

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN APPROPRIATE INTERIM COMMITTEE OR SUFFICIENT STAFF RESOURCES BE ASSIGNED TO DEVELOP LEGISLATION THAT PROVIDES FOR A COMPREHENSIVE CLEANUP AND CLARIFICATION OF CURRENT ELECTION LAWS, INCLUDING THE POSSIBLE REVISIONS TO MAIL BALLOT ELECTION LAWS TO REQUIRE OR PERMIT THAT ALL ELECTIONS BE CONDUCTED BY MAIL BALLOT; AND PROVIDING THAT THE DRAFT LEGISLATION BE PRESENTED TO THE 61ST LEGISLATURE FOR CONSIDERATION.

WHEREAS, Title 13, chapter 19, of the Montana Code Annotated allows local elections to be conducted by mail as a cost-effective and efficient alternative for conducting an election by requiring electors to vote at the polls; and

WHEREAS, current law that allows absentee voting and late registration has resulted in a significant increase in absentee voting, which demonstrates that absentee voting is a popular alternative to voting only at the polling place on election day; and

WHEREAS, a mail ballot election is essentially absentee voting; and

WHEREAS, all elections in Oregon are conducted by mail, which has proven for Oregon to be not only cost-effective but to have significantly improved voter participation; and

WHEREAS, Montana's election laws have undergone significant changes in the past 20 years due to federal legislation, including changes required by the Voting Accessibility for the Elderly and Handicapped Act, the Uniformed and Overseas Citizens Absentee Voting Act, the National Voter Registration Act of 1993, and the Help America Vote Act of 2002; and

WHEREAS, Montana's election laws have also undergone significant revision due to state-level legislation revising absentee voting, voter registration, and mail ballot elections; and

WHEREAS, in the past 20 years, there has not been a comprehensive examination of the election statutes or comprehensive legislation to clean up, clarify, and better coordinate all the election statutes;

WHEREAS, most recently, bill draft request LC 1503, which would have provided that all elections be conducted by mail, highlighted the fact that current statutes on mail ballot elections are outdated, inadequate, and unwieldy and that there are significant gaps and overlaps in laws with respect to not only mail ballot elections, but also with respect to absentee and provisional voting and accessibility for elderly and disabled voters; and

WHEREAS, work already completed on LC 1503 lays a foundation for developing comprehensive legislation concerning mail ballot elections, absentee and provisional voting, and accessibility so that all elections could be conducted by mail; and

WHEREAS, despite the amount of work already completed on LC 1503, more work is required so that a technically sufficient bill can be properly considered and debated by the Legislature and so that the legislation will not only update current laws but will enhance the integrity of the process for voter registration, for absentee, provisional, and mail ballots, and for signature verification; and

WHEREAS, assigning this project to an interim committee or to staff during the interim would provide greater opportunity for public participation and discussion among all interested persons and stakeholders with respect to Montana's election laws, especially concerning mail ballot elections and absentee voting.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to draft legislation to provide for a comprehensive update, clarification, and cleanup of current election law statutes and to require or permit all elections to be conducted by mail.

BE IT FURTHER RESOLVED, that the legislation be drafted with input from the Office of the Secretary of State, local election administrators, interested persons and organizations, and the general public.

BE IT FURTHER RESOLVED, that if assigned to staff, the draft legislation be presented to and reviewed by an appropriate interim committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that the draft legislation be completed and presented to the appropriate interim committee prior to September 15, 2008.

BE IT FURTHER RESOLVED, that the draft legislation, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 61st Legislature.

Adopted April 27, 2007

HOUSE JOINT RESOLUTION NO. 47

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN INTERIM COMMITTEE STUDY THE FUNDING, EXPENDITURES, AND EFFECTIVENESS OF MONTANA'S STATEWIDE GENETICS PROGRAM.

WHEREAS, the statewide genetics program has served Montanans since its creation in the 1960s at what was then known as the Boulder River School and Hospital; and

WHEREAS, the Montana Legislature established the statewide genetics program in the Department of Public Health and Human Services in 1985; and

WHEREAS, the Department of Public Health and Human Services issues a request for proposals to contract for the statewide genetics program; and

WHEREAS, the statewide genetics program provides unique clinical and laboratory services to diagnose and treat genetic disorders, as well as to prevent genetic disorders by determining a person's risk factors and providing information to help manage high-risk pregnancies; and

WHEREAS, the statewide genetics program holds clinics in towns throughout the state each year to allow Montanans to obtain genetics services without traveling to Helena; and

WHEREAS, if the statewide genetics program no longer existed, Montanans could obtain similar genetic services only by going out of state; and

WHEREAS, the statewide genetics program is highly respected and well-recognized within the field of genetics; and

WHEREAS, the Montana Legislature in 1985 established a fee on each Montana resident insured under any individual or group disability or health insurance policy, including those insured through the state employee insurance plan, to fund the statewide genetics program; and

WHEREAS, the Montana Legislature has amended the genetics program fee four times since its imposition and is again considering a change in the level of the fee; and

WHEREAS, creating a stable and equitable source of funding will benefit not only the statewide genetics program, but also Montanans who use the program and the Montana economy.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) study the history of the funding of the statewide genetics program established in section 50-19-211, MCA;

(2) review the current public and private sources of the program's funding;

(3) review program expenditures;

(4) evaluate the effectiveness of the program by examining factors that include but are not limited to the number of people served by the program, the number of communities visited by the program, and the types of services provided; and

(5) make recommendations for maintaining an effective statewide genetics program, including but not limited to recommendations for providing a stable and equitable source of funding for the program.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2008.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 61st Legislature.

Adopted April 26, 2007

HOUSE JOINT RESOLUTION NO. 48

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN INTERIM COMMITTEE STUDY HEALTH INSURANCE REFORM AND PUBLICLY FUNDED HEALTH CARE PROGRAMS.

WHEREAS, the cost of health care is increasing at a rate higher than the rate of consumer inflation and is driving up costs of businesses, workers, retirees, and state and local governments for health insurance or health care coverage; and

WHEREAS, an estimated 19% of the Montana population remains without health insurance coverage while still needing access to health care; and

WHEREAS, the State of Montana has previously sought to expand health insurance coverage by establishing the Insure Montana program to help small employers provide health insurance to employees, the Montana Comprehensive Health Association plan to help high-risk individuals obtain health insurance coverage, and the Children's Health Insurance Program to provide health insurance coverage for uninsured, low-income children; and

WHEREAS, health care insurance represents a significant component of public budgets, and the control of escalating health insurance costs would help to control public budgets; and

WHEREAS, states regulate health insurance and have the flexibility to revise and reform the way in which health insurance is offered at the state level; and

WHEREAS, many states are determining how best to reform their health care or health insurance systems in an attempt to reduce costs to individuals and employers and reduce the number of uninsured residents; and

WHEREAS, the health care and health insurance systems are complex, and changes to these systems are of interest to health care providers, health insurers, businesses, labor groups, government bodies, and consumers.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or an appropriate combination of interim committees, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study and make recommendations on reforms of the Montana health insurance and health care systems, including publicly funded health care programs. The study must include all interested parties in addressing:

(1) the creation of a system of universal, portable, affordable health insurance coverage for all Montanans that involves private health insurance issuers and that incorporates existing public programs; and

(2) ways to improve the quality, affordability, and delivery of health care.

BE IT FURTHER RESOLVED, that in exploring options for a universal, portable, affordable, private health insurance system, the study examine the concept of a health insurance exchange and the ways in which a health insurance exchange could be implemented in Montana.

BE IT FURTHER RESOLVED, that in exploring the options for providing a universal, portable, affordable, private health insurance system, the study consider the following factors:

(1) similar reforms enacted in other states, including the cost of the reforms to the state and to consumers, the extent to which the reforms have improved the availability and affordability of health insurance coverage, and barriers that states may have encountered and overcome to improve newly enacted health insurance coverage systems;

(2) the advantages and disadvantages of mandating the private universal coverage;

(3) the ways in which existing state-supported private insurance programs, including the Insure Montana program and the Montana Comprehensive Health Association plan, may be incorporated into any reforms;

(4) whether public employee health benefit programs should be included in a reformed system;

(5) potential changes to publicly funded health care programs, including the Medicaid program and the Children's Health Insurance Program, to maximize the use of federal funds and to ensure broader coverage of those in need of assistance;

(6) the ways in which health care providers handle uncompensated care, including whether those costs are shifted to other entities or individuals, and an estimate of the uncompensated costs;

(7) ways in which the state could work with the federal government on integrating aspects of health care services and programs operated by the federal government, including the Indian Health Service, into the state's health care system;

(8) other issues related to access to health care, including access in rural areas; and

(9) the potential for coordinating state health care workforce planning with federal, state, and private funding for medical education.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2008.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 61st Legislature.

Adopted April 26, 2007

HOUSE JOINT RESOLUTION NO. 50

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN APPROPRIATE INTERIM COMMITTEE STUDY MONTANA'S PSYCHIATRIC PRECOMMITMENT EXAMINATION, DETENTION, AND TREATMENT PROCESS AND COSTS.

WHEREAS, section 53-21-132, MCA, requires Montana counties to serve as the payor of last resort for the psychiatric precommitment examination, detention, and treatment costs incurred when a court order has been sought to commit a seriously mentally ill person to the Montana State Hospital; and

WHEREAS, psychiatric precommitment evaluations for which counties have been billed have ranged in duration from 3 days to more than 45 days; and

WHEREAS, the lack of time limits on psychiatric precommitment evaluations not only creates uncertainty for a person subject to commitment proceedings, but also may delay the person's placement in the most appropriate treatment setting; and

WHEREAS, the lack of time limits on psychiatric precommitment evaluations also creates financial uncertainty for Montana's counties, resulting in unanticipated costs.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) study the ways in which the psychiatric precommitment examination, detention, and treatment provisions of state law have been used across the state, including the number of days that individuals are in precommitment evaluation status in each county;

(2) determine the amount of money that Montana's county governments have paid for psychiatric precommitment examination, detention, and treatment, including the trends in those costs over time; and

(3) review the number of people committed to the Montana State Hospital pursuant to the provisions of Title 53, chapter 21, part 1, MCA, including the number of people committed from each Montana county.

BE IT FURTHER RESOLVED, that the study involve discussions with county officials, mental health providers, District Judges, County Attorneys, the Office of State Public Defender, the Department of Public Health and Human Services, and mental health advocates to provide needed information on ways to streamline the system for both mental health consumers and county governments.

BE IT FURTHER RESOLVED, that the committee identify alternatives to the current psychiatric precommitment examination, detention, and treatment process that would:

(1) allow timely resolution of commitment proceedings to ensure that a person who is subject to a commitment proceeding is placed in the most appropriate treatment setting as quickly as possible; and

(2) improve a county government's ability to predict and budget for the costs of psychiatric precommitment evaluations.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2008.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 61st Legislature.

Adopted April 23, 2007

HOUSE JOINT RESOLUTION NO. 52

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE ECONOMIC AND SOCIETAL COSTS OF GAMBLING WITH THE PURPOSE OF INCREASING AWARENESS ABOUT THE INDUSTRY AND ITS EFFECTS ON THE LIVES OF MONTANA CITIZENS AND THEIR COMMUNITIES.

WHEREAS, the impact of gambling in Montana is not well-documented in terms of societal costs but is well-recorded in terms of revenues, which from the video gambling tax alone surpassed $62 million in 2006 with nearly $57.3 million of that going into the state general fund and with revenue increases from the video gambling tax projected at 4.5% in 2007 and 6.3% in each of the next 2 fiscal years; and

WHEREAS, various states and institutions are conducting studies that look at the economic and societal impacts of gambling and, in particular, at the impacts of problem and pathological gambling on individuals and communities; and

WHEREAS, more information is needed for the Legislature to develop policies to deal with problem gambling or pathological gambling, an impulse

control disorder listed in the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association; and

WHEREAS, the Council on Problem Gambling, an industry-based group, has been providing treatment options and has requested more information on societal and economic influences affecting problem gambling in order to develop solutions and better evaluate the effectiveness of the treatments and the program.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(a) review and update, whenever possible, past studies conducted on gambling in Montana, including the positive and negative impacts;

(b) examine the results and recommendations of studies conducted in other states or nationwide for their possible correlation to the economic and societal impacts of gambling in Montana, including convenience gambling and problem gambling; and

(c) include information from the Department of Justice, the Department of Public Health and Human Services, the Department of Revenue, the Banking and Financial Institutions Division of the Department of Administration, the Department of Commerce, and court records regarding the effect of gambling on any of the following:

(i) bankruptcies;

(ii) suicide;

(iii) embezzlement and theft;

(iv) lack of child support;

(v) abuse within families;

(vi) increased requests for public assistance; and

(vii) economic impacts on main street businesses.

(2) That the study include information on tribal gambling compacts and relevant details about state and tribal relations in regard to gambling on reservations.

(3) That the study incorporate analyses from studies that identify:

(a) risk factors for problem gambling;

(b) recommendations regarding programs or treatments; and

(c) outcomes or effectiveness of the programs or treatments.

(4) That, if the information provides clear evidence of negative impacts connected to gambling, the study include recommendations for increasing public awareness of the problem and recommendations for policies intended to decrease negative impacts.

(5) That the study include representatives of the gambling industry and other businesses impacted by the gambling industry, along with consumers and members of the financial, legal, law enforcement, and counseling industries as well as representatives of cities and towns, counties, and the state.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2008.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 61st Legislature.

Adopted April 26, 2007

HOUSE JOINT RESOLUTION NO. 57

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA PROVIDING FOR AN INTERIM STUDY OF CONSERVATION EASEMENTS ON STATE TRUST LANDS.

WHEREAS, citizens of the State of Montana value the preservation of traditional uses on school trust lands of grazing, farming, timber harvest, and general recreation; and

WHEREAS, if a conservation easement was purchased on school trust land, the public would get to examine and comment on that agreement to see how traditional uses are affected before the easement was finalized; and

WHEREAS, if valuable school trust lands are sold, the traditional uses on these lands could be lost; and

WHEREAS, the Department of Natural Resources and Conservation is charged with managing the state's school trust lands in a manner that derives revenue for the support of the common schools, the University System, and other state institutions; and

WHEREAS, the Department of Natural Resources and Conservation is currently working to increase the revenue earned from school trust lands by diversifying existing uses on school trust lands; and

WHEREAS, conservation easements are an effective tool available to protect these traditional uses while preserving the long-term value of trust lands and retaining the trust land base; and

WHEREAS, the money raised from the purchase of conservation easements on school trust lands is deposited in a nondistributable permanent trust, the interest of which can be used to benefit schools and other trust beneficiaries; and

WHEREAS, the money invested from the purchase of a conservation easement plus the money derived from annual leases or licenses for traditional uses can make traditional uses more financially lucrative for the schools and other trust beneficiaries.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) evaluate the benefits to the various trusts of granting easements in terms of years and in perpetuity;

(2) assess the alternatives with regard to appropriate entities to hold conservation easements on state trust land;

(3) analyze how or if conservation easements can ensure that multiple use management occurs;

(4) evaluate the effectiveness and cost or benefit to the various trusts of continuing traditional classified uses as part of the terms of a conservation easement;

(5) determine options and alternatives for providing the continuance of recreational uses that were in place prior to an easement being granted; and

(6) evaluate opportunities for the Department of Natural Resources and Conservation to partner with other organizations to acquire state trust lands that have restricted development rights, which would lower land acquisition costs while also perpetuating traditional uses of the land.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2008.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 61st Legislature.

Adopted April 26, 2007

HOUSE JOINT RESOLUTION NO. 59

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATIVE COUNCIL DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR ASSIGN SUFFICIENT STAFF RESOURCES TO STUDY PUBLIC EMPLOYEE RETIREMENT SYSTEMS AND PRODUCE A LEGISLATOR'S GUIDE ON MONTANA'S PUBLIC EMPLOYEE RETIREMENT PLANS THAT INCLUDES COMPARISONS OF PLAN DESIGN AND FUNDING OPTIONS AND OFFERS FINDINGS AND RECOMMENDATIONS.

WHEREAS, the fair value of invested assets of Montana's public employee retirement systems is in excess of $7 billion; and

WHEREAS, the actuarial accrued liabilities of the retirement systems amount to $7.8 billion; and

WHEREAS, the excess actuarial unfunded liability has caused actuarial unsoundness in the teachers', public employees', and sheriffs' retirement systems; and

WHEREAS, actuarial soundness is required by the Montana Constitution under Article VIII, Section 15, and Montana's current statutory law, section

19-2-409, MCA, interprets actuarial soundness to be actuarial funding sufficient to amortize system unfunded liabilities over 30 years or less; and

WHEREAS, to address the actuarial unsoundness of the teachers' and public employees' retirement systems, the Legislature during the December 2005 special session appropriated from the general fund to the teachers' retirement system $100 million and to the public employees' retirement system $25 million and during this 2007 regular session is considering appropriating additional millions to the teachers' retirement system; and

WHEREAS, the current structure and funding of Montana's public employee retirement plans is set by statute, making it the Legislature's duty to ensure that statutory provisions reflect sound policy principles that balance considerations about actuarial soundness, employer objectives, employee retirement savings, and Montana's tax base; and

WHEREAS, previous Legislatures and interim legislative committees have laid a foundation upon which this and the next Legislature can continue to build; and

WHEREAS, the public employee retirement boards, directors, attorneys, and actuaries can assist the Legislature by providing information, research, and analysis to evaluate strengths and weaknesses, identify alternatives, and make recommendations; and

WHEREAS, pursuant to section 5-5-228, MCA, the State Administration and Veterans' Affairs Interim Committee is responsible for the legislative oversight of the public employee retirement plans; and

WHEREAS, a legislator's guide on Montana's retirement systems that is updated before each legislative session and that may be explained to legislators is a valuable resource that will assist Montana's Legislature in making informed retirement policy and funding decisions.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study public employee retirement systems and produce for the next Legislature a legislator's guide that includes:

(1) a brief history of Montana's retirement plans;

(2) a concise summary of the rationale for the current retirement plan features of Montana's public employee retirement systems, including but not limited to vesting, early retirement, disability, postretirement benefit adjustments, postretirement earning limits, service purchase and rollover provisions, and benefit formulas;

(3) an overview of and background on policy principles established by the State Administration and Veterans' Affairs Interim Committee pursuant to section 5-5-228(2)(b), MCA, the retirement boards, and the Board of Investments;

(4) a review of current trends and best practices in public retirement plan design and funding, including a compilation of research and analysis comparing and contrasting options such as money purchase plans, cash balance plans, floor plans, pension equity plans, deferred retirement option plans, and other hybrid defined benefit and defined contribution retirement plans;

(5) a comparison of Montana's public employee retirement systems with current trends and best practices, and identification of viable alternatives to current structure and funding;

(6) a general analysis of the fiscal implications of potential plan design changes on employee and employer contributions, retirement savings, investment responsibilities, and funding obligations; and

(7) findings and recommendations, including recommendations from the Teachers' Retirement Board, the Public Employees' Retirement Board, and the Board of Investments, on whether Montana's public employee retirement plans should be updated or changed and if so, how, to best serve public employers, public employees, and all people of Montana.

BE IT FURTHER RESOLVED, that the Public Employees' Retirement Board, the Teachers' Retirement Board, the Board of Investments, and the National Conference of State Legislatures be requested to provide assistance and technical expertise in gathering and analyzing information, identifying and analyzing options, and developing findings and recommendations.

BE IT FURTHER RESOLVED, that if considered necessary by the designated interim committee, the Legislative Council be requested to authorize the expenditure of interim committee resources for consulting services.

BE IT FURTHER RESOLVED, that if the study is assigned as a staff study rather than a committee study, the State Administration and Veterans' Affairs Interim Committee provide guidance and oversight.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2008.

BE IT FURTHER RESOLVED, that informational briefings on the public employee retirement systems be made available to the next Legislature, including a briefing from the presiding officer of the State Administration and Veterans' Affairs Interim Committee.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 61st Legislature.

Adopted April 24, 2007

HOUSE JOINT RESOLUTION NO. 61

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO ASSESS THE CONFORMITY OF MONTANA'S INCOME TAX LAWS WITH FEDERAL INCOME TAX LAWS AND TO CONSIDER REORGANIZING CERTAIN PROVISIONS OF MONTANA'S INCOME TAX LAWS; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 61ST LEGISLATURE.

WHEREAS, the Montana individual income tax is the largest source of general fund revenue; and

WHEREAS, the corporation license tax is a significant source of general fund revenue; and

WHEREAS, most states that impose individual income taxes and corporation net income taxes have laws that conform, to varying degrees, with federal income tax laws in the determination of gross income and the use of allowable deductions; and

WHEREAS, conformity with federal income tax laws facilitates both taxpayer compliance with and the administration of a state's income tax laws; and

WHEREAS, many states routinely enact conforming legislation with federal income tax laws; and

WHEREAS, a state's conforming legislation may also include provisions to "decouple" from certain elements of federal income tax laws; and

WHEREAS, Montana law provides that individual income taxes and corporation net income taxes are, for the most part, intricately tied to the Internal Revenue Code of 1986, as amended; and

WHEREAS, because Montana does not routinely enact conforming legislation with federal income tax laws, the state may be improperly delegating much of its tax policy and taxing authority to the federal government; and

WHEREAS, certain business activities in a state, including Montana, may be treated for state income tax purposes in ways that are different for federal income tax purposes; and

WHEREAS, the existing organizational structure of Montana's income tax laws may be confusing to taxpayers, tax preparers, and tax administrators alike; and

WHEREAS, the Montana Legislature finds that a study of Montana's conformity with federal income tax laws is long overdue.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim study committee or statutory committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) conduct a general review of federal income tax laws;

(2) review Montana statutory provisions that conform with or are related to federal income tax laws and statutory provisions that do not conform with federal income tax laws and the reasons for nonconformity;

(3) analyze the legal implications of Montana's income tax provisions as they relate to federal income tax laws;

(4) review the extent of other states' conformity or nonconformity with federal income tax law;

(5) review the differences between federal income tax laws and state income tax laws in the tax treatment of business activities; and

(6) determine whether improvements may be made to Montana's income tax laws to give the state more control over its tax policy and taxing authority.

BE IT FURTHER RESOLVED, that the study may also consider whether consolidating or reorganizing certain provisions of Montana's income tax laws would provide for more transparency in the compliance with and the administration of the state's income tax laws.

BE IT FURTHER RESOLVED, that the study consider the views of:

(1) certified public accountants;

(2) tax attorneys;

(3) taxpayer groups;

(4) representatives of agricultural groups;

(5) representatives of natural resource groups;

(6) representatives of pass-through entities;

(7) representatives of C corporations;

(8) the department of revenue; and

(9) other persons with knowledge of state and federal income tax laws.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded before September 15, 2008.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the committee, be reported to the 61st Legislature.

Adopted April 25, 2007

House Resolutions

HOUSE RESOLUTION NO. 1

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REVISING AND ADOPTING THE HOUSE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following rules be adopted:

RULES OF THE MONTANA

HOUSE OF REPRESENTATIVES

CHAPTER 1

Administration

H10-10. House officers — definitions. (1) House officers include a Speaker, a Speaker pro tempore, majority and minority leaders, and majority and minority whips (section 5-2-221, MCA).

(2) A majority of representatives voting elects the Speaker and Speaker pro tempore from the House membership. A majority of each caucus voting nominates House members to the remaining offices, and those nominees are considered to have been elected by a majority vote of the House.

(3) (a) "Majority leader" means the leader of the majority party, elected by the caucus as provided in 5-2-221.

(b) "Majority party" means the party with the most members, subject to subsection (2).

(c) "Minority leader" means the leader of the minority party, elected by the caucus as provided in 5-2-221.

(d) "Minority party" means the party with the second most members, subject to subsection (2).

(4) If there are an equal number of members of the two parties with the most members, then the majority party is the party of the Speaker and the minority party is the other party with an equal number of members.

H10-20. Speaker's duties. (1) The Speaker is the presiding officer of the House, with authority for administration, order, decorum, and the interpretation and enforcement of rules in all House deliberations.

(2) The Speaker shall see that all members conduct themselves in a civil manner in accordance with accepted standards of parliamentary conduct. The Speaker may, when necessary, order the Sergeant-at-Arms to clear the aisles and seat the members of the House so that business may be conducted in an orderly manner.

(3) Signs, placards, or other objects of a similar nature are not permitted in the rooms, lobby, gallery, or on the floor of the House. The Speaker may order the galleries, lobbies, or hallway cleared in case of disturbance or disorderly conduct.

(4) The Speaker shall appoint and may remove the members of all standing and select committees not otherwise specified by law or rule. Prior to making committee assignments, the Speaker shall take into consideration the recommendations of the minority leader for minority committee assignments and the appointment of the minority vice chairmen. For the Rules Committee, the Speaker shall determine the total number of members and the party division, but each party shall appoint its own members. The Speaker may appoint an additional at-large member to the Rules Committee from either party.

(5) The Speaker shall sign all necessary certifications by the House, including enrolled bills and resolutions, journals (section 5-11-201, MCA), subpoenas, and payrolls.

(6) The Speaker shall arrange the agendas for second and third readings each legislative day. Representatives may amend the agendas as provided in H40-130.

(7) The Speaker is the chief officer of the House, with authority for all House employees. The Speaker may seek the advice and counsel of the Legislative Administration Committee regarding employees.

(8) The Speaker may name any member to perform the duties of the chair. If the House is not in session and the Speaker pro tempore is not available, the Speaker shall name a member who shall call the House to order and preside during the Speaker's absence.

(9) Upon request of the House Leader of the opposite party, the Speaker will submit a request for a fiscal note on any bill.

H10-30. Speaker-elect. During the transition period between the party organization caucuses and the election of House officers, the Speaker-elect has

the responsibilities and authority appropriate to organize the House (section 5-2-202, MCA). Authority includes approving presession expenditures.

H10-40. Speaker pro tempore duties. The Speaker pro tempore shall, in the absence or inability of the Speaker, call the House to order and perform all other duties of the chair in presiding over the deliberations of the House and shall perform other duties and exercise other responsibilities as may be assigned by the Speaker.

H10-50. Legislative Administration Committee duties. (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee shall have authority to act in the interim to prepare for future legislative sessions. It may delegate specific duties to a legislative agency.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the House, subject to the approval of the Speaker.

(4) The committee shall comprise the House membership of the Joint Legislative Administration Committee.

H10-60. Employees. (1) The Speaker shall appoint a Chief Clerk, Sergeant-at-Arms, and Chaplain, subject to confirmation of the House (section 5-2-221, MCA).

(2) The Speaker shall recommend to the Legislative Administration Committee employment of necessary staff. All House staff hired to date will be retained.

(3) The secretary for a standing or select committee is generally responsible to the committee chair but shall work under the direction of the Chief Clerk.

(4) The Speaker and majority and minority leaders may each appoint a private secretary.

H10-70. Chief Clerk's duties. The Chief Clerk, under the supervision of the Speaker, is the chief administrative officer of the House and is responsible to:

(1) supervise all House employees;

(2) have custody of all records and documents of the House;

(3) supervise the handling of legislation in the House, the House journal, and other House publications; deliver to the Secretary of State at the close of each session the House journal, bill and resolution records, and all original House bills and joint resolutions; collect minutes and exhibits from all House committees and subcommittees and arrange to have them printed on archival paper and copied in an electronic format within a reasonable time after each meeting. An electronic copy will be provided to the Legislative Services Division and the State Law Library of Montana. The archival paper copy will be delivered to the Montana Historical Society.

H10-80. Sergeant-at-Arms duties. The Sergeant-at-Arms shall:

(1) under the direction of the Speaker and the Chief Clerk, have charge of and maintain order in the House, its lobbies, galleries, and hallways and all other rooms in the Capitol assigned for the use of the House;

(2) be present whenever the House is in session and at any other time as directed by the presiding officer;

(3) execute the commands of the House and serve the writs and processes issued by the authority of the House and directed by the Speaker;

(4) supervise assistants to the Sergeant-at-Arms, who shall aid in the performance of prescribed duties and who have the same authority, subject to the control of the Speaker;

(5) clear the floor and anteroom of the House of all persons not entitled to the privileges of the floor prior to the convening of each session of the House;

(6) bring in absent members when so directed under a call of the House;

(7) enforce the distribution of any printed matter in the House chambers and anteroom in accordance with H20-80;

(8) enforce parking regulations applicable to areas of the Capitol complex under the control of the House;

(9) supervise the doorkeeper; and

(10) supervise the pages.

H10-90. Legislative aides. (1) A legislative aide is a person specifically designated by a representative to assist that representative in performing legislative duties. A representative may sponsor one legislative aide a session by written notification to the Sergeant-at-Arms.

(2) No representative may designate a second legislative aide in the same session without the approval of the House Rules Committee.

(3) A legislative aide must be of legal age unless otherwise approved by the House Rules Committee.

(4) The Sergeant-at-Arms shall issue distinctive identification tags to legislative aides. The cost must be paid by the sponsoring representative.

H10-100. Legislative interns. A legislative intern is a person designated under Title 5, chapter 6, MCA.

H10-110. House journal. (1) The House shall keep a journal, which is the official record of House actions (Montana Constitution, Art. V, Sec. 10). The journal must be prepared under the direction of the Speaker.

(2) Records of the following proceedings must be entered on the journal:

(a) the taking and subscription of the constitutional oath by representatives (Montana Constitution, Art. III, Sec. 3; 5-2-214);

(b) committee reports;

(c) messages from the Governor;

(d) messages from the Senate;

(e) every motion, the name of the representative presenting it, and its disposition;

(f) the introduction of legislation in the House;

(g) consideration of legislation subsequent to introduction;

(h) on final passage of legislation, the names of the representatives and their vote on the question (Montana Constitution, Art. V, Sec. 11);

(i) roll call votes; and

(j) upon a request by two representatives before a vote is taken, the names of the representatives and their votes on the question.

(3) The Chief Clerk shall provide to the Legislative Services Division such information as may be required for the publication of the daily journal.

(4) Any representative may examine the daily journal and propose corrections. The Speaker may direct a correction to be made when suggested subject to objection by the House.

(5) The Speaker shall authenticate the House journal after the close of the session (section 5-11-201, MCA).

(6) The Legislative Services Division shall publish and distribute the House journal (sections 5-11-202 and 5-11-203, MCA). The title of each bill must be listed in the index of the published session journal.

H10-120. Votes recorded and public. Every vote of each representative on each substantive question in the House, in any committee, or in Committee of the Whole must be recorded and made public (Montana Constitution, Art. V, Sec. 11).

H10-130. Duration of legislative day. A legislative day ends either 24 hours after the House convenes for that day or at the time the House convenes for the following legislative day, whichever is earlier.

CHAPTER 2

Decorum

H20-10. Addressing the House — recognition. (1) When a member desires to speak to or address any matter to the House, the member should rise and respectfully address the Speaker or the presiding officer.

(2) The Speaker or presiding officer may ask, "For what purpose does the member rise?" or "For what purpose does the member seek recognition?" and may then decide if recognition is to be granted. There is no appeal from the Speaker's or presiding officer's decision.

H20-20. Questions of order and privilege. (1) The Speaker shall decide all questions of order and privilege, subject to an appeal by any representative seconded by two representatives. The question on appeal is, "Shall the decision of the chairman be sustained?".

(2) Responses to parliamentary inquiries and decisions of recognition may not be appealed.

(3) Questions of order and privilege, in order of precedence, are:

(a) those affecting the collective rights, safety, dignity, and integrity of the House; and

(b) those affecting the rights, reputation, and conduct of individual representatives.

(4) A member may not address the House on a question of privilege between the time:

(a) an undebatable motion is offered and the vote is taken on the motion;

(b) the previous question is ordered and the vote is taken on the proposition included under the previous question; or

(c) a motion to lay on the table is offered and the vote is taken on the motion.

H20-30. Limits on lobbying. Lobbying on the House floor and in the anteroom is prohibited during a daily session, 2 hours before the session, and 2 hours after the session.

H20-40. Admittance to the House floor. (1) The following persons may be admitted to the House floor during a daily session: present and former legislators; legislative employees necessary for the conduct of the session; accredited news staff; and members' spouses and children. The Speaker may allow exceptions to this rule.

(2) Only a member may sit in a member's chair when the House is in session.

H20-50. Dilatory motions or questions. The House has a right to protect itself from dilatory motions or questions used for the purpose of delaying or obstructing business. The presiding officer shall decide if motions (except a call of the House) or questions are dilatory. This decision may be appealed to the House.

H20-60. Opening and order of business. The opening of each legislative day must include an invocation, the pledge of allegiance, and roll call. Following the opening, the order of business of the House is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Senate;

(5) messages from the Governor;

(6) first reading and commitment of bills;

(7) second reading of bills;

(8) third reading of bills;

(9) motions;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

H20-70. Lobbying by employees. (1) A legislative employee, intern, or aide of either house is prohibited from lobbying, although a legislative committee may request testimony from a person so restricted.

(2) The Speaker or the Legislative Administration Committee may discipline or discharge any House employee violating this prohibition. The Speaker or the committee may withdraw the privileges of any House aide or intern violating this prohibition.

H20-80. Papers distributed on desks. A paper concerning proposed legislation may not be placed on representatives' desks unless it is authorized by a member and permission has been granted by the Speaker. The Sergeant-at-Arms shall direct its distribution.

H20-90. Violation of rules. (1) If a member, in speaking or otherwise, violates the rules of the House, the Speaker shall, or the majority or minority leader may, call the member to order, in which case the member called to order must be seated immediately.

(2) The member called to order may move for an appeal to the House and if the motion is seconded by two members, the matter must be submitted to the House for determination by majority vote. The motion is nondebatable.

(3) If the decision of the House is in favor of the member called to order, the member may proceed. If the decision is against the member, the member may not proceed.

(4) If a member is called to order, the matter may be referred to the Rules Committee by the majority or minority leader. The Committee may recommend to the House that the member be censured or be subject to other action. The House shall act upon the recommendation of the Committee.

CHAPTER 3

Committees

H30-10. House standing committees — appointments. (1) The Speaker shall determine the total number of members and the party division and shall appoint the members to the following standing committees: Agriculture; Appropriations; Business and Labor; Education; Ethics; Federal Relations, Energy, and Telecommunications; Fish, Wildlife, and Parks; Transportation; Human Services; Judiciary; Legislative Administration; Local Government; Natural Resources; Rules; State Administration; and Taxation.

(2) The Speaker shall appoint the chairman, vice chairman, and minority vice chairman of each standing committee while retaining the authority to remove and replace any chairman, vice chairman, or minority vice chairman at any time. The appointment or removal of a minority vice chairman requires the consent of the minority leader. The Speaker shall give notice of each appointment to the Chief Clerk for publication.

(3) The Speaker may, in the Speaker's discretion or as authorized by the House, create and appoint select committees, designating the chairman and vice chairman of the select committee. Select committees may request or receive legislation in the same manner as a standing committee and are subject to the rules of standing committees.

H30-20. Chairman's duties. The principal duties of the chairman of standing or select committees are to:

(1) preside over meetings of the committee and to put all questions;

(2) maintain order and decide all questions of order subject to appeal to the committee;

(3) supervise and direct staff of the committee;

(4) have the committee secretary keep the official record of the minutes;

(5) sign reports of the committee and submit them promptly to the Chief Clerk;

(6) appoint subcommittees to perform on a formal or an informal basis; and

(7) inform the Speaker of committee activity.

H30-30. Quorum — officers as members. (1) A quorum of a committee is a majority of the members of the committee. A quorum of a committee must be present at a meeting to act officially. A quorum of a committee may transact business, and a majority of the quorum, even though it is a minority of the committee, is sufficient for committee action.

(2) The Speaker, the majority leader, and the minority leader are ex officio, nonvoting members of all House committees. They may count toward establishing a quorum.

H30-40. Meetings. (1) All meetings of committees must be open to the public at all times, subject always to the power and authority of the chairman to maintain safety, order, and decorum. The date, time, and place of committee meetings must be posted.

(2) A committee or subcommittee may be assembled for:

(a) a public hearing at which testimony is to be heard and at which official action may be taken on bills, resolutions, or other matters;

(b) a formal meeting at which the committees may discuss and take official action on bills, resolutions, or other matters without testimony; or

(c) a work session at which the committee may discuss bills, resolutions, or other matters but take no formal action.

(3) All committees meet at the call of the chairman or upon the request of a majority of the members of the committee directed to and with the approval of the Speaker.

(4) All committees shall provide for and give public notice, reasonably calculated to give actual notice to interested persons, of the time, place, and subject matter of regular and special meetings. All committees are encouraged to provide at least 3 legislative days notice to members of committees and the general public. However, a meeting may be held upon notice appropriate to the circumstances.

(5) A committee may not meet during the time the House is in session without leave of the Speaker. Any member attending such a meeting must be considered excused to attend business of the House subject to a call of the House.

(6) All meetings of committees must be recorded and the minutes must be available to the public within a reasonable time after the meeting. The official record must contain at least the following information:

(a) the time and place of each meeting of the committee;

(b) committee members present, excused, or absent;

(c) the names and addresses of persons appearing before the committee, whom each represents, and whether the person is a proponent, opponent, or other witness;

(d) all motions and their disposition;

(e) the results of all votes;

(f) references to the recording log, sufficient to serve as an index to the original recording; and

(g) testimony and exhibits submitted in writing.

H30-50. Procedures. (1) The chairman shall notify the sponsor of any bill pending before the committee of the time and place it will be considered.

(2) A standing or select committee may not take up referred legislation unless the sponsor or one of the cosponsors is present or unless the sponsor has given written consent.

(3) The committee shall act on each bill in its possession:

(a) by reporting the bill out of the committee:

(i) with the recommendation that it be referred to another committee;

(ii) favorably as to passage; or

(iii) unfavorably; or

(b) by tabling the measure in committee.

(4) The committee may not report a bill to the House without recommendation.

(5) The committee may recommend that a bill on which it has made a favorable recommendation by unanimous vote be placed on the consent calendar.

(6) In reporting a measure out of committee, a committee shall include in its report:

(a) the measure in the form reported out;

(b) the recommendation of the committee;

(c) an identification of all substantive changes; and

(d) a fiscal note, if required.

(7) If a measure is withdrawn from a committee and brought to the House floor for debate on second reading on that day without a committee recommendation, the bill does not include amendments formally adopted by the committee.

(8) A second to any motion offered in a committee is not required in order for the motion to be considered by the committee.

(9) The vote of each member on all committee actions must be recorded. All motions may be adopted only on the affirmative vote of a majority of the members voting.

(10) A motion to take a bill from the table may be adopted by the affirmative vote of a majority of the members present at any meeting of the committee.

(11) An action formally taken by a committee may not be altered in the committee except by reconsideration and further formal action of the committee.

(12) A committee may reconsider any action as long as the matter remains in the possession of the committee. A committee member need not have voted with the prevailing side in order to move reconsideration.

(13) Any legislation requested by a committee requires three-fourths of all members of the committee to vote in favor of the question to allow the committee to request the drafting or introduction of legislation. Votes requesting drafting and introduction of committee legislation may be taken jointly or separately.

(14) The chairman shall decide points of order.

(15) The privileges of committee members include the following:

(a) to participate freely in committee discussions and debate;

(b) to offer motions;

(c) to assert points of order and privilege;

(d) to question witnesses upon recognition by the chairman;

(e) to offer any amendment to any bill; and

(f) to vote, either by being present or by proxy, using a standard form or through the vice chairman or minority vice chairman.

(16) Any meeting of a committee held through the use of telephone or other electronic communication must be conducted in accordance with Chapter 3 of the House Rules.

(17) A committee may consolidate into one bill any two or more related bills referred to it whenever legislation may be simplified by the consolidation.

(18) Committee procedure must be informal, but when any questions arise on committee procedure, the rules or practices of the House are applicable except as stated in the House Rules.

H30-60. Public testimony. (1) Testimony from proponents, opponents, and informational witnesses must be allowed on every bill or resolution before a standing or select committee. All persons, other than the sponsor, offering testimony shall complete a "Witness Form" and submit it to the committee secretary.

(2) Any person wishing to offer testimony to a committee hearing a bill or resolution must be given a reasonable opportunity to do so, orally or in writing. Written testimony may not be required of any witness, but all witnesses must be encouraged to submit a statement in writing for the committee's official record.

(3) The chairman may order the committee room cleared of visitors if there is disorderly conduct. During committee meetings, visitors may not speak unless called upon by the chairman. Restrictions on time available for testimony may be announced.

(4) The number of people in a committee room may not exceed the maximum posted by the State Fire Marshal. The chairman shall maintain that limit.

(5) In any committee meeting, the use of cameras, television, radio, or any form of telecommunication equipment is allowed, but the chairman may designate the areas of the hearing room from which the equipment must be operated.

CHAPTER 4

Legislation

H40-10. Introduction deadlines. If a representative accepts drafted legislation from the Legislative Services Division after the deadline for preintroduction, the representative may not introduce that legislation after 2 legislative days from the time the bill was accepted from the Legislative Services Division.

H40-20. House resolutions. (1) A House resolution is used to adopt or amend House rules, make recommendations on the districting and apportionment plan (Montana Constitution, Art. V, Sec. 14), express the sentiment of the House, or assist House operations.

(2) As to drafting, introduction, and referral, a House resolution is treated as a bill. A House resolution may be requested and introduced at any time. Final passage of a House resolution is determined by the Committee of the Whole report. A House resolution does not progress to third reading.

(3) The Chief Clerk shall transmit a copy of each passed House resolution to the Senate and the Secretary of State.

H40-30. Cosponsors. (1) Prior to submitting legislation to the Chief Clerk for introduction, the chief sponsor may add representatives and senators as cosponsors by having them sign the legislation.

(2) After legislation is submitted for introduction but before the legislation returns from the first House committee, the chief sponsor may add or remove cosponsors by filing a cosponsor form with the Chief Clerk. This filing must be noted by the Chief Clerk for the record on Order of Business No. 11.

H40-40. Introduction — receipt. (1) During a session, proposed House legislation may be introduced in the House by submitting it, endorsed with the signature of a representative as chief sponsor, to the Chief Clerk for introduction. Except for the first 15 bill numbers that may be reserved for preintroduced legislation, in each session of the Legislature, the proposed legislation must be numbered consecutively by type in the order of receipt. Submission and numbering of properly endorsed legislation constitutes introduction.

(2) Preintroduction of legislation prior to a session under provisions of the joint rules constitutes introduction in the House.

(3) Acknowledgment by the Chief Clerk of receipt of legislation or other matters transmitted from the Senate for consideration by the House constitutes introduction of the Senate legislation in the House or receipt by the House for purposes of applying time limits contained in the House rules. All legislation may be referred to a committee prior to being read across the rostrum as provided in H40-50.

(4) Acknowledgment by the Chief Clerk of receipt of messages from the Senate or other elected officials constitutes receipt by the House for purposes of any applicable time limit. Senate legislation or messages received from the Senate or elected officials are subject to all other rules.

H40-50. First reading. Legislation properly introduced or received in the House must be announced across the rostrum and public notice provided. This announcement constitutes first reading, and no debate or motion is in order except that a representative may question adherence to rules. Acknowledgment by the Chief Clerk of receipt of legislation transmitted from the Senate commences the time limit for consideration of the legislation. All legislation received by the House may be referred to a committee prior to being read across the rostrum.

H40-60. One reading per day. Except on the final legislative day, legislation may receive no more than one reading per legislative day. On the final legislative day, legislation may receive more than one reading.

H40-70. Referral. (1) The Speaker shall refer to a House committee, joint select committee, or joint special committee all properly introduced House legislation and transmitted Senate legislation in conformity to the committee jurisdiction.

(2) Legislation may not receive final passage and approval unless it has been referred to a House committee, joint select committee, or joint special committee.

H40-80. Rereferral — normal progression. (1) Except as provided in subsection (2), legislation that is in the possession of the House and that has not been finally disposed of may be rereferred to a House committee by House motion approved by not less than three-fifths of the members present and voting.

(2) Legislation that is in the possession of the House and that has been reported from a committee with a do pass or be concurred in recommendation may be rereferred to a House committee by a majority vote.

(3) The normal progress of legislation through the House consists of the following steps in the order listed: introduction; referral to a standing or select committee; a report from the committee; second reading; and third reading.

H40-90. Legislation withdrawn from committee. Legislation may be withdrawn from a House committee by House motion approved by not less than three-fifths of the members present and voting.

H40-100. Standing committee reports. (1) A House standing committee recommendation of "do pass" or "be concurred in" must be announced across the rostrum and, if there is no objection to form, is considered adopted.

(2) A recommendation of "do not pass" or "be not concurred in" must be announced across the rostrum and, on the following legislative day, may be debated and adopted or rejected on Order of Business No. 2. A motion to reject an adverse committee report must be approved by not less than three-fifths of the members voting. Failure to adopt a motion to reject an adverse committee report constitutes adoption of the report.

(3) If the House rejects an adverse committee report, the bill progresses to second reading, as scheduled by the Speaker, with any amendments recommended by the committee.

H40-110. Consent calendar procedure. (1) Noncontroversial bills and simple and joint resolutions may be recommended for the consent calendar by a standing committee and processed according to the following provisions:

(a) To be eligible for the consent calendar, the legislation must receive a unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended). In addition, a motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report. Appropriation or revenue bills may not be recommended for the consent calendar.

(b) The legislation must then be sent to be processed and reproduced as a third reading version and specifically marked as a "consent calendar" item.

(2) Other legislation may be placed on the consent calendar by agreement between the Speaker and the minority leader following a positive recommendation by a standing committee. The legislation must be sent to be processed as a second reading version but must be specifically announced and posted as a "consent calendar" item.

(3) Legislation must be posted immediately (as soon as it is received appropriately printed) on the consent calendar and must remain there for 1 legislative day before consideration under Order of Business No. 11, special orders of the day. At that time, the presiding officer shall announce consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate is allowed.

(4) If any one representative submits a written objection to the placement of legislation on the consent calendar, the legislation must be removed from the consent calendar and added to the regular second reading board.

(5) Consent calendar legislation will be considered on Order of Business No. 8, third reading of bills, following the regular third reading agenda, as separately noted on the agenda.

(6) Legislation on the consent calendar must be considered individually with the roll call vote spread on the journal as the final vote in the House.

(7) Legislation passed on the consent calendar must then be transmitted to the Senate. Legislation must be appropriately printed prior to transmittal.

H40-120. Legislation requiring other than a majority vote. Legislation that requires other than a majority vote for final passage needs only a majority vote for any action that is taken prior to third reading and that normally requires a majority vote.

H40-130. Amending House second and third reading agendas. (1) A majority of representatives present may rearrange or remove legislation from either the second or third reading agenda on that legislative day.

(2) Legislation may be added to the second or third reading agenda on that legislative day on a motion approved by not less than three-fifths of the members present and voting.

H40-140. Second reading. (1) Legislation returned from committee may be placed on second reading unless otherwise ordered by the House.

(2) The House shall form itself into a Committee of the Whole to consider business on second reading. The Committee of the Whole may debate legislation, attach amendments, and recommend approval or disapproval of legislation.

(3) Except on the final legislative day, at least 1 legislative day must elapse between the time legislation is reported from committee and the time it is considered on second reading.

(4) If a motion to recommend that a bill "do pass" or "be concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do not pass" or "be not concurred in", is considered to have passed. If a motion to recommend that a bill "do not pass" or "be not concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do pass" or "be concurred in", is considered to have passed.

(5) An amendment attached to legislation by the Committee of the Whole remains unless removed by further legislative action.

(6) When the Committee of the Whole reports to the House, the House shall adopt or reject the Committee of the Whole report. If the House rejects the Committee of the Whole report, the legislation remains on second reading, as amended by the Committee of the Whole, unless the House orders otherwise.

(7) A representative may move to segregate legislation from the Committee of the Whole report before the report is adopted. Segregated legislation, as amended by the Committee of the Whole, must be placed on second reading unless the House orders otherwise. Amendments adopted by the Committee of the Whole on segregated legislation remain adopted unless reconsidered or unless the legislation is rereferred to a committee.

H40-150. Amendments in the Committee of the Whole. (1) All Committee of the Whole amendments must be checked by the House amendments coordinator for format, style, clarity, consistency, and other factors, in accordance with the most recent Bill Drafting Manual published by the Legislative Services Division, before the amendment may be accepted at the rostrum. The amendment form must include the date and time the amendment is submitted for that check.

(2) An amendment submitted to the rostrum for consideration by the Committee of the Whole must be marked as checked by the amendments coordinator and signed by a representative. Unless the majority leader, the minority leader, and sponsor agree, amendments must be printed and placed on the members' desks prior to consideration.

(3) An amendment may not be proposed until the sponsor has opened on a bill.

(4) A copy of every amendment rejected by the Committee of the Whole must be kept as part of the official records.

(5) An amendment may not change the original purpose of the bill.

H40-160. Motions in the Committee of the Whole. (1) When the House resolves itself into a Committee of the Whole, the only motions in order are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) reconsider;

(e) pass consideration;

(f) call for cloture;

(g) rise, rise and report, or rise and report progress and beg leave to sit again; and

(h) to change the order in which legislation is placed on the agenda.

(2) Subsections (1)(d) through (1)(g) are nondebatable but may be amended. Once a motion under subsection (1)(b) or (1)(c) is made, a contrary motion is not in order.

(3) If a quorum of representatives is not present during second reading, the Committee of the Whole may conduct no business on legislation and a motion for a call of the House without a quorum is in order.

H40-170. Limits on debate in the Committee of the Whole. (1) A representative may not speak more than once on the motion and may speak for no more than 5 minutes. The representative who makes the motion may speak a second time for 5 minutes in order to close.

(2) After at least two proponents and two opponents have spoken on a question and 30 minutes have elapsed, a motion to call for cloture is in order. Approval by not less than two-thirds of the members present and voting is required to sustain a motion for cloture. Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

(3) By previous agreement of the majority leader and the minority leader:

(a) a lead proponent and a lead opponent may be granted additional time to speak on a bill;

(b) a bill or resolution may be allocated a predetermined amount of time for debate and number of speakers.

H40-180. Special provisions for debate on the general appropriations bill. (1) The Appropriations Committee chairman, in presenting the bill, is not subject to the 5-minute speaking limitation.

(2) Each appropriations subcommittee chairman shall fully present the chairman's portion of the bill. A subcommittee chairman is not subject to the 5-minute speaking limitation.

(3) After the presentation by the subcommittee chairman, the respective section of the bill is open for debate, questions, and amendments. A proposed amendment to the general appropriations act may not be divided.

(4) An amendment that affects more than one section of the bill must be offered when the first section affected is considered.

(5) Following completion of the debate on each section, that section is closed and may not be reopened except by majority vote.

(6) If a member moves to reopen a section for amendment, only the amendment of that member may be entertained. Another member wishing to amend the same section shall make a separate motion to reopen the section.

(7) Debate on the motion to reopen a section is limited to the question of reopening the section. The amendment itself may not be debated at that time. This limitation does not prohibit the member from explaining the amendment to be considered.

(8) A motion for cloture is not in order during debate on the general appropriations bill.

H40-190. Engrossing. (1) After legislation is passed on second reading, it must be engrossed within 48 hours under the direction of the Speaker. The Speaker may grant additional time for engrossing.

(2) When the legislation that has passed second reading, as amended, has been correctly engrossed, it may be placed on third reading on the following legislative day. If the bill is not amended, the bill must be sent to printing. On the final legislative day, the correctly engrossed legislation may be placed on third reading on the same legislative day. For the purposes of this rule, "engrossing" means placing amendments in a bill.

H40-200. Third reading. (1) All bills, joint resolutions, and Senate amendments to House bills and joint resolutions passing second reading must be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) Legislation on third reading may not be amended or debated.

(3) The Speaker shall state the question on legislation on third reading. If a majority of the representatives voting does not approve the legislation, it fails to pass third reading.

H40-210. Senate legislation in the House. Senate legislation properly transmitted to the House must be treated as House legislation.

H40-220. Senate amendments to House legislation. (1) When the Senate has properly returned House legislation with Senate amendments, the House shall announce the amendments on Order of Business No. 4, and the Speaker shall place them on second reading for debate. The Speaker may rerefer House legislation with Senate amendments to a committee for a hearing if the Senate amendments constitute a significant change in the House legislation. The second reading vote is limited to consideration of the Senate amendments.

(2) If the House accepts Senate amendments, the House shall place the final form of the legislation on third reading to determine if the legislation, as amended, is passed or if the required vote is obtained.

(3) If the House rejects the Senate amendments, the House may request the Senate to recede from its amendments or may direct appointment of a conference committee and request the Senate to appoint a like committee.

H40-230. Conference committee reports. (1) When a House conference committee files a report, the report must be announced under Order of Business No. 3. A tie vote in a conference committee on the question of a recommendation to the whole House on a matter referred for a conference results in the matter passing out to the whole House for consideration without recommendation.

(2) The House may debate and adopt or reject the conference committee report on second reading on any legislative day. The House may reconsider its action in rejecting a conference committee report under rules for reconsideration, H50-160.

(3) If both the House and the Senate adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the House, following approval of the conference committee report on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(4) If the House rejects a conference committee report, the committee continues to exist unless dissolved by the Speaker or by motion. The committee may file a subsequent report.

(5) A House conference committee may confer regarding matters assigned to it with any Senate conference committee with like jurisdiction and submit recommendations for consideration of the House.

H40-240. Enrolling. (1) When House legislation has passed both houses, it must be enrolled within 48 hours under the direction of the Speaker. The Speaker may grant additional time for enrolling.

(2) The chief sponsor of the legislation shall examine the enrolled legislation and, if it has no enrolling errors, shall, within 1 legislative day, certify the legislation as correctly enrolled.

(3) The correctly enrolled legislation must be delivered to the Speaker, who shall sign the legislation.

(4) After the legislation has been reported correctly enrolled but before it is signed, any representative may examine the legislation.

H40-250. Governor's amendments. (1) When the Governor returns a bill with recommended amendments, the House shall announce the amendments under Order of Business No. 5.

(2) The House may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the House and the Senate accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage, the House shall place the final form of the legislation on third reading to determine if the required vote is obtained.

H40-260. Governor's veto. (1) When the Governor returns a bill with a veto, the House shall announce the veto under Order of Business No. 5.

(2) On any legislative day, a representative may move to override the Governor's veto by a two-thirds vote under Order of Business No. 9.

CHAPTER 5

Floor Actions

H50-10. Attendance. (1) A representative, unless excused, is required to be present at every sitting of the House.

(2) A representative may request in writing to be excused for a specified cause by the representative's party leader. This excused absence is not a leave with cause from a call of the House.

H50-20. Quorum. (1) A quorum of the House is fifty-one representatives (Montana Constitution, Art. V, Sec. 10).

(2) Any representative may question the lack of a quorum at any time a vote is not being taken. The question is nondebatable, may not be amended, and is resolved by a roll call.

(3) The House may conduct no business without a quorum, except that representatives present may convene, compel the attendance of absent representatives, or adjourn.

H50-30. Call of the House without a quorum. (1) In the absence of a quorum, a majority of the representatives present may compel the attendance of absent representatives through a call of the House without a quorum. The motion for the call is nondebatable, may not be amended, and is in order at any time it has been established that a quorum is not present.

(2) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(3) When a quorum has been achieved under the call, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

H50-40. Call of the House with a quorum. (1) If a quorum is present but at least one representative is excused or absent, one-third of the representatives present and voting may order a call of the House with a quorum.

(2) The motion for a call is nondebatable, may not be amended, and is in order at any time a vote is not being taken, except that a call of the House with a quorum is not allowed in the Committee of the Whole.

(3) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(4) When all representatives are present, except those on leave with cause, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

H50-50. Leave with cause. (1) During a call of the House, a representative with an overriding medical or personal reason may request a leave with cause.

(2) If the representative is present at the time of the call, the Speaker may approve a request for a leave with cause.

(3) If the representative is not present at the time of the call, two-thirds of the representatives present and voting may approve a request for leave with cause.

(4) During a call of the House, a representative on leave with cause may not cast an absentee vote.

H50-60. Motions. (1) Any representative may propose a motion allowed by the rules for the order of business under which the motion is offered for the consideration of the House. Unless otherwise specified in rule or law, a majority of representatives voting is necessary and sufficient to decide a motion.

(2) Seconds to motions on the House floor are not required.

(3) Absentee votes are not allowed on votes that are specified as "representatives present and voting".

(4) The majority leader shall make routine procedural motions required to conduct the business of the House.

H50-70. Limits on debate of debatable motions. (1) Except for the representative who places a debatable motion before the body, no representative may speak more than once on the question unless a unanimous House consents. The representative who places the motion may close.

(2) No representative may speak for more than 10 minutes on the same question, except that a representative may have 5 minutes to close.

H50-80. Nondebatable motions. (1) A representative has the right to understand any question before the House and, usually under the administration of the presiding officer, may ask questions to exercise this right.

(2) The following motions are nondebatable:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for parliamentary inquiry;

(e) to table or take from the table;

(f) to call for the previous question or cloture;

(g) to amend a nondebatable motion;

(h) to divide a question;

(i) to postpone consideration to a day certain;

(j) to suspend the rules;

(k) all incidental motions, such as motions relating to voting or of a general procedural nature; and

(l) to appeal a call to order.

H50-90. Questions. A representative may, through the presiding officer, ask questions of another representative during a floor session. There is no limit on questions and answers, except as provided in H20-50.

H50-100. Amending motions — limitations. (1) A representative may move to amend the specific provisions of a motion without changing its substance.

(2) No more than one motion to amend a motion is in order at any one time.

(3) A motion for a call of the House, for the previous question, to table, or to take from the table may not be amended.

H50-110. Substitute motions. (1) When a question is before the House, no substitute motion may be made except the following, which have precedence in the order listed:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for a question of privilege;

(e) to table;

(f) to call for the previous question or cloture;

(g) to postpone consideration to a day certain;

(h) to refer to a committee; and

(i) to propose amendments.

(2) Nothing in this section allows a motion that would not otherwise be allowed under a particular order of business.

(3) (a) Except as provided in subsection (3)(b), no more than one substitute motion is in order at any one time.

(b) A motion for cloture is in order on a substitute motion to amend.

H50-120. Withdrawing motions. A representative who proposes a motion may withdraw it before it is voted on or amended.

H50-130. Dividing a question. Except as provided in H40-180, a representative may request to divide a question as a matter of right if it includes two or more propositions so distinct that they can be separated and if at least one substantive question remains after one substantive question is removed.

H50-140. Previous question. (1) If a majority of representatives present and voting adopts a motion for the previous question, debate is closed on the question and it must be brought to a vote. The Speaker may not entertain a motion to end debate unless at least one proponent and one opponent have spoken on the question.

(2) Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

H50-150. Questions requiring other than a majority vote. The following questions require the vote specified for each condition:

100 House Members

(1) a motion to approve a bill to appropriate the principal of the tobacco settlement trust fund (two-thirds);

(2) a motion to approve a bill to appropriate the principal of the coal severance tax trust fund (three-fourths);

(3) a motion to approve a bill to appropriate highway revenue, as described in Article VIII, section 6, of the Montana Constitution, for purposes other than therein described (three-fifths);

(4) a motion to approve a bill to authorize creation of state debt (two-thirds);

(5) a motion to temporarily suspend a joint rule governing the procedure for handling bills (two-thirds).

Members Present and Voting

(1) a motion to override the Governor's veto (two-thirds);

(2) a call of the House with a quorum (one-third);

(3) a motion to lift a call of the House (two-thirds);

(4) a motion to rerefer a bill from one committee to another pursuant to Rule 40-80(1) (three-fifths);

(5) a motion to withdraw a bill from a committee (three-fifths);

(6) a motion to add legislation to the second or third reading agenda (three-fifths);

(7) a motion to remove legislation from its normal progress through the House as provided under H40-80(3) and reassign it unless otherwise specifically provided by these rules, such as H40-80(2) (three-fifths);

(8) a motion to change a vote (unanimous);

(9) a motion to call for cloture (two-thirds);

(10) a motion to take from the table in Committee of the Whole (three-fifths).

Members Voting

(1) a motion to amend or suspend rules (two-thirds);

(2) a motion to overturn an adverse committee report (three-fifths);

(3) a motion to record a vote (one representative);

(4) a motion to spread a vote on the journal (two representatives);

(5) an appeal of the ruling of the presiding officer (three representatives);

(6) a motion to speak more than once on a debatable motion (unanimous vote);

(7) a motion to appeal the presiding officer's interpretation of the rules to the House Rules Committee (15 representatives).

Entire Legislature

(1) a motion to approve a bill proposing to amend the Montana Constitution (two-thirds of the entire Legislature).

H50-160. Reconsideration. (1) Any representative may, within 1 legislative day of a vote, move to reconsider the House vote on any matter still within the control of the House.

(2) A motion for reconsideration, unless tabled or replaced by a substitute motion, must be disposed of when made.

(3) When a motion for reconsideration fails, the question is finally settled. A motion for reconsideration may not be renewed or reconsidered.

(4) A motion to recall legislation from the Senate constitutes a motion to reconsider and is subject to the same rules.

(5) A motion for reconsideration is not in order on a vote to postpone to a day certain or to table legislation.

(6) There may be only one reconsideration vote on a specific issue on a legislative day.

H50-170. Renewing procedural motions. The House may renew a procedural motion if further House business has intervened.

H50-180. Tabling. (1) Under Order of Business No. 9, a representative may move to table any question, motion, or legislation before the House except the question of a quorum or a call of the House. The motion is nondebatable and may not be amended.

(2) When a matter has been tabled, a representative may move to take it from the table under Order of Business No. 9 on any legislative day.

H50-190. Voting. (1) The representatives shall vote to decide any motion or question properly before the House. Each representative has one vote.

(2) The House may, without objection, use a voice vote on procedural motions that are not required to be recorded in the journal. If a representative rises and objects, the House shall record the vote.

(3) The House shall record the vote on all substantive questions. If the voting system is inoperable, the Chief Clerk shall record the representatives' votes by other means.

(4) A member who is present shall vote unless the member has disclosed a conflict of interest to the House. A member may be present for a vote by electronic means.

H50-200. Changing a vote. (1) A representative may move to change the representative's vote within 1 legislative day of the vote. The motion is nondebatable. The motion must be made on Order of Business No. 9, motions. All of the members present and voting are required to consent to the change in order for it to be effective.

(2) The representative making the motion shall first specify the bill number, the question, and the original vote tally. A vote may not be changed if it would affect the outcome of legislation.

(3) A vote change must be entered into the journal as a notation that the member's vote was changed. The original printed vote will not be reprinted to reflect the change.

(4) An error caused by a malfunction of the voting system may be corrected without a vote.

H50-210. Absentee votes. (1) An excused representative may file an absentee vote authorization form to vote during the excused absence on any vote for which absentee voting is allowed.

(2) An excused representative shall sign an absentee vote authorization form that specifies the motion and the desired vote.

(3) The absentee vote authorization form must be handed in at the rostrum by the party whip or designated representative before voting on the motion has commenced.

(4) The absentee vote authorization may be revoked before the vote by the member who signed the authorization.

(5) Absentee voting is not allowed on third reading.

H50-220. Recess. The House may stand at ease or recess under any order of business by order of the Speaker or a majority vote. The recess may be ended at the call of the chair or at a time specified.

H50-230. Adjournment for a legislative day. (1) A representative may move that the House adjourn for that legislative day. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

(2) A motion to adjourn for a legislative day must specify a date and time for the House to convene on the subsequent legislative day.

H50-240. Adjournment sine die. A representative may move that the House adjourn for the session. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

CHAPTER 6

Motions

H60-10. Proposal for consideration. (1) Every question presented to the House or a committee must be submitted as a definite proposition.

(2) A representative has the right to understand any question before the House and, under the authority of the presiding officer, may ask questions to exercise this right.

H60-20. Nondebatable motions. The following motions, in addition to any other motion specifically designated, must be decided without debate:

(1) to adjourn;

(2) for a call of the House;

(3) to recess or rise;

(4) for parliamentary inquiry;

(5) to table or to take from the table;

(6) to call for the previous question or for cloture;

(7) to amend a nondebatable motion;

(8) to divide a question;

(9) to postpone consideration to a day certain;

(10) to suspend the rules; and

(11) all incidental motions, such as motions relating to voting or of a general procedural nature.

H60-30. Motions allowed during debate. (1) When a question is under debate, only the following motions are in order. The motions have precedence in the following order:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for a question of privilege;

(e) to table or take from the table;

(f) to call for the previous question or cloture;

(g) to postpone consideration to a day certain;

(h) to refer or rerefer; and

(i) to propose amendments.

(2) This section does not allow a motion that would not otherwise be allowed under a particular order of business.

(3) Only one substitute motion is in order at any time.

H60-40. Motions to adjourn or recess. (1) A motion to adjourn or recess is always in order, except:

(a) when the House is voting on another motion;

(b) when the previous question has been ordered and before the final vote;

(c) when a member entitled to the floor has not yielded for that purpose; or

(d) when business has not been transacted after the defeat of a motion to adjourn or recess.

(2) The vote by which a motion to adjourn or recess is carried or fails is not subject to a motion to reconsider.

H60-50. Motion to table. (1) A motion to table, if carried, has the effect of postponing action on the proposition to which it was applied until superseded by a motion to take from the table.

(2) The vote by which a motion to table is carried or fails cannot be reconsidered.

(3) A motion to table is not in order after the previous question has been ordered.

H60-60. Motion to postpone. A motion to postpone to a day certain may be amended and is debatable within narrow limits. The merits of the proposition that is the subject of the motion to postpone may not be debated.

H60-70. Motion to refer. When a motion is made to refer a subject to a standing committee or select committee, the question on the referral to a standing committee must be put first.

H60-80. Terms of debate on motion to refer or rerefer. (1) A motion to refer or rerefer is debatable within narrow limits. The merits of the proposition that is the subject of the motion may not be debated.

(2) A motion to refer or rerefer with instructions is fully debatable.

H60-100. Moving the previous question after a motion to table. (1) If a motion to table is made directly to a main motion, a motion for the previous question is not in order.

(2) If an amendment to a main motion is pending and a motion to table is made, the previous question may be called on the main motion, the pending amendment, and the motion to table the amendment.

H60-110. Standard motions. The following are standard motions:

(1) moving House bills or resolutions on second reading, "Mister/Madam Chairman, I move that when this committee does rise and report after having under consideration House Bill ___, that it recommend the same (do pass)/(do pass as amended)/(do not pass)."

(2) moving Senate bills and Senate amendments to House bills, "Mister/Madam Chairman, I move that when this committee does rise and report after having under consideration Senate Bill ___/Senate amendments to House Bill ___, that it recommend the same (be concurred in)/(be not concurred in)."

(3) Committee of the Whole floor amendments, "Mister/Madam Chairman, I move that House Bill ___/Senate Bill ___ be amended and request that the amendment be posted and deemed read."

(4) introducing visitors, "Mister/Madam Speaker/Chairman, I request that we be off the record and out of the journal."

(5) changing a vote, "Mister Speaker, I would like my vote changed on House Bill ___/Senate Bill ___ from (yes/no) to (yes/no). The question on the bill was ( ) with a vote tally of ____ for and ____ against."

(6) question another representative, "Mister/Madam Speaker/Chairman, would Representative ___ yield to a question?"

CHAPTER 7

Rules

H70-10. House rules. (1) The House may adopt, through a House resolution passed by a majority of its members, rules to govern its proceedings.

(2) After adoption of the House rules, two-thirds of the representatives voting must vote in favor of the question to amend the rules.

(3) The Speaker shall refer to the House Rules Committee all resolutions for House rules.

(4) The House Rules Committee shall report all resolutions for House rules within 1 legislative day of referral.

H70-20. Tenure of rules. Rules adopted by the House remain in effect until removed by House resolution or until a new House is elected and takes office.

H70-30. Suspension of rules. The House may suspend a House rule on a motion approved by not less than two-thirds of the members voting.

H70-40. Supplementary rules. Mason's Manual of Legislative Procedure (2000) governs House proceedings in all cases not covered by House rules.

H70-50. Interpreting rules. The Speaker shall interpret all questions on House rules, subject to appeal by any 15 representatives to the House Rules Committee. Unless the delay would cause legislation to fail to meet a scheduled deadline, the House Rules Committee may consider and report on the appeal on the next legislative day. The decision of the House Rules Committee may be appealed to the House by any representative.

H70-60. Joint rules superseded. A House rule, insofar as it relates to the internal proceedings of the House, supersedes a joint rule.

Appendix

(1) Except as provided in subsections (2) through (4), legislation dealing with an enumerated subject must be referred to a standing committee as follows:

Agriculture: Agriculture; country of origin labeling for products; crops; crop insurance; farm subsidies; fuel produced from grain; grazing (other than state land leases); irrigation; livestock; poultry; and weed control.

Appropriations: Appropriations for the Legislature, general government, and bonding, including supplemental appropriations and the coal severance tax.

Business and Labor: Alcohol regulation other than taxation; associations; corporations; credit transactions; employment; financial institutions; gambling; insurance; labor unions; partnerships; private sector pensions and pension plans; professions and occupations other than the practice of law; salaries and wages; sales; secured transactions; securities regulation other than criminal provisions; sports other than hunting, fishing, and competition water sports; trade regulation; unemployment insurance; the Uniform Commercial Code; and workers' compensation.

Education: Higher education; home schools; K-12 education; religion in schools; school buildings and other structures; school libraries and university system libraries; school safety; school sports; school staff other than teachers;

school transportation; students; teachers; and vocational education and training.

Ethics: Ethical standards applicable to members, officers, and employees of the House and ethical standards for lobbyists.

Federal Relations, Energy, and Telecommunications: Energy generation and transmission; Indian reservations; international relations; interstate cooperation and compacts, except those relating to law enforcement and water compacts; relations with the federal government; relations with sovereign Indian tribes; telecommunications; and utilities other than municipal utilities.

Fish, Wildlife, and Parks: Fish; fishing; hunting; outdoor recreation; parks other than those owned by local governments; relations with federal and state governments concerning fish and wildlife; Virginia City and Nevada City; water sports; and wildlife.

Human Services: Developmentally disabled persons; disabled persons; health; health and disability insurance; housing; human services; mental illness or incapacity; retirement other than pensions and pension plans; senior citizens; tobacco regulation other than taxation; and welfare.

Judiciary: Abortion; arbitration and mediation; civil procedure; constitutional amendments; consumer protection; contracts; corrections; courts; criminal law; criminal procedure; discrimination; evidence; family law; fees imposed by or relating to the court system; guaranty; human rights; impeachment; indemnity; judicial system; landlord and tenant; law enforcement; liability and immunity from liability; minors; practice of law; privacy; property law; religion other than in schools; state law library; surety; torts; and trusts and estates.

Legislative Administration: Interim committees and subjects assigned by H10-50.

Local Government: Cities; consolidated governments; counties; libraries and parks owned or operated by local governments; local development; local government finance and revenue; local government officers and employees, local planning; special districts and other political subdivisions, except school districts; towns; and zoning.

Natural Resources: Board of Land Commissioners; dams, except for electrical generation; emission standards; environmental protection; extractive activities; fires and fire protection, except for a local government fire department; forests and forestry; hazardous waste; mines and mining; natural gas; natural resources; oil; pollution; solid waste; state land, except state parks; water and water rights; water bodies and water courses; and water compacts.

Rules: House rules; joint rules; legislative procedure; jurisdictions of committees; and rules of decorum.

State Administration: Administrative rules; arts and antiquities; ballots; elections; initiative and referendum procedures; military affairs; public contracts and procurement; public employee retirement systems; state buildings; state employees; state employee benefits; state equipment and property, except state lands and state parks; state government generally; state-owned libraries other than the state law library; veterans; and voting.

Taxation: Taxes other than fuel taxes.

Transportation: Fuel taxes; highways; railroads; roads; traffic regulation; transportation generally; vehicles; and vehicle safety.

(2) If a select committee is created to address a specific subject, then bills relating to that subject must be assigned to the select committee.

(3) (a) If legislation deals with more than one subject and the subjects are assigned to more than one committee, the bill must be assigned to a class one committee before a class two committee and to a class two committee before a class three committee. If there is a conflict of subjects between the same class of committees, then the bill must be assigned by the Speaker.

(b) If a bill contains substantive provisions dealing with policy and an appropriation, the bill must be referred to the committee with jurisdiction over the subject addressed in the policy provisions. If the bill is reported from the committee to which it was assigned, the Speaker may rerefer the bill to the Appropriations Committee. The referral must be announced to the House. The rereferral does not require action or approval by the House, but may be overturned by a majority vote.

(4) If a committee chair upon consultation with the vice chair determines that the committee cannot effectively process all bills assigned to the committee because of time limitations, the chair shall, in writing, request the Speaker to reassign specific bills. The Speaker shall reassign the bills to an appropriate committee. The reassignments must be announced to the House. The reassignments do not require action or approval by the House, but may be overturned by a three-fifths vote.

Adopted January 12, 2007

HOUSE RESOLUTION NO. 3

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING FULL FEDERAL FUNDING IN THE CONSTRUCTION AND MAINTENANCE OF FEDERAL HIGHWAYS.

WHEREAS, it is the duty of the United States Congress to ensure fairness among all 50 states in matters of governance, commerce, and security; and

WHEREAS, the national highway system is a critical part of the country's system of national defense, and any one part thus provides security to the citizenry as a whole; and

WHEREAS, the national highway system is necessary for interstate commerce, which benefits the national economy; and

WHEREAS, Montana is a large geographic state with a relatively low population of only 6.2 inhabitants per square mile and with a subsequent correlating greater share of individual financial contribution in matters of state public obligation.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the members of the Montana Delegation of the U.S. Congress pursue legislative efforts in coordination with their colleagues from other states to ensure that all federal highways in Montana are constructed and maintained in a manner that promotes safe and efficient travel conditions.

BE IT FURTHER RESOLVED, that the federal government authorize and appropriate adequate funding to ensure all construction projects are awarded and completed on a timely basis.

Adopted February 2, 2007

Senate Joint Resolutions

SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REVISING AND ADOPTING THE JOINT LEGISLATIVE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following Joint Rules be adopted:

JOINT RULES OF THE MONTANA
SENATE AND HOUSE OF REPRESENTATIVES
CHAPTER 10
Administration

10-10. Time of meeting. Each house may order its time of meeting.

10-20. Legislative day — duration. (1) If either house is in session on a given day, that day constitutes a legislative day.

(2) A legislative day for a house ends either 24 hours after that house convenes for the day or at the time the house convenes for the following legislative day, whichever is earlier.

10-30. Schedules. The presiding officer of each house shall coordinate its schedule to accommodate the workload of the other house.

10-40. Adjournment — recess — meeting place. A house may not, without the consent of the other, adjourn or recess for more than 3 days or to any place other than that in which the two houses are sitting (Montana Constitution, Art. V, Sec. 10(5)).

10-50. Access of press. Subject to the presiding officer's discretion on issues of decorum and order, an accredited press representative may not be prohibited from photographing, televising, or recording a legislative meeting or hearing.

10-60. Conflict of interest. A member who has a personal or private interest in any measure or bill proposed or pending before the Legislature shall disclose the fact to the house to which the member belongs. (section 2-2-112, MCA)

10-70. Telephone calls and internet access. (1) Long-distance telephone calls made by a member while the Legislature is in session or while the member is in travel status are considered official legislative business. These include but are not limited to calls made to constituencies, places of business, and family members. A member's access to the internet through a permissible server is a proper use of the state communication system if the use is for

legislative business or is within the scope of permissible use of long-distance telephone calls.

(2) Session staff, including aides and interns, may use telephones for long-distance calls only if specifically authorized to do so by their legislative sponsor or supervisor. Sponsoring members and supervisors are accountable for use of state telephones and internet access by their staff, including aides and interns, and may not authorize others to use state phones or state servers to access the internet.

(3) Permanent staff of the Legislature shall comply with executive branch rules applying to the use of state telephones.

10-80. Joint employees. The presiding officers of each house, acting together, shall:

(1) hire joint employees; and

(2) review a dispute or complaint involving the competency or decorum of a joint employee, and dismiss, suspend, or retain the employee.

10-85. Harassment prohibited. (1) Legislators and legislative employees have the right to work free of harassment on account of race, color, sex, culture, social origin or condition, or religious ideas when performing services in furtherance of legislative responsibilities, whether the offender is an employer, employee, legislator, lobbyist, or member of the public.

(2) A violation of this policy must be reported to the party leader in the appropriate house if the offended party is a legislator or to the presiding officer if the offended party is the party leader. The presiding officer may refer the matter to the rules committee of the applicable house, and the offender is subject to discipline or censure, as appropriate.

(3) If the offended party is an employee of the house of representatives or the senate, the violation must be reported to the employee's supervisor or, if the offender is the supervisor for the house of representatives or the senate, the report should be made to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate. If the offended party is a permanent legislative employee, the report should be made to the employee's supervisor or, if the offender is the supervisor, to the appropriate division director. If the offender is a division director, the report should be made to the presiding officer of the appropriate statutory committee.

(4) If the offended party is a supervisor for the house of representatives or the senate, the violation must be reported to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate. If the offended party is a supervisor of permanent legislative employees, the violation must be reported to the appropriate division director. If the offender is a division director, the report should be made to the presiding officer of the appropriate statutory committee.

(5) The chief clerk or the secretary shall report the violation to the presiding officer. The presiding officer may refer the matter to the rules committee. If the offender is an employee or supervisor, the employee or supervisor is subject to discipline or discharge.

10-90. Legislative interns. Qualifications for legislative interns are specified in Title 5, chapter 6, MCA.

10-100. Legislative Services Division. (1) The staff of the Legislative Services Division shall serve both houses as required.

(2) Staff members shall:

(a) maintain personnel files for legislative employees; and

(b) prepare payrolls for certification and signature by the presiding officer and prepare a monthly financial report.

10-120. Engrossing and enrolling staff — duties. (1) The Legislative Services Division shall provide all engrossing and enrolling staff.

(2) The duties of the engrossing and enrolling staff are:

(a) to engross or enroll any bill or resolution delivered to them within 48 hours after it has been received, unless further time is granted in writing by the presiding officer of the house in which the bill originated; and

(b) to correct clerical errors, absent the objection of the sponsor of a bill, resolution, or amendment and the Secretary of the Senate or the Chief Clerk of the House of Representatives in any bill or amendment originating in the house by which the Clerk or Secretary is employed. The following kinds of clerical errors may be corrected:

(i) errors in spelling;

(ii) errors in numbering sections;

(iii) additions or deletions of underlining or lines through matter to be stricken;

(iv) material copied incorrectly from the Montana Code Annotated;

(v) errors in outlining or in internal references;

(vi) an error in a title caused by an amendment;

(vii) an error in a catchline caused by an amendment;

(viii) errors in references to the Montana Code Annotated; and

(ix) other nonconformities of an amendment with Bill Drafting Manual form.

(3) The engrossing and enrolling staff shall give notice in writing of the clerical correction to the Secretary of the Senate or the Chief Clerk of the House and to the sponsor of the bill or amendment. The sponsor shall sign the clerical form to acknowledge notification of the clerical correction. The signed form must be filed in the office of the amendments coordinator. A party receiving notice may register an objection to the correction by filing the objection in writing within 24 hours after receipt of the notice.

(4) If a committee is the sponsor of a bill or resolution, any committee member designated by the chair may be the principal sponsor for the purpose of this section. If a committee has proposed an amendment, the chair is the principal sponsor for the purpose of this section.

(5) For the purposes of this rule, "engrossing" means placing amendments in a bill.

10-130. Bills. (1) A bill draft request must be sponsored by a member of the Legislature.

(2) A bill must be:

(a) printed on paper with numbered lines;

(b) numbered at the foot of each page (except page 1);

(c) covered with a cover page of substantial material; and

(d) introduced.

(3) In a section amending an existing statute, matter to be stricken out must be indicated with a line through the words or part to be deleted, and new matter must be underlined.

(4) Sections of the Montana Code Annotated repealed or amended in a bill must be stated in the title.

(5) Introduced bills must be reproduced on white paper and distributed to members.

(6) An introduced bill may not be withdrawn.

10-140. Voting. (1) A bill may not become a law except by vote of the constitutionally required majority of all the members present and voting in each house (Montana Constitution, Art. V, Sec. 11(1)). On final passage, the vote must be taken by ayes and noes and the names of those voting entered on the journal (Montana Constitution, Art. V, Sec. 11(2)).

(2) Any vote in one house on a bill proposing an amendment to The Constitution of the State of Montana under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

10-150. Recording and publication of voting. (1) Every vote of each member on each substantive question in the Legislature, in any committee, or in Committee of the Whole must be recorded and made public. On final passage of any bill or joint resolution, the vote must be taken by ayes and noes and the names entered on the journal.

(2) (a) Roll call votes must be taken by ayes and noes and the names entered on the journal on adopting an adverse committee report and on those motions made in Committee of the Whole to:

(i) amend;

(ii) recommend passage or nonpassage;

(iii) recommend concurrence or nonconcurrence; or

(iv) indefinitely postpone.

(b) The text of all proposed amendments must be recorded.

(3) A roll call vote must be taken on nonsubstantive questions on the request of two members who may, on any vote, request that the ayes and noes be spread upon the journal.

(4) Roll call votes and other votes that are to be made public but are not specifically required to be spread upon the journal must be entered in the minutes of the appropriate committee or of the appropriate house (Montana Constitution, Art. V, Sec. 11(2)). A copy of the minutes must be filed with the Montana Historical Society. If electronically recorded minutes are kept for a committee, a written log conforming to section 2-3-212(2), MCA, must also be kept.

10-160. Journal. Each house shall:

(1) supply the Legislative Services Division with the contents of the daily journal to be stored on an automated system;

(2) examine its journal and order correction of any errors; and

(3) distribute a daily journal to all members.

10-170. Journals — authentication — availability. (1) The journal of the Senate must be authenticated by the signature of the President and the journal of the House of Representatives by the signature of the Speaker.

(2) The Legislative Services Division shall make the completed journals available to the public (sections 5-11-201 through 5-11-203, MCA).

CHAPTER 30

Committees

30-10. Committee chair. Except as provided in Joint Rule 30-50, the chair of the Senate committee is the chair of all joint committees.

30-20. Voting in joint committees. (1) Except for Rules Committees and conference committees, a member of a joint committee votes individually and not by the house to which the committee member belongs.

(2) Because the Rules Committees and conference committees are joint meetings of separate committees, in those committees the committees from each house vote separately. A majority of each committee shall agree before any action may be taken, unless otherwise specified by individual house rules.

30-30. Conference committees. (1) If either house requests a conference and appoints a committee for the purpose of discussing an amendment on which the two houses cannot agree, the other house shall appoint a committee for the same purpose. The time and place of all conference committee meetings must be agreed upon by their chairs and announced from the rostrum. This announcement is in order at any time. Failure to make this announcement does not affect the validity of the legislation being considered. A conference committee meeting must be conducted as an open meeting, and minutes of the meeting must be kept.

(2) A conference committee, having conferred, shall report to the respective houses the result of its conference. A conference committee shall confine itself to consideration of the disputed amendment. The committee may recommend:

(a) acceptance or rejection of each disputed amendment in its entirety; or

(b) further amendment of the disputed amendment.

(3) If either house requests a free conference committee and the other house concurs, appointments must be made in the same manner as above. A free conference committee may discuss a bill in its entirety and is not confined to a particular amendment.

30-40. Conference committee — enrolling. A conference committee report must give clerical instructions for a corrected reference bill and for enrolling by referring to the reference bill version.

30-50. Committee consideration of appropriation bills. (1) All bills providing for an appropriation of public money may first be considered by a joint committee composed of the members of the Senate Finance and Claims Committee and the House Appropriations Committee, and then by each separately.

(2) Meetings of the joint committee must be held upon call of the chair of the House Appropriations Committee, who is chair of the joint committee.

(3) The committee chair of the Senate Finance and Claims Committee or of the House Appropriations Committee may be a voting member in the joint subcommittees if:

(a) either house has fewer members on the joint subcommittees;

(b) the chair represents the house with fewer members on the subcommittees; and

(c) the chair is present for the vote at the time that a question is called. A vote may not be held open to facilitate voting by a chair.

30-60. Estimation of revenue. The Revenue and Transportation Interim Committee shall introduce a House joint resolution for the purpose of estimating revenue that may be available for appropriation by the Legislature.

30-70. Appointment of interim committees. As provided for in section 5-5-211(6), MCA, 50% of interim committees must be selected from the following legislative standing committees:

(1) Economic Affairs Interim Committee:

(a) Senate Agriculture, Livestock, and Irrigation Committee;

(b) Senate Business, Labor, and Economic Affairs Committee;

(c) Senate Finance and Claims Committee;

(d) House Agriculture Committee;

(e) House Business and Labor Committee;

(f) House Federal Relations, Energy, and Telecommunications Committee; and

(g) House Appropriations Committee;

(2) Education and Local Government Interim Committee:

(a) Senate Education and Cultural Resources Committee;

(b) Senate Local Government Committee;

(c) Senate Finance and Claims Committee;

(d) House Education Committee;

(e) House Local Government Committee; and

(f) House Appropriations Committee;

(3) Children, Families, Health, and Human Services Interim Committee:

(a) Senate Public Health, Welfare, and Safety Committee;

(b) Senate Finance and Claims Committee;

(c) House Human Services Committee; and

(d) House Appropriations Committee;

(4) Law and Justice Interim Committee:

(a) Senate Judiciary Committee;

(b) Senate Finance and Claims Committee;

(c) House Judiciary Committee; and

(d) House Appropriations Committee;

(5) Revenue and Transportation Interim Committee:

(a) Senate Taxation Committee;

(b) Senate Highways and Transportation Committee;

(c) Senate Finance and Claims Committee;

(d) House Taxation Committee;

(e) House Transportation Committee; and

(f) House Appropriations Committee;

(6) State Administration and Veterans' Affairs Interim Committee:

(a) Senate State Administration Committee;

(b) Senate Finance and Claims Committee;

(c) House State Administration Committee; and

(d) House Appropriations Committee;

(7) Energy and Telecommunications Interim Committee:

(a) Senate Natural Resources and Energy Committee;

(b) House Federal Relations, Energy, and Telecommunications Committee;

(c) House Appropriations Committee; and

(d) Senate Finance and Claims Committee.

CHAPTER 40

Legislation

40-10. Amendment to state constitution. A bill must be used to propose an amendment to The Constitution of the State of Montana. The bill is not subject to the veto of the Governor (Montana Constitution, Art. VI, Sec. 10(1)).

40-20. Appropriation bills. (1) All appropriation bills must originate in the House of Representatives.

(2) Appropriation bills for the operation of the Legislature must be introduced by the chair of the House Appropriations Committee.

40-30. Effective dates. (1) Except as provided in subsections (2) through (4), a statute takes effect on October 1 following its passage and approval unless a different time is prescribed in the enacting legislation.

(2) A law appropriating public funds for a public purpose takes effect on July 1 following its passage and approval unless a different time is prescribed in the enacting legislation.

(3) A statute providing for the taxation or imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed in the enacting legislation.

(4) A joint resolution takes effect on its passage unless a different time is prescribed therein (sections 1-2-201 and 1-2-202, MCA).

40-40. Bill requests and introduction — limits and procedures. (1) Prior to a regular session, a person entitled to serve in that session, hereafter referred to as a "member", is entitled to request bill drafting services from the Legislative Services Division, subject to the following limits:

(a) Prior to 5 p.m. on December 5 preceding a regular session of the Legislature, a member may request an unlimited number of bills and resolutions to be prepared by the Legislative Services Division for introduction in the regular session.

(b) After 5 p.m. on December 5, a member may request no more than seven bills or resolutions to be prepared by the Legislative Services Division. At least five of the seven bills or resolutions must be requested before the regular session convenes.

(c) After December 5, a member, in the member's discretion, may grant to any other member any of the remaining bill or resolution requests the granting member has not used. A bill requested by an individual may not be transferred to another legislator but may be introduced by another legislator.

(d) These limitations on bill and resolution requests do not apply to:

(i) Code Commissioner bills;

(ii) a bill or resolution requested by a standing committee; and

(iii) a bill or resolution requested by a member at the request of a newly elected state official if so designated.

(2) The staff of the Legislative Services Division shall work on bill draft requests in the order received. After a member has requested the drafting of five bills, the sixth bill request and all subsequent bill requests of that member must receive a lower drafting priority than all other bills of members not in excess of five per member. The Speaker of the House, the minority leader of the House, the President of the Senate, and the minority leader of the Senate may each direct the staff of the Legislative Services Division to assign a higher priority to 10 draft requests. The staff of the Legislative Services Division shall assign a higher priority to any bill draft request when jointly directed by:

(a) the President of the Senate, the minority leader of the Senate, the Speaker of the House, and the minority leader of the House; or

(b) the House and the Senate.

(3) Bills and resolutions must be reviewed by the staff of the Legislative Services Division prior to introduction for proper format, style, and legal form. The staff of the Legislative Services Division shall store bills on the automated bill drafting equipment and shall print and deliver them to the requesting members. The original bill cover must be signed to indicate review by the Legislative Services Division. A bill may not be introduced unless it is so signed.

(4) (a) During a session, a bill may be introduced by endorsing it with the name of a member and presenting it to the Chief Clerk of the House of Representatives or the Secretary of the Senate. Bills or joint resolutions may be sponsored jointly by Senate and House members. A jointly sponsored bill must be introduced in the house in which the member whose name appears first on the bill is a member. The chief joint sponsor's name must appear immediately to the right of the first sponsor's name. Except as provided in subsection (4)(b), in each session of the Legislature, bills, joint resolutions, and simple resolutions must be numbered consecutively in separate series in the order of their receipt.

(b) The first 15 House bills may be reserved for preintroduced bills.

(5) (a) Any bill proposed by an interim or statutory legislative committee or introduced by request of an administrative or executive agency or department must be so indicated by placing after the names of the sponsors the phrase "By Request of the..... (Name of committee or agency)". The phrase may not be added to an introduced bill and may not be placed on a bill whose subject matter was requested by an agency or statutory or interim committee prior to the convening of the session. Unless requested by an individual member, a bill draft request submitted at the request of an agency must be submitted to, reviewed

by, and requested by the appropriate interim or statutory committee. Except as provided in subsection (5)(b), an agency or committee bill request must be preintroduced or the request is canceled. Preintroduction must occur no later than 5 p.m. on the fifth working day prior to the convening of a legislative session. Preintroduction is accomplished when the Legislative Services Division receives a signed preintroduction form.

(b) The preintroduction requirement does not apply to an office held by an elected official during the official's first year in that office or to bills requested by a joint select or joint special committee appointed prior to the convening of the legislative session to address a specific issue.

(6) Bills may be preintroduced, numbered, and reproduced prior to a legislative session by the staff of the Legislative Services Division. Actual signatures of persons entitled to serve as members in the ensuing session may be obtained on a consent form from the Legislative Services Division and the sponsor's name printed on the bill. Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill. These names will be forwarded to the Legislative Services Division to be included on the face of the bill following standing committee approval.

40-50. Schedules for drafting requests and bill introduction. (1) The following schedule must be followed for submission of drafting requests.

	Request Deadline 5:00 P.M. Legislative Day
• General Bills and Resolutions	10
• Revenue Bills	17
• Committee Bills and Resolutions	36
• Committee Revenue Bills	62
• Committee Bills implementing provisions of a general appropriation act	75
• Interim study resolutions	75
• Appropriation Bills	No Deadline
• Resolutions to express confirmation of appointments	No Deadline
• Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules	No Deadline

(2) Bills and resolutions must be introduced within 2 legislative days after delivery.

40-60. Joint resolutions. (1) A joint resolution must be adopted by both houses and is not approved by the Governor. It may be used to:

(a) express desire, opinion, sympathy, or request of the Legislature;

(b) request, but not require, a legislative entity to conduct an interim study;

(c) adopt, amend, or repeal the joint rules;

(d) approve construction of a state building under section 18-2-102 or 20-25-302, MCA;

(e) deal with disasters and emergencies under Title 10, specifically as provided in sections 10-3-302(3), 10-3-303(3), 10-3-303(4), and 10-3-505(5), MCA;

(f) submit a negotiated settlement under section 39-31-305(3), MCA;

(g) declare or terminate an energy emergency under section 90-4-310, MCA;

(h) ratify or propose amendments to the United States Constitution; or

(i) advise or request the repeal, amendment, or adoption of a rule in the Administrative Rules of Montana.

(2) A joint resolution may not be used for purposes of congratulating or recognizing an individual or group achievement. Recognition of individual or group achievements is handled on special orders of the day.

(3) Except as otherwise provided in these rules or The Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

(4) A copy of every joint resolution must be transmitted after adoption to the Secretary of State by the Secretary of the Senate or the Chief Clerk of the House.

40-65. Appropriation required for bills requesting interim studies. A bill including a request for an interim study may not be transmitted to the Governor unless the bill contains an appropriation sufficient to conduct the study. A fiscal note may be requested for a bill requesting an interim study if the appropriation does not appear to be sufficient.

40-70. Bills with same purpose — vetoes. (1) A bill may not be introduced or received in a house after that house, during that session, has finally rejected a bill designed to accomplish the same purpose, except with the approval of the Rules Committee of the house in which the bill is offered for introduction or reception.

(2) Failure to override a veto does not constitute final rejection.

40-80. Reproduction of full statute required. A statute may not be amended or its provisions extended by reference to its title only, but the statute section that is amended or extended must be reproduced or published at length.

40-90. Bills — original purpose. A law may not be passed except by bill. A bill may not be so altered or amended on its passage through either house as to change its original purpose (Montana Constitution, Art. V, Sec. 11(1)).

40-100. Fiscal notes. (1) As provided in Title 5, chapter 4, part 2, MCA, all bills reported out of a committee of the Legislature having a potential effect on the revenues, expenditures, or fiscal liability of the state, local governments, or public schools, except appropriation measures carrying specific dollar amounts, must include a fiscal note incorporating an estimate of the fiscal effect. The Legislative Services Division staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes must be requested by the presiding officer of either house, who, at the time of introduction or after adoption of substantive amendments to an introduced bill, shall determine the need for the note, based on the Legislative Services Division staff recommendation.

(2) The Legislative Services Division shall make available an electronic copy of any bill for which it has been determined a fiscal note may be necessary to the Budget Director immediately after the bill has been prepared for introduction and delivered to the requesting member. The Budget Director may proceed with the preparation of a fiscal note in anticipation of a subsequent formal request. A bill with financial implications for a local government or school district must comply with subsection (4).

(3) The Budget Director, in cooperation with the governmental entity or entities affected by the bill, is responsible for the preparation of the fiscal note. Except as provided in subsection (4), the Budget Director shall return the fiscal note within 6 days unless further time is granted by the presiding officer or committee making the request, based upon a written statement from the Budget Director that additional time is necessary to properly prepare the note.

(4) (a) A bill that may require a local government or school district to perform an activity or provide a service or facility that requires the direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of section 1-2-112 or 1-2-113, MCA, must be accompanied, at the time that the bill is presented for introduction, by an estimate of all direct and indirect fiscal impacts on the local government or school district. The estimate of the fiscal impacts must be prepared by the Budget Director in cooperation with a local government or school district affected by the bill.

(b) The Budget Director has 10 days to prepare the estimate. Upon completion of the estimate, the Budget Director shall submit it to the presiding officer and the chief sponsor of the bill.

(5) A completed fiscal note must be submitted by the Budget Director to the presiding officer who requested it. The presiding officer shall notify the bill's chief sponsor of the completed fiscal note and request the chief sponsor's signature. The chief sponsor has 1 legislative day after delivery to review the fiscal note and to discuss the findings with the Budget Director, if necessary. After the legislative day has elapsed, all fiscal notes must be reproduced and placed on the members' desks, either with or without the chief sponsor's signature.

(6) A fiscal note must, if possible, show in dollar amounts:

(a) the estimated increase or decrease in revenues or expenditures;

(b) costs that may be absorbed without additional funds; and

(c) long-range financial implications.

(7) The fiscal note may not include any comment or opinion relative to merits of the bill. However, technical or mechanical defects in the bill may be noted.

(8) A fiscal note also may be requested, through the presiding officer, on a bill and on an amended bill by:

(a) a committee considering the bill;

(b) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or

(c) the chief sponsor.

(9) The Budget Director shall make available on request to any member of the Legislature all background information used in developing a fiscal note.

(10) If a bill requires a fiscal note, the bill may not be reported from a committee for second reading unless the bill is accompanied by the fiscal note.

40-110. Sponsor's fiscal note. (1) If a sponsor elects to request the preparation of a sponsor's fiscal note pursuant to section 5-4-204, MCA, the sponsor shall make the election as provided and return the completed sponsor's fiscal note to the presiding officer within 4 days of the election.

(2) The presiding officer may grant additional time to the sponsor for preparation of the sponsor's fiscal note.

(3) Upon receipt of the completed sponsor's fiscal note, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the note must be identified as a sponsor's fiscal note, reproduced, and placed on the members' desks.

(4) The Legislative Services Division shall provide forms for preparation of sponsors' fiscal notes and shall print the completed sponsors' fiscal notes on a different color paper than the fiscal notes prepared by the Budget Director.

40-120. Substitute bills. (1) A committee may recommend that every clause in a bill be changed and that entirely new material be substituted so long as the new material is relevant to the title and subject of the original bill. The substitute bill is considered an amendment and not a new bill.

(2) The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the material following the enacting clause, to substitute the new material, and to recommend any necessary changes in the title of the bill.

(3) If a committee report is adopted that recommends a substitute for a bill originating in the other house, the substitute bill must be printed and reproduced.

40-130. Reading of bills. Prior to passage, a bill, other than a bill requested by a joint select or joint special committee as provided in 40-40(5)(b), must be read three times in the house in which it is under consideration. It may be read either by title or by summary of title.

40-140. Second reading — bill reproduction. (1) If the majority of a house adopts a recommendation for the passage of a bill originating in that house after the bill has been returned from a committee with amendments, the bill must be reproduced on yellow paper with all amendments incorporated into the copies.

(2) If a bill has been returned from a committee without amendments, only the first sheet must be reproduced on yellow paper, and the remainder of the text may be incorporated by reference to the preceding version of the entire bill.

(3) A bill requested by and heard by a joint select or joint special committee, as provided in 40-40(5)(b), may be referred directly to second reading. If the bill is passed by the house of origin, the bill must be transmitted to the other house, and if the bill was not amended, it may be placed on second reading without the need for referral to a committee.

40-150. Engrossing. (1) When a bill has been reported favorably by Committee of the Whole of the house in which it originated and the report has been adopted, the bill must be engrossed if the bill is amended. Committee of the Whole amendments must be included in the engrossed bill. If the bill is not amended, the bill must be sent to printing. The bill must be placed on the calendar for third reading on the legislative day after receipt.

(2) Copies of the engrossed bill to be distributed to members are reproduced on blue paper. If a bill is unamended by the Committee of the Whole and

contains no clerical errors, it is not required to be reprinted. Only the first sheet must be reproduced on blue paper, with the remainder of the text incorporated by reference to the preceding version of the entire bill.

(3) If a bill is amended by a standing committee in the second house, the amendments must be included in a tan-colored bill and distributed in the second house for second reading consideration. If the bill is amended in Committee of the Whole, the amendments must be included in a salmon-colored reference bill and distributed in the second house for third reading. If the bill passes on third reading, copies of the reference bill must be distributed in the original house. The original house may request from the second house a specified number of copies of the amendments to be printed.

40-160. Enrolling. (1) When a bill has passed both houses, it must be enrolled. An original and two duplicate printed copies of the bill must be enrolled, free from all errors, with a margin of two inches at the top and one inch on each side. In sections amending existing statutes, new matter must be underlined and deleted matter must be shown as stricken.

(2) When the enrolling is completed, the bill must be examined by the sponsor.

(3) The correctly enrolled bill must be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall sign the original and two copies of each bill not later than the next legislative day after it has been reported correctly enrolled, unless the bill is delivered on the last legislative day, in which case the presiding officer shall sign it that day. The fact of signing must be announced by the presiding officer and entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly enrolled and before the signing, if a member signifies a desire to examine the bill, the member must be permitted to do so. The bill then must be transmitted to the other house where the same procedure must be followed.

(4) A bill that has passed both houses of the Legislature by the 90th day may be:

(a) enrolled;

(b) clerically corrected by the presiding officers, if necessary;

(c) signed by the presiding officers; and

(d) delivered to the Governor or, in the case of a bill proposing a referendum, to the Secretary of State, not later than 5 working days after the 90th legislative day.

(5) All journal entries authorized under this rule must be entered on the journal for the 90th day.

(6) The original and two copies signed by the presiding officer of each house must be presented to the Governor or the Secretary of State, as applicable, in return for a receipt. A report then must be made to the house of the day of the presentation, which must be entered on the journal.

(7) The original must be filed with the Secretary of State. Signed copies with chapter numbers assigned pursuant to section 5-11-204, MCA, must be filed with the Clerk of the Supreme Court and the Legislative Services Division.

40-170. Amendment by second house. (1) Amendments to a bill by the second house may not be further amended by the house in which the bill originated, but must be either accepted or rejected. A bill amended by the second

house when the effect of the combined amendments is to return the bill to the form that the bill passed the house in which the bill originated is not considered to have been amended and need not be returned to the house of origin for acceptance or rejection of the amendments. If the amendments are rejected, a conference committee may be requested by the house in which the bill originated. If the amendments are accepted and the bill is of a type requiring more than a majority vote for passage, the bill again must be placed on third reading in the house of origin.

(2) The vote on third reading after concurrence in amendments is the vote of the house of origin that must be used to determine if the required number of votes has been cast.

40-180. Final action on a bill. (1) When a bill being heard by the second house has received its third reading or has been rejected, the second house shall transmit it as soon as possible to the original house with notice of the second house's action.

(2) A bill that reduces revenue and that contains a contingent voidness provision may not be transmitted to the Governor unless there is an identified corresponding reduction in an appropriation contained in the general appropriations act.

40-190. Transmittal of bills between houses. (1) Each house shall transmit to the other with any bill all relevant papers.

(2) When a House bill is transmitted to the Senate, the Secretary of the Senate shall give a dated receipt for the bill to the Chief Clerk of the House. When a Senate bill is transmitted to the House of Representatives, the Chief Clerk of the House shall give a dated receipt to the Secretary of the Senate.

40-200. Transmittal deadlines. (1) (a) A bill or amendment transmitted after the deadline established in this subsection (1) may be considered by the receiving house only upon approval of two-thirds of its members present and voting. If the receiving house does not so vote, the bill or amendment must be held pending in the house to which it was transmitted.

(b) (i) A bill, except for an appropriation bill, a revenue bill, an interim study resolution, or amendments considered by joint committee, must be transmitted from one house to the other on or before the 45th legislative day.

(ii) Amendments, except to appropriation bills, bills implementing the general appropriations bill, the revenue estimating resolution, interim study resolutions, and revenue bills, must be transmitted from one house to the other on or before the 73rd legislative day.

(c) (i) Revenue bills must be transmitted to the other house on or before the 71st legislative day.

(ii) Amendments to revenue bills, received from the other house, must be transmitted to the house of origin on or before the 82nd legislative day.

(iii) A revenue bill is one that either increases or decreases revenue.

(d) (i) Appropriation bills and any bill implementing provisions of a general appropriation bill must be transmitted to the Senate on or before the 67th legislative day.

(ii) Senate amendments to appropriation bills must be transmitted by the Senate to the House on or before the 80th legislative day.

(2) (a) A joint resolution introduced for the purpose of estimating revenue available for appropriation by the Legislature must be transmitted to the Senate no later than the 60th legislative day.

(b) Amendments to the revenue estimating resolution must be transmitted to the House no later than the 82nd legislative day.

(3) Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules may be transmitted at any time during a session.

(4) Interim study resolutions must be transmitted from one house to the other on or before the 85th legislative day.

40-210. Governor's veto. (1) Except as provided in 40-65 and 40-180, each bill passed by the Legislature must be submitted to the Governor for the Governor's signature. This does not apply to:

(a) bills proposing amendments to The Constitution of the State of Montana;

(b) bills ratifying proposed amendments to the United States Constitution;

(c) resolutions; and

(d) referendum measures of the Legislature.

(2) If the Governor does not sign or veto the bill within 10 days after its delivery, the bill becomes law.

(3) The Governor shall return a vetoed bill to the Legislature with a statement of reasons for the veto.

(4) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it becomes law.

(5) If the Legislature is not in session when the Governor vetoes a bill, the Governor shall return the bill with reasons for the veto to the Legislature as provided by law. The Legislature may be polled on a bill that it approved by two-thirds of the members present or it may be reconvened to reconsider any bill so vetoed (Montana Constitution, Art. VI, Sec. 10).

(6) The Governor may veto items in appropriation bills, and in these instances the procedure must be the same as upon veto of an entire bill (Montana Constitution, Art. VI, Sec. 10).

40-220. Response to Governor's veto. (1) When the presiding officer receives a veto message, the presiding officer shall read it to the members over the rostrum. After the reading, a member may move that the Governor's veto be overridden.

(2) A vote on the motion is determined by roll call. If two-thirds of the members present vote "aye", the veto is overridden. If two-thirds of the members present do not vote "aye", the veto is sustained.

40-230. Governor's recommendations for amendment. (1) The Governor may return any bill to the Legislature with recommendations for amendment. The Governor's recommendations for amendment must be considered first by the house in which the bill originated.

(2) If the Legislature passes the bill in accordance with the Governor's recommendations, it shall return the bill to the Governor for reconsideration. The Governor may not return a bill to the Legislature a second time for amendment.

(3) If the Governor returns a bill to the originating house with recommendations for amendment, the house shall reconsider the bill under its rules relating to amendments offered in Committee of the Whole.

(4) The bill then is subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in Committee of the Whole, the bill and the originating house's approval or disapproval of the Governor's recommendations.

(b) If both houses approve the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(c) If both houses disapprove the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(d) If one house disapproves the Governor's recommendations and the other house approves, then either house may request a conference committee, which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report must be returned to the Governor for reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the Governor's recommendations must be considered not approved and the bill must be returned to the Governor for further consideration.

CHAPTER 60

Rules

60-10. Suspension of joint rule — change in rules. (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any Rules Committee report recommending a change in the joint rules must be referred to the other house. Any new rule or any change in the rules of either house must be transmitted to the other house for informational purposes.

(4) Upon adoption of any change, the Secretary of the Senate and the Chief Clerk of the House of Representatives shall provide the office of the Legislative Services Division:

(a) one copy of all motions or resolutions amending Senate, House, or joint rules; and

(b) copies of all minutes and reports of the Rules Committees.

60-20. Reference to Mason's Manual. Mason's Manual of Legislative Procedure (2000) governs the proceedings of the Senate and the House of Representatives in all cases not covered by these rules.

60-30. Publication and distribution of joint rules. (1) The Legislative Services Division shall codify and publish in one volume:

(a) the rules of the Senate;

(b) the rules of the House of Representatives; and

(c) the joint rules of the Senate and the House of Representatives.

(2) After the rules have been published, the Legislative Services Division shall distribute copies as directed by the Senate and the House of Representatives.

60-40. Tenure of joint rules. The joint rules remain in effect until removed by a joint resolution or until a new Legislature is elected and takes office.

Adopted January 30, 2007

SENATE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM LEGISLATIVE STUDY OF DRIVING UNDER THE INFLUENCE IN MONTANA.

WHEREAS, Montana law prohibits individuals from driving under the influence of drugs or alcohol; and

WHEREAS, it is the duty of the Legislature to protect the safety of the public on public highways; and

WHEREAS, although section 61-8-460, MCA, disallowing open containers of alcohol, may have some impact on the number of alcohol-related accidents and deaths, Montana continues to see a high number of alcohol-related fatalities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources:

(1) to study the issue of driving under the influence generally to determine any legislation that might augment current law in reducing the incidence of driving while intoxicated or under the influence of drugs; and

(2) to identify improvements, where applicable, that can be made to current laws related to driving under the influence.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2008.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 61st Legislature.

Adopted April 14, 2007

SENATE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING THE

SIZEABLE CULTURAL, NATURAL, AND ECONOMIC CONTRIBUTIONS THAT NATIONAL PARKS, BATTLEFIELDS, AND MONUMENTS MAKE TO THE STATE AND RECOGNIZING THAT DOCUMENTED AND SUBSTANTIAL MAINTENANCE BACKLOGS AND ANNUAL OPERATIONS BUDGET SHORTFALLS AT NATIONAL PARKS, BATTLEFIELDS, AND MONUMENTS PUT THE PARKS AND BUSINESSES THAT DEPEND ON HEALTHY PARKS AT RISK; AND URGING MONTANA'S CONGRESSIONAL DELEGATION TO INITIATE APPROPRIATIONS ACTIONS TO RESTORE NATIONAL PARKS, BATTLEFIELDS, AND MONUMENTS TO THEIR FORMER STATURE BY THE CENTENNIAL OF THE NATIONAL PARK SYSTEM IN 2016.

WHEREAS, Montana's citizens, communities, children, and travel industry have a great interest in ensuring that health, public and economic benefits, and welfare of the state's national parks, battlefields, and monuments are well maintained and protected for present and future generations; and

WHEREAS, an estimated 69% of Montana's nonresident summer vacationers visit Yellowstone or Glacier National Park, which generates substantial economic benefit for Montana through employment, tax revenue, visitor spending, business expenditures to service visitors, and National Park Service expenditures for park employee salaries, supplies, services, construction and maintenance programs, and other benefits; and

WHEREAS, a Government Accountability Office (GAO) report released in 2006 documented that National Park System operating budgets, when adjusted for inflation, are declining and that the accommodation of newly mandated responsibilities, including rising energy prices, homeland security requirements, congressionally approved pay raises, and other mandates, has resulted in substantial park operations cutbacks; and

WHEREAS, the National Park Service has identified a backlog of between $4.9 billion and $7 billion for overdue maintenance, road repair, and other infrastructure repair resulting from decades of annual shortfalls in parks' operating budgets; and

WHEREAS, a series of business plan analyses conducted by business and policy experts in conjunction with the National Park Service indicate that the parks' annual operations budget shortfall is in excess of $800 million, at least 32% short of what is needed to operate all national parks, an estimated 35% short of the amount needed to operate Yellowstone National Park, and a 36% shortfall for Glacier National Park; and

WHEREAS, improving conservation and stewardship of our national parks' diverse natural resources is fundamental to sustaining visitor experience and maintaining and enhancing visitation levels; and

WHEREAS, chronic underfunding of national parks, battlefields, and monuments puts Montana's communities, economies, and businesses at risk and thwarts the National Park Service mandate to provide for the enjoyment of the parks in a manner and means that will leave them unimpaired for the enjoyment of future generations.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That deterioration of the infrastructure, visitor services, and natural resources of the national parks, monuments, and battlefields in the state

resulting from chronic underfunding is an issue of great concern to the citizens, communities, businesses, and travel industry in Montana.

(2) That Montana's Congressional Delegation be urged to initiate actions that result in full funding of the National Park Service annual operations budgets and in elimination of maintenance and road repair backlogs for all park, battlefield, and monument units by the National Park System centennial in 2016.

(3) That the Secretary of State send copies of this resolution to the members of the Montana Congressional Delegation, the U.S. Secretary of the Interior, and the Director of the National Park Service.

Adopted April 21, 2007

SENATE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE U.S. CONGRESS TO REAUTHORIZE THE SECURE RURAL SCHOOLS AND COMMUNITY SELF-DETERMINATION ACT AND WORK TOWARD A PERMANENT SOLUTION TO COMPENSATE STATES AND LOCAL GOVERNMENTS FOR LOST TAX REVENUE ON FEDERAL LAND WITHIN MONTANA.

WHEREAS, the stability of Montana's economy has historically been dependent on use of our abundant natural resources; and

WHEREAS, the natural resource harvest has historically contributed billions of dollars to Montana's economy by providing employment opportunities to members of our communities, supporting our business communities, and contributing to the health of our schools; and

WHEREAS, revenue from industries related to the natural resource harvest has produced taxes for the support of local and state governments; and

WHEREAS, the amount of money generated by national forests has dropped more than 85% between 1986 and 2005, creating a financial crisis for rural forest communities in Montana and around the country; and

WHEREAS, Congress passed the Secure Rural Schools and Community Self-Determination Act of 2000 to provide a safety net for these communities, and the purpose of the Act was to stabilize payments to states and counties to help support roads and schools, provide projects that enhance forest ecosystem health, provide employment opportunities, and improve cooperative relationships among federal land management agencies and those who use and care about the lands that the agencies manage; and

WHEREAS, counties in Montana received more than $14 million in the last year to maintain schools and roads; and

WHEREAS, the Secure Rural Schools and Community Self-Determination Act has expired; and

WHEREAS, if the Act is not reauthorized, many counties will suffer severe financial impacts resulting in significant reduction in services, including but not limited to public safety and education.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature of the State of Montana urge the U.S. Congress to reauthorize the Secure Rural Schools and Community Self-Determination Act of 2000 and work toward a permanent solution to compensate states and local governments for lost tax revenue on federal land within Montana.

(2) That the Secretary of State send copies of this resolution to the President of the United States, the Secretary of State of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the Western Governors' Association, and the Montana Congressional Delegation.

Adopted April 4, 2007

SENATE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO IDENTIFY THE ISSUES AND CHALLENGES INVOLVED IN PROVIDING EMERGENCY CARE AND TO REPORT ON STRATEGIES THAT CAN STRENGTHEN MONTANA'S EMERGENCY MEDICAL SERVICES SYSTEM.

WHEREAS, the Montana Legislature recognizes the need for quality emergency medical services and an effective emergency care system that provides quality care and treatment for victims of sudden and serious injury or illness from first response through initial stabilization and subsequent emergency treatment; and

WHEREAS, emergency medical services are an integral part of the emergency care system and are particularly important in less densely populated areas where access to health care services is often limited; and

WHEREAS, many volunteer emergency medical personnel work full time in other, unrelated jobs within the community, donate their personal time to provide prehospital care, and are usually expected to be available 24 hours a day and on weekends and holidays; and

WHEREAS, the vital nature of emergency medical services and the state of constant readiness required to maintain adequate emergency services pose special challenges for rural communities, including but not limited to adequate funding; recruitment, retention, and training of volunteers and other personnel; physician leadership; and modern communications and medical services equipment.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study the availability and viability of acute care and emergency medical services across the state.

BE IT FURTHER RESOLVED, that the committee:

(1) gather information from stakeholders and customers of the state's emergency care system, including but not limited to local emergency services providers, emergency medical services systems, hospitals, physicians and other

health care providers, elected county and local officials, organizations representing emergency medical services providers, and state agencies;

(2) conduct a statewide assessment of issues that communities face relating to emergency medical services;

(3) identify challenges to the continued viability of the state's emergency care system; and

(4) identify objectives and strategies that will help ensure the continued viability of the system.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2008.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 61st Legislature.

Adopted April 14, 2007

SENATE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A STUDY OF THE JUVENILE JUSTICE SYSTEM IN ORDER TO IDENTIFY ANY GAPS IN THE LAW OR RESOURCES OR BETWEEN THE EXISTING AGENCIES WITH VARIOUS RESPONSIBILITIES WITHIN THE SYSTEM.

WHEREAS, our state should work to balance youth accountability for delinquent behavior with the best and most appropriate services to help youth contribute to our state and our society; and

WHEREAS, our state should coordinate youth services in order to provide the best services in the most fiscally responsible manner in order to enhance rehabilitation and restore the communities affected by juvenile offenders; and

WHEREAS, a comprehensive study of juvenile justice programs and data is necessary to determine the most objective and fair treatment of youth; and

WHEREAS, the Montana Constitution provides that the rights of persons under 18 years of age include but are not limited to all the fundamental rights unless specifically precluded by laws that enhance their protection; and

WHEREAS, a review of the juvenile justice system is needed because of its complexities that involve many entities in government and because of the effects on the youth, families, and communities in Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study the various entities of the Montana system of juvenile justice, its governing statutes, and its resources.

BE IT FURTHER RESOLVED, that the committee prioritize areas for study based on the review and the areas of need brought to its attention by the public and the stakeholders and determine those that could be effectively addressed during the interim.

BE IT FURTHER RESOLVED, that the committee:

(1) identify gaps or overlap and consistency in services by examining the roles of the specific entities involved, including juvenile probation, juvenile parole, detention centers, secure care, foster care, schools, and mental health professionals in state, local, and tribal governments;

(2) determine what statutory changes to the Montana Youth Court Act or other laws may be required to facilitate a more seamless delivery of services among and between the various agencies that are involved with youth in the juvenile justice system;

(3) identify the existence and quality of any tools used for assessment, evaluation, and treatment of youth and the extent to which the tools need to be developed or updated to reflect research-based best practices and to measure outcomes;

(4) identify any inconsistencies statewide in the handling of graduated sanctions and probation violations;

(5) research how to improve the transition of the population of youth that is between 18 and 24 years of age to the adult correctional system; and

(6) analyze existing data to determine areas of greatest success in prevention of and early intervention in juvenile delinquency and related areas that need improvement.

BE IT FURTHER RESOLVED, that the committee develop methods, such as public hearings, panel discussions, or working groups, to solicit concerns and information from the public and representatives from the Office of Court Administrator, juvenile probation, juvenile detention, the Department of Corrections, juvenile parole, the Board of Crime Control, the Youth Justice Council, school districts, tribal and local governments, County Attorneys, the public defender system, law enforcement, the mental health profession, addictive and mental disorders and child and family services in the Department of Public Health and Human Services, and youth and parents either currently involved or previously involved in aspects of the juvenile justice system relevant to this study.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2008.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 61st Legislature.

Adopted April 14, 2007

SENATE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND THE DEPARTMENT OF JUSTICE TO EXAMINE REQUIRING CRIMINAL BACKGROUND CHECKS FOR DIRECT-CARE WORKERS AND TO PROVIDE A PROPOSAL TO THE 61ST LEGISLATURE.

WHEREAS, many places of employment require criminal background checks as a condition of employment in programs and services that serve the most vulnerable people in society; and

WHEREAS, a criminal background check using fingerprints is the only way to screen an applicant who is from out-of state or may have changed the applicant's name and many other states have laws requiring criminal background checks for workers providing direct care to vulnerable persons;

WHEREAS, requiring criminal background checks for those who work directly with vulnerable persons is a complex situation that requires information from and cooperation with multiple agencies; and

WHEREAS, a study of this nature is best accomplished with the assistance of parties that will be involved in regulating or licensing direct-care workers and performing the background checks and with the assistance of service providers, consumers, and advocacy groups who hold vital information.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Public Health and Human Services work with the Department of Justice and other stakeholders to develop a proposal to present to the 2009 Legislature that would require an applicant seeking employment as a direct-care staff person in a program or service that is provided, funded, or regulated by the Department of Public Health and Human Services to undergo a criminal background check, using fingerprints, through the Federal Bureau of Investigation as a condition of employment.

BE IT FURTHER RESOLVED, that the proposal should:

(1) identify the programs and services for which criminal background checks should be required;

(2) specify the direct-care staff positions for which criminal background checks should be required;

(3) provide a detailed process and timeline for collecting an applicant's fingerprints, submitting them to the Federal Bureau of Investigation, and distributing appropriate information to employers;

(4) establish a specific list of relevant crimes that would exclude a convicted applicant from employment as a direct-care staff person;

(5) establish an appeals process for applicants who are denied employment because of the results of a background check; and

(6) determine the estimated cost and sources of funding for implementing the system of criminal background checks outlined in the proposal.

BE IT FURTHER RESOLVED, that the Department of Public Health and Human Services and the Department of Justice identify and include affected

parties and stakeholders in the development of any proposal and report at least quarterly to an appropriate legislative interim committee.

BE IT FURTHER RESOLVED, that the final proposal resulting from the study, including any findings, conclusions, comments, or recommendations be reported to the 61st Legislature.

Adopted April 11, 2007

SENATE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING INTERNATIONAL EDUCATION IN THE ADVANCEMENT OF THE GLOBAL SOCIETY.

WHEREAS, advances in communication and transportation technology over the past half-century have made today's world increasingly interconnected; and

WHEREAS, successful businesses, universities, and governments depend on a global perspective; and

WHEREAS, this era of global exchange has created a marketplace of ideas in which citizens of the world from distinct social, cultural, religious, and linguistic backgrounds cooperate and compete on a daily basis; and

WHEREAS, evidence of the growing connection between Montana and the rest of the world can be found in the Institute of International Education's Open Doors Report 2005; and

WHEREAS, 966 students studying abroad were enrolled through Montana institutions in 2004, a 10% increase from 2003, and these foreign students and their families contributed over $21 million to the Montana economy in 2004 and 2005; and

WHEREAS, international education is critical to promoting a broadened world view that prepares Montanans for life and work in the global economy; and

WHEREAS, creating a diverse academic environment by exchanging scholars and students between countries builds the foundation for future international business success; and

WHEREAS, with foreign trade projected to be a key factor of Montana's economy and with the economy of Montana inextricably intertwined to the rest of the world, our state's economic development depends upon a deliberate strategic development plan that includes recognition of the role of international education in all its facets; and

WHEREAS, the United States' national security and economic competitiveness depend significantly on the country's ability to provide future leaders with the education that will best prepare them to respond to the demands of the 21st century.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature finds that international education is an essential component of the bright future of the great State of Montana.

BE IT FURTHER RESOLVED, that the Montana Legislature encourage international education to ensure that students and future leaders are prepared to meet the challenges of a global society.

BE IT FURTHER RESOLVED, that a copy of this resolution be transmitted to the Board of Regents and the Commissioner of Higher Education.

Adopted April 21, 2007

SENATE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO EVALUATE METHODS AND RECOMMEND WAYS TO ADD VALUE TO MONTANA AGRICULTURAL PRODUCTS THROUGH REDEVELOPMENT OF A FOOD PROCESSING INDUSTRY; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 61ST LEGISLATURE.

WHEREAS, most of the $3 billion that Montanans spend on food each year goes to out-of-state companies; and

WHEREAS, the lack of a food processing infrastructure is a primary barrier inhibiting the ability of farmers and ranchers to serve in-state markets; and

WHEREAS, Montana's neighboring states add as much as eight to nine times more value to their agricultural products than Montana; and

WHEREAS, the food processing industry was Montana's number one employer through the 1940s, but today the Montana food processing industry is negligible; and

WHEREAS, Montana farmers, ranchers, small business entrepreneurs, and community economies would benefit from redevelopment of a food processing industry; and

WHEREAS, Montana's climate and soils can support production of a much greater diversity of agricultural and food products than are currently produced; and

WHEREAS, value-added enterprises owned by Montanans retain more of the value that is added to agricultural products in Montana communities; and

WHEREAS, producing food for local markets can reconnect Montana's rural and urban economies; and

WHEREAS, dependence on bulk raw commodity export markets diminishes the viability of Montana's rural economies and family farms and ranches; and

WHEREAS, food production on a family or community scale can enhance stewardship of Montana's natural and human resources; and

WHEREAS, value-added food production can contribute to the economic development goals of many communities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim study committee or statutory committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) identify and compile statistics on model programs and policies that have been effective in supporting the development of value-added food enterprises and a strong entrepreneurial culture within the food and agriculture sectors;

(2) when possible, include a summary of the economic, social, and environmental impacts of each of these model programs and policies;

(3) identify the barriers to value-added food production in Montana;

(4) using the findings, recommend public and private programs and policies appropriate to Montana that:

(a) support value-added food production that keeps money circulating in Montana's communities;

(b) sustain the state's natural resources; and

(c) encourage fair treatment of participants at each step in the food value chain, from field to table; and

(5) determine methods used by other states with geography similar to Montana to add more value to raw agricultural products.

BE IT FURTHER RESOLVED, that the study consider input from:

(1) producers of livestock and crops;

(2) value-added meat processors;

(3) value-added nonmeat food processors;

(4) public and private economic developers;

(5) nonprofit, community-based food system advocates;

(6) Montana State University-Bozeman agriculture extension agents;

(7) Montana State University-Bozeman extension nutritionists;

(8) University of Montana-Missoula food system researchers;

(9) Agriculture Development Division staff at the Department of Agriculture;

(10) Business Resources Division staff at the Department of Commerce;

(11) food distributors and wholesalers;

(12) state legislators;

(13) the Governor's Office of Economic Development;

(14) the food and consumer safety section staff of the Department of Public Health and Human Services; and

(15) the Department of Livestock.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2008.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the committee, be reported to the 61st Legislature.

Adopted April 14, 2007

SENATE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN APPROPRIATE INTERIM COMMITTEE TO STUDY THE IMPACT OF MONTANA'S HEALTH CARE DELIVERY SYSTEM, INCLUDING PHYSICIAN-OWNED HEALTH CARE FACILITIES AND SPECIALTY HOSPITALS, ON HEALTH CARE SERVICES IN MONTANA.

WHEREAS, physicians, hospitals, and other health care providers have a long history of working in concert to provide access to high-quality medical care for Montanans; and

WHEREAS, changes in the health care delivery system, such as the development of physician ownership of health care facilities and services and of specialty hospitals, have challenged cooperation and collaboration between these groups of providers; and

WHEREAS, concerns about these changes raise serious public policy issues that may affect the future and financial viability of Montana's health care delivery system, including the cost of health care and providers' ability to guarantee access to affordable, high-quality health care; and

WHEREAS, the Montana Legislature in 2005 approved a moratorium on licensure of new specialty hospitals for the purpose of giving the United States Congress time to address nationwide concern about the impact of specialty hospitals; and

WHEREAS, some members of Congress, as well as some members of the Montana Legislature, have indicated an interest in further examination and study of these issues during the biennium.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) study and analyze the impacts of various models for the delivery of health care services on the cost of health care, the quality of care, and access to health care services, including but not limited to:

(a) the percentage of Medicare, Medicaid, private pay, and charity and uncompensated care that these health care facilities, as defined in 50-5-101, provide compared to the percentage provided by nonprofit, community-based hospitals;

(b) the range of services provided by physician-owned and privately owned health care facilities and specialty hospitals and the benefits and impacts of those services compared to the services provided by nonprofit, community-based hospitals;

(c) the comparative cost of services rendered by the private facilities and specialty hospitals compared to the nonprofit, community-based hospitals; and

(d) the comparative impact on a community's health care safety net of the operations of health care providers in each of the categories in subsection (1)(c);

(2) identify the number and operating characteristics of nonprofit, community-based hospitals; physician-owned hospitals and physician-owned

health care facilities; and nonhospital, for-profit facilities that perform surgical, imaging, and diagnostic procedures, including those owned jointly with hospitals; and

(3) analyze and develop public policy recommendations associated with Montana's health care delivery system and Montana's health care consumers for consideration by the 61st Legislature, including but not limited to:

(a) physician self-referral, which means referral for medical treatment by a physician to a facility in which the referring physician has an ownership interest;

(b) the increase in hospital-employed physicians;

(c) physician credentialing, or the process that hospitals use for granting privileges to physicians to practice in their facilities, including use of hospitals by physicians who may be in competition with that hospital;

(d) whether a need exists to impose or continue moratoriums on specialty hospitals;

(e) quality of care for patients;

(f) quality improvement and cost containment initiatives;

(g) health information technology;

(h) health care costs and ways to reduce those costs; and

(i) how to empower Montanans to take a more active role in their health care and to be better health care consumers.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2008.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 61st Legislature.

Adopted April 21, 2007

SENATE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE OFFICE OF PUBLIC INSTRUCTION TO CIRCULATE SPECIFIED MATERIAL TO ALL PUBLIC AND PRIVATE SCHOOLS IN MONTANA AND TO ENCOURAGE THOSE SCHOOLS TO DELIVER THE "BE SAFE" FIREARMS SAFETY PROGRAM TO ALL STUDENTS IN GRADES 1 THROUGH 3 EACH SCHOOL YEAR.

WHEREAS, the right of Montana citizens to keep and bear arms is guaranteed under both the Constitution of the State of Montana and the United States Constitution; and

WHEREAS, as many as 90% of Montana households are estimated to contain firearms and it is expected that Montana citizens will continue to have a high level of firearm ownership; and

WHEREAS, Montana has the highest percentage in the country of residents purchasing hunting licenses; and

WHEREAS, improper or unsupervised use of firearms results in a small but tragic number of firearm injuries to children in Montana; and

WHEREAS, safety training for other life-hazard or injury-hazard topics, such as fire escape, is currently conducted in Montana's elementary schools; and

WHEREAS, firearm safety training for school-age children, as is urged in section 20-7-132, MCA, could significantly reduce the number of firearm-related injuries and deaths among Montana children; and

WHEREAS, the "Be Safe" program has been made available by the Superintendent of Public Instruction for children in first through third grade throughout Montana for over a decade to teach firearm safety and is cost-effective.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Office of Public Instruction be urged to encourage all public and private schools in Montana to deliver the "Be Safe" program to all students in grades 1 through 3 each school year.

BE IT FURTHER RESOLVED, that the Office of Public Instruction circulate this resolution, a copy of section 20-7-132, MCA, and "Be Safe" program materials to all public and private schools in Montana.

Adopted April 23, 2007

SENATE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO ALLOCATE A PORTION OF FEDERAL EXCISE TAXES FOR TRIBAL WILDLIFE AND FISH MANAGEMENT PROGRAMS.

WHEREAS, tribal and nontribal recreationists of Montana, whether on or off of reservations, pay federal excise taxes on sporting goods; and

WHEREAS, a portion of these federal excise taxes is apportioned to the state to be administered by the Department of Fish, Wildlife, and Parks and is earmarked for purposes of wildlife and fish management in Montana; and

WHEREAS, the distribution of funds from the total apportionment is based on a formulated percentage, factoring in licensed resource users, demographic population, land base, and water area, including tribal populations, lands, and waters, yet none of these funds are currently apportioned to tribal governments; and

WHEREAS, the various tribal governments of Montana also maintain programs of wildlife and fish management that benefit the state wildlife and fish resources, and wildlife and fish management on reservations could be enhanced if Montana tribes were to receive part of the tax revenue for tribal management programs; and

WHEREAS, as a matter of equity, Montana tribes are entitled to a portion of the federal excise tax revenue on sporting goods for tribal wildlife and fish management programs.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the United States Congress pass legislation that would allocate a portion of federal excise taxes for tribal wildlife and fish management programs in the same manner that the taxes are allocated to the states.

(2) That the Secretary of State send copies of this resolution to the Montana Congressional Delegation, the Secretary of the U.S. Department of the Interior, and to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Adopted April 16, 2007

SENATE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE DEVELOPMENT OF SECURE AND CONFIDENTIAL HEALTH INFORMATION TECHNOLOGY AND EXCHANGE IN LOCAL COMMUNITIES.

WHEREAS, the rising cost of health care is the significant factor accounting for the decline in insurance coverage rates, and 60% of Americans are worried about the rising cost of health insurance; and

WHEREAS, the average cost of health care for each individual in 2004 was $6,280, and the United States spent almost $1.9 trillion dollars, or 16% of its gross domestic product, on health care; and

WHEREAS, according to a 2006 survey by the Kaiser Family Foundation, 80% of Americans are dissatisfied with "the total cost of health care in this country" and 54% of Americans are dissatisfied with "the quality of health care in this country"; and

WHEREAS, health information technology is the network infrastructure and health information exchange is the comprehensive management of medical information and its secure exchange between health care consumers and providers; and

WHEREAS, health information technology and health information exchange may slow the rising cost of health care by eliminating unnecessary or duplicate procedures, decreasing paperwork, and increasing administrative efficiencies; and

WHEREAS, health information technology and health information exchange will allow health care providers to access relevant information about patients in a timely manner, thereby reducing medical errors, allowing for more accurate diagnoses, and bettering patient care; and

WHEREAS, with health information technology and health information exchange capabilities, communities will be able to communicate and respond to local health emergencies more quickly and more efficiently; and

WHEREAS, states that have used this technology report beneficial results that include but are not limited to a reduction in the number of patients who

stopped taking medication prematurely, access to useful information in emergency room situations, increased adherence to guideline or protocol-based care, and increased ability to measure and improve performance.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the State of Montana support the development of secure and confidential health information technology and health information exchange for the safety and well-being of its residents.

(2) That the State of Montana support the funding of a demonstration project in specific communities throughout the state as developed by the health information task force.

(3) That the State of Montana recognize the critical and ongoing efforts of the health information task force and its steering committee.

Adopted April 18, 2007

SENATE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE LEWISTOWN, MONTANA, NATIONAL GUARD ARMORY BE NAMED IN HONOR OF MASTER SERGEANT ROBBIE D. MCNARY.

WHEREAS, Master Sergeant Robbie D. McNary was a life-long resident of the Lewistown, Montana, area, served in the U.S. Marine Corps before joining the Montana Army National Guard, and was deployed in support of Operation Joint Forge to Bosnia with Alpha Company of the 1-163rd Infantry Battalion during the 2001-02 timeframe; and

WHEREAS, MSG McNary was deployed in support of Operation Iraqi Freedom with the 1-163rd Infantry Battalion in the 2004-05 timeframe and, as the platoon sergeant for 3rd Platoon Charlie Company, led his soldiers in daily combat patrols, on civil affairs, humanitarian, and training missions with the Iraqi army and the Iraqi police, and in offensive operations against the enemy; and

WHEREAS, on March 31, 2005, while MSG McNary and his platoon conducted a mission to clear improvised explosive devices in the city of Hawijah, Iraq, with the scout platoon, a U.S. Air Force explosive ordinance disposal team, and an attached Iraqi army infantry platoon, coalition forces received fire from a sniper located in the top of a nearby building; and

WHEREAS, MSG McNary led the team that assaulted the building to clear the sniper and, during the breach of the building, was killed instantly when crushed by a Humvee, becoming the first combat loss suffered by the 1-163rd Infantry Battalion since World War II; and

WHEREAS, MSG McNary was posthumously awarded the Combat Infantryman Badge, the Purple Heart, and the Bronze Star Medal for distinguished service in combat operations.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Department of Military Affairs be requested to name the Lewistown National Guard Armory, currently known as the S.H. Mitchell

Armory, the McNary-Mitchell Armory to honor the memory of MSG Robbie D. McNary.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Montana Department of Military Affairs and that it be displayed in a prominent location at the Lewistown National Guard Armory.

Adopted March 24, 2007

SENATE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING CONGRESS TO ADOPT LEGISLATION TO MODIFY THE LIMITS ON THE LENGTH AND WEIGHT OF LONG-HAUL TRUCKS.

WHEREAS, the national highway system is not adequate to meet the nation's needs, both today and in the future, because there is a predicted growth of commercial vehicles of 70% from 1998 to 2018, and yet there has been an increase in highway lanes of only 3.4% from 1994 to 2004; and

WHEREAS, the western states have pioneered in the development of productive vehicle systems, in cooperation with the western departments of transportation, to meet the demands of large geographic distances to market, safety, air quality, and congestion mitigation; and

WHEREAS, the truck size and weight limits, from state to state, are frozen by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), which prohibits the states from allowing any vehicles longer or greater in weight than those in operation on June 1, 1991; and

WHEREAS, a coalition is being established to seek to gain passage of federal legislation that allows western states to harmonize certain truck sizes, weights, and routes for long combination vehicle types; and

WHEREAS, the uniform sizes and weights sought by the Multistate Highway Transportation Agreement (MHTA) will bring safe options to the transportation industry and encourage economic development.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the members of the Montana Legislature agree with the Multistate Highway Transportation Agreement and hereby encourage the Congress of the United States to act in an expeditious manner to enact federal legislation that lifts the freeze and allows western states to harmonize certain truck sizes, weights, and routes for long combination vehicle types.

BE IT FURTHER RESOLVED, that Montana and other western states seek to pass state legislation to harmonize the truck size and weights set out on this resolution when they are successful in seeking passage of federal legislation to do so.

Adopted April 2, 2007

SENATE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA STRONGLY URGING THAT TAIWAN BE PERMITTED APPROPRIATE AND MEANINGFUL PARTICIPATION IN ACTIVITIES OF THE WORLD HEALTH ORGANIZATION.

WHEREAS, direct and unobstructed participation in international health cooperation forums and programs is crucial for all parts of the world, especially with today's greater potential for the cross-border spread of various infectious diseases; and

WHEREAS, Taiwan's achievements in the field of health are substantial, including one of the highest life expectancy levels in Asia, maternal and infant mortality rates comparable to those of western countries, the eradication of the infectious diseases of cholera, smallpox, and plague, and being the first Asian nation to eradicate polio and the first country in the world to provide children with free hepatitis B vaccinations; and

WHEREAS, the United States Centers for Disease Control and Prevention and its Taiwanese counterpart have enjoyed close collaboration on a wide range of public health issues; and

WHEREAS, in recent years, Taiwan has expressed a willingness to financially and technically assist the international aid and health activities supported by the World Health Organization; and

WHEREAS, Taiwan's population of 23 million people is larger than that of 75% of the World Health Organization member states; and

WHEREAS, the United States, in the 1994 Taiwan Policy Review, declared its intention to support Taiwan's participation in appropriate international organizations; and

WHEREAS, Taiwan's participation in the activities of the World Health Organization could bring many benefits to the state of health not only in Taiwan but also regionally and globally.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature strongly urge that Taiwan be permitted appropriate and meaningful participation in the activities of the World Health Organization.

BE IT FURTHER RESOLVED, that the Montana Secretary of State send copies of this resolution to the President of the United States, the Montana Congressional Delegation, the Director General of the Taipei Economic and Cultural Office in Seattle, and the World Health Organization.

Adopted April 26, 2007

SENATE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO ASSESS PRISON POPULATION GROWTH AND

NONPRISON TREATMENT ALTERNATIVES FOR CERTAIN NONVIOLENT OFFENDERS.

WHEREAS, Montana experienced a growth of 920% in its incarceration rate from 1970 to 2003, the largest rate of growth in incarceration of any state for that period; and

WHEREAS, Montana's adult correctional population grew by an estimated 10.2% in 2005, the second highest increase nationally, and 5.7% faster than the national average; and

WHEREAS, the Executive Budget for the 2009 biennium proposes a spending increase of 38% for the Montana Department of Corrections; and

WHEREAS, the 60th Legislature may be the first Legislature in Montana history to appropriate more general fund dollars to corrections than to higher education; and

WHEREAS, a recent report of the University of Montana School of Social Work found that 92.4% of offenders assigned to prerelease facilities have been diagnosed with chemical dependency or substance abuse issues, mental illness, or both; and

WHEREAS, treatment is an effective and necessary tool for the successful rehabilitation of offenders with drug and alcohol addictions; and

WHEREAS, other states have found treatment for certain convicted nonviolent offenders with substance abuse addictions to be a cost-effective alternative to secure care, while reducing prison population overcrowding and providing an overall cost savings to the taxpayers.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to 5-5-217, MCA, to study secure care diversion alternatives for certain nonviolent offenders.

BE IT FURTHER RESOLVED, that the committee make recommendations to the criminal justice and corrections systems and the judiciary to alleviate Montana's prison population growth.

BE IT FURTHER RESOLVED, that the study:

(1) examine the impacts of diversion and treatment alternatives for certain nonviolent offenders on Montana's current and future corrections population;

(2) estimate the overall effects to the state budget provided by nonsecure care treatment alternatives for certain nonviolent offenders;

(3) propose revisions to laws related to secure care placement guidelines and treatment availability; and

(4) work collaboratively with the Corrections Advisory Council established by Executive Order No. 20-2005;

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2008.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 61st Montana Legislature, to each tribal

government located on the seven Montana reservations and to the Little Shell Chippewa tribe, and to the Governor.

Adopted April 14, 2007

SENATE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING GRATITUDE FOR THE MILITARY PERSONNEL KILLED IN IRAQ AND AFGHANISTAN AND EXPRESSING SYMPATHY FOR THE FAMILIES OF THOSE MILITARY PERSONNEL; AND REQUESTING THE DEPARTMENT OF MILITARY AFFAIRS TO CONSIDER, AND MAKE RECOMMENDATIONS TO THE LEGISLATURE ABOUT, CREATING AN APPROPRIATE MEDAL HONORING MONTANA MILITARY PERSONNEL KILLED IN ACTION.

WHEREAS, more than a dozen Montana military personnel have been killed in the war in Iraq and Afghanistan; and

WHEREAS, the Montana Legislature recognizes and honors these heroic military personnel and the ultimate sacrifice they made on behalf of the United States of America and the freedom its citizens enjoy; and

WHEREAS, the Montana Legislature expresses its sympathy and gratitude to the families of the military personnel.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an individual certificate of recognition and honor signed by members of the 60th Legislature be prepared, signed, and delivered to the next of kin of all Montana military personnel killed in the war in Iraq and Afghanistan before the adjournment of the 60th Legislature.

BE IT FURTHER RESOLVED, that the Department of Military Affairs be requested to consider, and make recommendations to the Legislature about, creating an appropriate medal honoring Montana military personnel killed in action.

Adopted April 21, 2007

SENATE JOINT RESOLUTION NO. 31

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO EXAMINE THE FUTURE VIABILITY OF THE USE OF PROPERTY TAXES TO FUND EDUCATION, EXAMINE EQUALIZATION THROUGH A STATEWIDE EQUALIZATION DISTRICT THAT COULD LEVY AGAINST SPECIFIC CLASSES OF PROPERTY, AND INQUIRE INTO THE USE OF A STATEWIDE SALES TAX AND USE TAX TO PROVIDE EDUCATION FUNDING THAT WOULD INCLUDE PROPERTY TAX RELIEF IN A PERMANENT MANNER; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 61ST LEGISLATURE.

WHEREAS, the State of Montana will be undergoing a profound demographic shift in the near future with the percentage of its population over the age of 65 increasing from 14% in 2007 to over 20% in 2019; and

WHEREAS, that aging demographic shows itself in the number of counties with more than 20% of their population over the age of 65 rising from 4 of 56 counties in 2000 to 45 of 56 counties in 2025; and

WHEREAS, during that same time period, the percentage of the state's population represented by children of elementary school attendance age will continue to decline; and

WHEREAS, the current system of school funding and equalization of school funding has resulted in 60 to 65% of the typical homeowner's property tax bill consisting of property taxes for the funding of education; and

WHEREAS, a steadily increasing demographic of Montana residents who are retired and living largely on fixed incomes will be faced with difficult and painful decisions when voting on property tax levies for funding education; and

WHEREAS, it is in the best long-term interest of the aging population of Montana, the generations of children yet to be educated, and the state as a whole to examine if there may be a better way to equalize education funding in Montana that is not reliant on property taxes as its primary means; and

WHEREAS, a study entitled "Disparities in School Mill Levies" and a study entitled "Property Tax Information Related to K-12" presented to the Quality Schools Interim Committee on July 21, 2005, collectively demonstrated that wide variations exist in the distribution of the industrial and business equipment classes of property among the 400 plus school districts in the state and thereby contribute to the difficulty of equalizing school funding through a property tax mechanism; and

WHEREAS, the concept of creating a single, statewide school equalization district to levy a uniform tax on the industrial and business classes of property while leaving the classes of property composed of agricultural lands, forest lands, and residential and commercial property to serve as the tax base for the local school districts deserves further study and analysis; and

WHEREAS, equalizing school funding by means of a statewide school equalization district would permit focusing property tax relief on the classes of property composed of agricultural lands, forest lands, and residential and commercial property; and

WHEREAS, a school funding equalization plan that uses a general statewide sales tax on goods and recreational services to grant property tax relief to owners of homes, commercial properties, and agricultural and forest lands should be put before the voters for review and approval only if there is a companion constitutional amendment guaranteeing that the statewide levies being eliminated by the referendum would be forever prohibited.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim or statutory committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) (a) examine future demographics of property taxpayers, school age children, retirees, and other factors relating to the viability of property taxes to fund education; and

(b) examine the distribution or maldistribution of classes of taxable property in counties and school districts;

(2) study the feasibility of a statewide school equalization district with property tax levies against particular classes of property and other sources of statewide revenue; and

(3) study the use of a sales tax and use tax for funding to replace property taxes and provide tax relief for homes, commercial properties, and agricultural and forest lands.

BE IT FURTHER RESOLVED, that:

(1) all aspects of the study be concluded prior to September 15, 2008; and

(2) the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 61st Legislature.

Adopted April 25, 2007

Senate Resolutions

SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REVISING AND ADOPTING THE SENATE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the following rules be adopted:

RULES OF THE MONTANA

SENATE

CHAPTER 1

Administration

S10-10. Officers of the Senate. The officers of the Senate are the officers listed and elected in accordance with Title 5, chapter 2, part 2, MCA.

S10-20. Term of office. The term of office for the officers and employees of the Senate established by law is until the succeeding Legislature is organized. This rule may not be construed to mean the staff will be full-time employees during an interim.

S10-30. President pro tempore and other officers. (1) The Senate shall, at the beginning of each regular session, and at other times as may be necessary, elect a Senator President pro tempore.

(2) The Senate shall choose its other officers and is the judge of the elections, returns, and qualifications of the Senators.

S10-40. Voting by presiding officer. Any Senator, when acting as presiding officer of the Senate, shall vote as any other Senator.

S10-50. Presiding officer and duties. (1) The presiding officer of the Senate is the President of the Senate, who must be chosen in accordance with law.

(2) The President shall take the chair on every legislative day at the hour to which the Senate adjourned at the last sitting.

(3) The President may name a Senator to perform the duties of the chair when the President pro tempore is not present in the Senate chamber. The Senator who is named is vested during that time with all the powers of the President.

(4) The President has general control over the assignment of rooms for the Senate and shall preserve order and decorum. The President may order the galleries and lobbies cleared in case of disturbance or disorderly conduct.

(5) The President shall issue cards to the media to allow floor access, and reporters holding the cards are subject to placement on the floor by the President. The President may administer this rule through the office of the Secretary of the Senate.

(6) The President shall sign all necessary certifications of the Senate, including enrolled bills and resolutions, journals, subpoenas, and payrolls. The President's signature must be attested by the Secretary of the Senate.

(7) The President shall approve the calendar for each legislative day.

(8) The President is the chief administrative officer of the Senate, with authority for the general supervision of all Senate employees. The President may seek the advice and counsel of the Legislative Administration Committee.

(9) The President of the Senate is the authorized approving authority of the Senate during the term of election to that office.

(10) The President shall refer bills to committee upon introduction or reception in the office of the Secretary of the Senate.

S10-60. Succession. (1) In case of the absence or disqualification of the President, the President pro tempore of the Senate shall perform the duties of the President until the vacancy is filled or the disability removed.

(2) Whenever the President pro tempore of the Senate is of the opposite political party from that of the President, the following procedure applies:

(a) If the President dies while in office, the members of the President's political party have the right to immediately nominate and elect an acting President of the same party.

(b) If the President is absent for 2 or more legislative days or at any time after the 85th legislative day or at any time during special session of the Legislature but able and desirous of appointing an acting President to act when the President is absent, the President may do so, or the members of the President's political party have the right to immediately nominate and elect an acting President of the same party.

(c) An acting President of the Senate has the powers of the President and supersedes the powers of the President pro tempore.

S10-70. President-elect. The President-elect nominated by the appropriate party caucus held in accordance with section 5-2-201, MCA, has the responsibility and authority to assume the duties of President of the Senate.

S10-80. Legislative Administration Committee duties. (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee has authority to act in the interim to prepare for future legislative sessions.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the Senate, subject to the approval of the President.

(4) The committee shall consider disputes or complaints involving the competency or decorum of legislative employees referred to it by the President and recommend dismissal, suspension, or retention of employees.

(5) The chair of the Legislative Administration Committee may, upon approval of the President, have purchase orders and requisitions prepared and forwarded to the accounting office in the Legislative Services Division.

S10-90. Senate employees. (1) In addition to the employees appointed by the President in accordance with section 5-2-221, MCA, the Senate shall employ staff recommended by the leadership and the Legislative Administration Committee as necessary to perform the functions of the Senate.

(2) A standing committee chair shall designate a secretary to take and transcribe minutes of committee meetings. A committee secretary is immediately responsible to the chair, but shall work under the overall direction of the Secretary of the Senate, subject to authority of the committee chair.

(3) (a) The President and floor leaders may each appoint a private secretary.

(b) The whips may each appoint a private secretary whose duties will include assisting other staff on an assigned basis when authorized by the secretary's respective whip.

S10-100. Secretary of the Senate and duties. The Secretary of the Senate works under the direction of the President. The responsibilities of the Secretary of the Senate include:

(1) performing the duties prescribed by law or other provisions of these rules;

(2) serving as parliamentary advisor to the Senate;

(3) compiling and maintaining the calendar for approval by the President;

(4) keeping the leadership informed on the progress and workload of the Senate;

(5) transmitting bills with appropriate messages to the House of Representatives as instructed by action of the Senate;

(6) keeping and maintaining records of the Senate; and

(7) supervision of the Senate employees, except as otherwise provided.

S10-110. Sergeant-at-Arms duties. Under the direction of the President, the Sergeant-at-Arms shall:

(1) maintain order as directed by the President or chair of the Committee of the Whole;

(2) enforce the lobbying rules of the Senate;

(3) supervise the employees assigned to the Sergeant's office;

(4) receive, distribute, and maintain supplies, equipment, and other inventory of the Senate, along with records of purchase and disposal in accordance with law;

(5) perform duties as required by other rules and the Senate.

S10-120. Legislative aides. Each Senator may designate one person of legal age to serve as an aide during the session. Exceptions to this policy may be approved by the Rules Committee. The Senator shall register an aide with the Secretary of the Senate and arrange for the purchase of a name tag with the Sergeant-at-Arms.

S10-130. Senate journal. (1) The Senate shall keep and authenticate a journal of its proceedings as required by law and the rules.

(2) The Secretary of the Senate will supervise the preparation of the journal under the direction of the President.

(3) In addition to the proceedings required by law to be recorded, the journal must include:

(a) committee reports;

(b) every motion, the name of the Senator presenting it, and its disposition;

(c) the introduction of legislation in the Senate;

(d) consideration of legislation subsequent to introduction;

(e) roll call votes;

(f) messages from the Governor and the House of Representatives;

(g) every amendment, the name of the Senator presenting it, and its disposition;

(h) the names of Senators and their votes on any question upon a request by two Senators before a vote is taken; and

(i) any other records the Senate directs by rule or action.

(4) The Secretary of the Senate shall provide information that may be necessary for the preparation of the daily journal for printing by the Legislative Services Division. Upon approval by the President, the daily journal must be reproduced and distributed.

(5) Any Senator may examine the daily journal and propose corrections. Without objection by the Senate, the President may direct the correction to be made.

(6) The President shall authenticate the original daily journal, from time to time, and the Secretary of the Senate shall, as appropriate, deliver it to the Legislative Services Division to be prepared for publication and distribution in accordance with law.

CHAPTER 2

Decorum

S20-10. Questions of order. The President of the Senate shall decide all questions of order, subject to an appeal by any Senator seconded by two other Senators. A Senator may not speak more than once on an appeal without the consent of a majority of the Senate.

S20-20. Questions of privilege. (1) Questions of privilege in order of precedence are those:

(a) affecting the collective rights, safety, dignity, or integrity of the proceedings of the Senate; and

(b) affecting the rights, reputation, or conduct of individual Senators in their capacity as Senators.

(2) A Senator may not address the Senate on a question of privilege between the time:

(a) an undebatable motion is offered and the vote is taken on the motion;

(b) the previous question is ordered and the vote is taken on the proposition included under the previous question; or

(c) a motion to lay on the table is offered and the vote is taken on the motion.

S20-30. Recognition by chair. A Senator desiring to speak shall rise and address the presiding officer and, once being recognized, shall speak standing in place. The presiding officer may grant permission for a speaker to speak from elsewhere in the chamber. When two or more Senators rise at the same time, the presiding officer shall name the order of the speakers.

S20-40. Senators called to order. When a Senator has been called to order, the Senator shall sit down until the presiding officer determines whether the Senator is in order or not. If the Senator is called to order for words spoken in debate, the language excepted to must be taken down in writing by the Secretary of the Senate.

S20-50. Communications to Senate. A communication to the Senate must be addressed to the President and must bear the name of the person submitting it. The President shall decide if the communication bears including in the calendar.

S20-60. Floor privileges. (1) When the Senate is in session no person is permitted in the chambers except:

(a) legislators;

(b) legislative officers and employees whose presence is necessary for the conduct of business of the session;

(c) accredited members of the news media; and

(d) former legislators (not currently registered as lobbyists).

(2) The President may make exceptions for visiting dignitaries.

(3) Beginning 1 hour before and ending one-half hour after adjournment, no person is permitted in the chambers except those authorized as exceptions under subsection (1).

S20-70. Distribution of materials on floor. Materials may not be distributed on the Senators' desks in the chamber unless the material bears the signature of the bearer and a Senator and has been approved by the President.

S20-80. Violation of rules. (1) If a Senator, in speaking or otherwise, violates the rules of the Senate, the President shall, or the majority or minority floor leader may, call the Senator to order, in which case the Senator called to order must be seated immediately.

(2) The Senator called to order may move for an appeal to the Senate, and if the motion is seconded by two Senators, the matter must be submitted to the Senate for determination by majority vote. The motion is nondebatable.

(3) If the decision of the Senate is in favor of the Senator called to order, the Senator may proceed. If the decision is against the Senator, the Senator may not proceed.

(4) If a Senator is called to order, the matter may be referred to the Rules Committee by the minority or majority leader. The Committee may recommend

to the Senate that the Senator be censured or be subject to other action. The Senate shall act upon the recommendation of the Committee.

CHAPTER 3

Committees

S30-10. Committee appointments. (1) The Senate shall elect a Committee on Committees consisting of six members. If the Senate is evenly divided between parties, the committee shall consist of six Senators, three from each party.

(2) The Committee on Committees shall, with the approval of the Senate, appoint the members of Senate standing committees, select committees, and joint committees.

(3) The President of the Senate shall appoint all conference committees and special committees, with the advice of the floor leaders.

(4) The Senate may change the membership of any committee on 1 day's notice.

S30-20. Standing committees — classification. (1) The standing committees of the Senate are as follows:

(a) class one committees:

(i) Business, Labor, and Economic Affairs;

(ii) Finance and Claims;

(iii) Judiciary; and

(iv) Taxation;

(b) class two committees:

(i) Agriculture, Livestock, and Irrigation;

(ii) Education and Cultural Resources;

(iii) Natural Resources and Energy;

(iv) Public Health, Welfare, and Safety; and

(v) State Administration;

(c) class three committees:

(i) Fish and Game;

(ii) Highways and Transportation; and

(iii) Local Government; and

(d) on call committees:

(i) Ethics;

(ii) Legislative Administration; and

(iii) Rules.

(2) A class 1 committee is scheduled to meet Monday through Friday. A class 2 committee is scheduled to meet Monday, Wednesday, and Friday. A class 3 committee is scheduled to meet Tuesday and Thursday. Unless a class is prescribed for a committee, it meets upon the call of the chair.

(3) The Legislative Council shall review the workload of the standing committees to determine if any change is indicated in the class of a standing committee for the next legislative session. The Legislative Council's

recommendations must be submitted to the leadership nominated or elected at the presession caucus provided for in 5-2-201.

S30-40. Ex officio members — quorum. (1) A quorum of a committee is a majority of the members of the committee. A quorum of a committee must be present at a meeting to act officially. A quorum of a committee may transact business, and a majority of the quorum, even though it is a minority of the committee, is sufficient for committee action.

(2) Each floor leader is an ex officio member of all committees in order to establish a quorum.

S30-50. Chair's duties. (1) The chair of a committee is the presiding officer of that committee and is responsible for:

(a) maintaining order within the committee room and its environs;

(b) scheduling hearings and executive action;

(c) supervising committee work, including the appointment of subcommittees to act on a formal or informal basis; and

(d) authenticating committee reports and minutes by signing them and submitting them promptly to the Secretary of the Senate. The minutes must be printed on archival paper.

(2) The Secretary of the Senate shall arrange to have the minutes copied in an electronic format. An electronic copy will be provided to the Legislative Services Division and the State Law Library of Montana. The archival paper copy must be delivered to the Montana Historical Society.

S30-60. Meetings. (1) All meetings of committees must be open to the public at all times, subject always to the power and authority of the chair to maintain safety, order, and decorum. The date, time, and place of committee meetings must be announced.

(2) A committee or subcommittee may be assembled for:

(a) a public hearing at which testimony is to be heard and at which official action may be taken on bills, resolutions, or other matters;

(b) a formal meeting at which the committees may discuss and take official action on bills, resolutions, or other matters without testimony; or

(c) a work session at which the committee may discuss bills, resolutions, or other matters but take no formal action.

(3) All committees meet at the call of the chair or upon the request of a majority of the members of the committee.

(4) All committees shall provide for and give public notice, reasonably calculated to give actual notice to interested persons, of the time, place, and subject matter of regular and special meetings. All committees are encouraged to provide at least 3 legislative days' notice to members of committees and the general public. However, subject to S30-120, a meeting may be held upon notice appropriate to the circumstances.

(5) A committee may not meet during the time the Senate is in session without leave of the President. Any Senator attending a meeting while the Senate is in session must be considered excused to attend business of the Senate subject to a call of the Senate.

(6) All meetings of committees must be recorded and the minutes must be available to the public within a reasonable time after the meeting. The official record must contain at least the following information:

(a) the time and place of each meeting of the committee;

(b) committee members present, excused, or absent;

(c) the names and addresses of persons appearing before the committee, whom each represents, and whether the person is a proponent, opponent, or other witness;

(d) all motions and their disposition;

(e) the results of all votes; and

(f) all testimony and exhibits.

(7) If a bill is heard in a joint committee, it must be referred to a standing committee. The standing committee is not required to hold an additional hearing but may report the bill to the committee of the whole.

S30-70. Procedures. (1) The chair shall notify the sponsor of any bill pending before the committee of the time and place it will be considered.

(2) A standing or select committee may not hear legislation unless the sponsor or one of the cosponsors is present or unless the sponsor has given written consent.

(3) (a) Subject to subsection (3)(b), the committee shall act on each bill in its possession:

(i) by reporting the bill out of the committee:

(A) with the recommendation that it be referred to another committee;

(B) favorably as to passage; or

(C) unfavorably; or

(ii) by tabling the measure in committee.

(b) At the written request of the sponsor, a committee may finally dispose of a bill without a hearing. Except as provided in S30-60(7), a bill may not be reported from a committee without a hearing.

(4) The committee may not report a bill to the Senate without recommendation.

(5) In reporting a measure out of committee, a committee shall include in its report:

(a) the measure in the form reported out;

(b) the recommendation of the committee;

(c) an identification of all substantive changes; and

(d) a fiscal note, if required.

(6) If a measure is taken from a committee and brought to the Senate floor for debate on second reading on that day without a committee recommendation, the bill does not include amendments formally adopted by the committee.

(7) A second to any motion offered in a committee is not required in order for the motion to be considered by the committee.

(8) The vote of each member on all committee actions must be recorded and reported in the committee minutes. All motions may be adopted only on the affirmative vote of a majority of the members voting.

(9) A motion to take a bill from the table may be adopted by the affirmative vote of a majority of the members present at any meeting of the committee.

(10) An action formally taken by a committee may not be altered in the committee except by reconsideration and further formal action of the committee.

(11) A committee may reconsider any action as long as the matter remains in the possession of the committee. A bill is in the possession of the committee until a report on the bill is made to the committee of the whole. A committee member need not have voted with the prevailing side in order to move reconsideration.

(12) The chair shall decide points of order.

(13) The privileges of committee members include the following:

(a) to participate freely in committee discussions and debate;

(b) to offer motions;

(c) to assert points of order and privilege;

(d) to question witnesses upon recognition by the chair;

(e) to offer any amendment to any bill; and

(f) to vote, either by being present or by proxy, using a standard form.

(14) Any meeting of a committee held through the use of telephone or other electronic communication must be conducted in accordance with Chapter 3 of the Senate Rules.

(15) A committee may consolidate into one bill any two or more related bills referred to it whenever legislation may be simplified by the consolidation.

(16) Committee procedure must be informal, but when any questions arise on committee procedure, the rules or practices of the Senate are applicable except as stated in the Senate Rules.

S30-80. Public testimony. (1) Testimony from proponents, opponents, and informational witnesses must be allowed on every bill or resolution before a standing or select committee. All persons, other than the sponsor, offering testimony shall complete a "Witness Form" and submit it to the committee secretary.

(2) Any person wishing to offer testimony to a committee hearing a bill or resolution must be given a reasonable opportunity to do so, orally or in writing, subject to time constraints. Written testimony may not be required of any witness, but all witnesses must be encouraged to submit a statement in writing for the committee's official record.

(3) The chair may order the committee room cleared of visitors if there is disorderly conduct. During committee meetings, visitors may not speak unless called upon by the chair. Restrictions on time available for testimony may be announced.

(4) The number of people in a committee room may not exceed the maximum posted by the State Fire Marshall. The chair shall maintain that limit.

(5) In any committee meeting, the use of cameras, television, radio, or any form of telecommunication equipment is allowed, but the chair may designate

the areas of the hearing room from which the equipment must be operated. Cell phone use is at the discretion of the chair.

S30-90. Committee reports to Senate. (1) Reports of standing committees must be read on Order of Business No. 2, and, subject to subsection (4), debate may not be had on any report unless a minority report has been submitted. A minority report is submitted after a majority report.

(2) Any Senator seeking a reconsideration of the Senate's action on the adoption of a committee report shall do so on Order of Business No. 6 by motion to reconsider. Any Senator may make the reconsideration motion and need not have voted on the prevailing side. This rule applies notwithstanding any joint rule to the contrary. The reconsideration motion must be made within 1 legislative day of the adoption of the committee report.

(3) The Rules Committee and conference committees may report at any time, except during a call of the Senate or when a vote is being taken.

(4) On an adverse committee report, the sponsor may respond to the chair of the committee making the report.

S30-100. Pairs. Pairs in standing committee are prohibited. Standing and select committees may by a majority vote of the committee authorize Senators to vote in absentia while engaged in other legislative business. Authorization for absentee or proxy voting must be reflected in the committee minutes.

S30-110. Committee hearings. (1) A bill or resolution may not be considered or become a law unless referred to a committee and returned from a committee.

(2) A bill may be rereferred at any time before its passage.

S30-120. Notice of committee hearings — exceptions. (1) Notice of a committee hearing must be made by posting the date, time, and subject of the hearing in a conspicuous public place not less than 3 legislative days in advance of the hearing. This 3-day notice requirement does not apply to hearings scheduled:

(a) prior to the 3rd legislative day;

(b) less than 10 legislative days before the transmittal deadline applicable to the subject of the hearing; or

(c) to consider confirmation of a gubernatorial appointment received less than 10 legislative days before the last scheduled day of a legislative session.

(2) When a committee hearing is scheduled with less than 3 days' notice, the committee chair shall use all practical means to disseminate notice of the hearing to the public.

(3) Notice of conference committee hearings must be given as provided in Joint Rule 30-30.

S30-130. Majority/minority reports. If the members of a committee cannot agree on a report, the majority and minority of the committee present at a committee meeting may submit separate reports. Only one minority report may be submitted. The reports must be entered at length on the journal, unless otherwise ordered by the Senate.

S30-140. Reconsideration in committee. Except for the Committee of the Whole, a committee may at any time prior to submitting a report to the Secretary of the Senate reconsider its previous action on legislation.

S30-150. Committee requested legislation. (1) (a) Except as provided in subsection (1)(b), at least three-fourths of all the members of a standing committee must have voted in favor of the question to allow the committee to request the introduction of legislation.

(b) The Finance and Claims Committee may request the introduction of legislation by a majority vote of all of the members of the committee.

(2) The chair of a committee shall introduce, or shall designate a member of the committee to introduce, legislation requested by the committee. The introduced bill must be referred to the requesting committee.

(3) When a committee has proposed an amendment, the chair is the principal sponsor.

S30-160. Ethics Committee. (1) The Ethics Committee shall meet only upon the call of the chair after the referral of an issue from the Rules Committee or to consider a request for a determination pursuant to subsection (4). The Rules Committee may be convened to consider the referral of a matter to the Ethics Committee upon the request of a Senator. The Rules Committee shall prepare a written statement of the specific question or issue to be addressed by the Ethics Committee. The issues referred to the Ethics Committee must be related to the actions of a Senator during a legislative session.

(2) The matters that may be referred to the Ethics Committee are:

(a) a violation of:

(i) 2-2-103;

(ii) 2-2-104;

(iii) 2-2-111;

(iv) 2-2-112;

(b) the use or threatened use of a Senator's position for personal or personal business benefit or advantage; or

(c) any other violation of law by a Senator while acting in the capacity of Senator.

(3) If there is a recommendation from the Ethics Committee, the recommendation is made to the Senate.

(4) As provided in 2-2-112, a Senator may seek a determination from the Ethics Committee concerning the possibility of a personal conflict of interest.

CHAPTER 4

Legislation

S40-10. Types of legislation. The only types of legislation that may be introduced in the Senate are those that have been drafted and approved by the Legislative Services Division and signed by a Senator. The types of legislation allowed include:

(1) bills of any subject, except appropriations;

(2) joint resolutions, which may:

(a) express desire, opinion, sympathy, or request of the Legislature;

(b) request an interim study by a legislative subcommittee;

(c) adopt or amend the joint rules;

(d) set salaries and other terms of employment for legislative employees; and

(e) accomplish other legislative duties required by law; and

(3) simple resolutions, which may:

(a) adopt or amend Senate rules;

(b) provide for the internal affairs of the Senate;

(c) express confirmation of the Governor's appointments;

(d) make recommendations concerning the districting and apportionment plan as provided by Article V, section 14(4), of the Montana Constitution.

S40-20. Introduction. (1) Upon receiving a bill or resolution from a Senator, the Secretary of the Senate shall assign an appropriate sequential number, which constitutes introduction of the legislation.

(2) Bills and resolutions may be preintroduced, assigned to committee, and printed prior to the legislative session. The Legislative Services Division is responsible for ensuring the preintroduction intent from each Senator and presenting the preintroduced legislation to the Secretary of the Senate.

(3) Upon referral to committee, the Secretary of the Senate shall publicly post a listing of the bill or resolution by a summary of its title, together with a notation of the committee to which it has been assigned.

S40-30. Additional sponsors. (1) Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill or resolution. Forms for adding sponsors will be supplied on request by the Secretary of the Senate.

(2) Upon passage of the motion, the names of the additional sponsors will be printed in the journal and the form containing the signatures of the additional sponsors will be forwarded to the Legislative Services Division with the original bill for the inclusion of the names in subsequent printings of the bill or resolution.

S40-40. Reading limitations. (1) Every bill must be read three times prior to passage, either by title or by summary of title as provided in these rules.

(2) A bill or resolution may not have more than one reading on the same day except the last legislative day.

(3) An amendment may not be offered on third reading.

S40-50. Rules for questions requiring other than a majority vote. (1) When a question requires more than a majority vote for final passage, a majority vote is sufficient to decide any question relating to the question prior to third reading.

(2) Any vote in the Senate on a bill proposing an amendment to the Montana Constitution under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote. This rule does not prevent a committee from indefinitely postponing or tabling a bill proposing an amendment to the Montana Constitution.

(3) If a bill has been amended in the House of Representatives and the amendments are accepted by the Senate, the bill must again be placed on third reading in the Senate to determine if the required number of votes has been cast.

S40-60. Scheduling for second reading. (1) All bills and resolutions that have been reported by a committee, accepted by the Senate, and reproduced must be scheduled for consideration by Committee of the Whole.

(2) Until the 50th legislative day, 1 day must elapse between receiving the legislation from printing and scheduling for second reading for consideration by Committee of the Whole.

(3) The majority leader shall arrange legislation on the agenda in the order in which the bills will be considered, unless otherwise ordered by the Senate or Committee of the Whole.

CHAPTER 5

Floor Action

S50-10. Attendance. Unless excused, Senators must be present at every sitting of the Senate and shall vote on questions put before the Senate.

S50-20. Orders of business. After prayer, roll call, and report on the journal, the order of business of the Senate is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Governor;

(5) messages from the House of Representatives;

(6) motions;

(7) first reading and commitment of bills;

(8) second reading of bills (Committee of the Whole);

(9) third reading of bills;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

To revert to or pass to a new order of business requires only a majority vote. Unless otherwise specified in the motion to recess, the Senate shall revert to Order of Business No. 1 when reconvening after a recess.

S50-30. Limitations on debate. A Senator may not speak more than twice on any one motion or question without unanimous consent of the Senate, unless the Senator has introduced or proposed the motion or question under debate, in which case the Senator may speak twice and also close the debate. However, a Senator who has spoken may not speak again on the same motion or question to the exclusion of a Senator who has not spoken.

S50-40. Procedure upon offering a motion. (1) When a motion is offered it must be restated by the presiding officer. If requested by the presiding officer or a Senator, it must be reduced to writing, presented at the rostrum, and read aloud by the Secretary.

(2) A motion may be withdrawn by the Senator offering it at any time before it is amended or voted upon.

S50-50. Precedence of motions. (1) When a question is under debate only the following privileged and subsidiary motions may be made:

(a) to adjourn;

(b) for a call of the Senate;

(c) to recess;

(d) question of privilege;

(e) to lay on the table;

(f) for the previous question;

(g) to postpone to a certain day;

(h) to refer or commit;

(i) to amend; and

(j) to postpone indefinitely.

(2) The motions listed in subsection (1) have precedence in the order listed.

(3) A question may be indefinitely postponed by a majority roll call of all Senators present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upon again except upon a motion of reconsideration.

(4) A motion or proposition on a subject different from that under consideration may not be admitted under color of amendment or substitute.

S50-60. Nondebatable motions. The following motions are not debatable:

(1) to adjourn;

(2) for a call of the Senate;

(3) to recess or rise;

(4) for parliamentary inquiry;

(5) for suspension of the rules;

(6) to lay on the table;

(7) for the previous question;

(8) to limit, extend the limits of, or to close debate;

(9) to amend an undebatable motion;

(10) to divide a question;

(11) to pass business in Committee of the Whole;

(12) to take from the table;

(13) a decision of the presiding officer, unless appealed or unless the presiding officer submits the question to the Senate for advice or decision; and

(14) all incidental motions, such as motions relating to voting or other questions of a general procedural nature.

S50-70. Amending motions. (1) Subject to subsection (2), no more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

(2) A motion for a call of the Senate, for the previous question, to table, or to take from the table may not be amended.

S50-80. Previous question. (1) Except as provided in subsection (2), the effect of calling for the previous question, if adopted, is to close debate immediately, to prevent the offering of amendments or other subsidiary

motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise.

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half hour, one-half of that time to be given to the proponents and one-half to the opponents. The sponsor of the main motion on which the previous question is adopted may close on the motion.

(3) A call of the Senate is not in order after the previous question is ordered unless it appears upon an actual count by the presiding officer that a quorum is not present.

S50-90. Reconsideration. (1) Any Senator may, on the day the vote was taken or on the next day the Senate is in session, move to reconsider the question. A motion to reconsider is a debatable motion, but the debate is limited to the motion. The debate on a motion to reconsider may not address the substance of the matter for which reconsideration is sought.

(2) A motion to reconsider may not be withdrawn after the next legislative day without the unanimous consent of the Senate, and thereafter any Senator may call it up for consideration. However, a motion to reconsider made after the 54th day of the session must be disposed of when made.

(3) A motion to recall a bill from the House of Representatives constitutes notice to reconsider and must be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the House of Representatives may be made only under Order of Business No. 6 and, under that order of business, takes precedence over all motions except motions to recess or adjourn.

(4) When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

(5) If a motion to reconsider third reading action is carried, there may not be further action until the succeeding legislative day.

S50-100. Dividing a question. A Senator may move to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain.

S50-110. Conference committee reports. (1) When a conference committee report is filed with the Secretary of the Senate, the report must be read under Order of Business No. 3, select committees, and placed on the calendar the succeeding legislative day for consideration on second reading. If recommended favorably by the Committee of the Whole, it may be considered on third reading the same legislative day.

(2) If both the Senate and the House of Representatives adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the Senate, following approval of the conference committee report on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(3) If the Senate rejects a conference committee report, the committee continues to exist unless dissolved by the President or by motion. The committee may file a subsequent report.

(4) A Senate conference committee may confer regarding matters assigned to it with any House conference committee with like jurisdiction and submit recommendations for consideration of the Senate.

S50-120. Second reading. (1) The Senate may resolve itself into a Committee of the Whole for consideration of business on second reading, by approval of a motion for that purpose.

(2) After a Committee of the Whole has been formed, the President shall appoint a chair to preside.

(3) All legislation considered in the Committee of the Whole must be read by a summary of its title. Unless the sponsor requests an opening statement beforehand, proposed amendments must be considered, and then the bill must be considered in its entirety.

(4) Prior to adoption of the Committee of the Whole report, a Senator may move to segregate legislation. If the motion prevails, the legislation remains on second reading.

(5) When a Committee of the Whole report on legislation is rejected, the legislation remains on second reading.

S50-130. Committee of the Whole amendments. (1) All Committee of the Whole amendments must be prepared, stipulating the date and time of preparation and staff approval, and delivered to the Secretary of the Senate for reading before the amendment is voted on.

(2) Each amendment, rejected or adopted, must be printed in the journal, along with the name of the sponsor and the vote on each.

S50-140. Motions in Committee of the Whole. (1) All proper motions on second reading are debatable.

(2) The only motions in order during Committee of the Whole are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) indefinitely postpone;

(e) pass consideration;

(f) rise;

(g) rise and report;

(h) rise and report progress and ask leave to sit again; or

(i) change the order in which legislation is placed on the agenda.

S50-150. Committee of the Whole — generally. (1) The Committee of the Whole may not appoint subcommittees.

(2) The Committee of the Whole may not punish its members for misconduct, but may report disorder to the Senate.

S50-160. Voting on second reading. (1) On Order of Business No. 8, in addition to other methods, a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The Secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as voting on the prevailing side. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

(2) A motion on second reading must be disposed of by a positive vote.

S50-170. Third reading procedure. (1) All legislation passing second reading must be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) On Order of Business No. 9 the Secretary shall read the title and the President shall state the question as follows: "Senate bill number (or other appropriate identification)..... having been read three several times, the question is, shall the bill (or other appropriate identification) pass the Senate?"

(3) If an electronic voting system is used, the President shall state "Those in favor vote yes and those opposed vote no" and the Secretary will sound the signal and open the board for voting. After a reasonable pause the presiding officer asks "Has every member voted?" (reasonable pause), "Does any member wish to change his or her vote?" (reasonable pause), "The Secretary will record the vote."

S50-180. Senate voting — changing a vote. (1) A roll call vote must be taken on the request of two Senators, if the request occurs before the vote is taken.

(2) On a roll call vote the names of the Senators must be called alphabetically, unless an electronic voting system is used. A Senator may not vote after the decision is announced from the chair. A Senator may not explain a vote until after the decision is announced from the chair.

(3) A Senator may move to change the Senator's vote, on any recorded vote, within 1 legislative day of the vote. The Senator making the motion shall first specify the bill number, the date of the vote, and the original vote tally. A vote may not be changed if it would affect the outcome of legislation. The motion is nondebatable. If none of the Senators present object, the change must be entered into the journal.

(4) If any Senator objects to the request in subsection (3), the Senator making the request may move to suspend the rules to allow the Senator to change the Senator's vote.

(5) An error caused by a malfunction of the voting system may be corrected without a vote within 10 minutes of the malfunction.

S50-190. Pairs. (1) Two Senators may pair on a question that will be determined by a majority vote. On a question requiring a two-thirds vote for adoption, three Senators may pair, with two Senators for the question and one Senator against. Pairing is permitted only when one of the paired Senators is excused when the vote is taken.

(2) An agreement to pair must be in writing and dated and signed by the Senators agreeing to be bound and must specify the duration of the pair. When an agreement to pair is filed with the Secretary of the Senate, it binds the Senators signing until the expiration of time for which it was signed, unless the paired Senators sooner appear and ask that the agreement be canceled.

(3) Pairs in Committee of the Whole are prohibited.

S50-200. Call of the Senate. (1) In the absence of a quorum, a majority of Senators present may compel the attendance of absent Senators by ordering a call of the Senate.

(2) If a quorum is present, five Senators may order a call of the Senate.

(3) On a call of the Senate, a Senator who refuses to attend may be arrested by the Sergeant-at-Arms or any other person, as the majority of the Senators present direct. When the attendance of an absent Senator is secured and the

Senate refuses to excuse the Senator's absence, the Senator may not be paid any expense payments while absent and is liable for the expenses incurred in procuring the Senator's attendance.

(4) During a call of the Senate, all business must be suspended. After a call has been ordered, no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote.

S50-210. House amendments to Senate legislation. (1) When the House has properly returned Senate legislation with House amendments, the Senate shall announce the amendments on Order of Business No. 5 and the President shall place them on second reading for debate. The President may rerefer Senate legislation with House amendments to a committee for a hearing if the House amendments constitute a significant change in the Senate legislation. The second reading vote is limited to consideration of the House amendments.

(2) If the Senate accepts House amendments, the Senate shall place the final form of the legislation on third reading to determine if the legislation, as amended, is passed or if the required vote is obtained.

(3) If the Senate rejects the House amendments, the Senate may request the House to recede from its amendments or may direct appointment of a conference committee and request the House to appoint a like committee.

S50-220. Governor's amendments. (1) When the Governor returns a bill with recommended amendments, the Senate shall announce the amendments under Order of Business No. 4.

(2) The Senate may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the Senate and the House of Representatives accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage, the Senate shall place the final form of the legislation on third reading to determine if the required vote is obtained.

S50-230. Governor's veto. (1) When the Governor returns a bill with a veto, the Senate shall announce the veto under Order of Business No. 4.

(2) On any legislative day, a Senator may move to override the Governor's veto by a two-thirds vote under Order of Business No. 6.

CHAPTER 6

Rules

S60-10. Senate rules. (1) A motion to amend or adopt a rule of the Senate must be referred to the Rules Committee without debate. A rule of the Senate may be amended or adopted only with the concurrence of a majority of the Senate and after 1 day's notice.

(2) A rule may be suspended temporarily by a two-thirds vote.

S60-20. Mason's Manual of Legislative Procedure. Mason's Manual of Legislative Procedure (2000) governs the proceedings of the Senate in all cases not covered by these rules.

S60-30. Quorum. A majority of the Senate shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent Senators, in the manner and under penalties as the Senate may prescribe (Montana Constitution, Art. V, Sec. 10(2)).

CHAPTER 7

Nominations from the Governor

S70-10. Nominations. (1) The Governor shall nominate and, by and with the consent of the Senate, appoint all officers whose offices are established by the Montana Constitution or which may be created by law and for whom appointment or election is not otherwise provided.

(2) If during a recess of the Senate a vacancy occurs in any office subject to Senate confirmation, the Governor shall appoint some fit person to discharge the duties of the office until the next meeting of the Senate, when the Governor shall nominate a person to fill the office.

S70-20. Introduction and first reading of nominations. (1) Nominations received from the Governor are:

(a) received by the President;

(b) delivered to the Secretary of the Senate;

(c) read under Order of Business No. 4, messages from the Governor; and

(d) referred to committee.

(2) The procedure in subsection (1) constitutes introduction and first reading of the nominations.

(3) The Secretary shall distribute a copy of the list of nominations to each Senator.

S70-30. Committee process. (1) (a) The committee shall research each nominee and may request biographical information from the Governor for each nominee if none has been provided.

(b) The committee chair shall submit a bill draft request for a simple resolution to include the nominees specified by the committee chair. These bill draft requests will not count against any bill draft request limit imposed on members. When the resolution has been prepared and introduced, the committee shall hold a hearing on the resolution after appropriate public notice has been made.

(2) Following the hearings, the committee shall issue preliminary standing committee reports to be distributed to each Senator, stating the committee's recommendations concerning the nominees.

(3) (a) If a Senator wishes to have an individual nominee, or group of nominees, considered by the Senate separately from the group of nominees recommended by the committee, the Senator may request of the chair of the committee that the nominee or nominees be considered by a separate resolution.

(b) A Senator shall request separate consideration of a nominee within 3 days of receipt of the preliminary standing committee report. The committee chair shall honor this request.

(4) After waiting 3 days from the day of distribution of the preliminary standing committee report, the committee chair shall issue a final standing committee report and deliver the report to the Secretary of the Senate.

(a) If a nominee is to be separated from the resolution, the final standing committee report must include an amendment deleting that nominee.

(b) When a nominee has been separated at the request of a Senator, the committee chair shall submit a bill draft request for a simple resolution to include only the nominee so separated. When the resolution has been prepared

and introduced, the committee shall take executive action on the resolution. When a hearing on the separated nomination was held prior to the committee's preliminary standing committee report, an additional hearing is not required to be held before the committee takes action on the separate resolution. After the committee's executive action, the committee chair shall issue a standing committee report.

(5) If a resolution contains only one nominee, the committee shall dispense with the preliminary standing committee report and shall issue a final standing committee report to be distributed to each Senator stating the committee's recommendation concerning the nominee.

(6) The Secretary will read the reports under Order of Business No. 2, reports of standing committees.

(7) After the report has been read, the resolution must be placed on Order of Business No. 11 the next legislative day for consideration by the Senate. Motions to approve or disapprove of the resolution are in order and may be debated.

Appendix A

List of Questions Requiring Other Than a Majority Vote

The following questions require the vote specified:

(1) a call of the Senate with a quorum (five Senators);

(2) a motion to lift a call of the Senate (two-thirds of the members present and voting);

(3) a motion to amend or suspend rules (two-thirds);

(4) a motion to override the Governor's veto (two-thirds);

(5) a motion to approve a bill to appropriate the principal of the coal trust fund (three-fourths of each house);

(6) a motion to approve a bill to appropriate highway revenue as described in Article VIII, section 6, of the Montana Constitution for purposes other than therein described (three-fifths of each house);

(7) a motion to approve a bill proposing to amend the Montana Constitution (two-thirds of the entire Legislature);

(8) an appeal of the ruling of the presiding officer (one Senator, seconded by two other Senators);

(9) a motion to approve a bill conferring immunity from suit as described in Article II, section 18, of the Montana Constitution (two-thirds); and

(10) a motion to approve a bill to appropriate the principal of the tobacco settlement trust fund (two-thirds).

Adopted January 12, 2007

SENATE RESOLUTION NO. 3

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 15, 2007, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Commissioner of Political Practices, in accordance with sections 13-37-102 and 13-37-104, MCA:

Dennis Unsworth, Helena, Montana, appointed pursuant to section 13-37-104, MCA, for the remainder of a term ending January 1, 2011.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 60th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted February 21, 2007

SENATE RESOLUTION NO. 4

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 15, 2007, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Aeronautics, in accordance with section 2-15-2506, MCA:

Mr. Alexander C. Edwards, Billings, Montana, appointed for a term ending January 1, 2011.

Mr. Fred Lark, Lewistown, Montana, appointed for a term ending January 1, 2011.

Mr. Robert Buckles, Bozeman, Montana, for a term ending January 1, 2011.

Mr. Charles Manning, Lakeside, Montana, appointed for a term ending January 1, 2011.

(2) As members of the Air Pollution Control Advisory Council, in accordance with section 2-15-2106, MCA:

Mr. Chad Doheny, Dutton, Montana, appointed to serve at the pleasure of the Governor.

Ms. Mary Jane McGarity, Big Sky, Montana, appointed to serve a term at the pleasure of the Governor.

Mr. Mat Millenbach, Billings, Montana, appointed to serve a term at the pleasure of the Governor.

Mr. Richard Southwick, Townsend, Montana, appointed to serve a term at the pleasure of the Governor.

Ms. Felicity McFerrin, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

Mr. Neil Turnbull, Brockton, Montana, appointed to serve a term at the pleasure of the Governor.

Mr. Mike Machler, Billings, Montana, appointed to serve a term at the pleasure of the Governor.

Dr. Leonard Bauer, Ashland, Montana, appointed to serve a term at the pleasure of the Governor.

Mr. Mike Barton, Missoula, Montana, appointed to serve a term at the pleasure of the Governor.

Dr. Linda Dworak, Hamilton, Montana, appointed to serve a term at the pleasure of the Governor.

(3) As members of the Alternative Health Care Board, in accordance with section 2-15-1730, MCA:

Ms. Molly Danison, Missoula, Montana, appointed to a term ending September 1, 2007.

Ms. Mary Anne Brown, Great Falls, Montana, appointed to a term ending September 1, 2010.

Mr. Tom Mensing, Red Lodge, Montana, appointed to a term ending September 1, 2010.

(4) As members of the Board of Architects, in accordance with section 2-15-1761, MCA:

Mr. Bayliss Ward, Bozeman, Montana, appointed to a term ending March 27, 2008.

Mr. James G. Shepard, Billings, Montana, appointed to a term ending March 27, 2009.

(5) As members of the Board of Athletics, in accordance with section 2-15-1772, MCA:

Ms. Jana Smith-Streitz, Butte, Montana, appointed to a term ending April 25, 2008.

Mr. John Paul Noyes, Kalispell, Montana, appointed to a term ending April 25, 2008.

Mr. Don Vegge, Billings, Montana, appointed to a term ending April 25, 2009.

Ms. Jamie Jones, Great Falls, Montana, appointed to a term ending April 25, 2007.

(6) As members of the State Banking Board, in accordance with section 2-15-1025, MCA:

Mr. John King, Kalispell, Montana, appointed to a term ending July 1, 2008.

Ms. Carolyn Colman, West Yellowstone, Montana, appointed to a term ending July 1, 2008.

Mr. Jon Redlin, Lambert, Montana, appointed to a term ending July 1, 2009.

Mr. Russ Ritter, Helena, Montana, appointed to a term ending July 1, 2009.

(7) As members of the Board of Barbers and Cosmetologists, in accordance with section 2-15-1747, MCA:

Ms. Maxine Collins, Helena, Montana, appointed to a term ending October 1, 2008.

Ms. Delores Lund, Plentywood, Montana, appointed to a term ending October 1, 2008.

Ms. Maggie Burton-Blize, Missoula, Montana, appointed to a term ending October 1, 2007.

Ms. Karan Charles, Miles City, Montana, appointed to a term ending October 1, 2011.

Ms. Juanita Mace, Billings, Montana, appointed to a term ending October 1, 2011.

(8) As members of the Board of Chiropractors, in accordance with section 2-15-1737, MCA:

Dr. John Sando, Butte, Montana, appointed to a term ending January 1, 2009.

Ms. Lucy Heger, Livingston, Montana, appointed to a term ending January 1, 2009.

(9) As members of the Board of Clinical Laboratory Science Practitioners, in accordance with section 2-15-1753, MCA:

Dr. Thomas Bennett, Billings, Montana, appointed to a term ending April 16, 2009.

Ms. Wendy Palmer, Raynesford, Montana, appointed to a term ending April 16, 2009.

(10) As members of the Board of Dentistry, in accordance with section 2-15-1732, MCA:

Dr. Mark Colonna, Whitefish, Montana, appointed to a term ending March 29, 2011.

Ms. Jennifer Porter, Bozeman, Montana, appointed to a term ending March 29, 2009.

Ms. Laura Germann, Glendive, Montana, appointed to a term ending March 29, 2011.

(11) As members of the Fish, Wildlife, and Parks Commission, in accordance with section 2-15-3402, MCA:

Mr. Dan Vermillion, Livingston, Montana, appointed to a term ending January 1, 2011.

Mr. Willie Doll, Malta, Montana, appointed to a term ending January 1, 2011.

(12) As a member of the Board of Funeral Service, in accordance with section 2-15-1743, MCA:

Mr. Thomas Meeks, Great Falls, Montana, appointed to a term ending July 1, 2010.

(13) As a member of the Board of Hail Insurance, in accordance with section 2-15-3003, MCA:

Ms. Trudy Laas Skari, Chester, Montana, appointed to a term ending April 18, 2009.

(14) As members of the Hard-Rock Mining Impact Board, in accordance with section 2-15-1822, MCA:

Ms. Marianne Roose, Eureka, Montana, appointed to a term ending January 1, 2011.

Mr. Shain Wolstein, Butte, Montana, appointed to a term ending January 1, 2011.

(15) As members of the Board of Hearing Aid Dispensers, in accordance with section 2-15-1740, MCA:

Dr. Stephen Kramer, Billings, Montana, appointed to a term ending July 10, 2007.

Ms. Lee Frantz Oines, Missoula, Montana, appointed to a term ending July 1, 2008.

Mr. Herbert Winsor, Helena, Montana, appointed to a term ending July 1, 2008.

Mr. Steve Wilson, Helena, Montana, appointed to a term ending July 1, 2009.

Mr. Brian Bolenbaugh, Missoula, Montana, appointed to a term ending July 1, 2009.

Ms. Jill Davis, Great Falls, Montana, appointed to a term ending July 1, 2009.

(16) As members of the Montana Historical Society Board of Trustees, in accordance with section 22-3-104, MCA:

Mr. James W. Murry, Clancy, Montana, appointed to a term ending July 1, 2010.

Ms. Shirley Groff, Butte, Montana, appointed to a term ending July 1, 2010.

Mr. Steve Lozar, Polson, Montana, appointed to a term ending July 1, 2007.

Mr. John G. Lepley, Fort Benton, Montana, appointed to a term ending July 1, 2010.

Ms. Katherine Lee, Glendive, Montana, appointed to a term ending July 1, 2007.

Mr. Jim Court, Billings, Montana, appointed to a term ending July 1, 2009.

Mr. Kent Kleinkopf, Missoula, Montana, appointed to a term ending July 1, 2007.

Mr. Thomas Nygard, Bozeman, Montana, appointed to a term ending July 1, 2011.

Ms. Crystal Wong Shors, Helena, Montana, appointed to a term ending July 1, 2011.

Mr. George Horse Capture, Great Falls, Montana, appointed to a term ending July 1, 2011.

(17) As members of the Board of Horseracing, in accordance with section 2-15-3106, MCA:

Mr. Robert G. Brastrup, Townsend, Montana, appointed to a term ending January 20, 2008.

Mr. Mike Tatsey, Valier, Montana, appointed to a term ending January 20, 2009.

Ms. Mary Ogdahl, Miles City, Montana, appointed to a term ending January 20, 2009.

(18) As members of the Commission for Human Rights, in accordance with section 2-15-1706, MCA:

Ms. Maria Beltran, Worden, Montana, appointed to a term ending January 1, 2009.

Ms. Emorie Davis-Bird, East Glacier Park, Montana, appointed to a term ending January 1, 2009.

Mr. Steve Fenter, Billings, Montana, appointed to a term ending January 1, 2011.

Mr. Ryan Rusche, Wolf Point, Montana, appointed to a term ending January 1, 2011.

(19) As a member of the Board of Labor Appeals, in accordance with section 2-15-1704, MCA:

Mr. Jack Calhoun, Helena, Montana, appointed to a term ending January 1, 2011.

(20) As members of the Board of Medical Examiners, in accordance with section 2-15-1731, MCA:

Dr. Kris Spanjian, Billings, Montana, appointed to a term ending September 1, 2009.

Mr. Dwight Thompson, Harlowton, Montana, appointed to a term ending September 1, 2009.

Ms. Pat Bollinger, Helena, Montana, appointed to a term ending September 1, 2009.

Ms. Carole Erickson, Missoula, Montana, appointed to a term ending September 1, 2009.

Ms. Sonia Gomez, Billings, Montana, appointed to a term ending September 1, 2009.

Dr. Anna Earl, Chester, Montana, appointed to a term ending September 1, 2010.

Dr. Michael LaPan, Sidney, Montana, appointed to a term ending September 1, 2010.

Dr. Arthur Fink, Glendive, Montana, appointed to a term ending September 1, 2010.

(21) As members of the Board of Nursing, in accordance with section 2-15-1734, MCA:

Ms. Sharon Dschaak, Wolf Point, Montana, appointed for a term ending July 1, 2007.

Ms. Connie Reichelt, Big Sandy, Montana, appointed for a term ending July 1, 2009.

Ms. Karen Pollington, Havre, Montana, appointed for a term ending July 1, 2010.

Ms. Kathleen Sprattler, Billings, Montana, appointed for a term ending July 1, 2010.

Ms. Deborah Hanson, Miles City, Montana, appointed for a term ending July 1, 2010.

(22) As members of the Board of Nursing Home Administrators, in accordance with section 2-15-1735, MCA:

Ms. Linda Sandman, Helena, Montana, appointed for a term ending May 28, 2010.

Ms. Polly Nikolaisen, Kalispell, Montana, appointed for a term ending May 28, 2011.

(23) As members of the Board of Occupational Therapy Practice, in accordance with section 2-15-1749, MCA:

Ms. Sue Furey, Missoula, Montana, appointed for a term ending December 31, 2008.

Ms. Cindy Stergar, Butte, Montana, appointed for a term ending December 31, 2010.

Mr. Tim Tracy, Kalispell, Montana, appointed for a term ending December 31, 2010.

(24) As members of the Board of Pardons and Parole, in accordance with section 2-15-2302, MCA:

Mr. John Rex, Miles City, Montana, appointed for a term ending January 1, 2007.

Mr. Darryl Dupuis, Polson, Montana, appointed for a term ending January 1, 2010.

Ms. Margaret Hall-Bowman, Pablo, Montana, appointed for a term ending January 1, 2010.

(25) As a member of the Board of Personnel Appeals, in accordance with section 2-15-1705, MCA:

Ms. Alice Whiteman, Bonner, Montana, appointed for a term ending January 1, 2009.

(26) As members of the Board of Pharmacy, in accordance with section 2-15-1733, MCA:

Mr. Jim MacKenzie, Whitefish, Montana, appointed for a term ending July 1, 2010.

Mr. William Burton, Clancy, Montana, appointed for a term ending July 1, 2011.

(27) As a member of the Board of Physical Therapy Examiners, in accordance with section 2-15-1748, MCA:

Mr. Richard Smith, Missoula, Montana, appointed for a term ending July 1, 2008.

(28) As members of the Board of Plumbers, in accordance with section 2-15-1765, MCA:

Ms. Marlene Jackson, Glasgow, Montana, appointed for a term ending May 4, 2009.

Mr. Olaf Stimac, Great Falls, Montana, appointed for a term ending May 4, 2010.

Mr. Tim Regan, Miles City, Montana, appointed for a term ending May 4, 2010.

Ms. Debi Friede, Havre, Montana, appointed for a term ending May 4, 2007.

(29) As members of the Board of Private Alternative Adolescent Residential or Outdoor Programs, in accordance with section 2-15-1745, MCA:

Mrs. Michele Manning, Thompson Falls, Montana, appointed for a term ending April 19, 2008.

Ms. Mary Alexine, Eureka, Montana, appointed for a term ending April 19, 2008.

Mr. Paul Clark, Trout Creek, Montana, appointed for a term ending April 19, 2008.

Ms. Carol Brooker, Plains, Montana, appointed for a term ending April 19, 2008.

Mr. Daniel Bidegaray, Bozeman, Montana, appointed for a term ending April 19, 2008.

(30) As members of the Board of Private Security Patrol Officers and Investigators, in accordance with section 2-15-1781, MCA:

Ms. Holly Dershem-Bruce, Glendive, Montana, appointed for a term ending August 1, 2008.

Mr. Raymond Murray, Missoula, Montana, appointed for a term ending August 1, 2008.

Mr. Shad K. Foster, Butte, Montana, appointed for a term ending August 1, 2009.

Mr. Leo C. Dutton, Helena, Montana, appointed for a term ending August 1, 2009.

Ms. Linda Sanem, Bozeman, Montana, appointed for a term ending August 1, 2009.

(31) As members of the Board of Professional Engineers and Land Surveyors, in accordance with section 2-15-1763, MCA:

Mr. John Neil, Great Falls, Montana, appointed for a term ending July 1, 2009.

Mr. Tom Heinecke, Kalispell, Montana, appointed for a term ending July 1, 2009.

Mr. Casey E. Johnston, Butte, Montana, appointed for a term ending July 1, 2007.

Ms. Liz Blair, Whitefish, Montana, appointed for a term ending July 1, 2010.

Mr. David Elias, Anaconda, Montana, appointed for a term ending July 1, 2010.

Mr. Steve Wright, Columbia Falls, Montana, appointed for a term ending July 1, 2010.

(32) As a member of the Board of Psychologists, in accordance with section 2-15-1741, MCA:

Ms. Bonnie Hyatt-Murphy, Livingston, Montana, appointed for a term ending September 1, 2010.

(33) As a member of the Board of Public Education, in accordance with section 2-15-1508, MCA:

Ms. Angela McLean, Anaconda, Montana, appointed for a term ending February 1, 2013.

(34) As members of the Board of Radiologic Technologists, in accordance with section 2-15-1738, MCA:

Ms. Anna L. Hazen, Fort Benton, Montana, appointed for a term ending July 1, 2008.

Ms. Charlotte Kelley, Clancy, Montana, appointed for a term ending July 1, 2008.

Mr. Charles McCubbins, Columbia Falls, Montana, appointed for a term ending July 1, 2008.

Dr. Ronald Darby, Billings, Montana, appointed for a term ending July 1, 2008.

Dr. Hugh Cecil, Kalispell, Montana, appointed for a term ending July 1, 2008.

Ms. Kelli Bush, Butte, Montana, appointed for a term ending July 1, 2009.

(35) As members of the Board of Real Estate Appraisers, in accordance with section 2-15-1758, MCA:

Mr. Peter Fontana, Great Falls, Montana, appointed for a term ending May 1, 2008.

Mr. Kraig P. Kosena, Missoula, Montana, appointed for a term ending May 1, 2008.

Ms. Kathleen Susan Gallaher, Bozeman, Montana, appointed for a term ending May 1, 2009.

Mr. Darwin Ernst, Hamilton, Montana, appointed for a term ending May 1, 2009.

(36) As members of the Board of Realty Regulation, in accordance with section 2-15-1757, MCA:

Ms. Lucinda Willis, Polson, Montana, appointed for a term ending May 9, 2009.

Ms. Judith Peasley, Seeley Lake, Montana, appointed for a term ending May 9, 2010.

(37) As members of the Board of Regents, in accordance with section 2-15-1508, MCA:

Ms. Heather O'Loughlin, Missoula, Montana, appointed for a term ending June 30, 2007.

Ms. Lynn Hamilton, Havre, Montana, appointed for a term ending February 1, 2013.

Mr. Clayton Christian, Missoula, Montana, appointed for a term ending February 1, 2008.

Dr. Janine Pease, Billings, Montana, appointed for a term ending February 1, 2011.

(38) As members of the Board of Research and Commercialization Technology, in accordance with section 2-15-1819, MCA:

Mr. Jim Davison, Anaconda, Montana, appointed for a term ending July 1, 2007.

Mr. Michael Dolson, Plains, Montana, appointed for a term ending July 1, 2008.

(39) As members of the Board of Sanitarians, in accordance with section 2-15-1751, MCA:

Ms. Kathleen Driscoll, Hamilton, Montana, appointed for a term ending July 1, 2008.

Mr. Gene Townsend, Three Forks, Montana, appointed for a term ending July 1, 2008.

Mr. Gerald Cormier, Billings, Montana, appointed for a term ending July 1, 2008.

Ms. Denise Moldroski, East Helena, Montana, appointed for a term ending July 1, 2009.

(40) As a member of the Board of Directors of the State Compensation Insurance Fund, in accordance with section 2-15-1019, MCA:

Mr. Joe Dwyer, Billings, Montana, appointed for a term ending April 28, 2007.

(41) As members of the Speech-Language Pathologists and Audiologists, in accordance with section 2-15-1739, MCA:

Ms. Tina Hoagland, Billings, Montana, appointed for a term ending December 31, 2008.

Ms. Lynn Harris, Missoula, Montana, appointed for a term ending December 31, 2008.

(42) As a member of the State Tax Appeal Board, in accordance with section 2-15-1015, MCA:

Ms. Karen E. Powell, Helena, Montana, appointed for a term ending January 1, 2009.

(43) As members of the Transportation Commission, in accordance with section 2-15-2502, MCA:

Mr. Kevin Howlett, Arlee, Montana, appointed for a term ending January 1, 2011.

Ms. Diann Seymour-Winterburn, Helena, Montana, appointed for a term ending January 1, 2011.

Ms. Nancy Espy, Broadus, Montana, appointed for a term ending January 1, 2011.

(44) As members of the Board of Veterans' Affairs, in accordance with section 2-15-1205, MCA:

Mr. Keith Heavyrunner, Browning, Montana, appointed for a term ending August 1, 2009.

Mr. Harry LaFriniere, Florence, Montana, appointed for a term ending August 1, 2010.

Ms. Mary Creech, Butte, Montana, appointed for a term ending August 1, 2010.

Ms. Sylvia Beals, Forsyth, Montana, appointed for a term ending August 1, 2010.

Mr. Thomas Huddleston, Helena, Montana, appointed for a term ending August 1, 2010.

(45) As members of the Board of Veterinary Medicine, in accordance with section 2-15-1742, MCA:

Dr. Joan Marshall, Ekalaka, Montana, appointed for a term ending July 31, 2010.

Mr. Tony Belcourt, Box Elder, Montana, appointed for a term ending July 31, 2010.

Dr. Bob Sager, Wilsall, Montana, appointed for a term ending July 31, 2011.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 60th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted February 23, 2007

SENATE RESOLUTION NO. 5

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO AN APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 2007, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Nursing, in accordance with section 2-15-1734, MCA:

Ms. Brenda Schye, Fort Peck, Montana, appointed for a term ending July 1, 2010.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 60th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted February 21, 2007

SENATE RESOLUTION NO. 6

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 3, 2007, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Corrections, in accordance with sections 2-15-111 and 2-15-2301, MCA:

Mr. Mike Ferriter, Clancy, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 60th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted February 19, 2007

SENATE RESOLUTION NO. 8

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 13, 2007, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As a member of the Board of Chiropractors, in accordance with section 2-15-1737, MCA:

Dr. Thomas Fullerton, Kalispell, Montana, appointed for a term ending January 1, 2010.

(2) As members of the Coal Board, in accordance with section 2-15-1821, MCA:

Mr. Thomas Kalakay, Billings, Montana, appointed for a term ending January 1, 2011.

Ms. Julie Foley, Missoula, Montana, appointed for a term ending January 1, 2011.

Ms. Marcia Brown, Butte, Montana, appointed for a term ending January 1, 2011.

(3) As members of the Board of Crime Control, in accordance with section 2-15-2006, MCA:

Mr. Mike Ferriter, Helena, Montana, appointed for a term ending January 1, 2011.

Mr. Richard Kirn, Poplar, Montana, appointed for a term ending January 1, 2011.

Mr. Godfrey Saunders, Bozeman, Montana, appointed for a term ending January 1, 2011.

Mr. Jim Oppedahl, Helena, Montana, appointed for a term ending January 1, 2011.

Ms. Lois Menzies, Helena, Montana, appointed for a term ending January 1, 2011.

Mr. Nickolas C. Murnion, Jordan, Montana, appointed for a term ending January 1, 2009.

Ms. Pamela B. Kennedy, Kalispell, Montana, appointed for a term ending January 1, 2009.

Ms. Brenda Desmond, Missoula, Montana, appointed for a term ending January 1, 2011.

Ms. Sherrie Matteucci, Billings, Montana, appointed for a term ending January 1, 2011.

Ms. Tracie Small, Crow Agency, Montana, appointed for a term ending January 1, 2011.

Mr. Steve McArthur, Butte, Montana, appointed for a term ending January 1, 2009.

(4) As a member of the State Electrical Board, in accordance with section 2-15-1764, MCA:

Ms. Dawn Achten, Billings, Montana, appointed for a term ending July 1, 2011.

(5) As members of the Board of Environmental Review, in accordance with section 2-15-3502, MCA:

Ms. Heidi Kaiser, Park City, Montana, appointed for a term ending January 1, 2011.

Mr. Joseph Russell, Kalispell, Montana, appointed for a term ending January 1, 2011.

Mr. Larry Mires, Glasgow, Montana, appointed for a term ending January 1, 2011.

(6) As members of the Montana Facility Finance Authority, in accordance with section 2-15-1815, MCA:

Ms. Kim Greco, Helena, Montana, appointed for a term ending January 1, 2011.

Mr. Joe Quilici, Butte, Montana, appointed for a term ending January 1, 2011.

Mr. David Dietrich, Billings, Montana, appointed for a term ending January 1, 2011.

(7) As members of the Board of Investments, in accordance with section 2-15-1808, MCA:

Mr. James Turcotte, Helena, Montana, appointed for a term ending January 1, 2009.

Mr. Terrill Moore, Billings, Montana, appointed for a term ending January 1, 2011.

Ms. Maureen Fleming, Missoula, Montana, appointed for a term ending January 1, 2011.

Mr. Karl Englund, Missoula, Montana, appointed for a term ending January 1, 2011.

Mr. Jon Satre, Helena, Montana, appointed for a term ending January 1, 2011.

(8) As members of the Board of Housing, in accordance with section 2-15-1814, MCA:

Ms. Susan Moyer, Kalispell, Montana, appointed for a term ending January 1, 2011.

Mr. Bob Gauthier, Ronan, Montana, appointed for a term ending January 1, 2011.

Ms. Jeanette McKee, Hamilton, Montana, appointed for a term ending January 1, 2011.

(9) As a member of the Board of Livestock, in accordance with section 2-15-3102, MCA:

Ms. Rebecca Weed, Belgrade, Montana, appointed for a term ending March 1, 2013.

(10) As members of the Board of Milk Control, in accordance with section 2-15-3105, MCA:

Mr. Clyde Greer, Bozeman, Montana, appointed for a term ending January 1, 2011.

Mr. Michael Kleese, Stevensville, Montana, appointed for a term ending January 1, 2011.

(11) As members of the Board of Personnel Appeals, in accordance with section 2-15-1705, MCA:

Mr. Patrick Dudley, Butte, Montana, appointed for a term ending January 1, 2011.

Mr. Steve Johnson, Missoula, Montana, appointed for a term ending January 1, 2011.

Ms. Robyn Rowe, Deer Lodge, Montana, appointed for a term ending January 1, 2011.

(12) As a member of the Board of Plumbers, in accordance with section 2-15-1765, MCA:

Mr. Steve Carey, Frenchtown, Montana, appointed for a term ending May 4, 2007.

(13) As members of the Board of Public Accountants, in accordance with section 2-15-1756, MCA:

Mr. Michael Johns, Deer Lodge, Montana, appointed for a term ending July 1, 2010.

Ms. Pamela K. Lynch, Plains, Montana, appointed for a term ending July 1, 2010.

Ms. Irma Paul, Helena, Montana, appointed for a term ending July 1, 2010.

Mr. Gary Kasper, Fairfield, Montana, appointed for a term ending July 1, 2007.

(14) As members of the Board of Public Education, in accordance with section 2-15-1508, MCA:

Ms. Patty Myers, Great Falls, Montana, appointed for a term ending February 1, 2014.

Ms. Sharon Carroll, Ekalaka, Montana, appointed for a term ending February 1, 2012.

(15) As a member of the Board of Regents, in accordance with section 2-15-1508, MCA:

Mr. Todd Buchanan, Billings, Montana, appointed for a term ending February 1, 2014.

(16) As members of the Board of Social Work Examiners and Professional Counselors, in accordance with section 2-15-1744, MCA:

Ms. Sherry Meador, Clancy, Montana, appointed for a term ending January 1, 2011.

Mr. Peter Degel, Helena, Montana, appointed for a term ending January 1, 2011.

Ms. Jill Thorngren, Bozeman, Montana, appointed for a term ending January 1, 2011.

(17) As a member of the State Tax Appeal Board, in accordance with sections 2-15-1015, 15-2-101, and 15-2-102, MCA:

Mr. Doug Kaercher, Havre, Montana, appointed for a term ending January 1, 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 60th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 10, 2007

SENATE RESOLUTION NO. 9

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO AN APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 13, 2007, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Livestock, in accordance with section 2-15-3102, MCA:

Mr. Stan Boone, Ingomar, Montana, appointed for a term ending March 1, 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 60th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 2, 2007

SENATE RESOLUTION NO. 10

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 12, 2007, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As a member of the Board of Architects, in accordance with section 2-15-1761, MCA:

Ms. Maire O'Neill, Bozeman, Montana, appointed for a term ending March 27, 2010.

(2) As members of the Board of Dentistry, in accordance with section 2-15-1732, MCA:

Mr. James Madison, Jefferson City, Montana, for a term ending March 29, 2012.

Ms. Carol Price, Clancy, Montana, for a term ending March 29, 2012.

Mr. Cliff Christenot, Libby, Montana, for a term ending March 29, 2012.

Dr. David Johnson, Great Falls, Montana, for a term ending March 29, 2012.

(3) As a member of the Board of Hail Insurance, in accordance with section 2-15-3003, MCA:

Mr. Jim Schillinger, Baker, Montana, for a term ending April 18, 2010.

(4) As members of the Montana Arts Council, in accordance with section 22-2-102, MCA:

Ms. Cindy Andrus, Bozeman, Montana, for a term ending February 1, 2012.

Ms. Judy Ulrich, Dillon, Montana, for a term ending February 1, 2012.

Mr. Rick Newby, Helena, Montana, for a term ending February 1, 2012.

Ms. Ellen Ornitz, Manhattan, Montana, for a term ending February 1, 2012.

Mr. Marshall Friedman, Whitefish, Montana, for a term ending February 1, 2012.

(5) As members of the Board of Oil and Gas Conservation, in accordance with section 2-15-3303, MCA:

Mr. Ronald Efta, Wibaux, Montana, for a term ending January 1, 2011.

Mr. Jack King, Billings, Montana, for a term ending January 1, 2011.

Mr. Bret Smelser, Sidney, Montana, for a term ending January 1, 2011.

(6) As members of the Board of Pardons and Parole, in accordance with section 2-15-2302, MCA:

Mr. Michael McKee, Helena, Montana, for a term ending January 1, 2011.

Mr. John Rex, Miles City, Montana, for a term ending January 1, 2011.

(7) As members of the Board of Physical Therapy Examiners, in accordance with section 2-15-1748, MCA:

Ms. Kim Miller, Virginia City, Montana, for a term ending July 1, 2009.

Ms. Patti Jo Lane, Great Falls, Montana, for a term ending July 1, 2009.

(8) As a member of the Board of Private Security Patrol Officers and Investigators, in accordance with section 2-15-1781, MCA:

Lt. Bryan Lockerby, Great Falls, Montana, for a term ending August 1, 2009.

(9) As a member of the Board of Public Assistance, in accordance with section 2-15-2203, MCA:

Ms. Helen Barta Schmitt, Sidney, Montana, for a term ending January 1, 2011.

(10) As a member of the Public Employees' Retirement Board, in accordance with section 2-15-1009, MCA:

Mr. John Nielsen, Glendive, Montana, for a term ending April 1, 2012.

(11) As a member of the Board of Regents, in accordance with section 2-15-1508, MCA:

Ms. Kerra Melvin, Butte, Montana, for a term ending June 30, 2008.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 60th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 24, 2007

2006 BALLOT ISSUES

Approved by Voters in the
November 2006 General Election

INITIATIVE NO. 151

A LAW PROPOSED BY INITIATIVE PETITION

This measure raises the state minimum wage to the greater of either $6.15 an hour or the federal minimum wage. This measure also adds an annual cost-of-living adjustment to the state minimum wage. Under existing law, the state minimum wage is equal to the federal minimum wage, which is $5.15 an hour with no cost of-living adjustment. This measure does not change the $4.00 an hour minimum wage for a business whose annual gross sales are $110,000 or less. This measure would take effect January 1, 2007.

This measure would have no significant impact on the revenues, expenditures, or the fiscal liability of the state.

The text of the initiative follows:

Section 1. Section 39-3-409 MCA is amended to read:

"39-3-409. Adoption of minimum wage rates — exception.

(1) The ~~commissioner shall adopt rules to establish a~~ minimum wage ~~that~~, except as provided in subsection ~~(2)~~ (3), must be the ~~same~~ greater of either:

(a) the minimum hourly wage rate as provided under the federal Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)), excluding the value of tips received by the employee and the special provisions for a training wage~~.~~; or

(b) $6.15 an hour, excluding the value of tips received by the employee and the special provisions for a training wage.

(2) (a) The minimum wage is subject to a cost-of-living adjustment, as provided in subsection (2)(b).

(b) No later than September 30 of each year, an adjustment of the wage amount specified in subsection (1) of this section shall be made based upon the increase, if any, from August of the preceding year to August of the year in which the calculation is made in the consumer price index, U.S. city average, all urban consumers, for all items, as published by the bureau of labor statistics of the United States department of labor.

(c) The wage amount established under this subsection (2):

(i) must be rounded to the nearest five cents; and

(ii) becomes effective as the new minimum wage, replacing the dollar figure specified in subsection (1), on January 1 of the following year.

~~(2)~~(3) The minimum wage rate for a business whose annual gross sales are $110,000 or less is $4 an hour."

Section 2. Effective Date. [This act] is effective on January 1, 2007.

Initiative No. 151 was approved by the following vote at the General Election held November 3, 2006:

For:	285,535
Against:	107,294

INITIATIVE NO. 153

A LAW PROPOSED BY INITIATIVE PETITION

This measure prohibits former state legislators, appointed officials, department directors, elected officials and their personal staff, from becoming licensed lobbyists within 24 months after departure from state government.

The text of the initiative follows:

BE IT ENACTED BY THE PEOPLE OF THE STATE OF MONTANA

NEW SECTION. **Section 1. Prohibition of lobbying by former government personnel.** (1) An individual may not be licensed as a lobbyist and a principal may not directly authorize or permit lobbying by an individual, if during the 24 months prior to applying for a license that individual served as a state legislator, elected state official, department director, appointed state official, or a member of a certain personal staff, as defined by 2-18-101, MCA.

(2) The prohibition in subsection (1) does not apply to an individual who seeks a license to serve as a lobbyist as part of the individual's responsibilities as an employee of state or local government.

NEW SECTION. **Section 2. Codification.** Section 1 is intended to be codified as an integral part of Title 5, chapter 7, part 3, and the provisions of Title 5, chapter 7, apply to section 1.

NEW SECTION. **Section 3. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Initiative No. 153 was approved by the following vote at the General Election held November 7, 2006:

For:	288,098
Against:	93,291

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This table was compiled before the codification process was completed. It does not reflect certain sections affected by name change amendments. All other substantive changes are reflected. Those sections for which renumbering is not attributed to a particular chapter and bill number were renumbered by the Code Commissioner under the authority of 1-11-204(3)(a)(ii).

Title-Chapter-Section	Action	Chapter	Bill Number
1-1-107	amended	Ch. 61	SB 40
1-1-201	amended	Ch. 61	SB 40
1-1-202	amended	Ch. 61	SB 40
1-1-203	amended	Ch. 61	SB 40
1-1-204	amended	Ch. 61	SB 40
1-1-215	amended	Ch. 442	SB 49
1-1-217	amended	Ch. 61	SB 40
1-1-219	amended	Ch. 61	SB 40
1-1-224	amended	Ch. 61	SB 40
1-1-226	amended	Ch. 61	SB 40
1-1-227	enacted	Ch. 477	SB 538
1-1-512	amended	Ch. 61	SB 40
1-1-515	amended	Ch. 61	SB 40
1-1-516	amended	Ch. 61	SB 40
1-1-530	enacted	Ch. 243	HB 594
1-3-203	amended	Ch. 61	SB 40
1-3-204	amended	Ch. 61	SB 40
1-3-205	amended	Ch. 61	SB 40
1-3-206	amended	Ch. 61	SB 40
1-3-208	amended	Ch. 61	SB 40
1-3-209	amended	Ch. 61	SB 40
1-3-210	amended	Ch. 61	SB 40
1-3-212	amended	Ch. 61	SB 40
1-3-217	amended	Ch. 61	SB 40
1-3-220	amended	Ch. 61	SB 40
1-3-234	amended	Ch. 61	SB 40
1-4-102	amended	Ch. 61	SB 40
1-5-302	amended	Ch. 61	SB 40
1-5-303	amended	Ch. 61	SB 40
1-5-305	amended	Ch. 61	SB 40
1-5-406	amended	Ch. 61	SB 40
1-5-407	amended	Ch. 61	SB 40
1-5-419	amended	Ch. 61	SB 40
1-5-420	amended	Ch. 61	SB 40
1-6-102	amended	Ch. 61	SB 40
1-6-104	amended	Ch. 61	SB 40
1-11-301	amended	Ch. 95	HB 132
2-1-302	amended	Ch. 61	SB 40
2-2-205	amended	Ch. 61	SB 40
2-2-207	amended	Ch. 61	SB 40
2-2-304	amended	Ch. 61	SB 40
2-3-105	amended	Ch. 61	SB 40
2-3-114	amended	Ch. 211	SB 177
2-3-213	amended	Ch. 211	SB 177
2-3-221	amended	Ch. 61	SB 40
2-4-104	amended	Ch. 61	SB 40
2-4-202	amended	Ch. 61	SB 40
	amended	Ch. 88	HB 70
2-4-302	amended	Ch. 88	HB 70
	amended	Ch. 207	SB 47
	amended	Ch. 394	SB 71

2-4-306	amended	Ch.	87	HB	67
	amended	Ch.	337	SB	175
2-4-312	amended	Ch.	88	HB	70
2-4-313	amended	Ch.	88	HB	70
2-4-403	amended	Ch.	87	HB	67
2-4-404	amended	Ch.	87	HB	67
2-4-405	amended	Ch.	189	SB	466
2-4-506	amended	Ch.	61	SB	40
2-4-604	amended	Ch.	61	SB	40
2-4-613	amended	Ch.	61	SB	40
2-4-621	amended	Ch.	61	SB	40
2-6-106	amended	Ch.	61	SB	40
2-6-108	amended	Ch.	61	SB	40
2-6-109	amended	Ch.	149	SB	485
2-6-110	amended	Ch.	81	HB	13
2-6-111	amended	Ch.	61	SB	40
2-6-303	amended	Ch.	61	SB	40
2-6-304	amended	Ch.	61	SB	40
2-7-103	amended	Ch.	61	SB	40
2-7-501	amended	Ch.	449	SB	130
2-7-503	amended	Ch.	272	HB	487
2-7-511	amended	Ch.	61	SB	40
2-8-105	amended	Ch.	61	SB	40
2-8-401	enacted	Ch.	64	SB	53
2-8-402	enacted	Ch.	64	SB	53
2-8-403	enacted	Ch.	64	SB	53
2-8-404	enacted	Ch.	64	SB	53
2-8-405	enacted	Ch.	64	SB	53
2-9-101	amended	Ch.	61	SB	40
2-9-103	amended	Ch.	61	SB	40
2-9-112	amended	Ch.	61	SB	40
2-9-305	amended	Ch.	61	SB	40
2-9-314	amended	Ch.	61	SB	40
2-9-504	amended	Ch.	61	SB	40
2-9-507	amended	Ch.	61	SB	40
2-9-511	amended	Ch.	61	SB	40
2-9-512	amended	Ch.	61	SB	40
2-9-513	amended	Ch.	61	SB	40
2-9-514	amended	Ch.	61	SB	40
2-9-515	amended	Ch.	61	SB	40
2-9-516	amended	Ch.	61	SB	40
2-9-523	amended	Ch.	61	SB	40
2-9-524	amended	Ch.	61	SB	40
2-9-527	amended	Ch.	61	SB	40
2-9-528	amended	Ch.	61	SB	40
2-15-111	amended	Ch.	61	SB	40
2-15-122	amended	Ch.	61	SB	40
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2-15-124	amended	Ch.	61	SB	40
2-15-131	amended	Ch.	61	SB	40
	amended	Ch.	81	HB	13
2-15-132	amended	Ch.	61	SB	40
2-15-143	amended	Ch.	124	HB	105
2-15-201	amended	Ch.	61	SB	40
2-15-221	amended	Ch.	61	SB	40
2-15-246	amended and renumbered 2-15-2511	Ch.	248	HB	26
2-15-302	amended	Ch.	61	SB	40
2-15-502	amended	Ch.	61	SB	40
2-15-602	amended	Ch.	61	SB	40
2-15-1009	amended	Ch.	68	SB	72
2-15-1202	amended	Ch.	61	SB	40
2-15-1203	amended	Ch.	61	SB	40
2-15-1205	amended	Ch.	78	SB	136

2-15-1508 . . . . . amended . . . . . Ch. 120 . . . . . HB 260
2-15-1515 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-15-1519 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
2-15-1521 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-15-1701 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-15-1730 . . . . . amended . . . . . Ch. 11 . . . . . SB 54
2-15-1735 . . . . . amended . . . . . Ch. 107 . . . . . HB 378
2-15-1742 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-15-1744 . . . . . amended . . . . . Ch. 11 . . . . . SB 54
amended . . . . . Ch. 61 . . . . . SB 40
2-15-1748 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-15-1750 . . . . . amended . . . . . Ch. 11 . . . . . SB 54
2-15-1753 . . . . . amended . . . . . Ch. 11 . . . . . SB 54
2-15-1757 . . . . . amended . . . . . Ch. 502 . . . . . SB 153
2-15-1761 . . . . . amended . . . . . Ch. 11 . . . . . SB 54
2-15-1762 . . . . . repealed . . . . . Ch. 11 . . . . . SB 54
2-15-1771 . . . . . enacted . . . . . Ch. 388 . . . . . HB 665
2-15-1772 . . . . . repealed . . . . . Ch. 11 . . . . . SB 54
2-15-1781 . . . . . amended . . . . . Ch. 405 . . . . . SB 209
amended . . . . . Ch. 502 . . . . . SB 153
2-15-1808 . . . . . amended . . . . . Ch. 190 . . . . . SB 467
2-15-1814 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-15-2005 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
2-15-2029 . . . . . enacted . . . . . Ch. 506 . . . . . SB 273
2-15-2212 . . . . . amended . . . . . Ch. 325 . . . . . HB 611
2-15-2230 . . . . . enacted . . . . . Ch. 175 . . . . . HB 437
2-15-2511 . . . . . formerly 2-15-246 . . . . . Ch. 248 . . . . . HB 26
2-15-3002 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-15-3003 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-15-3104 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-15-3110 . . . . . enacted . . . . . Ch. 261 . . . . . HB 364
2-15-3111 . . . . . enacted . . . . . Ch. 261 . . . . . HB 364
2-15-3112 . . . . . enacted . . . . . Ch. 261 . . . . . HB 364
2-15-3113 . . . . . enacted . . . . . Ch. 261 . . . . . HB 364
2-15-3114 . . . . . enacted . . . . . Ch. 261 . . . . . HB 364
2-15-3304 . . . . . amended . . . . . Ch. 44 . . . . . SB 39
2-15-3305 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-15-3331 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-15-3402 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-102 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-114 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-115 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-202 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-212 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-213 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-303 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-406 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-504 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-505 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-507 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-513 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-521 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-603 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-612 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-613 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-616 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-617 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-620 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-621 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-622 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-633 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-16-635 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
2-17-135 . . . . . enacted . . . . . Ch. 217 . . . . . SB 299

2-17-414	amended	Ch. 100	HB 176
2-17-415	enacted	Ch. 470	SB 449
2-17-416	enacted	Ch. 470	SB 449
2-17-417	enacted	Ch. 470	SB 449
2-17-418	enacted	Ch. 470	SB 449
2-17-518	amended	Ch. 72	SB 82
2-17-802	amended	Ch. 215	SB 285
2-17-807	amended	Ch. 216	SB 286
2-17-808	amended	Ch. 13	SB 101
2-17-816	amended	Ch. 61	SB 40
2-18-101	amended	Ch. 81	HB 13
2-18-106	amended	Ch. 61	SB 40
2-18-107	amended	Ch. 61	SB 40
2-18-201	amended	Ch. 81	HB 13
2-18-202	amended	Ch. 81	HB 13
2-18-203	amended	Ch. 81	HB 13
2-18-204	amended	Ch. 81	HB 13
2-18-205	repealed	Ch. 81	HB 13
2-18-206	amended	Ch. 81	HB 13
2-18-207	amended	Ch. 81	HB 13
2-18-301	amended	Ch. 81	HB 13
2-18-303	amended	Ch. 81	HB 13
2-18-304	amended	Ch. 81	HB 13
2-18-312	repealed	Ch. 81	HB 13
2-18-411	amended	Ch. 46	HB 43
2-18-503	amended	Ch. 40	SB 10
2-18-512	amended	Ch. 61	SB 40
2-18-601	amended	Ch. 503	SB 168
2-18-612	amended	Ch. 61	SB 40
2-18-616	amended	Ch. 61	SB 40
2-18-617	amended	Ch. 47	HB 62
	amended	Ch. 503	SB 168
2-18-618	amended	Ch. 47	HB 62
2-18-619	amended	Ch. 61	SB 40
2-18-621	amended	Ch. 61	SB 40
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2-18-701	amended	Ch. 356	SB 419
2-18-703	amended	Ch. 81	HB 13
2-18-704	amended	Ch. 356	SB 419
	amended	Ch. 390	HB 687
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2-18-811	amended	Ch. 127	HB 124
2-18-902	amended	Ch. 61	SB 40
2-18-1001	amended	Ch. 61	SB 40
2-18-1011	amended	Ch. 61	SB 40
	amended	Ch. 81	HB 13
2-18-1204	amended	Ch. 81	HB 13
2-18-1311	amended	Ch. 503	SB 168
2-20-101	repealed	Ch. 130	HB 177
2-20-102	repealed	Ch. 130	HB 177
2-20-103	repealed	Ch. 130	HB 177
2-20-104	repealed	Ch. 130	HB 177
2-20-105	repealed	Ch. 130	HB 177
2-20-106	repealed	Ch. 130	HB 177
2-20-107	repealed	Ch. 130	HB 177
2-20-108	repealed	Ch. 130	HB 177
2-20-109	repealed	Ch. 130	HB 177
2-20-110	repealed	Ch. 130	HB 177
2-20-111	repealed	Ch. 130	HB 177
3-1-102	amended	Ch. 428	SB 523
3-1-402	amended	Ch. 61	SB 40
3-1-404	amended	Ch. 61	SB 40
3-1-405	amended	Ch. 61	SB 40

3-1-504 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-514 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-515 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-516 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-517 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-522 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-601 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-602 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-603 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-604 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-605 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-606 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-607 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-701 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-1003 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-1009 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-1010 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-1103 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-1104 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-1106 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-1108 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-1109 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-1110 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-1111 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-1122 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-1502 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-1-1503 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-2-102 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-2-202 . . . . . amended . . . . . Ch. 481 . . . . . SB 96
3-2-212 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-2-301 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-2-401 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-2-403 . . . . . amended . . . . . Ch. 39 . . . . . HB 402
3-2-406 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-2-502 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-5-115 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-5-201 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-5-202 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-5-213 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-5-214 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-5-215 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-5-216 . . . . . repealed . . . . . Ch. 24 . . . . . HB 18
amended . . . . . Ch. 61 . . . . . SB 40
3-5-302 . . . . . amended . . . . . Ch. 481 . . . . . SB 96
3-5-311 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-5-401 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-5-405 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-5-503 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-5-504 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-5-505 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-5-508 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-5-509 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-5-611 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-5-901 . . . . . amended . . . . . Ch. 140 . . . . . SB 124
3-6-101 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-6-203 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-6-303 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-7-201 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-7-203 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-7-224 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-10-201 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-10-202 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
3-10-204 . . . . . amended . . . . . Ch. 61 . . . . . SB 40

3-10-209	amended	Ch.	61	SB	40
3-10-233	amended	Ch.	61	SB	40
3-10-234	amended	Ch.	61	SB	40
3-10-303	amended	Ch.	514	SB	382
3-10-304	amended	Ch.	457	SB	227
3-10-401	amended	Ch.	61	SB	40
3-10-405	amended	Ch.	61	SB	40
3-10-502	amended	Ch.	61	SB	40
3-10-514	amended	Ch.	61	SB	40
3-10-602	amended	Ch.	61	SB	40
3-10-706	amended	Ch.	61	SB	40
3-10-1005	amended	Ch.	61	SB	40
3-11-202	amended	Ch.	61	SB	40
3-11-203	amended	Ch.	61	SB	40
3-11-204	amended	Ch.	61	SB	40
3-11-205	amended	Ch.	61	SB	40
3-12-203	amended	Ch.	61	SB	40
3-15-201	amended	Ch.	61	SB	40
3-15-203	amended	Ch.	61	SB	40
3-15-401	amended	Ch.	61	SB	40
	repealed	Ch.	133	HB	341
3-15-402	amended	Ch.	133	HB	341
3-15-403	amended	Ch.	133	HB	341
3-15-404	amended	Ch.	133	HB	341
3-15-504	amended	Ch.	61	SB	40
3-15-601	amended	Ch.	61	SB	40
3-15-602	amended	Ch.	61	SB	40
3-15-604	amended	Ch.	61	SB	40
3-15-701	amended	Ch.	61	SB	40
3-15-801	amended	Ch.	61	SB	40
5-1-105	amended	Ch.	61	SB	40
5-2-102	amended	Ch.	61	SB	40
5-2-104	amended	Ch.	61	SB	40
5-2-105	amended	Ch.	61	SB	40
5-2-211	amended	Ch.	61	SB	40
5-2-213	amended	Ch.	61	SB	40
5-2-216	amended	Ch.	61	SB	40
5-2-301	amended	Ch.	81	HB	13
5-2-302	amended	Ch.	61	SB	40
	amended	Ch.	81	HB	13
5-2-304	amended	Ch.	334	HB	765
5-2-405	amended	Ch.	61	SB	40
5-3-101	amended	Ch.	5	HB	21
5-4-204	amended	Ch.	61	SB	40
5-4-302	amended	Ch.	61	SB	40
5-4-303	amended	Ch.	61	SB	40
5-4-304	amended	Ch.	61	SB	40
5-4-305	amended	Ch.	61	SB	40
5-4-306	amended	Ch.	61	SB	40
5-5-101	amended	Ch.	61	SB	40
5-5-102	amended	Ch.	61	SB	40
5-5-103	amended	Ch.	61	SB	40
5-5-105	amended	Ch.	61	SB	40
5-5-227	amended	Ch.	5	HB	21
5-5-301	amended	Ch.	61	SB	40
5-5-302	amended	Ch.	61	SB	40
5-5-413	amended	Ch.	61	SB	40
5-5-415	amended	Ch.	61	SB	40
5-5-418	amended	Ch.	61	SB	40
5-5-419	amended	Ch.	61	SB	40
5-5-420	amended	Ch.	61	SB	40
5-5-421	amended	Ch.	61	SB	40
5-5-431	amended	Ch.	61	SB	40

5-6-109 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
5-7-101 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
5-7-102 . . . . . amended . . . . . Ch. 402 . . . . . SB 172
5-7-120. . . . . enacted . . . . . Ch. 241 . . . . . HB 433
5-7-201 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
5-7-203 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
5-7-209 . . . . . amended . . . . . Ch. 402 . . . . . SB 172
5-7-210 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
5-7-301 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
5-11-104 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
5-11-120. . . . . enacted . . . . . Ch. 309 . . . . . HB 139
5-11-204 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
5-11-210 . . . . . amended . . . . . Ch. 285 . . . . . HB 771
5-12-202 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
5-12-203 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
5-12-303 . . . . . amended . . . . . Ch. 70 . . . . . SB 76
5-13-101 . . . . . amended . . . . . Ch. 91 . . . . . HB 86
5-13-303 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
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7-13-2308 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-13-2328 . . . . . amended . . . . . Ch. 93 . . . . . HB 102
7-13-2342 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-13-2345 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-13-2505 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-13-4107 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-112 . . . . . amended . . . . . Ch. 209 . . . . . SB 160
7-14-205 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-1103 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-2101 . . . . . amended . . . . . Ch. 342 . . . . . SB 251
7-14-2121 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-2122 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-2135 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-2137 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-2201 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-2205 . . . . . repealed . . . . . Ch. 171 . . . . . HB 253
7-14-2302 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-2303 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-2306 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-2308 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-2506 . . . . . amended . . . . . Ch. 380 . . . . . HB 426
7-14-2507. . . . . enacted . . . . . Ch. 350 . . . . . SB 308
7-14-2524 . . . . . amended . . . . . Ch. 187 . . . . . SB 245
7-14-2525 . . . . . amended . . . . . Ch. 187 . . . . . SB 245
7-14-2606 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-2607 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-2613 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-2705 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-2707 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-2708 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-2709 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-2712 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-2719 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-2720 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-2721 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-2753 . . . . . amended . . . . . Ch. 61 . . . . . SB 40
7-14-2756 . . . . . amended . . . . . Ch. 61 . . . . . SB 40

7-14-2761	amended	Ch.	61	SB	40
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7-14-2805	amended	Ch.	61	SB	40
7-14-2823	amended	Ch.	61	SB	40
7-14-2826	amended	Ch.	61	SB	40
7-14-2827	amended	Ch.	61	SB	40
7-14-2828	amended	Ch.	61	SB	40
7-14-4110	amended	Ch.	159	HB	596
7-14-4201	amended	Ch.	61	SB	40
7-14-4203	amended	Ch.	61	SB	40
7-14-4301	amended	Ch.	61	SB	40
7-14-4612	amended	Ch.	61	SB	40
7-14-4631	amended	Ch.	44	SB	39
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7-14-4717	amended	Ch.	61	SB	40
7-14-4718	amended	Ch.	61	SB	40
7-14-4721	amended	Ch.	61	SB	40
7-15-2107	amended	Ch.	61	SB	40
7-15-2108	amended	Ch.	61	SB	40
7-15-4204	amended	Ch.	441	SB	41
7-15-4206	amended	Ch.	441	SB	41
7-15-4221	amended	Ch.	61	SB	40
7-15-4234	amended	Ch.	61	SB	40
7-15-4239	amended	Ch.	61	SB	40
7-15-4258	amended	Ch.	441	SB	41
7-15-4259	amended	Ch.	441	SB	41
	amended	Ch.	512	SB	363
7-15-4264	amended	Ch.	61	SB	40
7-15-4296	amended	Ch.	44	SB	39
7-15-4299	amended	Ch.	44	SB	39
7-15-4402	amended	Ch.	61	SB	40
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7-15-4436	amended	Ch.	61	SB	40
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7-15-4439	amended	Ch.	61	SB	40
7-15-4528	amended	Ch.	61	SB	40
7-15-4530	amended	Ch.	61	SB	40
7-16-2201	amended	Ch.	217	SB	299
7-16-2205	amended (voided by sec. 13, Ch. 505)	Ch.	217	SB	299
	amended	Ch.	505	SB	233
7-16-2211	enacted	Ch.	505	SB	233
7-16-2212	enacted	Ch.	505	SB	233
7-16-2213	enacted	Ch.	505	SB	233
7-16-2214	enacted	Ch.	505	SB	233
7-16-2215	enacted	Ch.	505	SB	233
7-16-2216	enacted	Ch.	505	SB	233
7-16-2217	enacted	Ch.	505	SB	233
7-16-2218	enacted	Ch.	505	SB	233
7-16-2219	enacted	Ch.	505	SB	233
7-16-2312	amended	Ch.	61	SB	40
7-16-2325	amended	Ch.	61	SB	40
7-16-2330	amended	Ch.	61	SB	40
7-16-2331	amended	Ch.	61	SB	40
7-21-2102	amended	Ch.	61	SB	40
7-21-2103	amended	Ch.	61	SB	40
7-21-2111	amended	Ch.	61	SB	40
7-21-2115	amended	Ch.	61	SB	40
7-21-2117	amended	Ch.	61	SB	40
7-21-2120	amended	Ch.	61	SB	40
7-21-2305	amended	Ch.	61	SB	40
7-21-2306	amended	Ch.	61	SB	40

7-21-2307	amended	Ch.	61	SB 40
7-21-2308	amended	Ch.	61	SB 40
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7-21-2401	amended	Ch.	61	SB 40
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7-21-2409	amended	Ch.	61	SB 40
7-21-2410	amended	Ch.	61	SB 40
7-21-2502	amended	Ch.	61	SB 40
7-21-2505	amended	Ch.	61	SB 40
7-21-2506	amended	Ch.	61	SB 40
7-21-2507	amended	Ch.	61	SB 40
7-21-3104	amended	Ch.	61	SB 40
7-21-3105	amended	Ch.	61	SB 40
7-21-3106	amended	Ch.	61	SB 40
7-21-3107	amended	Ch.	61	SB 40
7-21-3108	amended	Ch.	61	SB 40
7-21-3211	amended	Ch.	61	SB 40
7-21-3212	amended	Ch.	61	SB 40
7-21-3213	amended	Ch.	61	SB 40
7-21-3303	amended	Ch.	61	SB 40
7-21-3307	amended	Ch.	61	SB 40
7-21-3435	amended	Ch.	61	SB 40
7-21-3453	amended	Ch.	61	SB 40
7-22-2116	amended	Ch.	313	HB 269
7-22-2126	amended	Ch.	313	HB 269
7-22-2142	amended	Ch.	313	HB 269
7-22-2149	repealed	Ch.	313	HB 269
7-22-2151	amended	Ch.	313	HB 269
7-22-2214	amended	Ch.	61	SB 40
7-22-2225	amended	Ch.	61	SB 40
7-22-2401	amended	Ch.	61	SB 40
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7-23-101	amended	Ch.	61	SB 40
7-23-102	amended	Ch.	61	SB 40
7-31-112	amended	Ch.	61	SB 40
7-31-201	amended	Ch.	506	SB 273
7-31-202	amended	Ch.	61	SB 40
	amended	Ch.	506	SB 273
7-31-203	amended	Ch.	506	SB 273
7-31-2101	amended	Ch.	61	SB 40
7-31-4102	amended	Ch.	61	SB 40
7-31-4206	amended	Ch.	61	SB 40
7-32-102	amended	Ch.	61	SB 40
7-32-103	amended	Ch.	244	HB 636
7-32-108	amended	Ch.	61	SB 40
7-32-110	amended	Ch.	61	SB 40
7-32-115	amended	Ch.	61	SB 40
7-32-122	amended	Ch.	61	SB 40
7-32-123	amended	Ch.	61	SB 40
7-32-124	amended	Ch.	61	SB 40
7-32-125	amended	Ch.	61	SB 40
7-32-126	amended	Ch.	61	SB 40
7-32-127	amended	Ch.	61	SB 40
7-32-128	amended	Ch.	61	SB 40
7-32-201	amended	Ch.	506	SB 273
7-32-213	amended	Ch.	61	SB 40
7-32-214	amended	Ch.	506	SB 273
7-32-235	amended	Ch.	186	SB 203
7-32-301	amended	Ch.	61	SB 40
7-32-302	amended	Ch.	61	SB 40
7-32-303	amended	Ch.	506	SB 273

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7-32-2104	amended	Ch.	61	SB	40
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7-32-2108	amended	Ch.	61	SB	40
7-32-2121	amended	Ch.	61	SB	40
7-32-2124	amended	Ch.	61	SB	40
7-32-2125	amended	Ch.	61	SB	40
7-32-2127	amended	Ch.	61	SB	40
7-32-2129	amended	Ch.	61	SB	40
7-32-2130	amended	Ch.	61	SB	40
7-32-2131	amended	Ch.	61	SB	40
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7-32-2202	amended	Ch.	61	SB	40
7-32-2207	amended	Ch.	61	SB	40
7-32-2208	amended	Ch.	61	SB	40
7-32-2211	amended	Ch.	61	SB	40
7-32-2234	amended	Ch.	61	SB	40
7-32-2246	amended	Ch.	61	SB	40
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7-32-4106	amended	Ch.	61	SB	40
7-32-4107	amended	Ch.	61	SB	40
7-32-4108	amended	Ch.	61	SB	40
7-32-4109	amended	Ch.	61	SB	40
7-32-4110	amended	Ch.	61	SB	40
7-32-4111	amended	Ch.	61	SB	40
7-32-4112	amended	Ch.	506	SB	273
7-32-4131	amended	Ch.	61	SB	40
7-32-4136	amended	Ch.	61	SB	40
7-32-4137	amended	Ch.	61	SB	40
7-32-4155	amended	Ch.	61	SB	40
7-32-4159	amended	Ch.	61	SB	40
7-33-2001	enacted	Ch.	167	HB	112
7-33-2101	amended	Ch.	499	SB	103
7-33-2102	amended	Ch.	499	SB	103
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7-33-2105	amended	Ch.	499	SB	103
7-33-2106	amended	Ch.	499	SB	103
7-33-2107	amended	Ch.	499	SB	103
7-33-2108	amended	Ch.	292	SB	102
7-33-2109	amended	Ch.	485	HB	337
	amended	Ch.	499	SB	103
7-33-2120	amended	Ch.	499	SB	103
7-33-2121	amended and renumbered 7-33-2141	Ch.	499	SB	103
7-33-2122	repealed	Ch.	499	SB	103
7-33-2123	amended and renumbered 7-33-2143	Ch.	499	SB	103
7-33-2124	amended and renumbered 7-33-2144	Ch.	499	SB	103
7-33-2125	amended	Ch.	499	SB	103
7-33-2126	amended	Ch.	499	SB	103
7-33-2127	amended	Ch.	61	SB	40
	amended	Ch.	499	SB	103
7-33-2128	amended	Ch.	499	SB	103
7-33-2141	formerly 7-33-2121	Ch.	499	SB	103
7-33-2142	enacted	Ch.	499	SB	103
7-33-2143	formerly 7-33-2123	Ch.	499	SB	103
7-33-2144	formerly 7-33-2124	Ch.	499	SB	103

7-33-2202	amended	Ch. 292	SB	102
	amended	Ch. 499	SB	103
7-33-2204	repealed	Ch. 499	SB	103
7-33-2205	amended	Ch. 499	SB	103
7-33-2206	amended	Ch. 499	SB	103
7-33-2207	repealed	Ch. 499	SB	103
7-33-2209	amended	Ch. 485	HB	337
7-33-2210	amended	Ch. 499	SB	103
7-33-2212	enacted	Ch. 450	SB	147
7-33-2311	amended	Ch. 499	SB	103
7-33-2312	amended	Ch. 61	SB	40
7-33-2313	repealed	Ch. 167	HB	112
	amended	Ch. 499	SB	103
7-33-2315	amended	Ch. 61	SB	40
7-33-2401	amended	Ch. 499	SB	103
7-33-2403	amended	Ch. 485	HB	337
7-33-2404	amended	Ch. 467	SB	436
7-33-2405	amended	Ch. 292	SB	102
7-33-4104	amended	Ch. 61	SB	40
7-33-4109	amended	Ch. 485	HB	337
7-33-4111	amended	Ch. 485	HB	337
7-33-4112	amended	Ch. 292	SB	102
7-33-4124	amended	Ch. 61	SB	40
	amended	Ch. 281	HB	690
7-33-4125	amended	Ch. 61	SB	40
7-33-4133	amended	Ch. 61	SB	40
7-33-4501	enacted	Ch. 464	SB	404
7-34-2104	amended	Ch. 61	SB	40
7-34-2105	amended	Ch. 61	SB	40
7-34-2106	amended	Ch. 61	SB	40
7-34-2118	amended	Ch. 61	SB	40
7-35-2103	amended	Ch. 61	SB	40
7-35-2133	amended	Ch. 61	SB	40
7-35-2139	amended	Ch. 61	SB	40
7-35-2141	amended	Ch. 61	SB	40
7-35-2144	amended	Ch. 61	SB	40
7-35-2205	enacted	Ch. 112	SB	21
10-1-101	amended	Ch. 347	SB	295
10-1-104	amended	Ch. 26	HB	46
10-1-501	amended	Ch. 176	HB	532
10-1-502	amended	Ch. 176	HB	532
10-1-505	enacted	Ch. 176	HB	532
10-1-1111	enacted	Ch. 373	HB	155
10-1-1112	enacted	Ch. 373	HB	155
10-1-1113	enacted	Ch. 373	HB	155
10-1-1114	enacted	Ch. 373	HB	155
10-1-1201	enacted	Ch. 308	HB	136
10-1-1202	enacted	Ch. 308	HB	136
10-1-1301	enacted	Ch. 311	HB	179
10-1-1302	enacted	Ch. 311	HB	179
10-1-1303	enacted	Ch. 311	HB	179
10-1-1304	enacted	Ch. 311	HB	179
10-1-1305	enacted	Ch. 311	HB	179
10-1-1306	enacted	Ch. 311	HB	179
10-1-1307	enacted	Ch. 311	HB	179
10-1-1308	enacted	Ch. 311	HB	179
10-1-1309	enacted	Ch. 311	HB	179
10-1-1310	enacted	Ch. 311	HB	179
10-1-1401	enacted	Ch. 347	SB	295
10-1-1402	enacted	Ch. 347	SB	295
10-1-1403	enacted	Ch. 347	SB	295
10-2-102	amended	Ch. 181	HB	803
10-2-601	amended	Ch. 370	HB	96

10-3-114	enacted	Ch. 459	SB 309
10-3-202	amended	Ch. 292	SB 102
10-3-209	amended	Ch. 292	SB 102
10-3-312	amended	Ch. 182	SB 60
10-3-406	amended	Ch. 450	SB 147
10-3-801	amended	Ch. 332	HB 759
10-3-903	amended	Ch. 43	SB 35
10-3-1102	amended	Ch. 292	SB 102
10-3-1103	amended	Ch. 292	SB 102
10-3-1204	amended	Ch. 44	SB 39
	amended	Ch. 67	SB 70
10-4-101	amended	Ch. 304	HB 27
10-4-102	amended	Ch. 304	HB 27
10-4-114	amended	Ch. 304	HB 27
10-4-115	enacted	Ch. 304	HB 27
10-4-201	amended	Ch. 304	HB 27
10-4-301	amended	Ch. 304	HB 27
10-4-313	enacted	Ch. 304	HB 27
13-1-101	amended	Ch. 273	HB 520
	amended	Ch. 481	SB 96
13-1-106	amended	Ch. 360	SB 517
13-1-108	amended	Ch. 273	HB 520
13-1-111	amended	Ch. 273	HB 520
13-1-202	amended	Ch. 44	SB 39
	amended	Ch. 273	HB 520
13-2-304	amended	Ch. 273	HB 520
13-3-202	amended	Ch. 228	SB 502
13-3-203	repealed	Ch. 228	SB 502
13-3-204	repealed	Ch. 228	SB 502
13-3-205	amended	Ch. 228	SB 502
13-3-206	amended	Ch. 228	SB 502
13-3-207	amended	Ch. 228	SB 502
13-3-212	amended	Ch. 228	SB 502
13-3-213	amended	Ch. 228	SB 502
13-10-201	amended	Ch. 96	HB 140
13-10-204	amended	Ch. 273	HB 520
13-10-209	amended	Ch. 273	HB 520
13-10-211	amended	Ch. 191	HB 242
	amended	Ch. 273	HB 520
	amended	Ch. 338	SB 181
13-10-301	amended	Ch. 273	HB 520
13-10-311	amended	Ch. 273	HB 520
13-10-326	amended	Ch. 273	HB 520
13-10-503	amended (voided by sec. 2, Ch. 458)	Ch. 273	HB 520
	amended	Ch. 458	SB 270
13-10-601	amended	Ch. 273	HB 520
13-12-205	amended	Ch. 273	HB 520
13-12-207	amended	Ch. 273	HB 520
13-13-117	amended	Ch. 273	HB 520
13-13-201	amended	Ch. 273	HB 520
13-13-203	repealed	Ch. 273	HB 520
13-13-205	amended	Ch. 273	HB 520
13-13-212	amended	Ch. 221	SB 374
	amended	Ch. 358	SB 443
13-13-213	amended	Ch. 273	HB 520
13-13-214	amended	Ch. 273	HB 520
13-13-241	amended	Ch. 273	HB 520
13-15-107	amended	Ch. 273	HB 520
13-15-201	amended	Ch. 273	HB 520
13-15-206	amended	Ch. 273	HB 520
13-15-209	amended	Ch. 273	HB 520
13-15-301	amended	Ch. 273	HB 520
13-16-414	repealed	Ch. 273	HB 520

13-17-103	amended	Ch. 273	HB 520
13-17-206	repealed	Ch. 273	HB 520
13-17-211	amended	Ch. 273	HB 520
13-17-212	amended	Ch. 273	HB 520
13-17-305	repealed	Ch. 273	HB 520
13-21-103	amended	Ch. 157	HB 570
13-21-201	amended	Ch. 157	HB 570
13-21-202	amended	Ch. 157	HB 570
13-21-204	repealed	Ch. 157	HB 570
13-21-205	amended	Ch. 157	HB 570
13-21-206	amended	Ch. 157	HB 570
13-21-210	amended	Ch. 157	HB 570
	amended	Ch. 221	SB 374
13-22-102	amended	Ch. 481	SB 96
13-25-101	amended	Ch. 273	HB 520
13-27-102	amended	Ch. 481	SB 96
13-27-201	amended	Ch. 481	SB 96
13-27-202	amended	Ch. 481	SB 96
13-27-204	amended	Ch. 481	SB 96
13-27-205	amended	Ch. 481	SB 96
13-27-207	amended	Ch. 481	SB 96
13-27-208	amended	Ch. 481	SB 96
13-27-209	enacted	Ch. 481	SB 96
13-27-210	enacted	Ch. 481	SB 96
13-27-302	amended	Ch. 481	SB 96
13-27-310	repealed	Ch. 481	SB 96
13-27-312	amended	Ch. 481	SB 96
13-27-313	repealed	Ch. 481	SB 96
13-27-315	amended	Ch. 481	SB 96
13-27-316	amended	Ch. 481	SB 96
13-27-317	enacted	Ch. 481	SB 96
13-27-401	amended	Ch. 273	HB 520
13-27-402	amended	Ch. 481	SB 96
13-27-403	amended	Ch. 481	SB 96
13-27-409	amended	Ch. 481	SB 96
13-27-501	amended	Ch. 481	SB 96
13-35-207	amended	Ch. 481	SB 96
13-35-240	enacted	Ch. 407	SB 253
13-35-401	enacted	Ch. 508	SB 279
13-35-402	enacted	Ch. 508	SB 279
13-35-403	enacted	Ch. 508	SB 279
13-37-106	amended	Ch. 81	HB 13
13-37-111	amended	Ch. 407	SB 253
13-37-113	amended	Ch. 407	SB 253
13-37-124	amended	Ch. 407	SB 253
13-37-128	amended	Ch. 508	SB 279
13-37-210	amended	Ch. 481	SB 96
13-37-216	amended	Ch. 328	HB 706
13-37-226	amended	Ch. 481	SB 96
13-37-228	amended	Ch. 481	SB 96
13-37-240	amended	Ch. 487	HB 462
13-37-401	enacted	Ch. 487	HB 462
13-37-402	enacted	Ch. 487	HB 462
15-1-106	enacted	Ch. 70	SB 76
15-1-108	enacted	Ch. 447	SB 121
15-1-109	enacted	Ch. 447	SB 121
15-1-110	enacted	Ch. 447	SB 121
15-1-113	repealed	Ch. 121	HB 22
15-1-121	amended	Ch. 210	SB 169
15-1-122	amended	Ch. 329	HB 737
15-1-216	amended	Ch. 319	HB 473
15-1-218	enacted	Ch. 327	HB 680
15-1-222	amended	Ch. 376	HB 257

15-1-223	amended	Ch. 376	HB 257
15-1-232	amended	Ch. 420	SB 413
15-1-501	repealed	Ch. 475	SB 525
15-2-102	amended	Ch. 44	SB 39
	amended	Ch. 81	HB 13
15-6-135	amended	Ch. 100	HB 176
15-6-211	amended	Ch. 418	SB 403
15-7-202	amended	Ch. 478	SB 549
	amended	Ch. 510	SB 316
15-7-308	amended	Ch. 366	HB 39
15-10-420	amended	Ch. 521	SB 550
15-10-425	amended	Ch. 170	HB 206
15-16-101	amended	Ch. 110	HB 623
15-16-701	amended	Ch. 316	HB 362
15-16-702	amended	Ch. 316	HB 362
15-17-121	amended	Ch. 110	HB 623
15-17-122	amended	Ch. 110	HB 623
15-17-124	amended	Ch. 110	HB 623
15-17-131	amended	Ch. 110	HB 623
15-17-211	amended	Ch. 110	HB 623
15-17-212	amended	Ch. 110	HB 623
15-17-213	amended	Ch. 110	HB 623
15-17-214	amended	Ch. 110	HB 623
15-17-317	amended	Ch. 110	HB 623
15-17-321	amended	Ch. 110	HB 623
15-17-323	amended	Ch. 110	HB 623
15-17-324	amended	Ch. 110	HB 623
15-17-325	amended	Ch. 110	HB 623
15-17-326	amended	Ch. 110	HB 623
15-18-111	amended	Ch. 110	HB 623
15-18-113	amended	Ch. 110	HB 623
15-18-114	amended	Ch. 110	HB 623
15-18-211	amended	Ch. 110	HB 623
15-18-212	amended	Ch. 7	HB 470
	amended	Ch. 110	HB 623
15-18-213	amended	Ch. 110	HB 623
15-18-214	amended	Ch. 110	HB 623
15-18-215	amended	Ch. 110	HB 623
15-18-217	amended	Ch. 7	HB 470
	amended	Ch. 110	HB 623
15-18-218	amended	Ch. 110	HB 623
15-30-111	amended	Ch. 509	SB 281
15-30-116	amended	Ch. 308	HB 136
	amended	Ch. 373	HB 155
15-30-165	amended	Ch. 208	SB 150
15-30-188	repealed 12/31/2010	Ch. 361	SB 553
15-30-189	amended	Ch. 361	SB 553
	repealed 12/31/2010	Ch. 361	SB 553
15-30-190	repealed 12/31/2010	Ch. 361	SB 553
15-30-191	repealed 12/31/2010	Ch. 361	SB 553
15-30-193	enacted	Ch. 311	HB 179
15-30-194	enacted	Ch. 320	HB 490
15-30-196	enacted	Ch. 375	HB 240
15-30-261	enacted	Ch. 468	SB 439
15-30-262	enacted	Ch. 468	SB 439
15-30-263	enacted	Ch. 468	SB 439
15-30-264	enacted	Ch. 468	SB 439
15-30-265	enacted	Ch. 468	SB 439
15-30-266	enacted	Ch. 468	SB 439
15-30-267	enacted	Ch. 468	SB 439
15-30-268	enacted	Ch. 468	SB 439
15-30-269	enacted	Ch. 468	SB 439
15-30-270	enacted	Ch. 468	SB 439

15-30-271 . . . . . enacted . . . . . Ch. 468 . . . . . SB 439
15-30-272 . . . . . enacted . . . . . Ch. 468 . . . . . SB 439
15-30-303 . . . . . amended . . . . . Ch. 70 . . . . . SB 76
15-30-305 . . . . . amended . . . . . Ch. 222 . . . . . SB 378
15-30-313 . . . . . amended . . . . . Ch. 44 . . . . . SB 39
15-31-103 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
15-31-171 . . . . . enacted . . . . . Ch. 375 . . . . . HB 240
15-31-501 . . . . . amended . . . . . Ch. 222 . . . . . SB 378
15-31-511 . . . . . amended . . . . . Ch. 70 . . . . . SB 76
15-31-906 . . . . . amended . . . . . Ch. 367 . . . . . HB 40
15-31-907 . . . . . amended . . . . . Ch. 367 . . . . . HB 40
15-31-908 . . . . . amended . . . . . Ch. 367 . . . . . HB 40
15-31-909 . . . . . repealed . . . . . Ch. 367 . . . . . HB 40
15-31-911 . . . . . amended . . . . . Ch. 367 . . . . . HB 40
15-32-701 . . . . . amended . . . . . Ch. 168 . . . . . HB 166
15-32-702 . . . . . amended . . . . . Ch. 168 . . . . . HB 166
15-32-703 . . . . . amended . . . . . Ch. 168 . . . . . HB 166
15-35-102 . . . . . amended . . . . . Ch. 44 . . . . . SB 39
15-35-108 . . . . . amended . . . . . Ch. 280 . . . . . HB 688
amended . . . . . Ch. 475 . . . . . SB 525
15-36-304 . . . . . amended . . . . . Ch. 286 . . . . . HB 778
15-36-331 . . . . . amended . . . . . Ch. 432 . . . . . HB 116
amended . . . . . Ch. 475 . . . . . SB 525
15-37-117 . . . . . amended . . . . . Ch. 432 . . . . . HB 116
amended . . . . . Ch. 475 . . . . . SB 525
15-38-106 . . . . . amended . . . . . Ch. 432 . . . . . HB 116
amended . . . . . Ch. 475 . . . . . SB 525
15-38-202 . . . . . amended . . . . . Ch. 432 . . . . . HB 116
15-38-203 . . . . . amended . . . . . Ch. 432 . . . . . HB 116
15-38-301 . . . . . enacted . . . . . Ch. 432 . . . . . HB 116
15-38-302 . . . . . enacted . . . . . Ch. 432 . . . . . HB 116
15-39-105 . . . . . amended . . . . . Ch. 44 . . . . . SB 39
15-39-107 . . . . . amended . . . . . Ch. 44 . . . . . SB 39
15-39-110 . . . . . amended . . . . . Ch. 89 . . . . . HB 75
15-50-311 . . . . . amended . . . . . Ch. 475 . . . . . SB 525
15-51-103 . . . . . amended . . . . . Ch. 475 . . . . . SB 525
15-53-156 . . . . . amended . . . . . Ch. 475 . . . . . SB 525
15-59-108 . . . . . amended . . . . . Ch. 475 . . . . . SB 525
15-60-210 . . . . . amended . . . . . Ch. 475 . . . . . SB 525
15-62-207 . . . . . amended . . . . . Ch. 509 . . . . . SB 281
15-62-208 . . . . . amended . . . . . Ch. 509 . . . . . SB 281
15-65-121 . . . . . amended . . . . . Ch. 475 . . . . . SB 525
15-66-101 . . . . . amended . . . . . Ch. 517 . . . . . SB 118
15-66-102 . . . . . amended . . . . . Ch. 475 . . . . . SB 525
amended (voided by sec. 29, Ch. 475) . . . . . Ch. 517 . . . . . SB 118
15-66-201 . . . . . amended . . . . . Ch. 517 . . . . . SB 118
15-67-102 . . . . . amended . . . . . Ch. 475 . . . . . SB 525
15-68-820 . . . . . amended . . . . . Ch. 475 . . . . . SB 525
15-70-101 . . . . . amended . . . . . Ch. 22 . . . . . HB 419
amended . . . . . Ch. 475 . . . . . SB 525
15-70-125 . . . . . amended . . . . . Ch. 475 . . . . . SB 525
15-70-201 . . . . . amended . . . . . Ch. 100 . . . . . HB 176
15-70-202 . . . . . amended . . . . . Ch. 100 . . . . . HB 176
15-70-204 . . . . . amended . . . . . Ch. 100 . . . . . HB 176
15-70-221 . . . . . amended . . . . . Ch. 100 . . . . . HB 176
15-70-302 . . . . . amended . . . . . Ch. 322 . . . . . HB 556
15-70-317 . . . . . enacted . . . . . Ch. 322 . . . . . HB 556
15-70-357 . . . . . amended . . . . . Ch. 44 . . . . . SB 39
15-70-372 . . . . . amended . . . . . Ch. 322 . . . . . HB 556
15-70-501 . . . . . amended . . . . . Ch. 100 . . . . . HB 176
15-70-502 . . . . . amended . . . . . Ch. 100 . . . . . HB 176
15-70-503 . . . . . amended . . . . . Ch. 100 . . . . . HB 176
15-70-511 . . . . . amended . . . . . Ch. 100 . . . . . HB 176

15-70-512	amended	Ch. 100	HB 176
15-70-513	amended	Ch. 100	HB 176
15-70-514	amended	Ch. 100	HB 176
15-70-521	amended	Ch. 100	HB 176
15-70-522	amended	Ch. 100	HB 176
15-70-523	amended	Ch. 100	HB 176
15-70-527	amended	Ch. 100	HB 176
15-72-103	amended	Ch. 491	HB 25
15-72-104	amended	Ch. 491	HB 25
15-72-106	amended	Ch. 475	SB 525
16-1-306	amended	Ch. 475	SB 525
16-1-401	amended	Ch. 475	SB 525
16-1-404	amended	Ch. 475	SB 525
16-1-406	amended	Ch. 475	SB 525
16-1-411	amended	Ch. 475	SB 525
16-2-101	amended	Ch. 44	SB 39
16-3-211	amended	Ch. 516	SB 524
16-3-214	amended	Ch. 516	SB 524
16-3-219	amended	Ch. 501	SB 127
16-3-301	amended	Ch. 501	SB 127
	amended	Ch. 516	SB 524
16-3-322	amended	Ch. 44	SB 39
	amended	Ch. 180	HB 789
16-3-324	amended	Ch. 44	SB 39
16-3-401	amended	Ch. 501	SB 127
16-3-402	amended	Ch. 501	SB 127
16-3-404	amended	Ch. 501	SB 127
16-3-411	amended	Ch. 501	SB 127
16-3-418	amended	Ch. 501	SB 127
16-4-107	amended	Ch. 501	SB 127
16-4-204	amended	Ch. 277	HB 633
16-4-401	amended	Ch. 197	HB 113
16-4-402	amended	Ch. 257	HB 300
16-4-420	amended	Ch. 348	SB 296
16-4-501	amended	Ch. 501	SB 127
16-4-906	amended	Ch. 501	SB 127
	amended	Ch. 516	SB 524
16-6-104	amended	Ch. 501	SB 127
	amended	Ch. 516	SB 524
16-6-201	amended	Ch. 49	HB 84
16-6-305	amended	Ch. 180	HB 789
16-6-314	amended	Ch. 501	SB 127
	amended	Ch. 516	SB 524
16-11-114	amended	Ch. 475	SB 525
16-11-119	amended	Ch. 475	SB 525
16-11-149	amended	Ch. 44	SB 39
17-1-132	amended	Ch. 70	SB 76
17-1-508	amended	Ch. 247	HB 19
17-1-511	enacted	Ch. 361	SB 553
17-2-124	enacted	Ch. 475	SB 525
17-3-211	amended	Ch. 74	SB 84
17-3-212	amended	Ch. 74	SB 84
17-5-205	amended	Ch. 3	HB 42
17-5-507	amended	Ch. 44	SB 39
17-5-702	amended	Ch. 432	HB 116
17-5-703	amended	Ch. 14	HB 44
17-5-704	amended	Ch. 14	HB 44
17-5-1604	amended	Ch. 378	HB 330
17-5-1608	amended	Ch. 50	HB 90
	amended	Ch. 378	HB 330
17-5-2001	amended	Ch. 50	HB 90
17-6-105	amended	Ch. 420	SB 413
17-6-201	amended	Ch. 247	HB 19

17-6-230 . . . . . enacted . . . . . Ch. 285 . . . . . HB 771
17-6-305 . . . . . amended . . . . . Ch. 444 . . . . . SB 69
17-6-311 . . . . . amended . . . . . Ch. 444 . . . . . SB 69
17-6-317 . . . . . amended . . . . . Ch. 100 . . . . . HB 176
17-6-402 . . . . . amended . . . . . Ch. 31 . . . . . HB 137
17-6-403 . . . . . amended . . . . . Ch. 31 . . . . . HB 137
17-6-407 . . . . . amended . . . . . Ch. 31 . . . . . HB 137
17-6-602 . . . . . amended . . . . . Ch. 283 . . . . . HB 743
17-6-606 . . . . . amended . . . . . Ch. 283 . . . . . HB 743
17-7-102 . . . . . amended . . . . . Ch. 319 . . . . . HB 473
17-7-111 . . . . . amended . . . . . Ch. 70 . . . . . SB 76
17-7-112 . . . . . amended . . . . . Ch. 44 . . . . . SB 39
amended . . . . . Ch. 230 . . . . . HB 12
17-7-161 . . . . . enacted . . . . . Ch. 519 . . . . . SB 205
17-7-302 . . . . . amended . . . . . Ch. 482 . . . . . SB 155
17-7-304 . . . . . amended . . . . . Ch. 482 . . . . . SB 155
17-7-502 . . . . . amended . . . . . Ch. 89 . . . . . HB 75
amended . . . . . Ch. 121 . . . . . HB 22
amended . . . . . Ch. 230 . . . . . HB 12
amended . . . . . Ch. 247 . . . . . HB 19
amended . . . . . Ch. 305 . . . . . HB 63
amended . . . . . Ch. 306 . . . . . HB 95
amended . . . . . Ch. 308 . . . . . HB 136
amended . . . . . Ch. 309 . . . . . HB 139
amended . . . . . Ch. 311 . . . . . HB 179
amended . . . . . Ch. 327 . . . . . HB 680
amended . . . . . Ch. 432 . . . . . HB 116
17-8-303 . . . . . amended . . . . . Ch. 46 . . . . . HB 43
17-8-306 . . . . . amended . . . . . Ch. 46 . . . . . HB 43
18-2-102 . . . . . amended . . . . . Ch. 403 . . . . . SB 184
amended . . . . . Ch. 419 . . . . . SB 412
18-2-105 . . . . . amended . . . . . Ch. 217 . . . . . SB 299
18-2-113 . . . . . amended . . . . . Ch. 11 . . . . . SB 54
18-2-124 . . . . . enacted . . . . . Ch. 259 . . . . . HB 319
18-4-132 . . . . . amended . . . . . Ch. 146 . . . . . SB 328
18-4-227 . . . . . enacted . . . . . Ch. 492 . . . . . SB 4
18-4-301 . . . . . amended . . . . . Ch. 226 . . . . . SB 459
18-4-303 . . . . . amended . . . . . Ch. 226 . . . . . SB 459
18-4-313 . . . . . amended . . . . . Ch. 127 . . . . . HB 124
18-8-202 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
18-8-204 . . . . . amended . . . . . Ch. 56 . . . . . HB 334
amended . . . . . Ch. 188 . . . . . SB 341
18-8-205 . . . . . amended . . . . . Ch. 56 . . . . . HB 334
19-2-405 . . . . . amended . . . . . Ch. 285 . . . . . HB 771
19-2-407 . . . . . amended . . . . . Ch. 285 . . . . . HB 771
19-2-408 . . . . . amended . . . . . Ch. 285 . . . . . HB 771
19-2-410 . . . . . enacted . . . . . Ch. 285 . . . . . HB 771
19-2-602 . . . . . amended . . . . . Ch. 128 . . . . . HB 129
19-2-715 . . . . . amended . . . . . Ch. 128 . . . . . HB 129
19-2-907 . . . . . amended . . . . . Ch. 128 . . . . . HB 129
19-2-908 . . . . . amended . . . . . Ch. 128 . . . . . HB 129
19-2-909 . . . . . amended . . . . . Ch. 128 . . . . . HB 129
19-3-316 . . . . . amended . . . . . Ch. 371 . . . . . HB 131
19-3-319 . . . . . amended . . . . . Ch. 371 . . . . . HB 131
19-3-401 . . . . . amended . . . . . Ch. 128 . . . . . HB 129
19-3-412 . . . . . amended . . . . . Ch. 41 . . . . . SB 11
amended . . . . . Ch. 128 . . . . . HB 129
amended . . . . . Ch. 334 . . . . . HB 765
19-3-510 . . . . . amended . . . . . Ch. 128 . . . . . HB 129
19-3-1105 . . . . . amended . . . . . Ch. 128 . . . . . HB 129
19-3-1106 . . . . . amended . . . . . Ch. 128 . . . . . HB 129
19-3-1202 . . . . . amended . . . . . Ch. 128 . . . . . HB 129
19-3-1203 . . . . . amended . . . . . Ch. 128 . . . . . HB 129

19-3-1204	amended	Ch. 128	HB 129
19-3-1605	amended	Ch. 371	HB 131
19-3-2111	amended	Ch. 128	HB 129
19-3-2112	amended	Ch. 128	HB 129
19-3-2113	amended	Ch. 128	HB 129
19-3-2117	amended	Ch. 371	HB 131
19-5-404	amended	Ch. 432	HB 116
19-6-707	amended	Ch. 128	HB 129
19-7-101	amended	Ch. 128	HB 129
	amended	Ch. 506	SB 273
19-7-312	amended	Ch. 128	HB 129
19-7-404	amended	Ch. 371	HB 131
19-7-711	amended	Ch. 371	HB 131
19-7-1101	amended	Ch. 128	HB 129
19-8-301	amended	Ch. 128	HB 129
19-8-302	amended	Ch. 128	HB 129
19-8-1105	amended	Ch. 371	HB 131
19-8-1110	repealed	Ch. 128	HB 129
19-9-1202	amended	Ch. 128	HB 129
19-9-1205	amended	Ch. 128	HB 129
19-9-1206	amended	Ch. 128	HB 129
19-13-210	amended	Ch. 299	SB 532
19-13-301	amended	Ch. 299	SB 532
19-17-102	amended	Ch. 128	HB 129
19-17-108	amended	Ch. 128	HB 129
19-17-401	amended	Ch. 128	HB 129
19-17-402	amended	Ch. 128	HB 129
19-17-502	amended	Ch. 128	HB 129
19-20-101	amended	Ch. 90	HB 81
	amended	Ch. 305	HB 63
19-20-102	amended	Ch. 305	HB 63
19-20-104	amended	Ch. 90	HB 81
19-20-201	amended	Ch. 285	HB 771
19-20-202	amended	Ch. 90	HB 81
19-20-215	enacted	Ch. 285	HB 771
19-20-302	amended	Ch. 90	HB 81
19-20-305	amended	Ch. 90	HB 81
19-20-414	amended	Ch. 90	HB 81
19-20-427	amended	Ch. 90	HB 81
19-20-501	amended	Ch. 90	HB 81
	amended	Ch. 305	HB 63
19-20-503	amended	Ch. 90	HB 81
19-20-602	amended	Ch. 90	HB 81
19-20-603	amended	Ch. 90	HB 81
19-20-605	amended	Ch. 90	HB 81
	amended	Ch. 305	HB 63
19-20-607	enacted	Ch. 305	HB 63
19-20-621	amended	Ch. 305	HB 63
19-20-705	amended	Ch. 90	HB 81
19-20-716	amended	Ch. 90	HB 81
	amended	Ch. 305	HB 63
19-20-717	amended	Ch. 90	HB 81
19-20-719	amended	Ch. 285	HB 771
	amended	Ch. 305	HB 63
19-20-731	amended	Ch. 90	HB 81
	amended	Ch. 305	HB 63
19-20-805	amended	Ch. 90	HB 81
19-20-1101	amended	Ch. 90	HB 81
19-21-203	amended	Ch. 306	HB 95
19-21-214	amended	Ch. 371	HB 131
20-3-324	amended	Ch. 44	SB 39
20-3-330	enacted	Ch. 324	HB 609
20-3-332	amended	Ch. 343	SB 266

20-5-101 . . . . . amended . . . . . Ch. 374 . . . . . HB 195
20-5-321 . . . . . amended . . . . . Ch. 442 . . . . . SB 49
20-5-322 . . . . . amended . . . . . Ch. 44 . . . . . SB 39
20-5-412 . . . . . amended . . . . . Ch. 393 . . . . . SB 48
amended . . . . . Ch. 442 . . . . . SB 49
20-5-420 . . . . . amended . . . . . Ch. 44 . . . . . SB 39
amended . . . . . Ch. 346 . . . . . SB 289
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amended . . . . . Ch. 442 . . . . . SB 49
20-5-501. . . . . enacted . . . . . Ch. 442 . . . . . SB 49
20-5-502. . . . . enacted . . . . . Ch. 442 . . . . . SB 49
20-5-503. . . . . enacted . . . . . Ch. 442 . . . . . SB 49
20-6-104 . . . . . amended . . . . . Ch. 194 . . . . . SB 291
20-6-105 . . . . . amended . . . . . Ch. 284 . . . . . HB 744
20-6-326. . . . . enacted . . . . . Ch. 194 . . . . . SB 291
20-7-453 . . . . . repealed . . . . . Ch. 94 . . . . . HB 128
20-7-454 . . . . . amended . . . . . Ch. 94 . . . . . HB 128
20-7-455 . . . . . amended . . . . . Ch. 94 . . . . . HB 128
20-7-457 . . . . . amended . . . . . Ch. 94 . . . . . HB 128
20-7-604 . . . . . amended . . . . . Ch. 94 . . . . . HB 128
20-9-141 . . . . . amended . . . . . Ch. 173 . . . . . HB 363
20-9-204 . . . . . amended . . . . . Ch. 106 . . . . . HB 347
20-9-308 . . . . . amended . . . . . Ch. 173 . . . . . HB 363
20-9-327 . . . . . amended . . . . . Ch. 94 . . . . . HB 128
amended . . . . . Ch. 354 . . . . . SB 335
20-9-353 . . . . . amended . . . . . Ch. 173 . . . . . HB 363
20-9-366 . . . . . amended . . . . . Ch. 194 . . . . . SB 291
20-9-406 . . . . . amended . . . . . Ch. 279 . . . . . HB 672
20-9-407 . . . . . amended . . . . . Ch. 279 . . . . . HB 672
20-9-408 . . . . . amended . . . . . Ch. 44 . . . . . SB 39
20-9-439 . . . . . amended . . . . . Ch. 194 . . . . . SB 291
20-9-443 . . . . . amended . . . . . Ch. 44 . . . . . SB 39
20-9-461 . . . . . amended . . . . . Ch. 94 . . . . . HB 128
20-9-462 . . . . . repealed . . . . . Ch. 94 . . . . . HB 128
20-9-463 . . . . . repealed . . . . . Ch. 94 . . . . . HB 128
20-9-464 . . . . . amended . . . . . Ch. 94 . . . . . HB 128
20-9-466 . . . . . repealed . . . . . Ch. 14 . . . . . HB 44
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20-9-467 . . . . . repealed . . . . . Ch. 14 . . . . . HB 44
20-9-472 . . . . . amended . . . . . Ch. 44 . . . . . SB 39
20-9-501 . . . . . amended . . . . . Ch. 44 . . . . . SB 39
20-9-502 . . . . . amended . . . . . Ch. 194 . . . . . SB 291
20-15-310 . . . . . amended . . . . . Ch. 493 . . . . . SB 12
20-15-312 . . . . . amended . . . . . Ch. 493 . . . . . SB 12
20-15-404 . . . . . amended . . . . . Ch. 94 . . . . . HB 128
20-20-105 . . . . . amended . . . . . Ch. 192 . . . . . SB 225
20-25-308 . . . . . amended . . . . . Ch. 419 . . . . . SB 412
20-25-309. . . . . enacted . . . . . Ch. 419 . . . . . SB 412
20-25-421 . . . . . amended . . . . . Ch. 27 . . . . . HB 48
amended . . . . . Ch. 44 . . . . . SB 39
20-25-428 . . . . . amended . . . . . Ch. 255 . . . . . HB 283
20-26-1501 . . . . . amended . . . . . Ch. 361 . . . . . SB 553
20-26-1502 . . . . . amended . . . . . Ch. 361 . . . . . SB 553
20-26-1503 . . . . . amended . . . . . Ch. 361 . . . . . SB 553
20-31-104 . . . . . amended . . . . . Ch. 38 . . . . . HB 290
22-1-211 . . . . . amended . . . . . Ch. 95 . . . . . HB 132
22-1-212 . . . . . amended . . . . . Ch. 95 . . . . . HB 132
22-1-213 . . . . . amended . . . . . Ch. 95 . . . . . HB 132
22-1-214 . . . . . repealed . . . . . Ch. 95 . . . . . HB 132
22-1-215 . . . . . repealed . . . . . Ch. 95 . . . . . HB 132
22-1-216 . . . . . repealed . . . . . Ch. 95 . . . . . HB 132
22-1-217 . . . . . repealed . . . . . Ch. 95 . . . . . HB 132
22-1-218 . . . . . amended . . . . . Ch. 95 . . . . . HB 132

22-1-219	enacted	Ch. 95	HB 132
22-2-701	enacted	Ch. 289	HB 811
22-3-1003	amended	Ch. 403	SB 184
23-1-105	amended	Ch. 420	SB 413
23-1-301	repealed	Ch. 85	HB 51
23-1-302	repealed	Ch. 85	HB 51
23-1-303	repealed	Ch. 85	HB 51
23-1-311	repealed	Ch. 85	HB 51
23-1-312	repealed	Ch. 85	HB 51
23-1-313	repealed	Ch. 85	HB 51
23-1-314	repealed	Ch. 85	HB 51
23-2-502	amended	Ch. 44	SB 39
	amended	Ch. 329	HB 737
23-2-513	repealed 1/1/2008	Ch. 329	HB 737
23-2-515	amended	Ch. 329	HB 737
23-2-540	repealed 1/1/2008	Ch. 329	HB 737
23-2-601	amended	Ch. 329	HB 737
23-2-614	amended	Ch. 44	SB 39
	amended	Ch. 329	HB 737
23-2-615	amended	Ch. 44	SB 39
	amended	Ch. 199	HB 348
23-2-619	repealed 1/1/2008	Ch. 329	HB 737
23-2-631	amended	Ch. 329	HB 737
23-2-634	amended	Ch. 329	HB 737
23-2-641	amended	Ch. 329	HB 737
23-2-642	amended	Ch. 329	HB 737
23-2-644	amended	Ch. 329	HB 737
23-2-702	amended	Ch. 315	HB 299
23-2-703	amended	Ch. 315	HB 299
23-2-704	amended	Ch. 315	HB 299
23-2-731	amended	Ch. 315	HB 299
23-2-733	amended	Ch. 315	HB 299
23-2-734	amended	Ch. 315	HB 299
23-2-735	amended	Ch. 315	HB 299
23-2-736	amended	Ch. 315	HB 299
23-2-818	repealed 1/1/2008	Ch. 329	HB 737
23-3-301	amended	Ch. 11	SB 54
23-3-401	repealed	Ch. 11	SB 54
23-3-402	amended	Ch. 11	SB 54
23-3-403	repealed	Ch. 11	SB 54
23-3-404	amended	Ch. 11	SB 54
23-3-405	amended	Ch. 11	SB 54
23-3-501	amended	Ch. 11	SB 54
23-3-502	amended	Ch. 11	SB 54
23-3-601	amended	Ch. 11	SB 54
23-3-602	amended	Ch. 11	SB 54
23-3-603	amended	Ch. 11	SB 54
23-4-101	amended	Ch. 9	HB 333
	amended	Ch. 379	HB 390
	amended	Ch. 387	HB 616
23-4-104	amended	Ch. 9	HB 333
	amended	Ch. 387	HB 616
23-4-105	amended	Ch. 9	HB 333
23-4-201	amended	Ch. 9	HB 333
	amended	Ch. 387	HB 616
23-4-202	amended	Ch. 9	HB 333
	amended	Ch. 379	HB 390
	amended	Ch. 387	HB 616
23-4-301	amended	Ch. 379	HB 390
	amended	Ch. 387	HB 616
23-4-302	amended	Ch. 379	HB 390
	amended	Ch. 387	HB 616
23-4-304	amended	Ch. 387	HB 616

23-5-112	amended	Ch. 101	HB 190
	amended	Ch. 379	HB 390
	amended	Ch. 429	SB 540
23-5-119	amended	Ch. 277	HB 633
23-5-152	amended	Ch. 429	SB 540
23-5-153	amended	Ch. 429	SB 540
23-5-306	amended	Ch. 101	HB 190
23-5-308	amended	Ch. 101	HB 190
23-5-313	amended	Ch. 101	HB 190
23-5-317	amended	Ch. 101	HB 190
23-5-319	repealed	Ch. 101	HB 190
23-5-325	enacted	Ch. 101	HB 190
23-5-610	amended	Ch. 475	SB 525
23-5-710	amended	Ch. 101	HB 190
23-5-801	amended	Ch. 387	HB 616
23-5-802	amended	Ch. 387	HB 616
23-5-805	amended	Ch. 387	HB 616
23-5-806	amended	Ch. 387	HB 616
25-1-1101	amended	Ch. 405	SB 209
25-1-1103	repealed	Ch. 405	SB 209
25-1-1104	amended	Ch. 405	SB 209
	amended	Ch. 502	SB 153
25-1-1105	repealed	Ch. 405	SB 209
25-1-1106	repealed	Ch. 405	SB 209
25-1-1107	amended	Ch. 405	SB 209
25-1-1111	amended	Ch. 405	SB 209
25-1-1112	amended	Ch. 405	SB 209
25-3-105	amended	Ch. 405	SB 209
25-3-201	amended	Ch. 405	SB 209
25-3-203	amended	Ch. 405	SB 209
25-3-204	amended	Ch. 405	SB 209
25-3-302	amended	Ch. 405	SB 209
25-13-212	amended	Ch. 457	SB 227
25-13-402	amended	Ch. 457	SB 227
25-13-608	amended	Ch. 397	SB 133
25-13-609	amended	Ch. 397	SB 133
25-13-613	amended	Ch. 449	SB 130
25-14-101	amended	Ch. 457	SB 227
25-31-409	amended	Ch. 457	SB 227
25-31-710	amended	Ch. 457	SB 227
25-31-1104	amended	Ch. 457	SB 227
27-2-204	amended	Ch. 266	HB 435
27-6-103	amended	Ch. 270	HB 467
27-6-105	amended	Ch. 270	HB 467
28-10-103	amended	Ch. 440	HB 768
30-9A-420	amended	Ch. 69	SB 73
30-9A-501	amended	Ch. 44	SB 39
30-12-203	amended	Ch. 196	HB 99
30-14-102	amended	Ch. 331	HB 755
30-14-1301	enacted	Ch. 162	HB 724
30-14-1302	enacted	Ch. 162	HB 724
30-14-1303	enacted	Ch. 162	HB 724
30-14-1304	enacted	Ch. 162	HB 724
30-14-1701	amended	Ch. 276	HB 630
30-14-1702	amended	Ch. 276	HB 630
30-14-1704	amended	Ch. 180	HB 789
30-14-1712	enacted	Ch. 276	HB 630
30-14-1713	enacted	Ch. 276	HB 630
30-14-1726	enacted	Ch. 138	SB 116
30-14-1727	enacted	Ch. 138	SB 116
30-14-1728	enacted	Ch. 138	SB 116
30-14-1729	enacted	Ch. 138	SB 116
30-14-1730	enacted	Ch. 138	SB 116

30-14-1731	enacted	Ch. 138	SB 116
30-14-1732	enacted	Ch. 138	SB 116
30-14-1733	enacted	Ch. 138	SB 116
30-14-1734	enacted	Ch. 138	SB 116
30-14-1735	enacted	Ch. 138	SB 116
30-14-1736	enacted	Ch. 138	SB 116
30-14-2501	enacted	Ch. 152	HB 409
30-14-2502	enacted	Ch. 152	HB 409
30-14-2503	enacted	Ch. 152	HB 409
30-18-102	amended	Ch. 130	HB 177
30-18-118	amended	Ch. 130	HB 177
31-1-111	amended	Ch. 369	HB 69
	amended	Ch. 451	SB 165
	amended	Ch. 497	SB 74
31-1-702	amended	Ch. 451	SB 165
31-1-703	amended	Ch. 451	SB 165
31-1-705	amended	Ch. 451	SB 165
31-1-706	amended	Ch. 451	SB 165
31-1-711	amended	Ch. 451	SB 165
31-1-712	amended	Ch. 451	SB 165
31-1-713	amended	Ch. 451	SB 165
31-1-714	amended	Ch. 451	SB 165
31-1-715	amended	Ch. 451	SB 165
31-1-721	amended	Ch. 451	SB 165
31-1-723	amended	Ch. 451	SB 165
31-1-726	enacted	Ch. 451	SB 165
31-1-727	enacted	Ch. 451	SB 165
31-1-728	enacted	Ch. 451	SB 165
31-1-802	amended	Ch. 497	SB 74
31-1-803	amended	Ch. 497	SB 74
31-1-811	amended	Ch. 497	SB 74
31-1-813	enacted	Ch. 497	SB 74
31-1-816	amended	Ch. 497	SB 74
31-1-817	amended	Ch. 497	SB 74
31-1-825	amended	Ch. 497	SB 74
31-1-841	enacted	Ch. 497	SB 74
31-1-842	enacted	Ch. 497	SB 74
31-3-132	enacted	Ch. 195	HB 35
32-1-422	amended	Ch. 33	HB 158
32-5-102	amended	Ch. 372	HB 141
32-5-103	amended	Ch. 372	HB 141
32-5-104	repealed 10/1/2008	Ch. 372	HB 141
32-5-201	amended	Ch. 372	HB 141
32-5-202	amended	Ch. 372	HB 141
32-5-204	amended	Ch. 372	HB 141
32-5-207	amended	Ch. 372	HB 141
32-5-208	amended	Ch. 372	HB 141
32-5-301	amended	Ch. 372	HB 141
32-5-302	amended	Ch. 372	HB 141
32-5-303	amended	Ch. 372	HB 141
32-5-305	amended	Ch. 372	HB 141
32-5-306	amended	Ch. 372	HB 141
32-5-308	amended	Ch. 372	HB 141
32-5-310	amended	Ch. 372	HB 141
32-5-321	repealed 10/1/2008	Ch. 372	HB 141
32-5-322	repealed 10/1/2008	Ch. 372	HB 141
32-5-323	repealed 10/1/2008	Ch. 372	HB 141
32-5-324	repealed 10/1/2008	Ch. 372	HB 141
32-5-401	amended	Ch. 372	HB 141
32-5-402	amended	Ch. 372	HB 141
32-5-403	amended	Ch. 372	HB 141
32-5-404	repealed 10/1/2008	Ch. 372	HB 141
32-5-405	amended	Ch. 372	HB 141

32-5-406	repealed 10/1/2008	Ch. 372	HB 141
32-5-407	amended	Ch. 372	HB 141
32-5-408	enacted	Ch. 372	HB 141
32-5-409	enacted	Ch. 372	HB 141
32-5-501	repealed 10/1/2008	Ch. 372	HB 141
32-5-502	repealed 10/1/2008	Ch. 372	HB 141
32-5-503	repealed 10/1/2008	Ch. 372	HB 141
32-5-504	repealed 10/1/2008	Ch. 372	HB 141
32-5-505	repealed 10/1/2008	Ch. 372	HB 141
32-5-506	repealed 10/1/2008	Ch. 372	HB 141
32-9-103	amended	Ch. 498	SB 92
32-9-108	amended	Ch. 498	SB 92
32-9-109	amended	Ch. 498	SB 92
32-9-110	amended	Ch. 498	SB 92
32-9-111	repealed	Ch. 498	SB 92
32-9-115	amended	Ch. 498	SB 92
32-9-117	amended	Ch. 498	SB 92
32-9-119	enacted	Ch. 498	SB 92
32-9-121	amended	Ch. 498	SB 92
32-9-122	amended	Ch. 498	SB 92
32-9-123	amended	Ch. 498	SB 92
32-9-124	amended	Ch. 498	SB 92
32-9-125	amended	Ch. 498	SB 92
32-9-126	amended	Ch. 498	SB 92
32-9-130	amended	Ch. 498	SB 92
32-9-131	repealed	Ch. 498	SB 92
32-9-133	amended	Ch. 498	SB 92
32-9-141	enacted	Ch. 498	SB 92
32-9-142	enacted	Ch. 498	SB 92
32-10-101	enacted	Ch. 369	HB 69
32-10-102	enacted	Ch. 369	HB 69
32-10-103	enacted	Ch. 369	HB 69
32-10-201	enacted	Ch. 369	HB 69
32-10-202	enacted	Ch. 369	HB 69
32-10-203	enacted	Ch. 369	HB 69
32-10-204	enacted	Ch. 369	HB 69
32-10-207	enacted	Ch. 369	HB 69
32-10-208	enacted	Ch. 369	HB 69
32-10-209	enacted	Ch. 369	HB 69
32-10-301	enacted	Ch. 369	HB 69
32-10-302	enacted	Ch. 369	HB 69
32-10-303	enacted	Ch. 369	HB 69
32-10-309	enacted	Ch. 369	HB 69
32-10-310	enacted	Ch. 369	HB 69
32-10-401	enacted	Ch. 369	HB 69
32-10-402	enacted	Ch. 369	HB 69
32-10-403	enacted	Ch. 369	HB 69
32-10-404	enacted	Ch. 369	HB 69
32-10-405	enacted	Ch. 369	HB 69
32-10-406	enacted	Ch. 369	HB 69
32-10-501	enacted	Ch. 369	HB 69
32-10-502	enacted	Ch. 369	HB 69
32-10-503	enacted	Ch. 369	HB 69
32-10-504	enacted	Ch. 369	HB 69
32-10-505	enacted	Ch. 369	HB 69
32-10-506	enacted	Ch. 369	HB 69
32-10-507	enacted	Ch. 369	HB 69
32-10-512	enacted	Ch. 369	HB 69
32-10-513	enacted	Ch. 369	HB 69
32-10-514	enacted	Ch. 369	HB 69
32-10-515	enacted	Ch. 369	HB 69
32-11-101	enacted	Ch. 411	SB 321
32-11-102	enacted	Ch. 411	SB 321

32-11-103	enacted	Ch. 411	SB 321
32-11-104	enacted	Ch. 411	SB 321
32-11-105	enacted	Ch. 411	SB 321
32-11-106	enacted	Ch. 411	SB 321
32-11-107	enacted	Ch. 411	SB 321
32-11-108	enacted	Ch. 411	SB 321
32-11-201	enacted	Ch. 411	SB 321
32-11-202	enacted	Ch. 411	SB 321
32-11-203	enacted	Ch. 411	SB 321
32-11-204	enacted	Ch. 411	SB 321
32-11-205	enacted	Ch. 411	SB 321
32-11-206	enacted	Ch. 411	SB 321
32-11-207	enacted	Ch. 411	SB 321
32-11-208	enacted	Ch. 411	SB 321
32-11-209	enacted	Ch. 411	SB 321
32-11-210	enacted	Ch. 411	SB 321
32-11-211	enacted	Ch. 411	SB 321
32-11-212	enacted	Ch. 411	SB 321
32-11-215	enacted	Ch. 411	SB 321
32-11-216	enacted	Ch. 411	SB 321
32-11-217	enacted	Ch. 411	SB 321
32-11-218	enacted	Ch. 411	SB 321
32-11-219	enacted	Ch. 411	SB 321
32-11-220	enacted	Ch. 411	SB 321
32-11-221	enacted	Ch. 411	SB 321
32-11-222	enacted	Ch. 411	SB 321
32-11-223	enacted	Ch. 411	SB 321
32-11-224	enacted	Ch. 411	SB 321
32-11-225	enacted	Ch. 411	SB 321
32-11-226	enacted	Ch. 411	SB 321
32-11-301	enacted	Ch. 411	SB 321
32-11-302	enacted	Ch. 411	SB 321
32-11-303	enacted	Ch. 411	SB 321
32-11-304	enacted	Ch. 411	SB 321
32-11-305	enacted	Ch. 411	SB 321
32-11-306	enacted	Ch. 411	SB 321
32-11-307	enacted	Ch. 411	SB 321
32-11-308	enacted	Ch. 411	SB 321
32-11-309	enacted	Ch. 411	SB 321
32-11-310	enacted	Ch. 411	SB 321
32-11-311	enacted	Ch. 411	SB 321
32-11-312	enacted	Ch. 411	SB 321
32-11-313	enacted	Ch. 411	SB 321
32-11-401	enacted	Ch. 411	SB 321
32-11-402	enacted	Ch. 411	SB 321
32-11-403	enacted	Ch. 411	SB 321
32-11-404	enacted	Ch. 411	SB 321
32-11-405	enacted	Ch. 411	SB 321
32-11-406	enacted	Ch. 411	SB 321
32-11-407	enacted	Ch. 411	SB 321
32-11-411	enacted	Ch. 411	SB 321
32-11-412	enacted	Ch. 411	SB 321
32-11-413	enacted	Ch. 411	SB 321
32-11-414	enacted	Ch. 411	SB 321
33-1-111	enacted	Ch. 249	HB 77
33-1-201	amended	Ch. 399	SB 157
33-1-311	amended	Ch. 399	SB 157
33-1-1302	amended	Ch. 44	SB 39
33-1-1303	amended	Ch. 44	SB 39
33-2-712	amended	Ch. 377	HB 278
33-4-312	amended	Ch. 399	SB 157
33-10-106	amended	Ch. 44	SB 39

33-17-211 . . . . . amended . . . . . Ch. 399 . . . . . SB 157
amended . . . . . Ch. 507 . . . . . SB 276
33-17-214 . . . . . amended . . . . . Ch. 399 . . . . . SB 157
amended . . . . . Ch. 507 . . . . . SB 276
33-17-232 . . . . . amended . . . . . Ch. 399 . . . . . SB 157
33-17-506 . . . . . repealed . . . . . Ch. 399 . . . . . SB 157
33-17-507 . . . . . repealed . . . . . Ch. 399 . . . . . SB 157
33-17-511 . . . . . amended . . . . . Ch. 399 . . . . . SB 157
33-17-1103 . . . . . amended . . . . . Ch. 399 . . . . . SB 157
33-18-103 . . . . . enacted . . . . . Ch. 333 . . . . . HB 764
33-18-224 . . . . . amended . . . . . Ch. 339 . . . . . SB 204
33-18-235 . . . . . amended . . . . . Ch. 399 . . . . . SB 157
33-18-301 . . . . . amended . . . . . Ch. 507 . . . . . SB 276
33-18-612 . . . . . enacted . . . . . Ch. 195 . . . . . HB 35
33-19-105 . . . . . amended . . . . . Ch. 399 . . . . . SB 157
33-19-321 . . . . . amended . . . . . Ch. 180 . . . . . HB 789
33-19-410 . . . . . enacted . . . . . Ch. 276 . . . . . HB 630
33-20-127 . . . . . amended . . . . . Ch. 32 . . . . . HB 156
33-20-128 . . . . . amended . . . . . Ch. 32 . . . . . HB 156
33-20-801 . . . . . enacted . . . . . Ch. 476 . . . . . SB 535
33-20-802 . . . . . enacted . . . . . Ch. 476 . . . . . SB 535
33-20-803 . . . . . enacted . . . . . Ch. 476 . . . . . SB 535
33-20-804 . . . . . enacted . . . . . Ch. 476 . . . . . SB 535
33-20-805 . . . . . enacted . . . . . Ch. 476 . . . . . SB 535
33-20-806 . . . . . enacted . . . . . Ch. 476 . . . . . SB 535
33-20-901 . . . . . enacted . . . . . Ch. 476 . . . . . SB 535
33-20-902 . . . . . enacted . . . . . Ch. 476 . . . . . SB 535
33-20-903 . . . . . enacted . . . . . Ch. 476 . . . . . SB 535
33-20-904 . . . . . enacted . . . . . Ch. 476 . . . . . SB 535
33-20-905 . . . . . enacted . . . . . Ch. 476 . . . . . SB 535
33-20-906 . . . . . enacted . . . . . Ch. 476 . . . . . SB 535
33-20-907 . . . . . enacted . . . . . Ch. 476 . . . . . SB 535
33-20-1101 . . . . . amended . . . . . Ch. 430 . . . . . SB 542
33-20-1111 . . . . . amended . . . . . Ch. 430 . . . . . SB 542
33-20-1209 . . . . . amended . . . . . Ch. 430 . . . . . SB 542
33-20-1303 . . . . . amended . . . . . Ch. 44 . . . . . SB 39
amended . . . . . Ch. 399 . . . . . SB 157
33-20-1315 . . . . . amended . . . . . Ch. 44 . . . . . SB 39
amended . . . . . Ch. 399 . . . . . SB 157
33-20-1501 . . . . . enacted . . . . . Ch. 507 . . . . . SB 276
33-20-1502 . . . . . enacted . . . . . Ch. 507 . . . . . SB 276
33-20-1503 . . . . . enacted . . . . . Ch. 507 . . . . . SB 276
33-22-101 . . . . . amended . . . . . Ch. 356 . . . . . SB 419
33-22-121 . . . . . amended . . . . . Ch. 399 . . . . . SB 157
33-22-122 . . . . . amended . . . . . Ch. 399 . . . . . SB 157
33-22-140 . . . . . amended . . . . . Ch. 356 . . . . . SB 419
33-22-152 . . . . . enacted . . . . . Ch. 356 . . . . . SB 419
33-22-244 . . . . . amended . . . . . Ch. 463 . . . . . SB 387
33-22-262 . . . . . amended . . . . . Ch. 463 . . . . . SB 387
33-22-303 . . . . . amended . . . . . Ch. 390 . . . . . HB 687
33-22-512 . . . . . amended . . . . . Ch. 390 . . . . . HB 687
33-22-513 . . . . . amended . . . . . Ch. 399 . . . . . SB 157
33-22-521 . . . . . amended . . . . . Ch. 463 . . . . . SB 387
33-22-1104 . . . . . enacted . . . . . Ch. 32 . . . . . HB 156
33-22-1107 . . . . . amended . . . . . Ch. 32 . . . . . HB 156
33-22-1111 . . . . . amended . . . . . Ch. 32 . . . . . HB 156
33-22-1115 . . . . . amended . . . . . Ch. 32 . . . . . HB 156
33-22-1116 . . . . . amended . . . . . Ch. 32 . . . . . HB 156
33-22-1119 . . . . . amended . . . . . Ch. 32 . . . . . HB 156
33-22-1121 . . . . . amended . . . . . Ch. 32 . . . . . HB 156
33-22-1123 . . . . . amended . . . . . Ch. 32 . . . . . HB 156
33-22-1124 . . . . . amended . . . . . Ch. 32 . . . . . HB 156
33-22-1125 . . . . . amended . . . . . Ch. 32 . . . . . HB 156

33-22-1126	enacted	Ch. 32	HB 156
33-22-1127	enacted	Ch. 32	HB 156
33-22-1128	enacted	Ch. 32	HB 156
33-22-1129	enacted	Ch. 32	HB 156
33-22-1517	amended	Ch. 399	SB 157
33-22-1803	amended	Ch. 356	SB 419
33-22-2001	amended	Ch. 44	SB 39
	amended	Ch. 399	SB 157
33-22-2002	amended	Ch. 399	SB 157
33-22-2004	amended	Ch. 399	SB 157
33-23-203	amended	Ch. 201	HB 587
33-25-212	amended	Ch. 399	SB 157
33-25-214	amended	Ch. 399	SB 157
33-28-101	amended	Ch. 518	SB 161
33-28-102	amended	Ch. 518	SB 161
33-28-104	amended	Ch. 518	SB 161
33-28-105	amended	Ch. 518	SB 161
33-28-106	amended	Ch. 518	SB 161
33-28-107	amended	Ch. 518	SB 161
33-28-108	amended	Ch. 518	SB 161
33-28-110	formerly 33-28-305	Ch. 518	SB 161
33-28-120	enacted	Ch. 518	SB 161
33-28-201	amended	Ch. 518	SB 161
33-28-202	amended	Ch. 518	SB 161
33-28-205	amended	Ch. 518	SB 161
33-28-206	amended	Ch. 518	SB 161
33-28-207	amended	Ch. 518	SB 161
33-28-301	amended	Ch. 518	SB 161
33-28-302	amended	Ch. 518	SB 161
33-28-303	amended	Ch. 518	SB 161
33-28-304	amended	Ch. 518	SB 161
33-28-305	renumbered 33-28-110	Ch. 518	SB 161
33-28-306	amended	Ch. 518	SB 161
33-28-310	enacted	Ch. 518	SB 161
33-30-1014	amended	Ch. 390	HB 687
33-30-1015	amended	Ch. 399	SB 157
33-31-102	amended	Ch. 356	SB 419
	amended	Ch. 463	SB 387
33-31-111	amended	Ch. 356	SB 419
	amended	Ch. 399	SB 157
33-31-301	amended	Ch. 390	HB 687
	amended	Ch. 463	SB 387
33-31-311	amended	Ch. 399	SB 157
33-35-103	amended	Ch. 399	SB 157
33-35-306	amended	Ch. 249	HB 77
	amended	Ch. 356	SB 419
	amended	Ch. 390	HB 687
	amended	Ch. 399	SB 157
33-36-103	amended	Ch. 502	SB 153
33-38-105	amended	Ch. 399	SB 157
35-1-113	amended	Ch. 33	HB 158
35-1-116	amended	Ch. 240	HB 153
35-1-216	amended	Ch. 240	HB 153
35-1-217	amended	Ch. 33	HB 158
35-1-226	amended	Ch. 240	HB 153
35-1-313	repealed 10/1/2008	Ch. 240	HB 153
35-1-314	repealed 10/1/2008	Ch. 240	HB 153
35-1-315	repealed 10/1/2008	Ch. 240	HB 153
35-1-316	repealed 10/1/2008	Ch. 240	HB 153
35-1-317	repealed 10/1/2008	Ch. 240	HB 153
35-1-425	amended	Ch. 240	HB 153
35-1-518	amended	Ch. 240	HB 153
35-1-523	amended	Ch. 240	HB 153

35-1-838 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-1-940 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-1-1028 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-1-1029 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-1-1032 . . . . . repealed 10/1/2008 . . . . . Ch. 240 . . . . . HB 153
35-1-1033 . . . . . repealed 10/1/2008 . . . . . Ch. 240 . . . . . HB 153
35-1-1034 . . . . . repealed 10/1/2008 . . . . . Ch. 240 . . . . . HB 153
35-1-1036 . . . . . repealed 10/1/2008 . . . . . Ch. 240 . . . . . HB 153
35-1-1037 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-1-1038 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-1-1040 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-1-1104 . . . . . amended . . . . . Ch. 33 . . . . . HB 158
amended . . . . . Ch. 240 . . . . . HB 153
35-1-1109 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-1-1309 . . . . . amended . . . . . Ch. 33 . . . . . HB 158
amended . . . . . Ch. 240 . . . . . HB 153
35-2-115 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-2-119 . . . . . amended . . . . . Ch. 33 . . . . . HB 158
35-2-130 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-2-213 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-2-222 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-2-309 . . . . . repealed 10/1/2008 . . . . . Ch. 240 . . . . . HB 153
35-2-310 . . . . . repealed 10/1/2008 . . . . . Ch. 240 . . . . . HB 153
35-2-311 . . . . . repealed 10/1/2008 . . . . . Ch. 240 . . . . . HB 153
35-2-314 . . . . . repealed 10/1/2008 . . . . . Ch. 240 . . . . . HB 153
35-2-315 . . . . . repealed 10/1/2008 . . . . . Ch. 240 . . . . . HB 153
35-2-423 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-2-528 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-2-535 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-2-609 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-2-613 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-2-729 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-2-822 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-2-823 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-2-827 . . . . . repealed 10/1/2008 . . . . . Ch. 240 . . . . . HB 153
35-2-828 . . . . . repealed 10/1/2008 . . . . . Ch. 240 . . . . . HB 153
35-2-829 . . . . . repealed 10/1/2008 . . . . . Ch. 240 . . . . . HB 153
35-2-832 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-2-904 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-2-909 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-2-1109 . . . . . amended . . . . . Ch. 33 . . . . . HB 158
amended . . . . . Ch. 240 . . . . . HB 153
35-2-1401 . . . . . amended . . . . . Ch. 135 . . . . . HB 412
35-3-202 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-3-209 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-3-210 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-4-311 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-4-411 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-6-102 . . . . . amended . . . . . Ch. 240 . . . . . HB 153
35-7-101. . . . . enacted . . . . . Ch. 240 . . . . . HB 153
35-7-102. . . . . enacted . . . . . Ch. 240 . . . . . HB 153
35-7-103. . . . . enacted . . . . . Ch. 240 . . . . . HB 153
35-7-104. . . . . enacted . . . . . Ch. 240 . . . . . HB 153
35-7-105. . . . . enacted . . . . . Ch. 240 . . . . . HB 153
35-7-106. . . . . enacted . . . . . Ch. 240 . . . . . HB 153
35-7-107. . . . . enacted . . . . . Ch. 240 . . . . . HB 153
35-7-108. . . . . enacted . . . . . Ch. 240 . . . . . HB 153
35-7-109. . . . . enacted . . . . . Ch. 240 . . . . . HB 153
35-7-110. . . . . enacted . . . . . Ch. 240 . . . . . HB 153
35-7-111. . . . . enacted . . . . . Ch. 240 . . . . . HB 153
35-7-112. . . . . enacted . . . . . Ch. 240 . . . . . HB 153
35-7-113. . . . . enacted . . . . . Ch. 240 . . . . . HB 153
35-7-114. . . . . enacted . . . . . Ch. 240 . . . . . HB 153

35-7-115	enacted	Ch. 240	HB 153
35-7-116	enacted	Ch. 240	HB 153
35-7-117	enacted	Ch. 240	HB 153
35-8-102	amended	Ch. 33	HB 158
35-8-105	repealed 10/1/2008	Ch. 240	HB 153
35-8-202	amended	Ch. 240	HB 153
35-8-208	amended	Ch. 33	HB 158
	amended	Ch. 240	HB 153
35-8-209	amended	Ch. 240	HB 153
35-8-911	repealed 10/1/2008	Ch. 240	HB 153
35-8-1003	amended	Ch. 240	HB 153
35-8-1004	repealed 10/1/2008	Ch. 240	HB 153
35-8-1005	repealed 10/1/2008	Ch. 240	HB 153
35-8-1006	repealed 10/1/2008	Ch. 240	HB 153
35-8-1011	amended	Ch. 240	HB 153
35-8-1014	amended	Ch. 240	HB 153
35-8-1103	repealed 10/1/2008	Ch. 240	HB 153
35-8-1203	amended	Ch. 240	HB 153
35-9-207	amended	Ch. 240	HB 153
35-9-501	amended	Ch. 240	HB 153
35-12-507	repealed 10/1/2008	Ch. 240	HB 153
35-12-508	amended	Ch. 240	HB 153
35-12-601	amended	Ch. 240	HB 153
35-18-104	amended	Ch. 234	SB 369
35-19-102	amended	Ch. 491	HB 25
37-1-101	amended	Ch. 11	SB 54
	amended	Ch. 44	SB 39
	amended	Ch. 225	SB 453
37-1-107	enacted	Ch. 11	SB 54
37-1-130	amended	Ch. 502	SB 153
37-1-131	amended	Ch. 225	SB 453
	amended	Ch. 502	SB 153
37-1-136	amended	Ch. 225	SB 453
37-1-201	amended	Ch. 389	HB 668
37-1-302	amended	Ch. 502	SB 153
37-1-303	amended	Ch. 44	SB 39
37-1-307	amended	Ch. 389	HB 668
37-1-311	amended	Ch. 225	SB 453
37-1-401	amended	Ch. 11	SB 54
	amended	Ch. 502	SB 153
37-1-405	amended	Ch. 225	SB 453
37-1-410	amended	Ch. 502	SB 153
37-2-104	amended	Ch. 125	HB 118
37-3-203	amended	Ch. 137	HB 770
37-3-208	enacted	Ch. 271	HB 468
37-7-103	amended	Ch. 125	HB 118
37-8-102	amended	Ch. 502	SB 153
37-8-202	amended	Ch. 44	SB 39
37-8-405	amended	Ch. 502	SB 153
37-8-415	amended	Ch. 502	SB 153
37-9-102	enacted	Ch. 107	HB 378
37-10-302	amended	Ch. 502	SB 153
37-15-302	amended	Ch. 502	SB 153
37-16-405	amended	Ch. 502	SB 153
37-18-306	amended	Ch. 502	SB 153
37-22-101	amended	Ch. 460	SB 342
37-22-301	amended	Ch. 460	SB 342
37-23-101	amended	Ch. 460	SB 342
37-23-202	amended	Ch. 460	SB 342
37-26-201	amended	Ch. 502	SB 153
37-26-403	amended	Ch. 502	SB 153
37-27-302	amended	Ch. 44	SB 39
37-31-101	amended	Ch. 36	HB 255

37-31-331	amended	Ch. 44	SB 39
37-36-101	enacted	Ch. 388	HB 665
37-36-102	enacted	Ch. 388	HB 665
37-36-201	enacted	Ch. 388	HB 665
37-36-202	enacted	Ch. 388	HB 665
37-36-203	enacted	Ch. 388	HB 665
37-36-204	enacted	Ch. 388	HB 665
37-36-205	enacted	Ch. 388	HB 665
37-42-102	amended	Ch. 423	SB 446
37-47-103	enacted	Ch. 502	SB 153
37-47-201	amended	Ch. 44	SB 39
37-47-318	amended	Ch. 502	SB 153
37-47-341	amended	Ch. 502	SB 153
37-47-344	amended	Ch. 445	SB 100
37-48-101	amended	Ch. 178	HB 769
37-48-102	amended	Ch. 178	HB 769
37-48-103	amended	Ch. 178	HB 769
37-48-106	enacted	Ch. 178	HB 769
37-48-107	enacted	Ch. 178	HB 769
37-48-108	enacted	Ch. 178	HB 769
37-48-113	enacted	Ch. 178	HB 769
37-48-115	enacted	Ch. 178	HB 769
37-48-118	enacted	Ch. 178	HB 769
37-51-102	amended	Ch. 502	SB 153
37-51-301	amended	Ch. 502	SB 153
37-51-302	amended	Ch. 502	SB 153
37-51-313	amended	Ch. 118	SB 319
37-51-324	enacted	Ch. 502	SB 153
37-60-101	amended	Ch. 405	SB 209
	amended	Ch. 502	SB 153
37-60-103	amended	Ch. 405	SB 209
	amended	Ch. 502	SB 153
37-60-105	amended	Ch. 405	SB 209
37-60-202	amended	Ch. 405	SB 209
	amended	Ch. 502	SB 153
37-60-301	amended	Ch. 405	SB 209
	amended	Ch. 502	SB 153
37-60-302	amended	Ch. 502	SB 153
37-60-303	amended	Ch. 405	SB 209
	amended	Ch. 502	SB 153
37-60-304	amended	Ch. 405	SB 209
	amended	Ch. 502	SB 153
37-60-309	amended	Ch. 502	SB 153
37-60-310	amended	Ch. 502	SB 153
37-60-314	amended	Ch. 502	SB 153
37-60-315	repealed	Ch. 502	SB 153
37-60-402	amended	Ch. 502	SB 153
37-60-403	amended	Ch. 502	SB 153
37-60-405	amended	Ch. 405	SB 209
37-60-406	repealed	Ch. 502	SB 153
37-60-409	amended	Ch. 502	SB 153
37-65-102	amended	Ch. 11	SB 54
37-65-204	amended	Ch. 11	SB 54
37-65-311	enacted	Ch. 502	SB 153
37-65-323	amended	Ch. 11	SB 54
37-66-103	amended	Ch. 11	SB 54
37-66-201	repealed	Ch. 11	SB 54
37-66-202	repealed	Ch. 11	SB 54
37-66-309	enacted	Ch. 11	SB 54
37-69-311	enacted	Ch. 502	SB 153
37-73-208	amended	Ch. 502	SB 153
37-73-216	amended	Ch. 44	SB 39
37-76-101	repealed	Ch. 11	SB 54

37-76-102	repealed	Ch. 11	SB	54
37-76-103	repealed	Ch. 11	SB	54
37-76-104	repealed	Ch. 11	SB	54
37-76-105	repealed	Ch. 11	SB	54
37-76-106	repealed	Ch. 11	SB	54
37-76-107	repealed	Ch. 11	SB	54
37-76-108	repealed	Ch. 11	SB	54
37-76-109	repealed	Ch. 11	SB	54
37-76-113	repealed	Ch. 11	SB	54
37-76-114	repealed	Ch. 11	SB	54
37-76-115	repealed	Ch. 11	SB	54
37-76-116	repealed	Ch. 11	SB	54
37-76-117	repealed	Ch. 11	SB	54
37-76-118	repealed	Ch. 11	SB	54
37-76-119	repealed	Ch. 11	SB	54
37-76-120	repealed	Ch. 11	SB	54
37-76-121	repealed	Ch. 11	SB	54
37-76-122	repealed	Ch. 11	SB	54
37-76-123	repealed	Ch. 11	SB	54
39-2-215	enacted	Ch. 290	SB	89
39-2-216	enacted	Ch. 290	SB	89
39-2-217	enacted	Ch. 290	SB	89
39-3-213	amended	Ch. 46	HB	43
39-3-501	amended	Ch. 110	HB	623
39-8-202	amended	Ch. 15	HB	72
39-8-205	amended	Ch. 15	HB	72
39-8-207	amended	Ch. 15	HB	72
39-11-202	amended	Ch. 177	HB	756
39-51-201	amended	Ch. 52	HB	111
39-51-203	amended	Ch. 52	HB	111
39-51-204	amended	Ch. 52	HB	111
	amended	Ch. 340	SB	214
39-51-207	enacted	Ch. 52	HB	111
39-51-301	amended	Ch. 52	HB	111
	amended	Ch. 81	HB	13
39-51-404	amended	Ch. 362	HB	790
39-51-405	amended	Ch. 52	HB	111
39-51-406	amended	Ch. 52	HB	111
39-51-409	amended	Ch. 362	HB	790
39-51-1105	amended	Ch. 52	HB	111
39-51-1109	amended	Ch. 52	HB	111
39-51-1121	amended	Ch. 362	HB	790
39-51-1212	amended	Ch. 362	HB	790
39-51-1214	amended	Ch. 52	HB	111
39-51-1218	amended	Ch. 52	HB	111
	amended	Ch. 362	HB	790
39-51-2201	amended	Ch. 86	HB	58
39-51-2208	amended	Ch. 205	HB	782
39-51-2302	amended	Ch. 52	HB	111
	amended	Ch. 86	HB	58
39-51-2304	amended	Ch. 52	HB	111
39-51-2306	amended	Ch. 52	HB	111
39-51-2510	amended	Ch. 52	HB	111
39-51-3207	amended	Ch. 362	HB	790
39-71-107	amended	Ch. 117	SB	108
39-71-116	amended	Ch. 359	SB	444
39-71-118	amended	Ch. 449	SB	130
39-71-201	amended	Ch. 117	SB	108
39-71-225	amended	Ch. 48	HB	65
39-71-325	enacted	Ch. 117	SB	108
39-71-401	amended	Ch. 179	HB	786
	amended	Ch. 288	HB	785
39-71-415	amended	Ch. 117	SB	108

39-71-417 . . . . . amended . . . . . Ch. 117 . . . . . SB 108
amended . . . . . Ch. 340 . . . . . SB 214
39-71-418 . . . . . amended . . . . . Ch. 117 . . . . . SB 108
39-71-503 . . . . . amended . . . . . Ch. 48 . . . . . HB 65
39-71-508 . . . . . amended . . . . . Ch. 48 . . . . . HB 65
39-71-510 . . . . . amended . . . . . Ch. 48 . . . . . HB 65
39-71-522. . . . . enacted . . . . . Ch. 48 . . . . . HB 65
39-71-704 . . . . . amended (voided by sec. 3, Ch. 330) . . . . . Ch. 117 . . . . . SB 108
amended . . . . . Ch. 330 . . . . . HB 738
39-71-727 . . . . . amended . . . . . Ch. 117 . . . . . SB 108
39-71-742 . . . . . amended . . . . . Ch. 12 . . . . . SB 97
39-71-743 . . . . . amended . . . . . Ch. 12 . . . . . SB 97
amended . . . . . Ch. 330 . . . . . HB 738
39-71-907 . . . . . amended . . . . . Ch. 48 . . . . . HB 65
39-71-915 . . . . . amended . . . . . Ch. 48 . . . . . HB 65
39-71-916. . . . . enacted . . . . . Ch. 48 . . . . . HB 65
39-71-1107 . . . . . amended . . . . . Ch. 117 . . . . . SB 108
39-71-2106 . . . . . amended . . . . . Ch. 117 . . . . . SB 108
39-71-2201 . . . . . amended . . . . . Ch. 117 . . . . . SB 108
39-71-2204 . . . . . amended . . . . . Ch. 117 . . . . . SB 108
39-71-2205 . . . . . amended . . . . . Ch. 117 . . . . . SB 108
39-71-2208 . . . . . repealed . . . . . Ch. 117 . . . . . SB 108
39-71-2215. . . . . enacted . . . . . Ch. 117 . . . . . SB 108
39-71-2321 . . . . . amended . . . . . Ch. 475 . . . . . SB 525
39-71-2337 . . . . . amended . . . . . Ch. 117 . . . . . SB 108
39-73-101 . . . . . amended . . . . . Ch. 232 . . . . . HB 540
39-73-103 . . . . . amended . . . . . Ch. 232 . . . . . HB 540
39-73-104 . . . . . amended . . . . . Ch. 232 . . . . . HB 540
39-73-107 . . . . . amended . . . . . Ch. 232 . . . . . HB 540
39-73-109 . . . . . amended . . . . . Ch. 232 . . . . . HB 540
40-1-202 . . . . . amended . . . . . Ch. 235 . . . . . HB 361
amended . . . . . Ch. 294 . . . . . SB 132
40-1-203 . . . . . amended . . . . . Ch. 294 . . . . . SB 132
40-1-205 . . . . . amended . . . . . Ch. 294 . . . . . SB 132
40-1-206 . . . . . amended . . . . . Ch. 294 . . . . . SB 132
40-1-208 . . . . . amended . . . . . Ch. 294 . . . . . SB 132
40-1-301 . . . . . amended . . . . . Ch. 235 . . . . . HB 361
40-5-222 . . . . . amended . . . . . Ch. 202 . . . . . HB 617
40-5-227 . . . . . amended . . . . . Ch. 202 . . . . . HB 617
40-6-402 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
40-6-501. . . . . enacted . . . . . Ch. 393 . . . . . SB 48
40-6-502. . . . . enacted . . . . . Ch. 393 . . . . . SB 48
40-6-601. . . . . enacted . . . . . Ch. 496 . . . . . SB 31
40-6-602. . . . . enacted . . . . . Ch. 496 . . . . . SB 31
40-9-102 . . . . . amended . . . . . Ch. 495 . . . . . SB 27
40-15-102 . . . . . amended . . . . . Ch. 465 . . . . . SB 411
41-3-110. . . . . enacted . . . . . Ch. 166 . . . . . HB 91
41-3-115 . . . . . amended . . . . . Ch. 166 . . . . . HB 91
41-3-120. . . . . enacted . . . . . Ch. 165 . . . . . HB 57
41-3-201 . . . . . amended . . . . . Ch. 166 . . . . . HB 91
41-3-205 . . . . . amended . . . . . Ch. 166 . . . . . HB 91
41-3-301 . . . . . amended . . . . . Ch. 212 . . . . . SB 193
41-3-422 . . . . . amended . . . . . Ch. 166 . . . . . HB 91
41-3-423 . . . . . amended . . . . . Ch. 166 . . . . . HB 91
41-3-425 . . . . . amended . . . . . Ch. 511 . . . . . SB 348
41-3-432 . . . . . amended . . . . . Ch. 166 . . . . . HB 91
41-3-438 . . . . . amended . . . . . Ch. 73 . . . . . SB 83
41-3-442 . . . . . amended . . . . . Ch. 73 . . . . . SB 83
41-3-445 . . . . . amended . . . . . Ch. 73 . . . . . SB 83
amended . . . . . Ch. 166 . . . . . HB 91
41-5-103 . . . . . amended . . . . . Ch. 398 . . . . . SB 146
41-5-104 . . . . . repealed . . . . . Ch. 398 . . . . . SB 146
41-5-112 . . . . . amended . . . . . Ch. 398 . . . . . SB 146

41-5-113	enacted	Ch. 398	SB	146
41-5-121	amended	Ch. 398	SB	146
41-5-123	repealed	Ch. 398	SB	146
41-5-124	amended	Ch. 398	SB	146
41-5-130	amended	Ch. 398	SB	146
41-5-131	amended	Ch. 398	SB	146
41-5-132	amended	Ch. 398	SB	146
41-5-206	amended	Ch. 483	SB	547
41-5-216	amended	Ch. 139	SB	119
	amended	Ch. 483	SB	547
41-5-1503	amended	Ch. 398	SB	146
41-5-1512	amended	Ch. 398	SB	146
41-5-1513	amended	Ch. 398	SB	146
	amended	Ch. 483	SB	547
41-5-1522	amended	Ch. 398	SB	146
41-5-1523	amended	Ch. 398	SB	146
41-5-1706	amended	Ch. 506	SB	273
41-5-1808	formerly 44-4-305	Ch. 506	SB	273
41-5-2002	amended	Ch. 398	SB	146
41-5-2003	amended	Ch. 398	SB	146
41-5-2004	amended	Ch. 398	SB	146
41-5-2005	amended	Ch. 398	SB	146
41-5-2006	amended	Ch. 398	SB	146
41-5-2011	amended	Ch. 398	SB	146
41-5-2012	enacted	Ch. 398	SB	146
44-1-302	amended	Ch. 244	HB	636
44-1-504	amended	Ch. 44	SB	39
	amended	Ch. 81	HB	13
44-1-511	amended	Ch. 12	SB	97
44-2-117	amended	Ch. 287	HB	781
44-4-301	amended	Ch. 506	SB	273
44-4-302	repealed	Ch. 506	SB	273
44-4-305	amended and renumbered 41-5-1808	Ch. 506	SB	273
44-4-401	enacted	Ch. 506	SB	273
44-4-402	enacted	Ch. 506	SB	273
44-4-403	enacted	Ch. 506	SB	273
44-4-404	enacted	Ch. 506	SB	273
44-4-902	amended	Ch. 506	SB	273
44-5-103	amended	Ch. 449	SB	130
44-5-202	amended	Ch. 141	SB	141
44-5-303	amended	Ch. 449	SB	130
44-11-309	repealed	Ch. 94	HB	128
44-11-310	amended	Ch. 94	HB	128
45-1-205	amended	Ch. 446	SB	104
	amended	Ch. 483	SB	547
45-2-101	amended	Ch. 155	HB	521
45-2-204	enacted	Ch. 464	SB	404
45-5-202	amended	Ch. 472	SB	486
45-5-209	amended	Ch. 44	SB	39
45-5-305	enacted	Ch. 147	SB	385
45-5-306	enacted	Ch. 147	SB	385
45-5-501	amended	Ch. 321	HB	514
	amended	Ch. 335	SB	50
45-5-502	amended	Ch. 321	HB	514
	amended	Ch. 335	SB	50
45-5-503	amended	Ch. 335	SB	50
	amended	Ch. 483	SB	547
45-5-507	amended	Ch. 483	SB	547
45-5-512	amended	Ch. 483	SB	547
45-5-601	amended	Ch. 483	SB	547
45-5-602	amended	Ch. 483	SB	547
45-5-603	amended	Ch. 483	SB	547
45-5-620	repealed	Ch. 29	HB	82

45-5-622 . . . . . amended . . . . . Ch. 75 . . . . . SB 85
45-5-624 . . . . . amended . . . . . Ch. 245 . . . . . HB 641
45-5-625 . . . . . amended . . . . . Ch. 29 . . . . . HB 82
amended . . . . . Ch. 483 . . . . . SB 547
45-6-105 . . . . . enacted . . . . . Ch. 413 . . . . . SB 350
45-6-203 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
45-6-332 . . . . . amended . . . . . Ch. 180 . . . . . HB 789
45-7-202 . . . . . amended . . . . . Ch. 407 . . . . . SB 253
45-8-116 . . . . . enacted . . . . . Ch. 10 . . . . . SB 15
45-8-206 . . . . . amended . . . . . Ch. 180 . . . . . HB 789
45-8-213 . . . . . amended . . . . . Ch. 214 . . . . . SB 282
45-8-220 . . . . . enacted . . . . . Ch. 404 . . . . . SB 192
45-8-322 . . . . . amended . . . . . Ch. 180 . . . . . HB 789
46-1-501 . . . . . enacted . . . . . Ch. 203 . . . . . HB 629
46-1-502 . . . . . enacted . . . . . Ch. 203 . . . . . HB 629
46-1-503 . . . . . enacted . . . . . Ch. 203 . . . . . HB 629
46-1-504 . . . . . enacted . . . . . Ch. 203 . . . . . HB 629
46-1-505 . . . . . enacted . . . . . Ch. 203 . . . . . HB 629
46-1-506 . . . . . enacted . . . . . Ch. 203 . . . . . HB 629
46-1-507 . . . . . enacted . . . . . Ch. 203 . . . . . HB 629
46-1-1201 . . . . . enacted . . . . . Ch. 514 . . . . . SB 382
46-1-1202 . . . . . enacted . . . . . Ch. 514 . . . . . SB 382
46-1-1203 . . . . . enacted . . . . . Ch. 514 . . . . . SB 382
46-1-1204 . . . . . enacted . . . . . Ch. 514 . . . . . SB 382
46-1-1211 . . . . . enacted . . . . . Ch. 514 . . . . . SB 382
46-1-1212 . . . . . enacted . . . . . Ch. 514 . . . . . SB 382
46-1-1213 . . . . . enacted . . . . . Ch. 514 . . . . . SB 382
46-1-1214 . . . . . enacted . . . . . Ch. 514 . . . . . SB 382
46-4-103 . . . . . amended . . . . . Ch. 345 . . . . . SB 287
46-4-123 . . . . . amended . . . . . Ch. 268 . . . . . HB 459
46-5-222 . . . . . amended . . . . . Ch. 434 . . . . . HB 353
46-6-420 . . . . . amended . . . . . Ch. 244 . . . . . HB 636
46-8-104 . . . . . amended . . . . . Ch. 417 . . . . . SB 379
46-14-202 . . . . . amended . . . . . Ch. 140 . . . . . SB 124
46-14-221 . . . . . amended . . . . . Ch. 140 . . . . . SB 124
46-16-216 . . . . . repealed . . . . . Ch. 488 . . . . . HB 491
46-16-221 . . . . . enacted . . . . . Ch. 282 . . . . . HB 742
46-16-226 . . . . . enacted . . . . . Ch. 488 . . . . . HB 491
46-16-227 . . . . . enacted . . . . . Ch. 488 . . . . . HB 491
46-16-228 . . . . . enacted . . . . . Ch. 488 . . . . . HB 491
46-16-229 . . . . . enacted . . . . . Ch. 488 . . . . . HB 491
46-17-202 . . . . . amended . . . . . Ch. 133 . . . . . HB 341
46-18-111 . . . . . amended . . . . . Ch. 483 . . . . . SB 547
46-18-201 . . . . . amended . . . . . Ch. 483 . . . . . SB 547
46-18-202 . . . . . amended . . . . . Ch. 483 . . . . . SB 547
46-18-203 . . . . . amended . . . . . Ch. 483 . . . . . SB 547
46-18-204 . . . . . amended . . . . . Ch. 515 . . . . . SB 433
46-18-205 . . . . . amended . . . . . Ch. 483 . . . . . SB 547
46-18-207 . . . . . enacted . . . . . Ch. 483 . . . . . SB 547
46-18-208 . . . . . enacted . . . . . Ch. 515 . . . . . SB 433
46-18-222 . . . . . amended . . . . . Ch. 483 . . . . . SB 547
46-18-231 . . . . . amended . . . . . Ch. 483 . . . . . SB 547
46-18-261 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
46-23-210 . . . . . amended . . . . . Ch. 250 . . . . . HB 83
46-23-502 . . . . . amended . . . . . Ch. 483 . . . . . SB 547
46-23-504 . . . . . amended . . . . . Ch. 254 . . . . . HB 272
amended . . . . . Ch. 483 . . . . . SB 547
46-23-505 . . . . . amended . . . . . Ch. 254 . . . . . HB 272
amended . . . . . Ch. 483 . . . . . SB 547
46-23-506 . . . . . amended . . . . . Ch. 483 . . . . . SB 547
46-23-508 . . . . . amended (voided by sec. 6, Ch. 254) . . . . . Ch. 254 . . . . . HB 272
amended . . . . . Ch. 483 . . . . . SB 547
46-23-509 . . . . . amended . . . . . Ch. 483 . . . . . SB 547

46-23-1003	amended	Ch. 506	SB 273
46-23-1011	amended	Ch. 483	SB 547
46-23-1021	amended	Ch. 238	HB 452
46-23-1027	enacted	Ch. 238	HB 452
46-24-106	amended	Ch. 424	SB 447
46-24-201	amended	Ch. 424	SB 447
46-24-218	enacted	Ch. 195	HB 35
46-24-219	enacted	Ch. 195	HB 35
46-24-220	amended	Ch. 195	HB 35
49-2-501	amended	Ch. 28	HB 76
49-2-503	amended	Ch. 28	HB 76
49-2-504	amended	Ch. 28	HB 76
49-2-505	amended	Ch. 28	HB 76
49-2-506	amended	Ch. 28	HB 76
49-2-507	repealed	Ch. 28	HB 76
49-2-508	amended	Ch. 28	HB 76
49-2-509	repealed	Ch. 28	HB 76
49-2-510	amended	Ch. 28	HB 76
49-2-511	enacted	Ch. 28	HB 76
49-2-512	enacted	Ch. 28	HB 76
49-4-302	amended	Ch. 59	SB 30
49-4-304	amended	Ch. 59	SB 30
50-1-101	amended	Ch. 150	HB 92
50-1-105	enacted	Ch. 150	HB 92
50-1-106	enacted	Ch. 150	HB 92
50-1-202	amended	Ch. 150	HB 92
50-1-211	amended	Ch. 473	SB 505
50-2-101	repealed	Ch. 150	HB 92
50-2-116	amended	Ch. 150	HB 92
50-2-118	amended	Ch. 150	HB 92
50-2-130	amended	Ch. 150	HB 92
50-3-101	amended	Ch. 449	SB 130
50-3-102	amended	Ch. 449	SB 130
50-3-106	amended	Ch. 449	SB 130
50-4-603	amended	Ch. 119	SB 323
50-4-703	amended	Ch. 399	SB 157
50-4-801	enacted	Ch. 436	HB 406
50-4-802	enacted	Ch. 436	HB 406
50-4-803	enacted	Ch. 436	HB 406
50-4-804	enacted	Ch. 436	HB 406
50-4-805	enacted	Ch. 436	HB 406
50-4-806	enacted	Ch. 436	HB 406
50-4-810	enacted	Ch. 436	HB 406
50-4-811	enacted	Ch. 436	HB 406
50-4-815	enacted	Ch. 436	HB 406
50-5-101	amended	Ch. 466	SB 417
50-5-105	amended	Ch. 351	SB 312
50-5-117	enacted	Ch. 351	SB 312
50-5-203	amended	Ch. 466	SB 417
50-5-207	amended	Ch. 351	SB 312
50-5-215	amended	Ch. 449	SB 130
50-5-245	amended	Ch. 466	SB 417
50-6-502	amended	Ch. 291	SB 95
50-6-503	amended	Ch. 291	SB 95
50-6-505	amended	Ch. 291	SB 95
50-9-105	amended	Ch. 345	SB 287
50-9-106	amended	Ch. 480	HB 683
50-10-103	amended	Ch. 345	SB 287
50-15-101	amended	Ch. 474	SB 518
50-15-208	enacted	Ch. 474	SB 518
50-19-203	amended	Ch. 401	SB 162
50-19-211	amended	Ch. 401	SB 162
50-19-403	amended	Ch. 449	SB 130

50-19-501 . . . . . amended . . . . . Ch. 29 . . . . . HB 82
50-31-307 . . . . . amended . . . . . Ch. 125 . . . . . HB 118
50-32-226 . . . . . amended . . . . . Ch. 108 . . . . . HB 449
50-32-232 . . . . . amended . . . . . Ch. 108 . . . . . HB 449
50-32-314 . . . . . amended . . . . . Ch. 502 . . . . . SB 153
50-37-107 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
50-37-108 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
50-37-109 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
50-48-102 . . . . . amended . . . . . Ch. 150 . . . . . HB 92
50-51-114. . . . . enacted . . . . . Ch. 375 . . . . . HB 240
50-51-115. . . . . enacted . . . . . Ch. 375 . . . . . HB 240
50-53-102 . . . . . amended . . . . . Ch. 150 . . . . . HB 92
amended . . . . . Ch. 310 . . . . . HB 148
50-53-103 . . . . . amended . . . . . Ch. 310 . . . . . HB 148
50-53-115 . . . . . amended . . . . . Ch. 422 . . . . . SB 431
50-53-201 . . . . . amended . . . . . Ch. 310 . . . . . HB 148
50-53-202 . . . . . amended . . . . . Ch. 310 . . . . . HB 148
50-53-203 . . . . . amended . . . . . Ch. 310 . . . . . HB 148
50-53-206 . . . . . amended . . . . . Ch. 310 . . . . . HB 148
50-57-101 . . . . . amended . . . . . Ch. 395 . . . . . SB 94
50-57-102 . . . . . amended . . . . . Ch. 395 . . . . . SB 94
50-57-105 . . . . . amended . . . . . Ch. 395 . . . . . SB 94
50-60-106 . . . . . amended . . . . . Ch. 98 . . . . . HB 145
50-60-115 . . . . . amended . . . . . Ch. 44 . . . . . SB 39
50-60-202 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
50-60-705 . . . . . amended . . . . . Ch. 44 . . . . . SB 39
50-60-901. . . . . enacted . . . . . Ch. 443 . . . . . SB 51
50-60-902. . . . . enacted . . . . . Ch. 443 . . . . . SB 51
50-61-102 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
50-61-114 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
50-61-115 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
50-61-121 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
50-62-101 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
50-62-102 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
50-62-103 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
50-62-112 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
50-63-102 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
50-63-103 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
50-63-202 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
50-63-203 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
50-63-401 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
50-63-402 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
50-63-404 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
50-65-101. . . . . enacted . . . . . Ch. 318 . . . . . HB 461
50-65-102. . . . . enacted . . . . . Ch. 318 . . . . . HB 461
50-65-103. . . . . enacted . . . . . Ch. 318 . . . . . HB 461
50-65-104. . . . . enacted . . . . . Ch. 318 . . . . . HB 461
50-65-110. . . . . enacted . . . . . Ch. 318 . . . . . HB 461
50-65-111. . . . . enacted . . . . . Ch. 318 . . . . . HB 461
50-65-112. . . . . enacted . . . . . Ch. 318 . . . . . HB 461
50-65-115. . . . . enacted . . . . . Ch. 318 . . . . . HB 461
50-65-120. . . . . enacted . . . . . Ch. 318 . . . . . HB 461
50-65-121. . . . . enacted . . . . . Ch. 318 . . . . . HB 461
50-78-102 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
52-2-301 . . . . . amended . . . . . Ch. 123 . . . . . HB 98
52-2-308 . . . . . amended . . . . . Ch. 123 . . . . . HB 98
52-2-309. . . . . enacted . . . . . Ch. 123 . . . . . HB 98
52-2-713 . . . . . amended . . . . . Ch. 126 . . . . . HB 120
52-2-733 . . . . . amended . . . . . Ch. 126 . . . . . HB 120
amended . . . . . Ch. 449 . . . . . SB 130
52-2-734 . . . . . amended . . . . . Ch. 449 . . . . . SB 130
52-3-115. . . . . enacted . . . . . Ch. 482 . . . . . SB 155
52-3-604 . . . . . amended . . . . . Ch. 60 . . . . . SB 32

52-4-205	amended	Ch. 449	SB 130
52-5-109	amended	Ch. 398	SB 146
53-1-203	amended	Ch. 398	SB 146
	amended	Ch. 483	SB 547
53-1-404	amended	Ch. 76	SB 90
53-2-108	amended	Ch. 205	HB 782
53-2-1203	amended	Ch. 224	SB 440
53-4-1004	amended	Ch. 490	SB 22
53-4-1005	amended	Ch. 169	HB 198
53-4-1007	amended	Ch. 129	HB 157
53-4-1012	amended	Ch. 129	HB 157
53-6-124	enacted	Ch. 414	SB 354
53-6-125	enacted	Ch. 414	SB 354
53-6-126	enacted	Ch. 414	SB 354
53-6-127	enacted	Ch. 414	SB 354
53-6-1201	amended	Ch. 482	SB 155
53-9-104	amended	Ch. 266	HB 435
53-9-112	enacted	Ch. 266	HB 435
53-19-302	amended	Ch. 325	HB 611
53-19-306	amended	Ch. 325	HB 611
53-19-307	amended	Ch. 325	HB 611
53-19-308	amended	Ch. 325	HB 611
53-19-310	amended	Ch. 325	HB 611
53-19-311	amended	Ch. 325	HB 611
53-19-312	repealed	Ch. 325	HB 611
53-19-315	enacted	Ch. 325	HB 611
53-19-316	enacted	Ch. 325	HB 611
53-19-317	enacted	Ch. 325	HB 611
53-19-318	enacted	Ch. 325	HB 611
53-19-319	enacted	Ch. 325	HB 611
53-19-401	amended	Ch. 251	HB 117
53-19-402	amended	Ch. 251	HB 117
53-19-403	repealed	Ch. 251	HB 117
53-19-404	amended	Ch. 251	HB 117
53-20-102	amended	Ch. 122	HB 64
	amended	Ch. 252	HB 154
53-20-110	enacted	Ch. 252	HB 154
53-20-112	amended	Ch. 252	HB 154
53-20-118	amended	Ch. 252	HB 154
53-20-121	amended	Ch. 252	HB 154
53-20-125	amended	Ch. 34	HB 162
	amended	Ch. 252	HB 154
53-20-126	amended	Ch. 252	HB 154
53-20-128	amended	Ch. 252	HB 154
53-20-129	amended	Ch. 252	HB 154
53-20-132	amended	Ch. 252	HB 154
53-20-133	amended	Ch. 252	HB 154
53-20-134	enacted	Ch. 263	HB 414
53-20-140	enacted	Ch. 252	HB 154
53-20-141	amended	Ch. 252	HB 154
53-20-172	enacted	Ch. 374	HB 195
53-20-307	amended	Ch. 449	SB 130
53-21-102	amended	Ch. 71	SB 81
	amended	Ch. 116	SB 45
53-21-129	amended	Ch. 116	SB 45
53-21-193	amended	Ch. 116	SB 45
53-21-194	amended	Ch. 116	SB 45
53-21-1101	enacted	Ch. 471	SB 478
53-21-1102	enacted	Ch. 471	SB 478
53-21-1103	enacted	Ch. 471	SB 478
60-1-213	enacted	Ch. 58	SB 29
60-1-214	enacted	Ch. 109	HB 531
60-2-111	amended	Ch. 56	HB 334

60-2-112	amended	Ch. 56	HB 334
60-2-116	enacted	Ch. 259	HB 319
60-2-117	enacted	Ch. 259	HB 319
60-2-134	amended	Ch. 56	HB 334
60-2-135	repealed	Ch. 56	HB 334
60-2-136	repealed	Ch. 56	HB 334
60-2-137	amended	Ch. 56	HB 334
60-4-201	amended	Ch. 342	SB 251
60-5-110	amended	Ch. 435	HB 357
61-1-101	amended	Ch. 20	HB 219
	amended	Ch. 44	SB 39
	amended	Ch. 83	HB 28
	amended	Ch. 233	SB 185
	amended	Ch. 329	HB 737
61-2-103	amended	Ch. 8	HB 121
61-3-101	amended	Ch. 44	SB 39
	amended	Ch. 180	HB 789
	amended	Ch. 329	HB 737
61-3-103	amended	Ch. 50	HB 90
61-3-115	amended	Ch. 329	HB 737
61-3-116	amended	Ch. 44	SB 39
	amended	Ch. 329	HB 737
61-3-203	amended	Ch. 50	HB 90
61-3-204	amended	Ch. 50	HB 90
61-3-206	amended	Ch. 329	HB 737
61-3-211	amended	Ch. 53	HB 143
61-3-214	enacted	Ch. 329	HB 737
61-3-216	amended	Ch. 180	HB 789
	amended	Ch. 329	HB 737
61-3-217	amended	Ch. 44	SB 39
61-3-222	amended	Ch. 329	HB 737
61-3-224	amended	Ch. 44	SB 39
	amended	Ch. 329	HB 737
61-3-225	enacted	Ch. 53	HB 143
61-3-301	amended	Ch. 44	SB 39
	amended	Ch. 329	HB 737
61-3-303	amended	Ch. 44	SB 39
	amended	Ch. 329	HB 737
61-3-311	amended	Ch. 44	SB 39
61-3-319	enacted	Ch. 329	HB 737
61-3-320	amended	Ch. 329	HB 737
61-3-321	amended	Ch. 44	SB 39
	amended	Ch. 206	SB 36
	amended	Ch. 329	HB 737
61-3-332	amended	Ch. 329	HB 737
	amended	Ch. 392	HB 840
61-3-448	amended	Ch. 329	HB 737
61-3-458	amended	Ch. 37	HB 274
	amended	Ch. 59	SB 30
61-3-461	amended	Ch. 44	SB 39
61-3-462	amended	Ch. 44	SB 39
61-3-463	amended	Ch. 329	HB 737
61-3-468	amended	Ch. 329	HB 737
61-3-479	amended	Ch. 392	HB 840
61-3-481	amended	Ch. 392	HB 840
61-3-503	amended	Ch. 329	HB 737
61-3-550	amended	Ch. 50	HB 90
61-3-562	amended	Ch. 329	HB 737
	amended	Ch. 392	HB 840
61-3-708	amended	Ch. 400	SB 158
61-3-721	amended	Ch. 44	SB 39
61-4-101	amended	Ch. 329	HB 737
61-4-102	amended	Ch. 329	HB 737

61-4-104	amended	Ch. 329	HB 737
61-4-105	amended	Ch. 329	HB 737
61-4-109	amended	Ch. 44	SB 39
	amended	Ch. 329	HB 737
61-4-111	amended	Ch. 329	HB 737
61-4-112	amended	Ch. 329	HB 737
61-4-120	amended	Ch. 329	HB 737
61-4-122	amended	Ch. 329	HB 737
61-4-123	amended	Ch. 20	HB 219
	amended	Ch. 218	SB 305
	amended	Ch. 329	HB 737
61-4-124	amended	Ch. 329	HB 737
61-4-125	amended	Ch. 329	HB 737
61-4-126	amended	Ch. 329	HB 737
61-4-127	enacted	Ch. 329	HB 737
61-4-128	enacted	Ch. 329	HB 737
61-4-129	amended	Ch. 329	HB 737
61-4-130	amended	Ch. 329	HB 737
61-4-131	amended	Ch. 329	HB 737
61-4-135	amended	Ch. 329	HB 737
61-4-136	amended	Ch. 329	HB 737
61-4-137	amended	Ch. 329	HB 737
61-4-202	amended	Ch. 329	HB 737
61-4-204	amended	Ch. 329	HB 737
61-4-501	amended	Ch. 84	HB 31
61-4-517	amended	Ch. 84	HB 31
61-5-102	amended	Ch. 233	SB 185
	amended	Ch. 462	SB 386
61-5-104	amended	Ch. 144	SB 239
61-5-105	amended	Ch. 242	HB 496
61-5-111	amended	Ch. 242	HB 496
61-5-112	amended	Ch. 329	HB 737
61-5-120	amended	Ch. 242	HB 496
61-5-121	amended	Ch. 6	HB 23
	amended	Ch. 44	SB 39
61-5-127	amended	Ch. 133	HB 341
61-5-128	enacted	Ch. 198	HB 287
61-5-203	amended	Ch. 83	HB 28
61-5-205	amended	Ch. 145	SB 322
61-5-206	amended	Ch. 180	HB 789
61-5-207	amended	Ch. 242	HB 496
61-5-212	amended	Ch. 83	HB 28
	amended	Ch. 462	SB 386
61-5-302	amended	Ch. 180	HB 789
61-6-304	amended	Ch. 329	HB 737
61-7-103	amended	Ch. 145	SB 322
61-8-102	amended	Ch. 329	HB 737
	amended	Ch. 449	SB 130
61-8-212	enacted	Ch. 143	SB 208
61-8-303	amended	Ch. 349	SB 302
61-8-346	amended	Ch. 520	SB 222
61-8-364	amended	Ch. 449	SB 130
61-8-377	enacted	Ch. 233	SB 185
61-8-715	amended	Ch. 44	SB 39
61-9-402	amended	Ch. 449	SB 130
	amended	Ch. 520	SB 222
61-9-406	amended	Ch. 114	SB 237
61-9-414	amended	Ch. 298	SB 422
61-9-418	amended	Ch. 105	HB 332
61-9-428	amended	Ch. 242	HB 496
61-9-432	enacted	Ch. 233	SB 185
61-9-435	enacted	Ch. 329	HB 737
61-11-105	amended	Ch. 329	HB 737

61-11-503	amended	Ch. 130	HB	177
61-12-401	amended	Ch. 461	SB	384
61-12-402	amended	Ch. 53	HB	143
61-12-801	enacted	Ch. 227	SB	480
61-13-103	amended	Ch. 242	HB	496
67-2-302	amended	Ch. 17	HB	122
67-3-205	amended	Ch. 19	HB	127
67-3-401	repealed	Ch. 18	HB	126
67-3-402	repealed	Ch. 18	HB	126
67-3-403	repealed	Ch. 18	HB	126
67-3-404	repealed	Ch. 18	HB	126
67-3-405	repealed	Ch. 18	HB	126
69-1-114	amended	Ch. 491	HB	25
69-2-216	enacted	Ch. 469	SB	448
69-2-217	enacted	Ch. 469	SB	448
69-3-305	amended	Ch. 103	HB	244
69-3-1302	amended	Ch. 325	HB	611
69-3-1402	amended	Ch. 174	HB	427
69-3-1408	amended	Ch. 174	HB	427
69-3-2001	formerly 69-8-1001	Ch. 220	SB	367
69-3-2002	formerly 69-8-1002	Ch. 220	SB	367
69-3-2003	formerly 69-8-1003	Ch. 220	SB	367
69-3-2004	formerly 69-8-1004	Ch. 220	SB	367
69-3-2005	formerly 69-8-1005	Ch. 220	SB	367
69-3-2006	formerly 69-8-1006	Ch. 220	SB	367
69-3-2007	formerly 69-8-1007	Ch. 220	SB	367
69-3-2008	formerly 69-8-1008	Ch. 220	SB	367
69-5-102	amended	Ch. 231	HB	526
69-5-105	amended	Ch. 231	HB	526
69-5-106	amended	Ch. 231	HB	526
69-5-110	amended	Ch. 231	HB	526
69-5-113	enacted	Ch. 231	HB	526
69-5-114	enacted	Ch. 231	HB	526
69-8-101	amended	Ch. 491	HB	25
69-8-102	repealed	Ch. 491	HB	25
69-8-103	amended	Ch. 491	HB	25
69-8-104	repealed	Ch. 491	HB	25
69-8-201	amended	Ch. 491	HB	25
69-8-202	repealed	Ch. 491	HB	25
69-8-203	repealed	Ch. 491	HB	25
69-8-204	repealed	Ch. 491	HB	25
69-8-208	repealed	Ch. 491	HB	25
69-8-209	repealed	Ch. 491	HB	25
69-8-210	amended	Ch. 491	HB	25
69-8-211	repealed	Ch. 491	HB	25
69-8-301	repealed	Ch. 491	HB	25
69-8-302	repealed	Ch. 491	HB	25
69-8-303	repealed	Ch. 491	HB	25
69-8-304	repealed	Ch. 491	HB	25
69-8-308	repealed	Ch. 491	HB	25
69-8-309	repealed	Ch. 491	HB	25
69-8-310	repealed	Ch. 491	HB	25
69-8-311	amended	Ch. 491	HB	25
69-8-402	amended	Ch. 491	HB	25
69-8-403	amended	Ch. 491	HB	25
69-8-404	repealed	Ch. 491	HB	25
69-8-408	repealed	Ch. 491	HB	25
69-8-409	repealed	Ch. 491	HB	25
69-8-410	repealed	Ch. 491	HB	25
69-8-411	amended	Ch. 491	HB	25
69-8-419	amended	Ch. 491	HB	25
69-8-420	amended	Ch. 491	HB	25
69-8-421	amended	Ch. 491	HB	25

69-8-426	enacted	Ch. 491	HB 25
69-8-602	amended	Ch. 491	HB 25
69-8-603	amended	Ch. 491	HB 25
69-8-1001	renumbered 69-3-2001	Ch. 220	SB 367
69-8-1002	renumbered 69-3-2002	Ch. 220	SB 367
69-8-1003	renumbered 69-3-2003	Ch. 220	SB 367
	amended	Ch. 246	HB 681
69-8-1004	renumbered 69-3-2004	Ch. 220	SB 367
	amended	Ch. 246	HB 681
	amended	Ch. 491	HB 25
69-8-1005	renumbered 69-3-2005	Ch. 220	SB 367
	amended	Ch. 246	HB 681
69-8-1006	renumbered 69-3-2006	Ch. 220	SB 367
69-8-1007	renumbered 69-3-2007	Ch. 220	SB 367
	amended	Ch. 246	HB 681
69-8-1008	renumbered 69-3-2008	Ch. 220	SB 367
69-12-102	amended	Ch. 223	SB 414
69-13-101	amended (voided by sec. 7, Ch. 365)	Ch. 365	HB 24
69-13-102	amended (voided by sec. 7, Ch. 365)	Ch. 365	HB 24
69-13-201	amended (voided by sec. 7, Ch. 365)	Ch. 365	HB 24
69-13-301	amended (voided by sec. 7, Ch. 365)	Ch. 365	HB 24
69-13-302	amended (voided by sec. 7, Ch. 365)	Ch. 365	HB 24
69-13-303	amended (voided by sec. 7, Ch. 365)	Ch. 365	HB 24
70-9-802	amended	Ch. 331	HB 755
70-9-803	amended	Ch. 331	HB 755
70-16-301	amended	Ch. 353	SB 318
70-16-302	amended	Ch. 353	SB 318
70-17-111	amended	Ch. 352	SB 317
70-17-203	amended	Ch. 352	SB 317
70-24-103	amended	Ch. 267	HB 456
70-24-305	amended	Ch. 267	HB 456
70-24-313	repealed	Ch. 267	HB 456
70-24-314	amended	Ch. 267	HB 456
70-24-315	repealed	Ch. 267	HB 456
70-24-422	amended	Ch. 267	HB 456
70-24-431	amended	Ch. 267	HB 456
70-24-432	repealed	Ch. 267	HB 456
70-24-436	repealed	Ch. 267	HB 456
70-24-441	amended	Ch. 267	HB 456
70-30-102	amended	Ch. 193	SB 536
	amended	Ch. 512	SB 363
70-30-111	amended	Ch. 512	SB 363
70-30-322	amended	Ch. 512	SB 363
70-32-104	amended	Ch. 99	HB 149
70-33-101	enacted	Ch. 267	HB 456
70-33-102	enacted	Ch. 267	HB 456
70-33-103	enacted	Ch. 267	HB 456
70-33-104	enacted	Ch. 267	HB 456
70-33-105	enacted	Ch. 267	HB 456
70-33-106	enacted	Ch. 267	HB 456
70-33-107	enacted	Ch. 267	HB 456
70-33-201	enacted	Ch. 267	HB 456
70-33-202	enacted	Ch. 267	HB 456
70-33-203	enacted	Ch. 267	HB 456
70-33-301	enacted	Ch. 267	HB 456
70-33-302	enacted	Ch. 267	HB 456
70-33-303	enacted	Ch. 267	HB 456
70-33-304	enacted	Ch. 267	HB 456
70-33-305	enacted	Ch. 267	HB 456
70-33-311	enacted	Ch. 267	HB 456
70-33-312	enacted	Ch. 267	HB 456
70-33-313	enacted	Ch. 267	HB 456
70-33-314	enacted	Ch. 267	HB 456

70-33-315	enacted	Ch. 267	HB 456
70-33-321	enacted	Ch. 267	HB 456
70-33-322	enacted	Ch. 267	HB 456
70-33-401	enacted	Ch. 267	HB 456
70-33-402	enacted	Ch. 267	HB 456
70-33-403	enacted	Ch. 267	HB 456
70-33-404	enacted	Ch. 267	HB 456
70-33-405	enacted	Ch. 267	HB 456
70-33-406	enacted	Ch. 267	HB 456
70-33-407	enacted	Ch. 267	HB 456
70-33-408	enacted	Ch. 267	HB 456
70-33-409	enacted	Ch. 267	HB 456
70-33-410	enacted	Ch. 267	HB 456
70-33-422	enacted	Ch. 267	HB 456
70-33-423	enacted	Ch. 267	HB 456
70-33-424	enacted	Ch. 267	HB 456
70-33-425	enacted	Ch. 267	HB 456
70-33-426	enacted	Ch. 267	HB 456
70-33-427	enacted	Ch. 267	HB 456
70-33-428	enacted	Ch. 267	HB 456
70-33-429	enacted	Ch. 267	HB 456
70-33-430	enacted	Ch. 267	HB 456
70-33-431	enacted	Ch. 267	HB 456
70-33-432	enacted	Ch. 267	HB 456
70-33-433	enacted	Ch. 267	HB 456
70-33-434	enacted	Ch. 267	HB 456
71-1-316	amended	Ch. 158	HB 579
71-3-522	amended	Ch. 293	SB 114
71-3-531	amended	Ch. 293	SB 114
71-3-551	amended	Ch. 204	HB 657
71-3-553	amended	Ch. 204	HB 657
71-3-1111	amended	Ch. 502	SB 153
71-3-1112	amended	Ch. 502	SB 153
71-3-1113	amended	Ch. 502	SB 153
71-3-1114	amended	Ch. 295	SB 246
	amended	Ch. 502	SB 153
71-3-1115	amended	Ch. 502	SB 153
71-3-1117	amended	Ch. 502	SB 153
71-3-1118	amended	Ch. 502	SB 153
71-3-1201	amended	Ch. 134	HB 397
72-5-315	amended	Ch. 184	SB 164
72-5-321	amended	Ch. 480	HB 683
72-5-408	amended	Ch. 184	SB 164
72-5-421	amended	Ch. 42	SB 20
72-6-111	amended	Ch. 258	HB 310
72-6-121	enacted	Ch. 258	HB 310
72-6-122	enacted	Ch. 258	HB 310
72-17-101	amended	Ch. 345	SB 287
72-17-102	amended	Ch. 345	SB 287
72-17-108	amended	Ch. 345	SB 287
72-17-109	enacted	Ch. 345	SB 287
72-17-201	amended	Ch. 345	SB 287
72-17-202	amended	Ch. 345	SB 287
72-17-207	amended	Ch. 345	SB 287
72-17-208	amended	Ch. 345	SB 287
72-17-213	amended	Ch. 345	SB 287
72-17-214	amended	Ch. 345	SB 287
72-17-216	enacted	Ch. 345	SB 287
72-17-217	enacted	Ch. 345	SB 287
72-17-218	enacted	Ch. 345	SB 287
72-17-301	amended	Ch. 345	SB 287
72-17-303	enacted	Ch. 345	SB 287
72-30-101	amended	Ch. 421	SB 424

72-30-102	amended	Ch. 421	SB 424
72-30-103	amended	Ch. 421	SB 424
72-30-201	repealed	Ch. 421	SB 424
72-30-202	repealed	Ch. 421	SB 424
72-30-203	repealed	Ch. 421	SB 424
72-30-204	repealed	Ch. 421	SB 424
72-30-205	repealed	Ch. 421	SB 424
72-30-206	repealed	Ch. 421	SB 424
72-30-207	amended	Ch. 421	SB 424
72-30-208	enacted	Ch. 421	SB 424
72-30-209	enacted	Ch. 421	SB 424
72-30-210	enacted	Ch. 421	SB 424
72-30-211	enacted	Ch. 421	SB 424
72-30-212	enacted	Ch. 421	SB 424
72-30-213	enacted	Ch. 421	SB 424
75-1-201	amended	Ch. 469	SB 448
75-1-205	amended	Ch. 469	SB 448
75-1-1101	amended	Ch. 432	HB 116
75-2-111	amended	Ch. 256	HB 291
75-5-305	amended	Ch. 150	HB 92
	amended	Ch. 312	HB 259
75-5-325	enacted	Ch. 312	HB 259
75-5-326	enacted	Ch. 312	HB 259
75-5-327	enacted	Ch. 312	HB 259
75-5-410	enacted	Ch. 391	HB 831
75-6-102	amended	Ch. 423	SB 446
75-6-103	amended	Ch. 423	SB 446
75-6-104	amended	Ch. 423	SB 446
75-6-112	amended	Ch. 423	SB 446
75-6-120	amended	Ch. 423	SB 446
75-10-104	amended	Ch. 54	HB 167
75-10-106	amended	Ch. 54	HB 167
75-10-111	amended	Ch. 54	HB 167
75-10-208	enacted	Ch. 97	HB 144
75-10-215	amended	Ch. 156	HB 555
75-10-231	amended	Ch. 97	HB 144
75-10-501	amended	Ch. 265	HB 428
75-10-513	amended	Ch. 53	HB 143
75-10-534	amended	Ch. 408	SB 261
75-10-541	amended	Ch. 53	HB 143
75-10-621	amended	Ch. 432	HB 116
75-10-704	amended	Ch. 432	HB 116
75-10-725	amended	Ch. 449	SB 130
75-10-743	amended	Ch. 432	HB 116
75-10-807	amended	Ch. 54	HB 167
75-10-920	amended	Ch. 54	HB 167
75-10-1003	amended	Ch. 97	HB 144
75-10-1004	amended	Ch. 97	HB 144
75-10-1006	amended	Ch. 97	HB 144
75-10-1007	enacted	Ch. 97	HB 144
75-11-302	amended	Ch. 100	HB 176
75-11-314	amended	Ch. 100	HB 176
75-11-505	amended	Ch. 51	HB 94
75-11-512	amended	Ch. 51	HB 94
75-11-525	amended	Ch. 51	HB 94
75-20-104	amended	Ch. 260	HB 328
75-20-216	amended	Ch. 469	SB 448
75-20-223	amended	Ch. 469	SB 448
76-1-103	amended	Ch. 455	SB 201
76-1-201	amended	Ch. 151	HB 400
76-1-211	amended	Ch. 151	HB 400
76-1-304	amended	Ch. 172	HB 265
76-1-410	enacted	Ch. 455	SB 201

76-1-601 . . . . . amended . . . . . Ch. 443 . . . . . SB 51
amended . . . . . Ch. 455 . . . . . SB 201
76-3-203 . . . . . amended . . . . . Ch. 229 . . . . . SB 527
76-3-501 . . . . . amended . . . . . Ch. 443 . . . . . SB 51
76-3-504 . . . . . amended . . . . . Ch. 317 . . . . . HB 425
amended . . . . . Ch. 443 . . . . . SB 51
76-3-605 . . . . . amended . . . . . Ch. 455 . . . . . SB 201
76-3-608 . . . . . amended . . . . . Ch. 455 . . . . . SB 201
76-3-609 . . . . . amended . . . . . Ch. 455 . . . . . SB 201
76-3-616 . . . . . enacted . . . . . Ch. 455 . . . . . SB 201
76-3-621 . . . . . amended . . . . . Ch. 264 . . . . . HB 415
76-4-125 . . . . . amended . . . . . Ch. 111 . . . . . HB 662
amended . . . . . Ch. 150 . . . . . HB 92
76-4-133 . . . . . amended . . . . . Ch. 150 . . . . . HB 92
76-6-207 . . . . . amended . . . . . Ch. 352 . . . . . SB 317
76-6-212 . . . . . enacted . . . . . Ch. 352 . . . . . SB 317
76-9-103 . . . . . amended . . . . . Ch. 44 . . . . . SB 39
76-11-101 . . . . . repealed . . . . . Ch. 336 . . . . . SB 145
76-11-102 . . . . . renumbered 76-13-136 . . . . . Ch. 336 . . . . . SB 145
76-13-101 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-102 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-103 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-104 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-105 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-106 . . . . . repealed . . . . . Ch. 336 . . . . . SB 145
76-13-109 . . . . . repealed . . . . . Ch. 336 . . . . . SB 145
amended . . . . . Ch. 443 . . . . . SB 51
76-13-110 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-115 . . . . . enacted . . . . . Ch. 336 . . . . . SB 145
76-13-116 . . . . . enacted . . . . . Ch. 336 . . . . . SB 145
76-13-121 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-122 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-123 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-124 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-125 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-126 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-131 . . . . . renumbered 76-13-420 . . . . . Ch. 336 . . . . . SB 145
76-13-132 . . . . . renumbered 76-13-421 . . . . . Ch. 336 . . . . . SB 145
76-13-133 . . . . . renumbered 76-13-422 . . . . . Ch. 336 . . . . . SB 145
76-13-134 . . . . . renumbered 76-13-423 . . . . . Ch. 336 . . . . . SB 145
76-13-135 . . . . . renumbered 76-13-424 . . . . . Ch. 336 . . . . . SB 145
76-13-136 . . . . . formerly 76-11-102 . . . . . Ch. 336 . . . . . SB 145
76-13-140 . . . . . enacted . . . . . Ch. 464 . . . . . SB 404
76-13-201 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-202 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-203 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-204 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-205 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-206 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-207 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-208 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-209 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-210 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-211 . . . . . amended . . . . . Ch. 336 . . . . . SB 145
76-13-212 . . . . . enacted . . . . . Ch. 336 . . . . . SB 145
76-13-213 . . . . . enacted . . . . . Ch. 336 . . . . . SB 145
76-13-304 . . . . . amended . . . . . Ch. 115 . . . . . HB 664
76-13-420 . . . . . formerly 76-13-131 . . . . . Ch. 336 . . . . . SB 145
76-13-421 . . . . . formerly 76-13-132 . . . . . Ch. 336 . . . . . SB 145
76-13-422 . . . . . formerly 76-13-133 . . . . . Ch. 336 . . . . . SB 145
76-13-423 . . . . . formerly 76-13-134 . . . . . Ch. 336 . . . . . SB 145
76-13-424 . . . . . formerly 76-13-135 . . . . . Ch. 336 . . . . . SB 145
76-13-701 . . . . . enacted . . . . . Ch. 409 . . . . . SB 293

76-13-702	enacted	Ch. 409	SB 293
76-14-103	amended	Ch. 44	SB 39
76-15-302	amended	Ch. 44	SB 39
77-1-101	amended	Ch. 164	HB 37
77-1-108	amended	Ch. 247	HB 19
77-1-109	amended	Ch. 247	HB 19
77-1-126	enacted	Ch. 164	HB 37
77-1-127	enacted	Ch. 164	HB 37
77-1-128	enacted	Ch. 164	HB 37
77-1-129	enacted	Ch. 164	HB 37
77-1-602	amended	Ch. 247	HB 19
77-1-606	amended	Ch. 247	HB 19
77-1-613	amended	Ch. 247	HB 19
	amended	Ch. 494	SB 25
77-1-905	amended	Ch. 247	HB 19
77-2-102	amended	Ch. 160	HB 703
77-2-213	amended	Ch. 456	SB 213
77-2-328	amended	Ch. 247	HB 19
77-2-363	amended	Ch. 396	SB 131
	amended	Ch. 456	SB 213
77-2-364	amended	Ch. 396	SB 131
	amended	Ch. 456	SB 213
77-2-366	amended	Ch. 396	SB 131
77-5-103	amended	Ch. 336	SB 145
77-5-104	repealed	Ch. 336	SB 145
77-5-105	repealed	Ch. 336	SB 145
77-5-106	repealed	Ch. 336	SB 145
77-5-201	amended	Ch. 494	SB 25
77-5-204	amended	Ch. 247	HB 19
	amended	Ch. 494	SB 25
77-5-214	enacted	Ch. 494	SB 25
77-5-215	enacted	Ch. 494	SB 25
77-5-216	enacted	Ch. 494	SB 25
77-5-217	enacted	Ch. 494	SB 25
77-5-218	enacted	Ch. 494	SB 25
77-5-219	enacted	Ch. 494	SB 25
77-6-114	repealed	Ch. 313	HB 269
80-2-203	amended	Ch. 275	HB 537
80-2-207	amended	Ch. 275	HB 537
80-2-208	amended	Ch. 275	HB 537
80-2-209	amended	Ch. 275	HB 537
80-2-227	amended	Ch. 275	HB 537
80-2-231	amended	Ch. 275	HB 537
80-2-244	amended	Ch. 275	HB 537
80-7-105	amended	Ch. 384	HB 569
80-7-106	amended	Ch. 384	HB 569
80-7-108	amended	Ch. 384	HB 569
80-7-109	amended	Ch. 384	HB 569
80-7-110	amended	Ch. 384	HB 569
80-7-122	amended	Ch. 384	HB 569
80-7-123	amended	Ch. 384	HB 569
80-7-133	amended	Ch. 384	HB 569
80-7-135	amended	Ch. 384	HB 569
80-7-823	amended	Ch. 432	HB 116
80-11-701	enacted	Ch. 148	SB 479
80-11-702	enacted	Ch. 148	SB 479
80-11-801	enacted	Ch. 300	SB 544
81-1-110	enacted	Ch. 261	HB 364
81-1-111	enacted	Ch. 261	HB 364
81-3-107	amended	Ch. 420	SB 413
81-7-202	amended	Ch. 297	SB 406
81-7-305	amended	Ch. 297	SB 406
81-7-605	amended	Ch. 297	SB 406

81-9-219 . . . . . amended . . . . . Ch. 65 . . . . . SB 59
81-23-101 . . . . . amended . . . . . Ch. 23 . . . . . HB 431
81-23-302 . . . . . amended . . . . . Ch. 23 . . . . . HB 431
82-1-104 . . . . . amended . . . . . Ch. 33 . . . . . HB 158
82-1-107 . . . . . amended . . . . . Ch. 33 . . . . . HB 158
amended . . . . . Ch. 57 . . . . . SB 19
82-4-127 . . . . . amended . . . . . Ch. 44 . . . . . SB 39
82-4-222 . . . . . amended . . . . . Ch. 44 . . . . . SB 39
82-4-232 . . . . . amended . . . . . Ch. 425 . . . . . SB 461
82-4-244 . . . . . enacted . . . . . Ch. 280 . . . . . HB 688
82-4-338 . . . . . amended . . . . . Ch. 269 . . . . . HB 460
82-4-402 . . . . . amended . . . . . Ch. 385 . . . . . HB 583
82-4-403 . . . . . amended . . . . . Ch. 385 . . . . . HB 583
82-4-406 . . . . . amended . . . . . Ch. 385 . . . . . HB 583
82-4-421 . . . . . repealed . . . . . Ch. 385 . . . . . HB 583
82-4-422 . . . . . amended . . . . . Ch. 385 . . . . . HB 583
82-4-423 . . . . . repealed . . . . . Ch. 385 . . . . . HB 583
82-4-424 . . . . . amended . . . . . Ch. 385 . . . . . HB 583
82-4-425 . . . . . amended . . . . . Ch. 385 . . . . . HB 583
82-4-426 . . . . . amended . . . . . Ch. 385 . . . . . HB 583
82-4-427 . . . . . amended . . . . . Ch. 385 . . . . . HB 583
82-4-431 . . . . . amended . . . . . Ch. 385 . . . . . HB 583
82-4-432 . . . . . amended . . . . . Ch. 385 . . . . . HB 583
82-4-433 . . . . . amended . . . . . Ch. 385 . . . . . HB 583
82-4-434 . . . . . amended . . . . . Ch. 385 . . . . . HB 583
82-4-436 . . . . . amended . . . . . Ch. 385 . . . . . HB 583
82-4-437 . . . . . enacted . . . . . Ch. 385 . . . . . HB 583
82-4-441 . . . . . amended . . . . . Ch. 385 . . . . . HB 583
82-4-442 . . . . . enacted . . . . . Ch. 385 . . . . . HB 583
82-4-1006 . . . . . enacted . . . . . Ch. 357 . . . . . SB 442
82-10-503 . . . . . amended . . . . . Ch. 57 . . . . . SB 19
82-10-504 . . . . . amended . . . . . Ch. 57 . . . . . SB 19
82-10-505 . . . . . amended . . . . . Ch. 57 . . . . . SB 19
82-10-510 . . . . . enacted . . . . . Ch. 57 . . . . . SB 19
82-15-105 . . . . . amended . . . . . Ch. 62 . . . . . SB 43
85-1-102 . . . . . amended . . . . . Ch. 432 . . . . . HB 116
85-1-603 . . . . . amended . . . . . Ch. 432 . . . . . HB 116
85-1-604 . . . . . amended . . . . . Ch. 431 . . . . . HB 6
repealed . . . . . Ch. 432 . . . . . HB 116
85-1-605 . . . . . amended . . . . . Ch. 432 . . . . . HB 116
85-1-606 . . . . . amended . . . . . Ch. 432 . . . . . HB 116
85-1-613 . . . . . amended . . . . . Ch. 432 . . . . . HB 116
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85-1-615 . . . . . amended . . . . . Ch. 432 . . . . . HB 116
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85-1-631 . . . . . amended . . . . . Ch. 432 . . . . . HB 116
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85-2-141 . . . . . amended . . . . . Ch. 416 . . . . . SB 376
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90-2-1121	amended	Ch. 432	HB 116
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Ch. 658, sec. 11	repealed	448	SB 128
Laws of 1991			
Ch. 740, secs. 4, 7	repealed	448	SB 128
Laws of 1995			
Ch. 463, sec. 5	repealed	77	SB 126
Laws of 1997			
Ch. 537, sec. 9	amended	208	SB 150
Laws of 1999			
Ch. 123, secs. 5, 6, 7, 9	repealed	448	SB 128
Ch. 512, sec. 19	repealed	453	SB 173
Ch. 529, secs. 6, 9	repealed	77	SB 126
Laws of 2001			
Ch. 69, sec. 5	repealed	453	SB 173
Ch. 226, sec. 5	amended	208	SB 150
Ch. 321, sec. 3	amended	237	HB 450
Ch. 435, sec. 1	amended	383	HB 512
Ch. 469, sec. 3	repealed	113	SB 88
Laws of 2003			
Ch. 60, sec. 11	repealed	153	HB 503
Ch. 81, sec. 4	amended	185	SB 170
Ch. 390, sec. 20	amended	517	SB 118
Ch. 473, sec. 2	amended	363	HB 7
Ch. 562, sec. 15	repealed	50	HB 90
Laws of 2005			
Ch. 4, sec. 7	amended	208	SB 150
Ch. 23, sec. 1	amended	185	SB 170
Ch. 288, sec. 15	repealed	319	HB 473
Ch. 307, sec. 11	repealed	431	HB 6
Ch. 308, sec. 10	repealed	363	HB 7
Ch. 365, sec. 6	repealed	466	SB 417
Ch. 404, sec. 4	amended	473	SB 505
Ch. 418, sec. 2	repealed	239	HB 36
Ch. 460, secs. 3, 4	repealed	453	SB 173
Ch. 464, sec. 14	amended	44	SB 39
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Ch. 577, sec. 5	amended	27	HB 48
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Ch.	189	SB	466	10/01/2007
Ch.	190	SB	467	04/10/2007
Ch.	191	HB	242	10/01/2007
Ch.	192	SB	225	04/11/2007
Ch.	193	SB	536	04/11/2007
Ch.	194	SB	291	04/12/2007
Ch.	195	HB	35	10/01/2007
Ch.	196	HB	99	10/01/2007
Ch.	197	HB	113	10/01/2007
Ch.	198	HB	287	10/01/2007
Ch.	199	HB	348	07/01/2007
Ch.	200	HB	372	07/01/2007
Ch.	201	HB	587	04/17/2007
Ch.	202	HB	617	10/01/2007
Ch.	203	HB	629	10/01/2007
Ch.	204	HB	657	10/01/2007
Ch.	205	HB	782	04/17/2007
Ch.	206	SB	36	04/17/2007
Ch.	207	SB	47	10/01/2007
Ch.	208	SB	150	04/17/2007
Ch.	209	SB	160	10/01/2007
Ch.	210	SB	169	04/17/2007
Ch.	211	SB	177	10/01/2007
Ch.	212	SB	193	10/01/2007
Ch.	213	SB	248	04/17/2007
Ch.	214	SB	282	07/01/2007
Ch.	215	SB	285	04/17/2007
Ch.	216	SB	286	04/17/2007
Ch.	217	SB	299	07/01/2007
Ch.	218	SB	305	10/01/2007
Ch.	219	SB	364	10/01/2007
Ch.	220	SB	367	10/01/2007
Ch.	221	SB	374	07/01/2007
Ch.	222	SB	378	04/17/2007
Ch.	223	SB	414	10/01/2007
Ch.	224	SB	440	04/17/2007
Ch.	225	SB	453	01/01/2009
Ch.	226	SB	459	10/01/2007
Ch.	227	SB	480	10/01/2007
Ch.	228	SB	502	10/01/2007
Ch.	229	SB	527	04/17/2007
Ch.	230	HB	12	07/01/2007
Ch.	231	HB	526	04/23/2007
Ch.	232	HB	540	07/01/2007
Ch.	233	SB	185	04/23/2007
Ch.	234	SB	369	06/30/2009
Ch.	235	HB	361	04/24/2007
Ch.	236	HB	369	07/01/2007
Ch.	237	HB	450	04/24/2007
Ch.	238	HB	452	10/01/2007
Ch.	239	HB	36	04/25/2007
Ch.	240	HB	153	10/01/2008
Ch.	241	HB	433	10/01/2007
Ch.	242	HB	496	10/01/2007

Ch.	243	HB	594	10/01/2007
Ch.	244	HB	636	04/25/2007
Ch.	245	HB	641	10/01/2007
Ch.	246	HB	681	04/25/2007
Ch.	247	HB	19	04/26/2007
Ch.	248	HB	26	10/01/2007
Ch.	249	HB	77	07/01/2007
Ch.	250	HB	83	07/01/2007
Ch.	251	HB	117	10/01/2007
Ch.	252	HB	154	10/01/2007
Ch.	253	HB	235	10/01/2007
Ch.	254	HB	272	10/01/2007
Ch.	255	HB	283	04/26/2007
Ch.	256	HB	291	04/26/2007
Ch.	257	HB	300	04/26/2007
Ch.	258	HB	310	10/01/2007
Ch.	259	HB	319	10/01/2007
Ch.	260	HB	328	10/01/2007
Ch.	261	§§ 1 and 4-11 HB	364	07/01/2007
		§§ 2 and 3		10/01/2007
Ch.	262	HB	389	04/26/2007
Ch.	263	HB	414	10/01/2007
Ch.	264	HB	415	10/01/2007
Ch.	265	HB	428	10/01/2007
Ch.	266	HB	435	04/26/2007
Ch.	267	HB	456	10/01/2007
Ch.	268	HB	459	10/01/2007
Ch.	269	HB	460	04/26/2007
Ch.	270	HB	467	04/26/2007
Ch.	271	HB	468	10/01/2007
Ch.	272	HB	487	10/01/2007
Ch.	273	HB	520	10/01/2007
Ch.	274	HB	524	10/01/2007
Ch.	275	HB	537	04/26/2007
Ch.	276	HB	630	10/01/2007
Ch.	277	HB	633	07/01/2007
Ch.	278	HB	634	04/26/2007
Ch.	279	HB	672	07/01/2007
Ch.	280	HB	688	07/01/2007
Ch.	281	HB	690	10/01/2007
Ch.	282	HB	742	10/01/2007
Ch.	283	HB	743	04/26/2007
Ch.	284	HB	744	04/26/2007
Ch.	285	HB	771	07/01/2007
Ch.	286	HB	778	04/26/2007
Ch.	287	HB	781	07/01/2007
Ch.	288	HB	785	04/26/2007
Ch.	289	HB	811	04/26/2007
Ch.	290	SB	89	10/01/2007
Ch.	291	SB	95	07/01/2007
Ch.	292	SB	102	04/26/2007
Ch.	293	SB	114	10/01/2007
Ch.	294	SB	132	10/01/2007
Ch.	295	SB	246	10/01/2007
Ch.	296	SB	339	04/26/2007
Ch.	297	SB	406	04/26/2007
Ch.	298	SB	422	04/26/2007
Ch.	299	SB	532	07/01/2007
Ch.	300	SB	544	04/26/2007
Ch.	301	HB	3	04/27/2007
Ch.	302	HB	4	04/27/2007
Ch.	303	HB	9	07/01/2007
Ch.	304	HB	27	07/01/2007

Ch.	305	§§ 3, 4, 11(1), and 13	HB	63	04/27/2007
		§§ 1, 2, 5-10, 11(2), and 12			07/01/2007
Ch.	306		HB	95	07/01/2007
Ch.	307		HB	125	04/28/2007
Ch.	308		HB	136	07/01/2007
Ch.	309		HB	139	07/01/2007
Ch.	310		HB	148	10/01/2007
Ch.	311		HB	179	07/01/2007
Ch.	312		HB	259	10/01/2007
Ch.	313	§§ 6 and 7	HB	269	07/01/2007
		§§ 1-5			10/01/2007
Ch.	314	§§ 2-4	HB	298	04/28/2007
		§ 1			07/01/2007
Ch.	315		HB	299	10/01/2007
Ch.	316		HB	362	04/28/2007
Ch.	317		HB	425	04/27/2007
Ch.	318		HB	461	05/01/2008
Ch.	319		HB	473	07/01/2007
Ch.	320		HB	490	04/28/2007
Ch.	321		HB	514	10/01/2007
Ch.	322		HB	556	07/01/2007
Ch.	323		HB	574	07/01/2007
Ch.	324		HB	609	04/27/2007
Ch.	325		HB	611	04/28/2007
Ch.	326		HB	677	07/01/2007
Ch.	327		HB	680	07/01/2007
Ch.	328		HB	706	10/01/2007
Ch.	329		HB	737	01/01/2008
Ch.	330		HB	738	07/01/2007
Ch.	331		HB	755	04/27/2007
Ch.	332		HB	759	04/27/2007
Ch.	333		HB	764	04/27/2007
Ch.	334		HB	765	04/27/2007
Ch.	335		SB	50	10/01/2007
Ch.	336		SB	145	07/01/2007
Ch.	337		SB	175	04/27/2007
Ch.	338		SB	181	10/01/2007
Ch.	339		SB	204	10/01/2007
Ch.	340		SB	214	07/01/2007
Ch.	341		SB	219	04/27/2007
Ch.	342		SB	251	10/01/2007
Ch.	343		SB	266	04/28/2007
Ch.	344		SB	269	04/28/2007
Ch.	345		SB	287	10/01/2007
Ch.	346		SB	289	07/01/2007
Ch.	347		SB	295	04/27/2007
Ch.	348		SB	296	07/01/2007
Ch.	349		SB	302	10/01/2007
Ch.	350		SB	308	04/27/2007
Ch.	351		SB	312	04/28/2007
Ch.	352	§§ 1-4, 6, and 7	SB	317	04/27/2007
		§ 5			10/01/2007
Ch.	353		SB	318	04/27/2007
Ch.	354		SB	335	07/01/2007
Ch.	355		SB	370	04/28/2007
Ch.	356		SB	419	01/01/2008
Ch.	357		SB	442	07/01/2007
Ch.	358		SB	443	10/01/2007
Ch.	359		SB	444	10/01/2007
Ch.	360		SB	517	10/01/2007

Ch.	361	§§ 1 and 8	SB	553	04/28/2007
		§§ 2-4, 7, and 9			07/01/2008
		§ 5			07/01/2009
		§ 6			12/31/2010
Ch.	362	§§ 2 and 7	HB	790	10/01/2007
		§§ 1, 3, 5, and 6			01/01/2008
		§ 4			07/01/2008
Ch.	363	§§ 9 and 11	HB	7	05/03/2007
		§§ 1-8, and 10			07/01/2007
Ch.	364		HB	8	07/01/2007
Ch.	365		HB	24	Chapter void — per section 7 of Chapter 365 (HB 24), this act is void if SB 218 was not passed and approved. SB 218 died in House Natural Resources Committee
Ch.	366		HB	39	07/01/2008
Ch.	367		HB	40	05/03/2007
Ch.	368		HB	49	05/03/2007
Ch.	369		HB	69	10/01/2007
Ch.	370		HB	96	07/01/2007
Ch.	371		HB	131	07/01/2007
Ch.	372	§§ 3, 5, and 24	HB	141	10/01/2007
		§§ 1, 2, 4, and 6-23			10/01/2008
Ch.	373		HB	155	05/03/2007
Ch.	374		HB	195	07/01/2007
Ch.	375		HB	240	10/01/2007
Ch.	376		HB	257	05/03/2007
Ch.	377		HB	278	05/03/2007
Ch.	378	§§ 1-20, 22, and 23	HB	330	05/03/2007
		§ 21			07/01/2007
Ch.	379		HB	390	07/01/2007
Ch.	380		HB	426	07/01/2007
Ch.	381		HB	480	07/01/2007
Ch.	382		HB	488	07/01/2007
Ch.	383	§§ 7-9, and 11	HB	512	05/03/2007
		§§ 1-6, and 10			07/01/2007
Ch.	384		HB	569	10/01/2007
Ch.	385		HB	583	10/01/2007
Ch.	386		HB	608	07/01/2007
Ch.	387		HB	616	10/01/2007
Ch.	388		HB	665	10/01/2007
Ch.	389		HB	668	10/01/2007
Ch.	390		HB	687	01/01/2008
Ch.	391		HB	831	05/03/2007
Ch.	392		HB	840	01/01/2008
Ch.	393		SB	48	10/01/2007
Ch.	394		SB	71	05/03/2007
Ch.	395		SB	94	10/01/2007
Ch.	396		SB	131	07/01/2007
Ch.	397		SB	133	05/03/2007
Ch.	398		SB	146	06/30/2007
Ch.	399		SB	157	05/03/2007
Ch.	400		SB	158	10/01/2007
Ch.	401		SB	162	10/01/2007
Ch.	402		SB	172	10/01/2007
Ch.	403		SB	184	05/03/2007
Ch.	404		SB	192	10/01/2007
Ch.	405		SB	209	07/01/2007
Ch.	406		SB	243	05/03/2007
Ch.	407		SB	253	10/01/2007
Ch.	408		SB	261	07/01/2007
Ch.	409		SB	293	10/01/2007
Ch.	410		SB	314	03/01/2008

Ch.	411		SB	321	10/01/2007
Ch.	412		SB	324	10/01/2007
Ch.	413		SB	350	10/01/2007
Ch.	414		SB	354	10/01/2007
Ch.	415	§§ 7 and 8	SB	372	05/03/2007
		§§ 1-3, 5, and 6			Effective upon notification by the U.S. fish and wildlife service to the department of fish, wildlife, and parks that the wolf has been formally removed from the federal threatened or endangered species list and upon removal of the wolf from the state endangered species list by the department of fish, wildlife, and parks
		§ 4			Effective upon notification by the U.S. fish and wildlife service to the department of fish, wildlife, and parks that the grizzly bear has been formally removed from the federal threatened or endangered species list
Ch.	416		SB	376	05/03/2007
Ch.	417		SB	379	05/03/2007
Ch.	418		SB	403	05/03/2007
Ch.	419		SB	412	05/03/2007
Ch.	420		SB	413	10/01/2007
Ch.	421		SB	424	10/01/2007
Ch.	422		SB	431	10/01/2007
Ch.	423		SB	446	10/01/2007
Ch.	424		SB	447	10/01/2007
Ch.	425		SB	461	10/01/2007
Ch.	426		SB	491	10/01/2007
Ch.	427		SB	492	05/03/2007
Ch.	428		SB	523	10/01/2007
Ch.	429		SB	540	05/03/2007
Ch.	430		SB	542	10/01/2007
Ch.	431	§§ 2-12	HB	6	05/03/2007
		§ 1			07/01/2007
Ch.	432		HB	116	07/01/2007
Ch.	433		HB	304	07/01/2007
Ch.	434		HB	353	10/01/2007
Ch.	435		HB	357	05/08/2007
Ch.	436		HB	406	07/01/2007
Ch.	437		HB	592	05/08/2007
Ch.	438		HB	715	07/01/2007
Ch.	439		HB	729	10/01/2007
Ch.	440		HB	768	10/01/2007
Ch.	441		SB	41	05/08/2007
Ch.	442		SB	49	07/01/2007
Ch.	443		SB	51	05/08/2007
Ch.	444		SB	69	07/01/2007
Ch.	445		SB	100	07/01/2007
Ch.	446		SB	104	10/01/2007
Ch.	447		SB	121	05/08/2007
Ch.	448		SB	128	05/08/2007
Ch.	449		SB	130	06/01/2007
Ch.	450		SB	147	06/01/2007
Ch.	451		SB	165	10/01/2007
Ch.	452		SB	166	05/08/2007
Ch.	453		SB	173	07/01/2007
Ch.	454		SB	200	05/08/2007
Ch.	455		SB	201	05/08/2007

Ch.	456		SB	213	05/08/2007
Ch.	457		SB	227	10/01/2007
Ch.	458		SB	270	10/01/2007
Ch.	459		SB	309	10/01/2007
Ch.	460		SB	342	10/01/2007
Ch.	461		SB	384	10/01/2007
Ch.	462		SB	386	10/01/2007
Ch.	463		SB	387	01/01/2008
Ch.	464		SB	404	05/08/2007
Ch.	465		SB	411	05/08/2007
Ch.	466		SB	417	05/08/2007
Ch.	467		SB	436	10/01/2007
Ch.	468		SB	439	01/01/2008
Ch.	469		SB	448	05/08/2007
Ch.	470		SB	449	07/01/2007
Ch.	471		SB	478	07/01/2007
Ch.	472		SB	486	10/01/2007
Ch.	473		SB	505	05/08/2007
Ch.	474		SB	518	01/01/2008
Ch.	475		SB	525	05/08/2007
Ch.	476		SB	535	10/01/2007
Ch.	477		SB	538	10/01/2007
Ch.	478		SB	549	05/08/2007
Ch.	479		SB	489	Effective upon approval by the electorate
Ch.	480		HB	683	10/01/2007
Ch.	481		SB	96	05/11/2007
Ch.	482		SB	155	05/11/2007
Ch.	483		SB	547	05/11/2007
Ch.	484		HB	160	07/01/2007
Ch.	485		HB	337	05/14/2007
Ch.	486		HB	368	Chapter void — per section 2 of Chapter 486 (HB 368), this act is void if HB 818 was not passed and approved. HB 818 died in conference committee
Ch.	487		HB	462	05/14/2007
Ch.	488		HB	491	10/01/2007
Ch.	489	§§ 1-6(1), 7, and 8	HB	829	05/14/2007
		§ 6(2)			Effective when a water rights compact among the Blackfeet Tribe, the state, and the United States has been finally ratified by the legislature, the congress of the United States, and the Blackfeet Tribe
Ch.	490		SB	22	07/01/2007
Ch.	491		HB	25	10/01/2007
Ch.	492		SB	4	07/01/2007
Ch.	493		SB	12	07/01/2007
Ch.	494		SB	25	05/16/2007
Ch.	495		SB	27	10/01/2007
Ch.	496		SB	31	10/01/2007
Ch.	497		SB	74	10/01/2007
Ch.	498		SB	92	10/01/2007
Ch.	499		SB	103	10/01/2007
Ch.	500		SB	115	07/01/2007
Ch.	501		SB	127	10/01/2007
Ch.	502		SB	153	10/01/2007
Ch.	503		SB	168	07/01/2007
Ch.	504		SB	206	05/16/2007
Ch.	505		SB	233	10/01/2007
Ch.	506		SB	273	07/01/2007

Ch.	507	SB	276	01/01/2008
Ch.	508	SB	279	10/01/2007
Ch.	509	SB	281	05/16/2007
Ch.	510	SB	316	05/16/2007
Ch.	511	SB	348	05/16/2007
Ch.	512	SB	363	10/01/2007
Ch.	513	SB	365	05/16/2007
Ch.	514	SB	382	07/01/2007
Ch.	515	SB	433	05/16/2007
Ch.	516	SB	524	10/01/2007
Ch.	517	SB	118	05/18/2007
Ch.	518	SB	161	10/01/2007
Ch.	519	SB	205	07/01/2007
Ch.	520	SB	222	10/01/2007
Ch.	521	SB	550	10/01/2007

EFFECTIVE DATES BY DATE

Effective Date	Chapter Number	Bill Number
02/01/2007	Ch. 1	HB 1
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02/01/2007	Ch. 3	HB 42
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02/13/2007	Ch. 5	HB 21
02/16/2007	Ch. 6	HB 23
03/12/2007	Ch. 9	HB 333
03/16/2007	Ch. 10	SB 15
03/16/2007	Ch. 12	SB 97
03/16/2007	Ch. 14	HB 44
03/16/2007	Ch. 16	HB 115
03/16/2007	Ch. 18	HB 126
03/16/2007	Ch. 20	HB 219
03/16/2007	Ch. 21	HB 292
03/22/2007	Ch. 24	HB 18
03/22/2007	Ch. 25	HB 38
03/22/2007	Ch. 27	HB 48
03/22/2007	Ch. 30	HB 106
03/22/2007	Ch. 35	HB 226
03/22/2007	Ch. 40	SB 10
03/22/2007	Ch. 41	SB 11
03/22/2007	Ch. 42	SB 20
03/22/2007	Ch. 43	SB 35
03/27/2007	Ch. 45	HB 20
03/27/2007	Ch. 51	HB 94
03/27/2007	Ch. 55	HB 264
03/27/2007	Ch. 58	SB 29
03/27/2007	Ch. 63	SB 44
03/27/2007	Ch. 65	SB 59
03/27/2007	Ch. 68	SB 72
03/27/2007	Ch. 70	SB 76
03/27/2007	Ch. 76	SB 90
03/27/2007	Ch. 77	SB 126
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03/30/2007	Ch. 85	HB 51
03/30/2007	Ch. 87	HB 67
03/30/2007	Ch. 89	HB 75
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03/30/2007	Ch. 93	HB 102
03/30/2007	Ch. 98	HB 145
03/30/2007	Ch. 99	HB 149
03/30/2007	Ch. 100	HB 176
03/30/2007	Ch. 103	HB 244
03/30/2007	Ch. 106	HB 347
03/30/2007	Ch. 108	HB 449
03/30/2007	Ch. 109	HB 531
03/30/2007	Ch. 111	HB 662
03/30/2007	Ch. 113	SB 88
04/02/2007	Ch. 115	HB 664
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04/05/2007	Ch. 126	HB 120
04/05/2007	Ch. 129	HB 157
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04/05/2007	Ch.	136	HB	497
04/05/2007	Ch.	137	HB	770
04/05/2007	Ch.	146	SB	328
04/05/2007	Ch.	147	SB	385
04/05/2007	Ch.	148	SB	479
04/06/2007	Ch.	151	HB	400
04/06/2007	Ch.	159	HB	596
04/06/2007	Ch.	161	HB	717
04/06/2007	Ch.	162	HB	724
04/10/2007	Ch.	168	HB	166
04/10/2007	Ch.	172	HB	265
04/10/2007	Ch.	173	HB	363
04/10/2007	Ch.	174	HB	427
04/10/2007	Ch.	176	HB	532
04/10/2007	Ch.	178	HB	769
04/10/2007	Ch.	181	HB	803
04/10/2007	Ch.	183	SB	77
04/10/2007	Ch.	184	SB	164
04/10/2007	Ch.	186	SB	203
04/10/2007	Ch.	190	SB	467
04/11/2007	Ch.	192	SB	225
04/11/2007	Ch.	193	SB	536
04/12/2007	Ch.	194	SB	291
04/17/2007	Ch.	201	HB	587
04/17/2007	Ch.	205	HB	782
04/17/2007	Ch.	206	SB	36
04/17/2007	Ch.	208	SB	150
04/17/2007	Ch.	210	SB	169
04/17/2007	Ch.	213	SB	248
04/17/2007	Ch.	215	SB	285
04/17/2007	Ch.	216	SB	286
04/17/2007	Ch.	222	SB	378
04/17/2007	Ch.	224	SB	440
04/17/2007	Ch.	229	SB	527
04/23/2007	Ch.	231	HB	526
04/23/2007	Ch.	233	SB	185
04/24/2007	Ch.	235	HB	361
04/24/2007	Ch.	237	HB	450
04/25/2007	Ch.	239	HB	36
04/25/2007	Ch.	244	HB	636
04/25/2007	Ch.	246	HB	681
04/26/2007	Ch.	247	HB	19
04/26/2007	Ch.	255	HB	283
04/26/2007	Ch.	256	HB	291
04/26/2007	Ch.	257	HB	300
04/26/2007	Ch.	262	HB	389
04/26/2007	Ch.	266	HB	435
04/26/2007	Ch.	269	HB	460
04/26/2007	Ch.	270	HB	467
04/26/2007	Ch.	275	HB	537
04/26/2007	Ch.	278	HB	634
04/26/2007	Ch.	283	HB	743
04/26/2007	Ch.	284	HB	744
04/26/2007	Ch.	286	HB	778
04/26/2007	Ch.	288	HB	785
04/26/2007	Ch.	289	HB	811
04/26/2007	Ch.	292	SB	102
04/26/2007	Ch.	296	SB	339
04/26/2007	Ch.	297	SB	406
04/26/2007	Ch.	298	SB	422
04/26/2007	Ch.	300	SB	544
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04/27/2007	Ch.	317		HB	425
04/27/2007	Ch.	324		HB	609
04/27/2007	Ch.	331		HB	755
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04/27/2007	Ch.	334		HB	765
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? . . . . . Ch. 82 . . . . . SB 16
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? . . . . . Ch. 365 . . . . . HB 24
(Chapter void — per section 7 of Chapter 365 (HB 24), this act is void if SB 218 was not passed and approved. SB 218 died in House Natural Resources Committee.)
? . . . . . Ch. 415 . . . . . SB 372
(§§ 1-3, 5, and 6, Effective upon notification by the U.S. fish and wildlife service to the department of fish, wildlife, and parks that the wolf has been formally removed from the federal threatened or endangered species list and upon removal of the wolf from the state endangered species list by the department of fish, wildlife, and parks.)
(§ 4, Effective upon notification by the U.S. fish and wildlife service to the department of fish, wildlife, and parks that the grizzly bear has been formally removed from the federal threatened or endangered species list.)
? . . . . . Ch. 479 . . . . . SB 489
(Effective upon approval by the electorate.)
? . . . . . Ch. 486 . . . . . HB 368
(Chapter void — per section 2 of Chapter 486 (HB 368), this act is void if HB 818 was not passed and approved. HB 818 died in conference committee.)
? . . . . . Ch. 489 . . . . . HB 829
(§ 6(2), Effective when a water rights compact among the Blackfeet Tribe, the state, and the United States has been finally ratified by the legislature, the congress of the United States, and the Blackfeet Tribe.)

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	2	5-5-227
	3	Effective date
6	1	61-5-121
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7	1	15-18-212
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8	1	61-2-103
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	4	23-4-201
	5	23-4-202
	6	Effective date
10	1	45-8-116
	2	Codification instruction
	3	Severability
	4	Effective date
	5	Applicability
11	1	37-1-107
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	19	37-65-102
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	21	37-65-323
	22	37-66-103
	23	37-66-309
	24	Repealer
	25	Codification instruction
	26	Effective date
12	1	39-71-742
	2	39-71-743
	3	44-1-511
	4	Effective date
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14	1	17-5-703
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	3	Repealer
	4	Effective date
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	2	39-8-205
	3	39-8-207
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16	1	87-1-202
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17	1	67-2-302
18	1	Repealer
	2	Effective date
19	1	67-3-205
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22	1	15-70-101
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25	1	87-2-104
	2	87-2-505
	3	87-2-702
	4	Effective date
26	1	10-1-104
27	1	20-25-421
	2	Sec. 5, Ch. 577, L. 2005
	3	Effective date
28	1	49-2-501
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	8	49-2-512
	9	49-2-510
	10	Repealer
	11	Codification instruction
	12	Effective date
29	1	45-5-625
	2	50-19-501
	3	Repealer
30	1	90-1-104
	2	Notification to tribal governments
	3	Effective date
31	1	17-6-402
	2	17-6-403
	3	17-6-407
	4	Effective date
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	2	33-20-128
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	6	33-22-1115
	7	33-22-1116
	8	33-22-1119
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	11	33-22-1124
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	14	33-22-1127
	15	33-22-1128
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	17	Codification instruction
	18	Effective date
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	8	35-8-102
	9	35-8-208
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34	1	53-20-125
35	1	87-2-104
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36	1	37-31-101
37	1	61-3-458
	2	Effective date
38	1	20-31-104
39	1	3-2-403
	2	Effective date
40	1	2-18-503
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41	1	19-3-412
	2	Effective date
42	1	72-5-421
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	2	Effective date
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	6	7-15-4299
	7	10-3-1204
	8	13-1-202
	9	15-2-102
	10	15-30-313
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	12	15-39-105
	13	15-39-107
	14	15-70-357
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	16	16-3-322
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	64	61-8-715
	65	76-9-103
	66	76-14-103
	67	76-15-302
	68	82-4-127
	69	82-4-222
	70	85-2-225
	71	85-2-350
	72	87-5-704
	73	Sec. 14, Ch. 464, L. 2005
	74	Sec. 5, Ch. 535, L. 2005
	75	Directions to code commissioner
45	1	85-2-125
	2	Saving clause
	3	Effective date
46	1	2-18-411
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	3	17-8-306
	4	39-3-213
47	1	2-18-617
	2	2-18-618
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	2	39-71-916
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	6	39-71-510
	7	39-71-907
	8	39-71-915
	9	Codification instruction
	10	Effective date
	11	Applicability
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	2	17-5-2001
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	4	61-3-203
	5	61-3-204
	6	61-3-550
	7	Appropriation
	8	Repealer
	9	Two-thirds vote required
	10	Effective date
51	1	75-11-505
	2	75-11-512
	3	75-11-525

	4	Saving clause
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	8	39-51-1105
	9	39-51-1109
	10	39-51-1214
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	12	39-51-2302
	13	39-51-2304
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	15	39-51-2510
	16	Notification to tribal governments
	17	Codification instruction
	18	Effective dates
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	4	75-10-541
	5	61-3-225
	6	Codification instruction
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	5	75-10-920
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	5	60-2-134
	6	60-2-137
	7	Repealer
	8	Effective date
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	7	Applicability
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	2	Codification instruction
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536	7-12-2140
537	7-12-2154
538	7-12-2158
539	7-12-2163
540	7-12-2164
541	7-12-4101
542	7-12-4121
543	7-12-4143
544	7-12-4145
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546	7-12-4152
547	7-12-4167
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551	7-12-4185
552	7-12-4255
553	7-12-4304
554	7-12-4307
555	7-12-4309
556	7-12-4325
557	7-12-4353
558	7-12-4604
559	7-13-108
560	7-13-124
561	7-13-209
562	7-13-218
563	7-13-2209
564	7-13-2241
565	7-13-2246
566	7-13-2247
567	7-13-2278
568	7-13-2308
569	7-13-2342
570	7-13-2345
571	7-13-2505
572	7-13-4107
573	7-14-205
574	7-14-1103
575	7-14-2121
576	7-14-2122
577	7-14-2135
578	7-14-2137
579	7-14-2201
580	7-14-2302
581	7-14-2303
582	7-14-2306
583	7-14-2308
584	7-14-2606
585	7-14-2607
586	7-14-2613
587	7-14-2705
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594	7-14-2721
595	7-14-2753
596	7-14-2756
597	7-14-2761
598	7-14-2802
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600	7-14-2823
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602	7-14-2827
603	7-14-2828
604	7-14-4201
605	7-14-4203
606	7-14-4301
607	7-14-4612
608	7-14-4665
609	7-14-4717
610	7-14-4718
611	7-14-4721
612	7-15-2107
613	7-15-2108
614	7-15-4221
615	7-15-4234
616	7-15-4239
617	7-15-4264
618	7-15-4402
619	7-15-4409
620	7-15-4410
621	7-15-4433
622	7-15-4436
623	7-15-4437
624	7-15-4439
625	7-15-4528
626	7-15-4530
627	7-16-2312
628	7-16-2325
629	7-16-2330
630	7-16-2331
631	7-21-2102
632	7-21-2103
633	7-21-2111
634	7-21-2115
635	7-21-2117
636	7-21-2120
637	7-21-2305
638	7-21-2306
639	7-21-2307
640	7-21-2308
641	7-21-2309
642	7-21-2401
643	7-21-2406
644	7-21-2408
645	7-21-2409

646	7-21-2410
647	7-21-2502
648	7-21-2505
649	7-21-2506
650	7-21-2507
651	7-21-3104
652	7-21-3105
653	7-21-3106
654	7-21-3107
655	7-21-3108
656	7-21-3211
657	7-21-3212
658	7-21-3213
659	7-21-3303
660	7-21-3307
661	7-21-3435
662	7-21-3453
663	7-22-2214
664	7-22-2225
665	7-22-2401
666	7-22-2410
667	7-22-2434
668	7-23-101
669	7-23-102
670	7-31-112
671	7-31-202
672	7-31-2101
673	7-31-4102
674	7-31-4206
675	7-32-102
676	7-32-108
677	7-32-110
678	7-32-115
679	7-32-122
680	7-32-123
681	7-32-124
682	7-32-125
683	7-32-126
684	7-32-127
685	7-32-128
686	7-32-213
687	7-32-301
688	7-32-302
689	7-32-2101
690	7-32-2104
691	7-32-2107
692	7-32-2108
693	7-32-2121
694	7-32-2124
695	7-32-2125
696	7-32-2127
697	7-32-2129
698	7-32-2130
699	7-32-2131
700	7-32-2143
701	7-32-2202
702	7-32-2207
703	7-32-2208
704	7-32-2211
705	7-32-2234
706	7-32-2246
707	7-32-2248
708	7-32-2249
709	7-32-2250
710	7-32-4103
711	7-32-4105
712	7-32-4106
713	7-32-4107
714	7-32-4108
715	7-32-4109
716	7-32-4110
717	7-32-4111
718	7-32-4131
719	7-32-4136
720	7-32-4137
721	7-32-4155
722	7-32-4159
723	7-33-2127
724	7-33-2312
725	7-33-2315
726	7-33-4104
727	7-33-4124
728	7-33-4125
729	7-33-4133
730	7-34-2104
731	7-34-2105
732	7-34-2106
733	7-34-2118
734	7-35-2103
735	7-35-2133
736	7-35-2139
737	7-35-2141
738	7-35-2144
62	1 82-15-105
63	1 87-1-271
	2 Effective date
64	1 2-8-401
	2 2-8-402
	3 2-8-403
	4 2-8-404
	5 2-8-405
	6 Codification instruction
	7 Saving clause
65	1 81-9-219
	2 Effective date
66	1 2-15-122
	2 Effective date
67	1 10-3-1204
68	1 2-15-1009
	2 Effective date
	3 Applicability
69	1 30-9A-420
70	1 15-1-106
	2 5-12-303
	3 15-30-303
	4 15-31-511
	5 17-1-132
	6 17-7-111
	7 Codification instruction
	8 Effective date
71	1 53-21-102
72	1 2-17-518
73	1 41-3-438
	2 41-3-442
	3 41-3-445
74	1 17-3-211
	2 17-3-212
	3 Effective date
75	1 45-5-622
76	1 53-1-404
	2 Effective date
77	1 Repealer
	2 Effective date
78	1 2-15-1205
79	1 85-20-1101
	2 Codification instruction
80	1 85-20-1201
	2 Codification instruction
81	1 2-6-110
	2 2-15-131

	3	2-18-101
	4	2-18-201
	5	2-18-202
	6	2-18-203
	7	2-18-204
	8	2-18-206
	9	2-18-207
	10	2-18-301
	11	2-18-303
	12	2-18-304
	13	2-18-703
	14	2-18-1011
	15	2-18-1204
	16	5-2-301
	17	5-2-302
	18	13-37-106
	19	15-2-102
	20	39-51-301
	21	44-1-504
	22	Appropriations for broadband classification plan pay implementation
	23	Repealer
	24	Effective dates
	25	Applicability
82	1	Tax levy for university system
	2	Codification instruction
	3	Effective dates
	4	Termination
	5	Submission to electorate
83	1	61-1-101
	2	61-5-203
	3	61-5-212
	4	Effective date
	5	Retroactive applicability
84	1	61-4-501
	2	61-4-517
	3	Effective date
85	1	90-14-103
	2	Repealer
	3	Effective date
86	1	39-51-2201
	2	39-51-2302
87	1	2-4-306
	2	2-4-403
	3	2-4-404
	4	Effective date
	5	Applicability
88	1	2-4-202
	2	2-4-302
	3	2-4-312
	4	2-4-313
89	1	15-39-110
	2	17-7-502
	3	Transition remittance
	4	Effective date
	5	Retroactive applicability
90	1	19-20-101
	2	19-20-104
	3	19-20-202
	4	19-20-302
	5	19-20-305
	6	19-20-414
	7	19-20-427
	8	19-20-501
	9	19-20-503
	10	19-20-602
	11	19-20-603
	12	19-20-605
	13	19-20-705
	14	19-20-716
	15	19-20-717
	16	19-20-731
	17	19-20-805
	18	19-20-1101
	19	Effective date
91	1	5-13-101
	2	5-13-304
	3	5-13-308
	4	5-13-309
	5	5-13-321
	6	5-13-313
	7	5-13-314
	8	Codification instruction
92	1	85-5-101
	2	85-5-201
	3	85-5-301
	4	Effective date
93	1	7-12-2102
	2	7-12-4102
	3	7-12-4106
	4	7-12-4110
	5	7-12-4114
	6	7-13-2212
	7	7-13-2328
	8	85-7-206
	9	85-7-1953
	10	85-7-1973
	11	85-7-2104
	12	85-7-2117
	13	85-7-2134
	14	85-7-2136
	15	Effective date
94	1	7-7-104
	2	7-7-2213
	3	7-7-4212
	4	20-7-454
	5	20-7-455
	6	20-7-457
	7	20-7-604
	8	20-9-327
	9	20-9-461
	10	20-9-464
	11	20-9-466
	12	20-15-404
	13	44-11-310
	14	Repealer
95	1	1-11-301
	2	22-1-211
	3	22-1-212
	4	22-1-213
	5	22-1-219
	6	22-1-218
	7	Repealer
	8	Codification instruction
96	1	13-10-201
97	1	75-10-231
	2	75-10-1003
	3	75-10-1004
	4	75-10-1006
	5	75-10-1007
	6	75-10-208
	7	Codification instruction
98	1	50-60-106
	2	Effective date
99	1	70-32-104
	2	Effective date
100	1	2-17-414
	2	15-6-135
	3	15-70-201

	4	15-70-202
	5	15-70-204
	6	15-70-221
	7	15-70-501
	8	15-70-502
	9	15-70-503
	10	15-70-511
	11	15-70-512
	12	15-70-513
	13	15-70-514
	14	15-70-521
	15	15-70-522
	16	15-70-523
	17	15-70-527
	18	17-6-317
	19	75-11-302
	20	75-11-314
	21	Name change — directions to code commissioner
	22	Effective date
101	1	23-5-112
	2	23-5-306
	3	23-5-308
	4	23-5-313
	5	23-5-317
	6	23-5-710
	7	23-5-325
	8	Repealer
	9	Codification instruction
	10	Effective date
102	1	87-2-803
	2	87-3-125
	3	Effective date
103	1	69-3-305
	2	Effective date
104	1	90-1-201
	2	90-1-202
	3	90-1-204
	4	Notification to tribal governments
	5	Effective date
105	1	61-9-418
106	1	20-9-204
	2	Effective date
107	1	37-9-102
	2	2-15-1735
	3	Codification instruction
108	1	50-32-226
	2	50-32-232
	3	Effective date
109	1	60-1-214
	2	Codification instruction
	3	Effective date
110	1	7-2-2722
	2	7-6-4423
	3	15-16-101
	4	15-17-121
	5	15-17-122
	6	15-17-124
	7	15-17-131
	8	15-17-211
	9	15-17-212
	10	15-17-213
	11	15-17-214
	12	15-17-317
	13	15-17-321
	14	15-17-323
	15	15-17-324
	16	15-17-325
	17	15-17-326
	18	15-18-111
	19	15-18-113
	20	15-18-114
	21	15-18-211
	22	15-18-212
	23	15-18-213
	24	15-18-214
	25	15-18-215
	26	15-18-217
	27	15-18-218
	28	39-3-501
	29	85-7-2136
	30	85-7-2152
	31	85-7-2157
	32	85-7-2158
	33	85-7-2159
	34	85-7-2162
	35	85-7-2163
	36	85-8-601
111	1	76-4-125
	2	Effective date
112	1	7-35-2205
	2	Codification instruction
113	1	Repealer
	2	Effective date
114	1	61-9-406
115	1	76-13-304
	2	Effective date
116	1	53-21-102
	2	53-21-129
	3	53-21-193
	4	53-21-194
117	1	39-71-107
	2	39-71-201
	3	39-71-415
	4	39-71-417
	5	39-71-418
	6	39-71-704 (Voided and replaced by sec. 3, Ch. 330)
	7	39-71-727
	8	39-71-1107
	9	39-71-2106
	10	39-71-2201
	11	39-71-2204
	12	39-71-2205
	13	39-71-2337
	14	39-71-325
	15	39-71-2215
	16	Repealer
	17	Codification instruction
	18	Effective date
118	1	37-51-313
	2	Effective date
119	1	50-4-603
	2	Effective date
	3	Retroactive applicability
120	1	2-15-1508
	2	Saving clause
	3	Effective date
	4	Applicability
121	1	17-7-502
	2	Repealer
	3	Effective date
	4	Retroactive applicability
122	1	53-20-102
123	1	52-2-309
	2	52-2-301
	3	52-2-308
	4	Use of medicaid funds — report
	5	Codification instruction
	6	Effective date

124	1	2-15-143
	2	Notification to tribal governments
	3	Effective date
125	1	37-2-104
	2	37-7-103
	3	50-31-307
126	1	52-2-713
	2	52-2-733
	3	Effective date
127	1	2-18-811
	2	18-4-313
	3	Effective date
128	1	19-2-602
	2	19-2-715
	3	19-2-907
	4	19-2-908
	5	19-2-909
	6	19-3-401
	7	19-3-412
	8	19-3-510
	9	19-3-1105
	10	19-3-1106
	11	19-3-1202
	12	19-3-1203
	13	19-3-1204
	14	19-3-2111
	15	19-3-2112
	16	19-3-2113
	17	19-6-707
	18	19-7-101
	19	19-7-312
	20	19-7-1101
	21	19-8-301
	22	19-8-302
	23	19-9-1202
	24	19-9-1205
	25	19-9-1206
	26	19-17-102
	27	19-17-108
	28	19-17-401
	29	19-17-402
	30	19-17-502
	31	Repealer
129	1	53-4-1007
	2	53-4-1012
	3	Effective date
	4	Retroactive applicability
	5	Contingent termination — transfer of excess funds
130	1	30-18-102
	2	30-18-118
	3	61-11-503
	4	Repealer
131	1	7-4-2105
	2	7-4-2205
132	1	Renovation of Morony apartment building at Giant Springs state park
	2	Appropriation
	3	Notification to tribal governments
	4	Effective date
133	1	3-15-402
	2	3-15-403
	3	3-15-404
	4	46-17-202
	5	61-5-127
	6	Repealer
	7	Effective date
134	1	71-3-1201
135	1	35-2-1401
136	1	87-2-803
	2	Effective date
137	1	37-3-203
	2	87-2-803
	3	Effective date
138	1	30-14-1726
	2	30-14-1727
	3	30-14-1728
	4	30-14-1729
	5	30-14-1730
	6	30-14-1731
	7	30-14-1732
	8	30-14-1733
	9	30-14-1734
	10	30-14-1735
	11	30-14-1736
	12	Severability
	13	Codification instruction
	14	Effective date
139	1	41-5-216
140	1	3-5-901
	2	46-14-202
	3	46-14-221
	4	Effective date
141	1	44-5-202
142	1	85-2-335
143	1	61-8-212
	2	Codification instruction
144	1	61-5-104
145	1	61-5-205
	2	61-7-103
146	1	18-4-132
	2	Effective date
	3	Applicability
147	1	45-5-305
	2	45-5-306
	3	Codification instruction
	4	Effective date
148	1	80-11-701
	2	80-11-702
	3	Codification instruction
	4	Effective date
149	1	2-6-109
150	1	50-1-105
	2	50-1-106
	3	50-1-101
	4	50-1-202
	5	50-2-116
	6	50-2-118
	7	50-2-130
	8	50-48-102
	9	50-53-102
	10	75-5-305
	11	76-4-125
	12	76-4-133
	13	Repealer
	14	Codification instruction
	15	Notification to tribal governments
151	1	76-1-201
	2	76-1-211
	3	Transition
	4	Effective date
152	1	30-14-2501
	2	30-14-2502
	3	30-14-2503
	4	Codification instruction
153	1	Repealer
154	1	7-12-2202
	2	7-12-4323
155	1	45-2-101

156	1	75-10-215
157	1	13-21-103
	2	13-21-201
	3	13-21-202
	4	13-21-205
	5	13-21-206
	6	13-21-210
	7	Repealer
	8	Notification to tribal governments
158	1	71-1-316
159	1	7-14-4110
	2	Effective date
	3	Retroactive applicability
160	1	77-2-102
161	1	85-20-1301
	2	Codification instruction
	3	Effective date
162	1	30-14-1301
	2	30-14-1302
	3	30-14-1303
	4	30-14-1304
	5	Codification instruction
	6	Effective date
	7	Applicability
163	1	7-12-4102
164	1	77-1-101
	2	77-1-126
	3	77-1-127
	4	77-1-128
	5	77-1-129
	6	Codification instruction
	7	Severability
165	1	41-3-120
	2	Appropriation
	3	Codification instruction
	4	Effective date
166	1	41-3-110
	2	41-3-115
	3	41-3-201
	4	41-3-205
	5	41-3-422
	6	41-3-423
	7	41-3-432
	8	41-3-445
	9	Codification instruction
	10	Effective date
167	1	7-33-2001
	2	Repealer
	3	Codification instruction
168	1	15-32-701
	2	15-32-702
	3	15-32-703
	4	Effective date
	5	Retroactive applicability
169	1	53-4-1005
	2	Effective date
	3	Termination
170	1	15-10-425
171	1	Repealer
172	1	76-1-304
	2	Effective date
173	1	20-9-141
	2	20-9-308
	3	20-9-353
	4	Effective date
	5	Retroactive applicability
174	1	69-3-1402
	2	69-3-1408
	3	Effective date
175	1	2-15-2230
	2	Codification instruction
	3	Effective date
176	1	10-1-505
	2	10-1-501
	3	10-1-502
	4	Codification instruction
	5	Effective date
177	1	39-11-202
	2	Effective date
178	1	37-48-106
	2	37-48-107
	3	37-48-108
	4	37-48-113
	5	37-48-115
	6	37-48-118
	7	37-48-101
	8	37-48-102
	9	37-48-103
	10	Codification instruction
	11	Effective date
179	1	39-71-401
	2	Effective date
180	1	16-3-322
	2	16-6-305
	3	30-14-1704
	4	33-19-321
	5	45-6-332
	6	45-8-206
	7	45-8-322
	8	61-3-101
	9	61-3-216
	10	61-5-206
	11	61-5-302
	12	87-2-106
	13	87-2-202
	14	Notification to tribal governments
181	1	10-2-102
	2	Effective date
182	1	10-3-312
	2	90-4-302
183	1	87-1-272
	2	Effective date
	3	Termination
184	1	72-5-315
	2	72-5-408
	3	Effective date
	4	Applicability
185	1	Sec. 4, Ch. 81, L. 2003
	2	Sec. 1, Ch. 23, L. 2005
186	1	7-32-235
	2	Effective date
187	1	7-3-1321
	2	7-7-2101
	3	7-7-4201
	4	7-14-2524
	5	7-14-2525
	6	Effective date
188	1	18-8-204
189	1	2-4-405
190	1	2-15-1808
	2	Effective date
191	1	13-10-211
	2	Applicability
192	1	20-20-105
	2	Effective date
	3	Extension of school election deadlines — applicability
193	1	70-30-102
	2	Effective date
194	1	20-6-326

	2	20-6-104
	3	20-9-366
	4	20-9-439
	5	20-9-502
	6	Codification instruction
	7	Effective date — applicability
195	1	46-24-218
	2	46-24-220
	3	31-3-132
	4	46-24-219
	5	33-18-612
	6	Codification instruction
196	1	30-12-203
197	1	16-4-401
198	1	61-5-128
	2	Codification instruction
199	1	23-2-615
	2	Effective date
200	1	7-4-2503
	2	Effective date
201	1	33-23-203
	2	Effective date
	3	Applicability
202	1	40-5-222
	2	40-5-227
203	1	46-1-501
	2	46-1-502
	3	46-1-503
	4	46-1-504
	5	46-1-505
	6	46-1-506
	7	46-1-507
	8	Codification instruction
204	1	71-3-551
	2	71-3-553
205	1	39-51-2208
	2	53-2-108
	3	Effective date
	4	Retroactive applicability
206	1	61-3-321
	2	Effective date
207	1	2-4-302
208	1	15-30-165
	2	Sec. 9, Ch. 537, L. 1997
	3	Sec. 5, Ch. 226, L. 2001
	4	Sec. 7, Ch. 4, L. 2005
	5	Effective date
	6	Applicability
	7	Termination
209	1	7-14-112
210	1	15-1-121
	2	Effective date
	3	Applicability
211	1	2-3-114
	2	2-3-213
212	1	41-3-301
213	1	85-20-1401
	2	85-2-320
	3	85-2-102
	4	85-2-302
	5	85-2-306
	6	85-2-308
	7	85-2-310
	8	85-2-311
	9	85-2-312
	10	85-2-316
	11	85-2-319
	12	85-2-331
	13	85-2-336
	14	85-2-341
	15	85-2-343
	16	85-2-344
	17	85-2-401
	18	85-2-402
	19	Codification instruction
	20	Effective date
214	1	45-8-213
	2	Effective date
215	1	2-17-802
	2	Effective date
216	1	2-17-807
	2	Effective date
217	1	2-17-135
	2	7-16-2201
	3	7-16-2205 (Voided and replaced by sec. 13, Ch. 505)
	4	90-1-160
	5	90-1-161
	6	90-1-162
	7	90-1-163
	8	90-1-164
	9	90-1-167
	10	90-1-168
	11	90-1-169
	12	18-2-105
	13	Codification instructions
	14	Notification to tribal governments
	15	Effective date
218	1	61-4-123
219	1	7-4-2106
220	1	Directions to code commissioner
221	1	13-13-212
	2	13-21-210
	3	Effective date
222	1	15-30-305
	2	15-31-501
	3	Effective date
	4	Retroactive applicability
223	1	69-12-102
224	1	53-2-1203
	2	Saving clause
	3	Effective date
225	1	37-1-101
	2	37-1-131
	3	37-1-136
	4	37-1-311
	5	37-1-405
	6	Severability
	7	Effective date
226	1	18-4-301
	2	18-4-303
227	1	61-12-801
	2	Codification instruction
228	1	13-3-202
	2	13-3-205
	3	13-3-206
	4	13-3-207
	5	13-3-212
	6	13-3-213
	7	Repealer
229	1	76-3-203
	2	Effective date
230	1	Legislative findings — county attorney workload and salaries
	2	7-4-2502
	3	7-4-2503
	4	7-4-2704
	5	7-4-2706
	6	17-7-112
	7	17-7-502

	8	Effective date
231	1	69-5-102
	2	69-5-105
	3	69-5-106
	4	69-5-110
	5	69-5-113
	6	69-5-114
	7	Saving clause
	8	Codification instruction
	9	Effective date
	10	Applicability
232	1	39-73-101
	2	39-73-103
	3	39-73-104
	4	39-73-107
	5	39-73-109
	6	Appropriation
	7	Effective date
233	1	61-1-101
	2	61-8-377
	3	61-9-432
	4	61-5-102
	5	Codification instruction
	6	Effective date
234	1	35-18-104
	2	Saving clause
	3	Effective date
235	1	40-1-202
	2	40-1-301
	3	Effective date
236	1	7-7-2402
	2	Effective date
237	1	87-2-106
	2	87-2-202
	3	Sec. 3, Ch. 321, L. 2001
	4	Effective date
	5	Contingent termination
238	1	46-23-1027
	2	46-23-1021
	3	Codification instruction
239	1	Repealer
	2	Effective date
240	1	35-7-101
	2	35-7-102
	3	35-7-103
	4	35-7-104
	5	35-7-105
	6	35-7-106
	7	35-7-107
	8	35-7-108
	9	35-7-109
	10	35-7-110
	11	35-7-111
	12	35-7-112
	13	35-7-113
	14	35-7-114
	15	35-7-115
	16	35-7-116
	17	35-7-117
	18	15-31-103
	19	35-1-116
	20	35-1-216
	21	35-1-226
	22	35-1-425
	23	35-1-518
	24	35-1-523
	25	35-1-838
	26	35-1-940
	27	35-1-1028
	28	35-1-1029
	29	35-1-1037
	30	35-1-1038
	31	35-1-1040
	32	35-1-1104
	33	35-1-1109
	34	35-1-1309
	35	35-2-115
	36	35-2-130
	37	35-2-213
	38	35-2-222
	39	35-2-423
	40	35-2-528
	41	35-2-535
	42	35-2-609
	43	35-2-613
	44	35-2-729
	45	35-2-822
	46	35-2-823
	47	35-2-832
	48	35-2-904
	49	35-2-909
	50	35-2-1109
	51	35-3-202
	52	35-3-209
	53	35-3-210
	54	35-4-311
	55	35-4-411
	56	35-6-102
	57	35-8-202
	58	35-8-208
	59	35-8-209
	60	35-8-1003
	61	35-8-1011
	62	35-8-1014
	63	35-8-1203
	64	35-9-207
	65	35-9-501
	66	35-12-508
	67	35-12-601
	68	Repealer
	69	Codification instruction
	70	Effective date
241	1	5-7-120
	2	Codification instruction
242	1	61-5-105
	2	61-5-111
	3	61-5-120
	4	61-5-207
	5	61-9-428
	6	61-13-103
243	1	1-1-530
	2	Codification instruction
244	1	7-32-103
	2	7-32-2107
	3	7-32-4105
	4	44-1-302
	5	46-6-420
	6	Effective date
245	1	45-5-624
246	1	69-8-1003
	2	69-8-1004
	3	69-8-1005
	4	69-8-1007
	5	Effective date
247	1	17-1-508
	2	17-6-201
	3	17-7-502
	4	77-1-108
	5	77-1-109
	6	77-1-602

	7	77-1-606
	8	77-1-613
	9	77-1-905
	10	77-2-328
	11	77-5-204
	12	Effective date
248	1	2-15-246 (Renumbered 2-15-2511)
	2	Appropriation
	3	Directions to code commissioner
249	1	33-1-111
	2	33-35-306
	3	Codification instruction
	4	Effective date
250	1	46-23-210
	2	Effective date
	3	Applicability
251	1	53-19-401
	2	53-19-402
	3	53-19-404
	4	Repealer
252	1	53-20-102
	2	53-20-112
	3	53-20-110
	4	53-20-118
	5	53-20-121
	6	53-20-125
	7	53-20-126
	8	53-20-128
	9	53-20-129
	10	53-20-132
	11	53-20-133
	12	53-20-140
	13	53-20-141
	14	Severability
	15	Codification instruction
253	1	7-12-1102
	2	7-12-1111
	3	7-12-1121
	4	7-12-1132
	5	7-12-1133
254	1	46-23-504 (Voided and replaced by sec. 4, Ch. 254)
	2	46-23-505 (Voided and replaced by sec. 5, Ch. 254)
	3	46-23-508 (Voided by sec. 6, Ch. 254)
	4	Coordination instruction
	5	Coordination instruction
	6	Coordination instruction
255	1	20-25-428
	2	Notification to tribal governments
	3	Effective date
256	1	75-2-111
	2	Effective date
257	1	16-4-402
	2	Effective date
	3	Applicability
258	1	72-6-121
	2	72-6-122
	3	72-6-111
	4	Codification instruction
	5	Applicability
259	1	18-2-124
	2	60-2-116
	3	60-2-117
	4	Codification instruction
260	1	75-20-104
261	1	2-15-3110
	2	2-15-3111
	3	2-15-3112
	4	2-15-3113
	5	81-1-110
	6	81-1-111
	7	2-15-3114
	8	Appropriation
	9	Notification to tribal governments
	10	Codification instruction
	11	Effective dates
262	1	87-1-201
	2	87-1-301
	3	Effective date
263	1	53-20-134
	2	Codification instruction
264	1	76-3-621
265	1	75-10-501
266	1	27-2-204
	2	53-9-104
	3	53-9-112
	4	Codification instruction
	5	Severability
	6	Effective date
	7	Applicability
267	1	70-24-103
	2	70-24-305
	3	70-24-314
	4	70-24-422
	5	70-24-431
	6	70-24-441
	7	70-33-101
	8	70-33-102
	9	70-33-103
	10	70-33-104
	11	70-33-105
	12	70-33-106
	13	70-33-107
	14	70-33-201
	15	70-33-202
	16	70-33-203
	17	70-33-301
	18	70-33-302
	19	70-33-303
	20	70-33-304
	21	70-33-305
	22	70-33-311
	23	70-33-312
	24	70-33-313
	25	70-33-314
	26	70-33-315
	27	70-33-321
	28	70-33-322
	29	70-33-401
	30	70-33-402
	31	70-33-403
	32	70-33-404
	33	70-33-405
	34	70-33-406
	35	70-33-407
	36	70-33-408
	37	70-33-409
	38	70-33-410
	39	70-33-422
	40	70-33-423
	41	70-33-424
	42	70-33-425
	43	70-33-426
	44	70-33-427
	45	70-33-428
	46	70-33-429
	47	70-33-430
	48	70-33-431

	49	70-33-432
	50	70-33-433
	51	70-33-434
	52	Repealer
	53	Codification instruction
268	1	46-4-123
269	1	82-4-338
	2	Effective date
	3	Applicability
270	1	27-6-103
	2	27-6-105
	3	Effective date
271	1	37-3-208
	2	Codification instruction
272	1	2-7-503
273	1	13-1-101
	2	13-1-108
	3	13-1-111
	4	13-1-202
	5	13-2-304
	6	13-10-204
	7	13-10-209
	8	13-10-211
	9	13-10-301
	10	13-10-311
	11	13-10-326
	12	13-10-503 (Voided and replaced by sec. 2, Ch. 458)
	13	13-10-601
	14	13-12-205
	15	13-12-207
	16	13-13-117
	17	13-13-201
	18	13-13-205
	19	13-13-213
	20	13-13-214
	21	13-13-241
	22	13-15-107
	23	13-15-201
	24	13-15-206
	25	13-15-209
	26	13-15-301
	27	13-17-103
	28	13-17-211
	29	13-17-212
	30	13-25-101
	31	13-27-401
	32	Repealer
274	1	7-2-4101
275	1	80-2-203
	2	80-2-207
	3	80-2-208
	4	80-2-209
	5	80-2-227
	6	80-2-231
	7	80-2-244
	8	Effective date
276	1	30-14-1712
	2	30-14-1713
	3	30-14-1701
	4	30-14-1702
	5	33-19-410
	6	Codification instruction
277	1	16-4-204
	2	23-5-119
	3	Effective date
278	1	90-7-302
	2	Effective date
279	1	20-9-406
	2	20-9-407
	3	Effective date
280	1	15-35-108
	2	82-4-244
	3	Codification instruction
	4	Effective date
	5	Applicability
281	1	7-33-4124
282	1	46-16-221
	2	Codification instruction
	3	Severability
	4	Applicability
283	1	17-6-602
	2	17-6-606
	3	Effective date
284	1	20-6-105
	2	Effective date
285	1	17-6-230
	2	19-2-410
	3	19-20-215
	4	5-11-210
	5	19-2-405
	6	19-2-407
	7	19-2-408
	8	19-20-201
	9	19-20-719
	10	Codification instruction
	11	Effective date
286	1	15-36-304
	2	Effective date
	3	Retroactive applicability
287	1	44-2-117
	2	Effective date
288	1	39-71-401
	2	Effective date
289	1	22-2-701
	2	Notification to tribal governments
	3	Codification instruction
	4	Effective date
290	1	39-2-215
	2	39-2-216
	3	39-2-217
	4	Codification instruction
291	1	50-6-502
	2	50-6-503
	3	50-6-505
	4	Effective date
292	1	7-33-2108
	2	7-33-2202
	3	7-33-2405
	4	7-33-4112
	5	10-3-202
	6	10-3-209
	7	10-3-1102
	8	10-3-1103
	9	Effective date
293	1	71-3-522
	2	71-3-531
294	1	40-1-202
	2	40-1-203
	3	40-1-205
	4	40-1-206
	5	40-1-208
295	1	71-3-1114
296	1	7-2-4208
	2	Codification instruction
	3	Effective date
297	1	81-7-202
	2	81-7-305
	3	81-7-605
	4	Effective date

298	1	61-9-414
	2	Effective date
299	1	19-13-210
	2	19-13-301
	3	Effective date
300	1	80-11-801
	2	Codification instruction
	3	Effective date
301	1	Time limits
	2	Appropriations — authorization to expend money
	3	Effective date
302	1	Time limits
	2	Appropriations
	3	Effective date
303	1	Appropriation of cultural and aesthetic grant funds — priority of disbursement
	2	Fund transfer
	3	Appropriation of cultural and aesthetic grant funds
	4	Reversion of grant money
	5	Reduction of grants on pro rata basis
	6	Effective date
304	1	10-4-101
	2	10-4-102
	3	10-4-114
	4	10-4-115
	5	10-4-201
	6	10-4-301
	7	10-4-313
	8	Codification instruction
	9	Effective date
305	1	19-20-607
	2	17-7-502
	3	19-20-101
	4	19-20-102
	5	19-20-501
	6	19-20-605
	7	19-20-621
	8	19-20-716
	9	19-20-719
	10	19-20-731
	11	Appropriations
	12	Codification instruction
	13	Effective dates
306	1	17-7-502
	2	19-21-203
	3	Effective date
307	1	Appropriation to repay startup loan for defined contribution plan
	2	Effective date
308	1	10-1-1201
	2	15-30-116
	3	17-7-502
	4	10-1-1202
	5	Codification instruction
	6	Effective date
309	1	5-11-120
	2	17-7-502
	3	Fund transfer
	4	Codification instruction
	5	Effective date
310	1	50-53-102
	2	50-53-103
	3	50-53-201
	4	50-53-202
	5	50-53-203
	6	50-53-206
311	1	10-1-1301
	2	10-1-1302
	3	10-1-1303
	4	10-1-1304
	5	10-1-1305
	6	10-1-1306
	7	10-1-1307
	8	10-1-1308
	9	10-1-1309
	10	10-1-1310
	11	15-30-193
	12	17-7-502
	13	Fund transfer
	14	Codification instruction
	15	Effective date
	16	Applicability
312	1	75-5-325
	2	75-5-326
	3	75-5-305
	4	75-5-327
	5	Codification instruction
	6	Applicability
313	1	7-22-2116
	2	7-22-2126
	3	7-22-2142
	4	7-22-2151
	5	Repealer
	6	Transfer of funds
	7	Effective dates
314	1	Extension of natural resource damage program appropriation
	2	Loan agreement
	3	Three-fourths vote required
	4	Effective dates
315	1	23-2-702
	2	23-2-703
	3	23-2-704
	4	23-2-731
	5	23-2-733
	6	23-2-734
	7	23-2-735
	8	23-2-736
316	1	15-16-701
	2	15-16-702
	3	Saving clause
	4	Effective date
317	1	76-3-504
	2	Effective date
318	1	50-65-101
	2	50-65-102
	3	50-65-103
	4	50-65-104
	5	50-65-110
	6	50-65-111
	7	50-65-112
	8	50-65-115
	9	50-65-120
	10	50-65-121
	11	Notification to tribal governments
	12	Effective date
	13	Codification instruction
319	1	15-1-216
	2	17-7-102
	3	85-2-270
	4	85-2-271
	5	85-2-280
	6	Funds transfer
	7	85-2-281
	8	Collection of outstanding water adjudication fees — appeals

	9	Repealer
	10	Effective date
	11	Termination
320	1	15-30-194
	2	Codification instruction
	3	Effective date
	4	Retroactive applicability
321	1	45-5-501
	2	45-5-502
322	1	15-70-317
	2	15-70-302
	3	15-70-372
	4	Codification instruction
	5	Effective date
	6	Applicability
323	1	Appropriation
	2	Effective date
324	1	20-3-330
	2	Codification instruction
	3	Effective date — applicability
325	1	2-15-2212
	2	53-19-302
	3	53-19-306
	4	53-19-307
	5	53-19-308
	6	53-19-310
	7	53-19-311
	8	69-3-1302
	9	53-19-315
	10	53-19-316
	11	53-19-317
	12	53-19-318
	13	53-19-319
	14	Repealer
	15	Codification instruction
	16	Effective date
326	1	Appropriation — matching funds — administration
	2	Effective date
327	1	15-1-218
	2	17-7-502
	3	Codification instruction
	4	Effective date
328	1	13-37-216
329	1	61-3-214
	2	61-3-319
	3	61-4-127
	4	61-4-128
	5	61-9-435
	6	15-1-122
	7	23-2-502
	8	23-2-515
	9	23-2-601
	10	23-2-614
	11	23-2-631
	12	23-2-634
	13	23-2-641
	14	23-2-642
	15	23-2-644
	16	61-1-101
	17	61-3-101
	18	61-3-115
	19	61-3-116
	20	61-3-206
	21	61-3-216
	22	61-3-222
	23	61-3-224
	24	61-3-301
	25	61-3-303
	26	61-3-320
	27	61-3-321
	28	61-3-332
	29	61-3-448
	30	61-3-463
	31	61-3-468
	32	61-3-503
	33	61-3-562
	34	61-4-101
	35	61-4-102
	36	61-4-104
	37	61-4-105
	38	61-4-109
	39	61-4-111
	40	61-4-112
	41	61-4-120
	42	61-4-122
	43	61-4-123
	44	61-4-124
	45	61-4-125
	46	61-4-126
	47	61-4-129
	48	61-4-130
	49	61-4-131
	50	61-4-135
	51	61-4-136
	52	61-4-137
	53	61-4-202
	54	61-4-204
	55	61-5-112
	56	61-6-304
	57	61-8-102
	58	61-11-105
	59	Repealer
	60	Codification instruction
	61	Effective date
330	1	39-71-704 (Voided and replaced by sec. 3, Ch. 330)
	2	39-71-743
	3	Coordination instruction
	4	Effective date
	5	Applicability dates
331	1	30-14-102
	2	70-9-802
	3	70-9-803
	4	Effective date — retroactive applicability
332	1	10-3-801
	2	87-1-601
	3	Effective date
333	1	33-18-103
	2	Codification instruction
	3	Effective date
334	1	5-2-304
	2	19-3-412
	3	Transition
	4	Effective date
	5	Retroactive applicability
335	1	45-5-501
	2	45-5-502
	3	45-5-503
336	1	76-13-115
	2	45-6-203
	3	76-13-101
	4	76-13-102
	5	76-13-103
	6	76-13-104 (Voided and replaced by sec. 34, Ch. 336)
	7	76-13-116
	8	76-13-105
	9	76-13-110

	10	76-13-121
	11	76-13-122
	12	76-13-123
	13	76-13-124
	14	76-13-125
	15	76-13-126
	16	76-13-212
	17	76-13-201
	18	76-13-202
	19	76-13-203
	20	76-13-204
	21	76-13-205
	22	76-13-206
	23	76-13-207
	24	76-13-208
	25	76-13-209
	26	76-13-210
	27	76-13-211
	28	77-5-103
	29	76-13-213
	30	Repealer
	31	Codification instruction
	32	Directions to code commissioner
	33	Coordination instruction
	34	Coordination instruction
	35	Effective date
337	1	2-4-306
	2	Effective date
338	1	13-10-211
339	1	33-18-224
340	1	39-51-204
	2	39-71-417
	3	Effective date
341	1	2-18-621
	2	Effective date
342	1	7-14-2101
	2	60-4-201
343	1	20-3-332
	2	Effective date
344	1	7-4-2636
	2	Effective date
345	1	46-4-103
	2	50-9-105
	3	50-10-103
	4	72-17-101
	5	72-17-102
	6	72-17-108
	7	72-17-201
	8	72-17-202
	9	72-17-207
	10	72-17-208
	11	72-17-213
	12	72-17-214
	13	72-17-216
	14	72-17-217
	15	72-17-218
	16	72-17-301
	17	72-17-303
	18	72-17-109
	19	Codification instruction
	20	Applicability
346	1	20-5-420
	2	Effective date
347	1	10-1-101
	2	10-1-1401
	3	10-1-1402
	4	10-1-1403
	5	Codification instruction
	6	Effective date
348	1	16-4-420
	2	Saving clause
	3	Effective date
349	1	61-8-303
350	1	7-14-2507
	2	Codification instruction
	3	Effective date
351	1	50-5-117
	2	50-5-105
	3	50-5-207
	4	Codification instruction
	5	Effective date
	6	Termination
352	1	70-17-111
	2	70-17-203
	3	76-6-207
	4	90-1-404
	5	76-6-212
	6	Codification instruction
	7	Effective dates
353	1	70-16-301
	2	70-16-302
	3	Effective date
354	1	20-9-327
	2	Effective date
355	1	85-2-404
	2	Effective date
356	1	33-22-152
	2	2-18-701
	3	2-18-704
	4	33-22-101
	5	33-22-140
	6	33-22-1803
	7	33-31-102
	8	33-31-111
	9	33-35-306
	10	Codification instruction
	11	Effective date
357	1	82-4-1006
	2	Codification instruction
	3	Effective date
358	1	13-13-212
	2	Applicability
359	1	39-71-116
360	1	13-1-106
361	1	15-30-189
	2	17-1-511
	3	20-26-1501
	4	20-26-1502
	5	20-26-1503
	6	Repealer
	7	Codification instruction
	8	Effective dates
	9	Applicability
362	1	39-51-404
	2	39-51-409
	3	39-51-1121
	4	39-51-1212
	5	39-51-1218
	6	39-51-3207
	7	Effective dates
363	1	Appropriations for reclamation and development grants (Amended by sec. 10, Ch. 363)
	2	Approved grants and projects
	3	Coordination of fund sources for grants program projects
	4	Condition of grants
	5	Other appropriations
	6	Fund transfer (Voided by sec. 10, Ch. 363)

	7	90-2-1104
	8	Sec. 2, Ch. 473, L. 2003
	9	Repealer
	10	Coordination instruction
	11	Effective dates
364	1	Approval of renewable resource projects and authorization to provide loans
	2	Projects not completing requirements — projects reauthorized
	3	Coal severance tax bonds authorized
	4	Conditions of loans
	5	Private and discount purchase of loans
	6	Appropriation established
	7	Regional water projects — conditions of loans — appropriation established
	8	Creation of state debt — appropriation of coal severance tax — bonding provisions
	9	Severability
	10	Effective date
365	1	69-13-101 (Voided by sec. 7, Ch. 365)
	2	69-13-102 (Voided by sec. 7, Ch. 365)
	3	69-13-201 (Voided by sec. 7, Ch. 365)
	4	69-13-301 (Voided by sec. 7, Ch. 365)
	5	69-13-302 (Voided by sec. 7, Ch. 365)
	6	69-13-303 (Voided by sec. 7, Ch. 365)
	7	Contingent voidness
	8	Contingent effective date (Voided by sec. 7, Ch. 365)
366	1	15-7-308
	2	85-2-421
	3	85-2-422
	4	85-2-424
	5	85-2-426
	6	85-2-431
	7	Effective date
367	1	15-31-906
	2	15-31-907
	3	15-31-908
	4	15-31-911
	5	Repealer
	6	Severability
	7	Effective date
	8	Retroactive applicability
	9	Termination — carryforward
368	1	Interim study on local government special purpose districts
	2	Appropriation
	3	Effective date
369	1	32-10-101
	2	32-10-102
	3	32-10-103
	4	32-10-201
	5	32-10-202
	6	32-10-203
	7	32-10-204
	8	32-10-207
	9	32-10-208
	10	32-10-209
	11	32-10-301
	12	32-10-302
	13	32-10-303
	14	32-10-309
	15	32-10-310
	16	32-10-401
	17	32-10-402
	18	32-10-403
	19	32-10-404
	20	32-10-405
	21	32-10-406
	22	32-10-501
	23	32-10-502
	24	32-10-503
	25	32-10-504
	26	32-10-505
	27	32-10-506
	28	32-10-507
	29	32-10-512
	30	32-10-513
	31	32-10-514
	32	32-10-515
	33	31-1-111
	34	Codification instruction
370	1	10-2-601
	2	Appropriation
	3	Contingent voidness
	4	Effective date
371	1	19-3-316
	2	19-3-319
	3	19-3-1605
	4	19-3-2117
	5	19-7-404
	6	19-7-711
	7	19-8-1105
	8	19-21-214
	9	Appropriation
	10	Saving clause
	11	Severability
	12	Effective date
372	1	32-5-102
	2	32-5-103
	3	32-5-201
	4	32-5-202
	5	32-5-204
	6	32-5-207
	7	32-5-208
	8	32-5-301
	9	32-5-302
	10	32-5-303
	11	32-5-305
	12	32-5-306
	13	32-5-308
	14	32-5-310
	15	32-5-401
	16	32-5-402
	17	32-5-403
	18	32-5-408
	19	32-5-405
	20	32-5-407
	21	32-5-409
	22	Repealer
	23	Codification instruction
	24	Effective dates
373	1	10-1-1111
	2	10-1-1112
	3	10-1-1113
	4	10-1-1114
	5	15-30-116

	6	Appropriation — periodic transfer — reversion
	7	Codification instruction
	8	Effective date
	9	Retroactive applicability
374	1	20-5-101
	2	53-20-172
	3	Appropriation
	4	Codification instruction
	5	Effective date
375	1	50-51-114
	2	50-51-115
	3	15-30-196 15-31-171
	4	Codification instructions
	5	Applicability
376	1	15-1-222
	2	15-1-223
	3	Effective date
377	1	33-2-712
	2	Effective date
378	1	90-4-1201
	2	90-4-1202
	3	90-4-1203
	4	90-4-1204
	5	90-4-1205
	6	90-4-1206
	7	90-4-1207
	8	90-4-1208
	9	90-4-1209
	10	90-4-1210
	11	90-4-1216
	12	90-4-1217
	13	90-4-1218
	14	90-4-1219
	15	90-4-1220
	16	90-4-1221
	17	90-4-1222
	18	90-4-1223
	19	17-5-1604
	20	17-5-1608
	21	Appropriation
	22	Codification instruction
	23	Effective dates
379	1	23-4-101
	2	23-4-202
	3	23-4-301
	4	23-4-302
	5	23-5-112
	6	Effective date
380	1	7-14-2506
	2	Effective date
381	1	Appropriation
	2	Effective date
382	1	Interim study on property reappraisal cycle
	2	Appropriation (Replaced by sec. 2, Ch. 510)
	3	Effective date
	4	Termination
383	1	Appropriation from treasure state endowment state special revenue account
	2	Approval of grants
	3	Conditions and manner of disbursement of grant funds
	4	Appropriations from treasure state endowment state special revenue account for emergency grants
	5	Appropriations from treasure state endowment special revenue account for preliminary engineering grants
	6	Sec. 1, Ch. 435, L. 2001
	7	Appropriation from treasure state endowment regional water system special revenue account
	8	Approval of funds — completion of appropriation
	9	Conditions — manner of disbursement of funds
	10	Notification to tribal governments
	11	Effective dates
384	1	80-7-105
	2	80-7-106
	3	80-7-108
	4	80-7-109
	5	80-7-110
	6	80-7-122
	7	80-7-123
	8	80-7-133
	9	80-7-135
385	1	82-4-437
	2	82-4-402
	3	82-4-403
	4	82-4-406
	5	82-4-422
	6	82-4-424
	7	82-4-425
	8	82-4-426
	9	82-4-427
	10	82-4-431
	11	82-4-432
	12	82-4-433
	13	82-4-434
	14	82-4-436
	15	82-4-441
	16	82-4-442
	17	Codification instruction
	18	Repealer
386	1	Fund transfer
	2	Effective date
387	1	23-4-101
	2	23-4-104
	3	23-4-201
	4	23-4-202
	5	23-4-301
	6	23-4-302
	7	23-4-304
	8	23-5-801
	9	23-5-802
	10	23-5-805
	11	23-5-806
388	1	2-15-1771
	2	37-36-101
	3	37-36-102
	4	37-36-201
	5	37-36-202
	6	37-36-203
	7	37-36-204
	8	37-36-205
	9	Codification instruction
389	1	37-1-201
	2	37-1-307
	3	Applicability
390	1	2-18-704
	2	33-22-303
	3	33-22-512
	4	33-30-1014

	5	33-31-301
	6	33-35-306
	7	Effective date
	8	Applicability
391	1	85-2-102
	2	85-2-302
	3	85-2-311
	4	85-2-329
	5	85-2-330
	6	85-2-335
	7	85-2-336
	8	85-2-340
	9	85-2-341
	10	85-2-342
	11	85-2-343
	12	85-2-344
	13	85-2-506
	14	85-2-360
	15	85-2-361
	16	85-2-362
	17	85-2-363
	18	85-2-364
	19	75-5-410
	20	85-2-368
	21	85-2-369
	22	85-2-370
	23	Closed basin case study
	24	Case study — requirements for participation — fee
	25	Appropriation
	26	Direction for amendment of rule
	27	Repealer
	28	Codification instruction
	29	Severability
	30	Effective date
	31	Applicability
392	1	61-3-332
	2	61-3-479
	3	61-3-481
	4	61-3-562
	5	Effective date
	6	Applicability
393	1	40-6-501
	2	40-6-502
	3	20-5-412
	4	20-5-420
	5	Codification instruction
	6	Two-thirds vote required — contingent voidness
	7	Applicability
394	1	2-4-302 (Voided and replaced by sec. 2, Ch. 394)
	2	Coordination instruction
	3	Effective date
	4	Applicability
395	1	50-57-101
	2	50-57-102
	3	50-57-105
396	1	77-2-363
	2	77-2-364
	3	77-2-366
	4	Effective date
397	1	25-13-608
	2	25-13-609
	3	Effective date
	4	Applicability
398	1	41-5-113
	2	41-5-103
	3	41-5-112
	4	41-5-121
	5	41-5-124
	6	41-5-130
	7	41-5-131
	8	41-5-132
	9	41-5-1503
	10	41-5-1512
	11	41-5-1513
	12	41-5-1522
	13	41-5-1523
	14	41-5-2002
	15	41-5-2003
	16	41-5-2004
	17	41-5-2005
	18	41-5-2006
	19	41-5-2011
	20	41-5-2012
	21	52-5-109
	22	53-1-203
	23	Repealer
	24	Codification instruction
	25	Effective date
399	1	33-1-201
	2	33-1-311
	3	33-4-312
	4	33-17-211
	5	33-17-214
	6	33-17-232
	7	33-17-511
	8	33-17-1103
	9	33-18-235
	10	33-19-105
	11	33-20-1303
	12	33-20-1315
	13	33-22-121
	14	33-22-122
	15	33-22-513
	16	33-22-1517
	17	33-22-2001
	18	33-22-2002
	19	33-22-2004
	20	33-25-212
	21	33-25-214
	22	33-30-1015
	23	33-31-111
	24	33-31-311
	25	33-35-103
	26	33-35-306
	27	33-38-105
	28	50-4-703
	29	Repealer
	30	Effective date
	31	Retroactive applicability
400	1	61-3-708
401	1	50-19-203
	2	50-19-211
402	1	5-7-102
	2	5-7-209
403	1	18-2-102
	2	22-3-1003
	3	Effective date
404	1	45-8-220
	2	Codification instruction
405	1	2-15-1781
	2	25-1-1101
	3	25-1-1104
	4	25-1-1107
	5	25-1-1111
	6	25-1-1112
	7	25-3-105
	8	25-3-201

	9	25-3-203
	10	25-3-204
	11	25-3-302
	12	37-60-101
	13	37-60-103
	14	37-60-105
	15	37-60-202
	16	37-60-301
	17	37-60-303
	18	37-60-304
	19	37-60-405
	20	Repealer
	21	Effective date
406	1	87-2-711
	2	87-2-803
	3	Effective date
407	1	13-35-240
	2	13-37-111
	3	13-37-113
	4	13-37-124
	5	45-7-202
	6	Codification instruction
408	1	75-10-534
	2	Effective date
409	1	76-13-701
	2	76-13-702
	3	Codification instruction
410	1	87-3-236
	2	Effective date
411	1	32-11-101
	2	32-11-102
	3	32-11-103
	4	32-11-105
	5	32-11-201
	6	32-11-202
	7	32-11-204
	8	32-11-205
	9	32-11-206
	10	32-11-207
	11	32-11-208
	12	32-11-209
	13	32-11-215
	14	32-11-216
	15	32-11-210
	16	32-11-211
	17	32-11-212
	18	32-11-217
	19	32-11-218
	20	32-11-219
	21	32-11-220
	22	32-11-221
	23	32-11-222
	24	32-11-223
	25	32-11-224
	26	32-11-225
	27	32-11-301
	28	32-11-302
	29	32-11-303
	30	32-11-401
	31	32-11-203
	32	32-11-304
	33	32-11-305
	34	32-11-306
	35	32-11-307
	36	32-11-308
	37	32-11-309
	38	32-11-310
	39	32-11-311
	40	32-11-313
	41	32-11-402
	42	32-11-403
	43	32-11-404
	44	32-11-405
	45	32-11-406
	46	32-11-407
	47	32-11-411
	48	32-11-104
	49	32-11-412
	50	32-11-413
	51	32-11-414
	52	32-11-108
	53	32-11-312
	54	32-11-226
	55	32-11-106
	56	32-11-107
	57	Codification instruction
412	1	85-2-501
	2	85-2-516
	3	85-2-522
	4	Codification instruction
413	1	45-6-105
	2	Codification instruction
414	1	53-6-124
	2	53-6-125
	3	53-6-126
	4	53-6-127
	5	Codification instruction
415	1	87-2-523
	2	87-2-524
	3	87-2-813
	4	87-2-814
	5	87-1-111
	6	87-3-102
	7	Codification instruction
	8	Effective dates — contingencies
416	1	85-2-141
	2	Effective date
417	1	46-8-104
	2	Effective date
418	1	15-6-211
	2	Effective date
	3	Retroactive applicability
419	1	20-25-309
	2	18-2-102
	3	20-25-308
	4	Codification instruction
	5	Effective date
420	1	15-1-232
	2	17-6-105
	3	23-1-105
	4	81-3-107
	5	87-1-601
421	1	72-30-101
	2	72-30-102
	3	72-30-103
	4	72-30-207
	5	72-30-208
	6	72-30-209
	7	72-30-210
	8	72-30-211
	9	72-30-212
	10	72-30-213
	11	Repealer
	12	Codification instruction
422	1	50-53-115
423	1	37-42-102
	2	75-6-102
	3	75-6-103
	4	75-6-104
	5	75-6-112

	6	75-6-120
424	1	46-24-106
	2	46-24-201
425	1	82-4-232
	2	Contingent voidness
426	1	90-6-107
	2	90-6-131
	3	90-6-132
	4	90-6-133
	5	90-6-134
427	1	7-8-2202
	2	Effective date
428	1	3-1-102
429	1	23-5-112
	2	23-5-152
	3	23-5-153
	4	Effective date
	5	Retroactive applicability
430	1	33-20-1101
	2	33-20-1111
	3	33-20-1209
431	1	Appropriations from renewable resource grant and loan program state special revenue account (Amended by sec. 10, Ch. 431)
	2	Conditions of grants
	3	Conditions for grants
	4	Appropriations established
	5	Review of previously authorized grants
	6	85-1-604
	7	Repealer
	8	Severability
	9	Notification to tribal governments
	10	Coordination instruction
	11	Coordination instruction
	12	Effective dates
432	1	15-36-331
	2	15-37-117
	3	15-38-106
	4	15-38-202
	5	15-38-203
	6	17-5-702
	7	17-7-502
	8	19-5-404
	9	75-1-1101
	10	75-10-621
	11	75-10-704
	12	75-10-743
	13	80-7-823
	14	85-1-102
	15	85-1-603
	16	85-1-605
	17	85-1-606
	18	85-1-613
	19	85-1-614
	20	85-1-615
	21	85-1-616
	22	85-1-631
	23	85-2-905
	24	90-2-1103
	25	90-2-1111
	26	90-2-1121
	27	15-38-301
	28	15-38-302
	29	Transfer of funds
	30	Repealer
	31	Codification instruction
	32	Effective date
	33	Termination
433	1	Water policy interim committee
	2	Appropriation
	3	Effective date
	4	Termination
434	1	46-5-222
435	1	60-5-110
	2	Effective date
436	1	50-4-801
	2	50-4-802
	3	50-4-803
	4	50-4-805
	5	50-4-806
	6	50-4-810
	7	50-4-811
	8	50-4-804
	9	50-4-815
	10	Appropriation
	11	Codification instruction
	12	Notification to tribal governments
	13	Effective date
437	1	Appropriation
	2	Effective date
438	1	90-3-1002
	2	90-3-1003
	3	Notification to tribal governments
	4	Saving clause
	5	Effective date
439	1	7-1-2121
	2	7-5-2411
440	1	28-10-103
441	1	7-15-4204
	2	7-15-4206
	3	7-15-4258
	4	7-15-4259
	5	Effective date
442	1	20-5-501
	2	20-5-502
	3	20-5-503
	4	1-1-215
	5	20-5-321
	6	20-5-412
	7	20-5-420
	8	Codification instruction
	9	Two-thirds vote required — contingent voidness
	10	Effective date
	11	Applicability
443	1	76-1-601
	2	76-3-501
	3	76-3-504
	4	76-13-109
	5	50-60-901
	6	50-60-902
	7	Codification instruction
	8	Effective date — applicability
444	1	17-6-305
	2	17-6-311
	3	Effective date
445	1	87-3-116
	2	37-47-344
	3	Codification instruction
	4	Effective date
446	1	45-1-205
447	1	15-1-108
	2	15-1-109
	3	15-1-110
	4	Codification instruction
	5	Effective date
448	1	85-2-102
	2	85-2-308

	3	85-2-402
	4	85-2-419
	5	85-2-436
	6	85-2-602
	7	87-1-257
	8	Repealer
	9	Effective date
449	1	2-7-501
	2	2-15-1519
	3	2-15-2005
	4	7-6-204
	5	18-8-202
	6	25-13-613
	7	39-71-118
	8	40-6-402
	9	44-5-103
	10	44-5-303
	11	46-18-261
	12	50-3-101
	13	50-3-102
	14	50-3-106
	15	50-5-215
	16	50-19-403
	17	50-37-107
	18	50-37-108
	19	50-37-109
	20	50-60-202
	21	50-61-102
	22	50-61-114
	23	50-61-115
	24	50-61-121
	25	50-62-101
	26	50-62-102
	27	50-62-103
	28	50-62-112
	29	50-63-102
	30	50-63-103
	31	50-63-202
	32	50-63-203
	33	50-63-401
	34	50-63-402
	35	50-63-404
	36	50-78-102
	37	52-2-733
	38	52-2-734
	39	52-4-205
	40	53-20-307
	41	61-8-102
	42	61-8-364
	43	61-9-402
	44	75-10-725
	45	Effective date
450	1	7-33-2212
	2	10-3-406
	3	Codification instruction
	4	Effective date
451	1	31-1-111
	2	31-1-702
	3	31-1-703
	4	31-1-705
	5	31-1-706
	6	31-1-711
	7	31-1-712
	8	31-1-713
	9	31-1-714
	10	31-1-715
	11	31-1-721
	12	31-1-723
	13	31-1-726
	14	31-1-727
	15	31-1-728
	16	Codification instruction
452	1	87-2-202
	2	87-2-801
	3	87-2-805
	4	87-2-903
	5	Transfer of funds
	6	Effective date
	7	Termination
453	1	90-1-131
	2	90-1-135
	3	Repealer
	4	Notification to tribal governments
	5	Effective date
454	1	Authorization of natural resource damage litigation
	2	Natural resource damage program policy committee
	3	Legislative oversight
	4	Effective date
455	1	76-1-103
	2	76-1-601
	3	76-1-410
	4	76-3-616
	5	76-3-605
	6	76-3-608
	7	76-3-609
	8	Codification instruction
	9	Effective date
456	1	77-2-213
	2	77-2-363
	3	77-2-364
	4	Effective date
457	1	3-10-304
	2	25-13-212
	3	25-13-402
	4	25-14-101
	5	25-31-409
	6	25-31-710
	7	25-31-1104
458	1	13-10-503 (Voided and replaced by sec. 2, Ch. 458)
	2	Coordination instruction
459	1	10-3-114
	2	Codification instruction
460	1	37-22-101
	2	37-22-301 (Voided and replaced by sec. 5, Ch. 460)
	3	37-23-101
	4	37-23-202 (Voided and replaced by sec. 6, Ch. 460)
	5	Coordination instruction
	6	Coordination instruction
	7	Applicability
461	1	61-12-401
462	1	61-5-102
	2	61-5-212
463	1	2-18-704
	2	33-22-244
	3	33-22-262
	4	33-22-521
	5	33-31-102
	6	33-31-301
	7	Effective date
464	1	45-2-204
	2	76-13-140
	3	7-33-4501
	4	Codification instruction
	5	Effective date
465	1	40-15-102

	2	Effective date
466	1	50-5-101
	2	50-5-203
	3	50-5-245
	4	Repealer
	5	Effective date
	6	Applicability
467	1	7-33-2404
468	1	15-30-261
	2	15-30-262
	3	15-30-263
	4	15-30-264
	5	15-30-265
	6	15-30-266
	7	15-30-267
	8	15-30-268
	9	15-30-269
	10	15-30-270
	11	15-30-271
	12	15-30-272
	13	Notification to tribal governments
	14	Codification instruction
	15	Effective date
	16	Applicability
469	1	69-2-216
	2	69-2-217
	3	75-1-201
	4	75-1-205
	5	75-20-216
	6	75-20-223
	7	Codification instruction
	8	Coordination instruction
	9	Effective date
	10	Applicability
470	1	2-17-415
	2	2-17-416
	3	2-17-417
	4	2-17-418
	5	Codification instruction
	6	Effective date
471	1	53-21-1101
	2	53-21-1102
	3	53-21-1103
	4	Notification to tribal governments
	5	Codification instruction
	6	Effective date
472	1	45-5-202
473	1	50-1-211
	2	Sec. 4, Ch. 404, L. 2005
	3	Effective date
474	1	50-15-208
	2	50-15-101
	3	Codification instruction
	4	Effective date
475	1	17-2-124
	2	15-35-108
	3	15-36-331
	4	15-37-117
	5	15-38-106
	6	15-50-311
	7	15-51-103
	8	15-53-156
	9	15-59-108
	10	15-60-210
	11	15-65-121
	12	15-66-102 (Voided and replaced by sec. 29, Ch. 475)
	13	15-67-102
	14	15-68-820
	15	15-70-101
	16	15-70-125
	17	15-72-106
	18	16-1-306
	19	16-1-401
	20	16-1-404
	21	16-1-406
	22	16-1-411
	23	16-11-114
	24	16-11-119
	25	23-5-610
	26	39-71-2321
	27	Repealer
	28	Codification instruction
	29	Coordination instruction
	30	Effective date
	31	Retroactive applicability
476	1	33-20-801
	2	33-20-802
	3	33-20-803
	4	33-20-804
	5	33-20-805
	6	33-20-806
	7	33-20-901
	8	33-20-902
	9	33-20-903
	10	33-20-904
	11	33-20-905
	12	33-20-906
	13	33-20-907
	14	Applicability
	15	Codification instruction
477	1	1-1-227
	2	Codification instruction
478	1	15-7-202
	2	Effective date
	3	Retroactive applicability
479	1	Art. VIII, sec. 13, Mont. Const
	2	Effective date
	3	Submission to electorate
480	1	50-9-106
	2	72-5-321
481	1	3-2-202
	2	3-5-302
	3	13-1-101
	4	13-22-102
	5	13-27-102
	6	13-27-201
	7	13-27-202
	8	13-27-204
	9	13-27-205
	10	13-27-207
	11	13-27-208
	12	13-27-209
	13	13-27-210
	14	13-27-302
	15	13-27-312
	16	13-27-315
	17	13-27-316
	18	13-27-317
	19	13-27-402
	20	13-27-403
	21	13-27-409
	22	13-27-501
	23	13-35-207
	24	13-37-210
	25	13-37-226
	26	13-37-228
	27	Repealer
	28	Codification instruction
	29	Severability

	30	Effective date
482	1	52-3-115
	2	17-7-302
	3	17-7-304
	4	53-6-1201
	5	Codification instruction
	6	Effective date
	7	Termination
483	1	41-5-206
	2	41-5-216
	3	41-5-1513
	4	45-1-205
	5	45-5-503
	6	45-5-507
	7	45-5-512
	8	45-5-601
	9	45-5-602
	10	45-5-603
	11	45-5-625
	12	46-18-111
	13	46-18-201
	14	46-18-202
	15	46-18-203
	16	46-18-205
	17	46-18-222
	18	46-18-231
	19	46-23-502
	20	46-23-504
	21	46-23-505
	22	46-23-506
	23	46-23-508
	24	46-23-509
	25	46-23-1011
	26	53-1-203
	27	46-18-207
	28	Codification instruction
	29	Severability
	30	Effective date
	31	Retroactive applicability
484	1	Transfer and appropriation for repayment
	2	Obligation settled
	3	Effective date
485	1	7-6-621
	2	7-33-2109
	3	7-33-2209
	4	7-33-2403
	5	7-33-4109
	6	7-33-4111
	7	Codification instruction
	8	Effective date
486	1	Appropriations (Voided by sec. 2, Ch. 486)
	2	Contingent voidness
487	1	13-37-401
	2	13-37-402
	3	13-37-240
	4	Codification instruction
	5	Effective date
488	1	46-16-226
	2	46-16-227
	3	46-16-228
	4	46-16-229
	5	Repealer
	6	Codification instruction
	7	Severability
489	1	85-20-1503
	2	85-20-1504
	3	85-20-1505
	4	85-20-1506
	5	Fund transfer
	6	Appropriation
	7	Codification instruction
	8	Effective dates — contingency
490	1	53-4-1004
	2	Effective date
491	1	15-72-103
	2	15-72-104
	3	35-19-102
	4	69-1-114
	5	69-8-101
	6	69-8-103
	7	69-8-201
	8	69-8-210
	9	69-8-311
	10	69-8-402
	11	69-8-403
	12	69-8-411
	13	69-8-419
	14	69-8-420
	15	69-8-421
	16	69-8-602
	17	69-8-603
	18	69-8-1004
	19	69-8-426
	20	Codification instruction
	21	Repealer
	22	Saving clause
	23	Severability
492	1	18-4-227
	2	Codification instruction
	3	Effective date
493	1	20-15-310
	2	20-15-312
	3	Effective date — applicability
494	1	77-5-214
	2	77-5-215
	3	77-5-216
	4	77-5-217
	5	77-5-218
	6	77-5-219
	7	77-1-613
	8	77-5-201
	9	77-5-204
	10	Coordination instruction
	11	Coordination instruction
	12	Severability
	13	Codification instruction
	14	Effective date
495	1	40-9-102
	2	Applicability
496	1	40-6-601
	2	40-6-602
	3	Codification instruction
	4	Two-thirds vote required — contingent voidness
	5	Applicability
497	1	31-1-111
	2	31-1-802
	3	31-1-803
	4	31-1-811
	5	31-1-813
	6	31-1-841
	7	31-1-842
	8	31-1-816
	9	31-1-817
	10	31-1-825
	11	Codification instruction
498	1	32-9-103
	2	32-9-108

	3	32-9-109
	4	32-9-110
	5	32-9-115
	6	32-9-117
	7	32-9-121
	8	32-9-122
	9	32-9-123
	10	32-9-119
	11	32-9-124
	12	32-9-125
	13	32-9-141
	14	32-9-142
	15	32-9-126
	16	32-9-130
	17	32-9-133
	18	Repealer
	19	Codification instruction
499	1	7-33-2101
	2	7-33-2102
	3	7-33-2103
	4	7-33-2104
	5	7-33-2105
	6	7-33-2106
	7	7-33-2107
	8	7-33-2109
	9	7-33-2120
	10	7-33-2121 (Renumbered 7-33-2141)
	11	7-33-2142
	12	7-33-2123 (Renumbered 7-33-2143)
	13	7-33-2124 (Renumbered 7-33-2144)
	14	7-33-2125
	15	7-33-2126
	16	7-33-2127
	17	7-33-2128
	18	7-33-2202 (Replaced by sec. 26, Ch. 499)
	19	7-33-2205
	20	7-33-2206
	21	7-33-2210
	22	7-33-2311
	23	7-33-2313
	24	7-33-2401
	25	Repealer
	26	Coordination instruction
	27	Codification instruction
500	1	87-1-114
	2	Effective date
501	1	16-3-219
	2	16-3-301
	3	16-3-401
	4	16-3-402
	5	16-3-404
	6	16-3-411
	7	16-3-418
	8	16-4-107
	9	16-4-501
	10	16-4-906
	11	16-6-104
	12	16-6-314
502	1	37-65-311
	2	37-69-311
	3	2-15-1757
	4	2-15-1781
	5	25-1-1104
	6	33-36-103
	7	37-1-130
	8	37-1-131
	9	37-1-302
	10	37-1-401
	11	37-1-410
	12	37-8-102
	13	37-8-405
	14	37-8-415
	15	37-10-302
	16	37-15-302
	17	37-16-405
	18	37-18-306
	19	37-26-201
	20	37-26-403
	21	37-47-318
	22	37-47-341
	23	37-47-103
	24	37-51-324
	25	37-51-102
	26	37-51-301
	27	37-51-302
	28	37-60-101
	29	37-60-103
	30	37-60-202
	31	37-60-301
	32	37-60-302
	33	37-60-303
	34	37-60-304
	35	37-60-309
	36	37-60-310
	37	37-60-314
	38	37-60-402
	39	37-60-403
	40	37-60-409
	41	37-73-208
	42	50-32-314
	43	71-3-1111
	44	71-3-1112
	45	71-3-1113
	46	71-3-1114
	47	71-3-1115
	48	71-3-1117
	49	71-3-1118
	50	Repealer
	51	Codification instruction
	52	Saving clause
503	1	2-18-601
	2	2-18-617
	3	2-18-1311
	4	Effective date
504	1	Department to conduct study of increasing reimbursement to medicaid direct-care service providers in order to provide employee health insurance — policy — pilot program — report to legislature — rulemaking
	2	Effective date
	3	Termination
505	1	7-16-2211
	2	7-16-2212
	3	7-16-2213
	4	7-16-2214
	5	7-16-2215
	6	7-16-2216
	7	7-16-2217
	8	7-16-2218
	9	7-16-2219
	10	7-6-2527
	11	7-16-2205 (Voided and replaced by sec. 13, Ch. 505)
	12	Codification instruction
	13	Coordination instruction
506	1	2-15-2029
	2	44-4-401

	3	44-4-402
	4	44-4-403
	5	44-4-404
	6	7-4-2905
	7	7-31-201
	8	7-31-202
	9	7-31-203
	10	7-32-201
	11	7-32-214
	12	7-32-303
	13	7-32-4112
	14	19-7-101
	15	41-5-1706
	16	44-4-301
	17	44-4-305 (Renumbered 41-5-1808)
	18	44-4-902
	19	46-23-1003
	20	Repealer
	21	Transition
	22	Notification to tribal governments
	23	Codification instruction — directions to code commissioner
	24	Saving clause
	25	Effective date
507	1	33-20-1501
	2	33-20-1502
	3	33-20-1503
	4	33-17-211
	5	33-17-214
	6	33-18-301
	7	Codification instruction
	8	Saving clause
	9	Effective date
508	1	13-35-401
	2	13-35-402
	3	13-35-403
	4	13-37-128
	5	Codification instruction
509	1	15-30-111
	2	15-62-207
	3	15-62-208
	4	Effective date
	5	Retroactive applicability
510	1	15-7-202
	2	Coordination instruction
	3	Effective date
	4	Applicability — retroactive applicability
511	1	41-3-425
	2	Effective date
512	1	7-15-4259
	2	70-30-102
	3	70-30-111
	4	70-30-322
513	1	85-5-107
	2	85-5-201
	3	85-5-204
	4	85-5-206
	5	Effective date
514	1	46-1-1201
	2	46-1-1202
	3	46-1-1203
	4	46-1-1204
	5	46-1-1211
	6	46-1-1212
	7	46-1-1213
	8	46-1-1214
	9	3-10-303
	10	Codification instruction
	11	Effective date
515	1	46-18-208
	2	46-18-204
	3	Codification instruction
	4	Effective date
516	1	16-3-211
	2	16-3-214
	3	16-3-301
	4	16-4-906
	5	16-6-104
	6	16-6-314
517	1	15-66-101
	2	15-66-102 (Voided and replaced by sec. 29, Ch. 475)
	3	15-66-201
	4	Sec. 20, Ch. 390, L. 2003
	5	Sec. 4, Ch. 606, L. 2005
	6	Sec. 7, Ch. 606, L. 2005
	7	Effective date
	8	Termination
518	1	33-28-101
	2	33-28-120
	3	33-28-310
	4	33-28-102
	5	33-28-104
	6	33-28-105
	7	33-28-106
	8	33-28-107
	9	33-28-108
	10	33-28-201
	11	33-28-202
	12	33-28-205
	13	33-28-206
	14	33-28-207
	15	33-28-301
	16	33-28-302
	17	33-28-303
	18	33-28-304
	19	33-28-306
	20	Codification instruction
	21	Directions to code commissioner
519	1	17-7-161
	2	Codification instruction
	3	Effective date
520	1	61-8-346
	2	61-9-402
521	1	7-3-122
	2	7-3-141
	3	7-3-142
	4	7-3-149
	5	7-3-151
	6	7-3-152
	7	7-3-153
	8	7-3-155
	9	7-3-156
	10	7-3-157
	11	7-3-158
	12	7-3-160
	13	7-3-161
	14	7-3-175
	15	7-3-178
	16	7-3-184
	17	7-3-187
	18	7-3-192
	19	7-3-193
	20	15-10-420

TABLE OF 2006 BALLOT ISSUES

Initiatives

Init.	Sec.	MCA
151	1	39-3-409
	2	Effective date
153	1	5-7-310
	2	Codification
	3	Severability

LAWS AND RESOLUTIONS

Enacted or Passed by the

FIFTY-NINTH LEGISLATURE
IN SPECIAL SESSION

Held at Helena, the Seat of Government
December 14 & 15, 2005

Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

OFFICERS AND MEMBERS OF THE MONTANA SENATE

2005

50 Members

27 Democrats 23 Republicans

OFFICERS

President.....Jon Tester
President Pro Tempore .....Dan Harrington
Majority Leader.....Jon Ellingson
Majority Whips.....Carolyn Squires, Trudi Schmidt
Minority Leader .....Bob Keenan
Minority Whips.....Corey Stapleton, Robert Story
Secretary of the Senate .....Bill Lombardi

MEMBERS

Name	Party	District	Preferred Mailing Address
Bales, Keith	(R)	20	HC 39 Box 33, Otter MT 59062-9703
Balyeat, Joe	(R)	34	6909 Rising Eagle Rd, Bozeman MT 59715-8621
Barkus, Greg	(R)	4	PO Box 2647, Kalispell MT 59903-2647
Black, Jerry	(R)	14	445 O'Haire Blvd, Shelby MT 59474-1950
Brueggeman, John	(R)	6	321 Lakeview Dr, Polson MT 59860-9317
Cobb, John	(R)	9	PO Box 388, Augusta MT 59410-0388
Cocchiarella, Vicki	(D)	47	535 Livingston Ave, Missoula MT 59801-8003
Cooney, Mike	(D)	40	713 Pyrite Court, Helena MT 59601-5877
Cromley, Brent	(D)	25	PO Box 2559, Billings MT 59103-2559
Curtiss, Aubyn	(R)	1	PO Box 216, Fortine MT 59918-0216
Ellingson, Jon	(D)	49	141 North Ave E, Missoula MT 59801-6011
Elliott, Jim	(D)	7	100 Trout Creek Rd, Trout Creek MT 59874-9609
Esp, John	(R)	31	PO Box 1024, Big Timber MT 59011-1024
Essmann, Jeff	(R)	28	PO Box 80945, Billings MT 59102-6525
Gallus, Steve	(D)	37	2319 Harvard Ave, Butte MT 59701-3854
Gebhardt, Kelly	(R)	23	PO Box 724, Roundup MT 59072-0724
Gillan, Kim	(D)	24	750 Judicial Ave, Billings MT 59105-2130
Grimes, Duane	(R)	39	4 Hole in the Wall, Clancy MT 59634-9516
Hansen, Ken (Kim)	(D)	17	PO Box 686, Harlem MT 59526-0686
Harrington, Dan	(D)	38	1201 N Excelsior Ave, Butte MT 59701-8505
Hawks, Bob	(D)	33	703 W Koch St, Bozeman MT 59715-4477
Keenan, Bob	(R)	5	PO Box 697, Bigfork MT 59911-0697
Kitzenberg, Sam	(R)	18	130 Bonnie St Apt 1, Glasgow MT 59230-2101
Laible, Rick	(R)	44	529 Moose Hollow Rd, Victor MT 59875-9303
Larson, Lane	(D)	22	1417 Cedar Canyon Rd, Billings MT 59101-6440
Laslovich, Jesse	(D)	43	112 Mountain View St, Anaconda MT 59711-1616
Lewis, Dave	(R)	42	5871 Collins Rd, Helena MT 59602-9584
Lind, Greg	(D)	50	PO Box 16720, Missoula MT 59808-6720
Mangan, Jeff	(D)	12	1223 7th Ave N, Great Falls MT 59401-1613
McGee, Dan	(R)	29	1925 Pinyon Dr, Laurel MT 59044-9381
Moss, Lynda	(D)	26	552 Highland Park Dr, Billings MT 59102-1046
O'Neil, Jerry	(R)	3	985 Walsh Rd, Columbia Falls MT 59912
Pease, Gerald	(D)	21	PO Box 556, Lodge Grass MT 59050-0556
Perry, Gary	(R)	35	3325 W Cedar Meadow Ln, Manhattan MT 59741-8240
Roush, Glenn	(D)	8	PO Box 185, Cut Bank MT 59427-0185

Ryan, Don	(D)	10	2101 7th Ave S, Great Falls MT 59405-2821
Schmidt, Trudi	(D)	11	4029 6th Ave S, Great Falls MT 59405-3746
Shockley, Jim	(R)	45	PO Box 608, Victor MT 59875-0608
Smith, Frank	(D)	16	PO Box 729, Poplar MT 59255-0729
Squires, Carolyn	(D)	48	2111 S 10th St W, Missoula MT 59801-3412
Stapleton, Corey	(R)	27	2015 Eastridge Dr, Billings MT 59102-7904
Steinbeisser, Don	(R)	19	RR 1 Box 3400, Sidney MT 59270-9620
Story, Robert	(R)	30	133 Valley Creek Rd, Park City MT 59063-8040
Tash, Bill	(R)	36	240 Vista Dr, Dillon MT 59725-3111
Tester, Jon	(D)	15	709 Son Ln, Big Sandy MT 59520-8443
Toole, Ken	(D)	41	PO Box 1462, Helena MT 59624-1462
Tropila, Joe	(D)	13	209 2nd St NW, Great Falls MT 59404-1301
Weinberg, Dan	(D)	2	575 Delrey Rd, Whitefish MT 59937-8042
Wheat, Mike	(D)	32	930 Stonegate Dr, Bozeman MT 59715-2109
Williams, Carol	(D)	46	PO Box 9176, Missoula MT 59807-9176

OFFICERS AND MEMBERS OF THE MONTANA HOUSE OF REPRESENTATIVES

2005

100 Members

50 Democrats 50 Republicans

OFFICERS

Speaker.....Gary Matthews
House Democratic Leader.....David Wanzenried
House Democratic Floor Leader.....John Parker
House Democratic Whips.....Bob Bergren, Gail Gutsche
House Republican Leader.....Roy Brown
House Republican Floor Leader.....Michael Lange
House Republican Whips .....Debby Barrett, Dennis Himmelberger
Chief Clerk of the House .....Marilyn Miller

MEMBERS

Name	Party	District	Preferred Mailing Address
Andersen, Joan	(R)	59	RR 1 Box 1012, Fromberg MT 59029-9701
Arntzen, Elsie	(R)	53	850 Senora Ave, Billings MT 59105-2051
Balyeat, John	(R)	100	4879 Scott Allen Dr, Missoula MT 59803-2793
Barrett, Debby	(R)	72	17600 MT Hwy 324, Dillon MT 59725-8031
Becker, Arlene	(D)	52	1440 Lewis Ave, Billings MT 59101-4240
Bergren, Bob	(D)	33	1132 26th Ave W, Havre MT 59501-8609
Bixby, Norma	(D)	41	PO Box 1165, Lame Deer MT 59043-1165
Branae, Gary	(D)	54	415 Yellowstone Ave, Billings MT 59101-1730
Brown, Dee	(R)	3	PO Box 444, Hungry Horse MT 59919-0444
Brown, Roy	(R)	49	PO Box 22273, Billings MT 59104-2273
Butcher, Ed	(R)	29	PO Box 89, Winifred MT 59489-0089
Buzzas, Rosalie (Rosie)	(D)	93	233 University Ave, Missoula MT 59801-4351
Caferro, Mary	(D)	80	PO Box 1036, Helena MT 59624-1036
Callahan, Tim	(D)	21	3409 5th Ave S, Great Falls MT 59405-3543
Campbell, Margarett	(D)	31	PO Box 228, Poplar MT 59255-0228
Clark, Paul	(D)	13	20 Fox Ln, Trout Creek MT 59874-9510
Cohenour, Jill	(D)	78	2610 Colt Dr, East Helena MT 59635-3442
Dickenson, Sue	(D)	25	620 Riverview Dr E, Great Falls MT 59404-1637
Dowell, Tim	(D)	8	46 West View Dr, Kalispell MT 59901-3364
Driscoll, Robyn	(D)	51	724 N 16th St, Billings MT 59101-0418
Eaton, Emelie	(D)	58	PO Box 159, Laurel MT 59044-0159
Everett, George	(R)	5	1344 Helena Flats Rd, Kalispell MT 59901-6548
Facey, Tom	(D)	95	418 Plymouth St, Missoula MT 59801-4133
Franklin, Eve	(D)	24	PO Box 6507, Great Falls MT 59406-6507
Furey, Kevin	(D)	91	1861 E Broadway St, Missoula MT 59802-4903
Gallik, Dave	(D)	79	1124 Billings Ave, Helena MT 59601-3505
Galvin-Halcro, Kathleen	(D)	26	101 Riverview Dr E, Great Falls MT 59404-1547
Glaser, Bill	(R)	44	1402 Indian Creek Rd, Huntley MT 59037-9338
Golie, George	(D)	20	316 20th Ave S, Great Falls MT 59405-4131
Grinde, Wanda	(D)	48	1910 Bannack Dr, Billings MT 59105-4236
Groesbeck, George	(D)	74	2214 Ottawa St Apt B, Butte MT 59701-6105
Gutsche, Gail	(D)	99	1530 Cooper St, Missoula MT 59802-2220
Hamilton, Robin	(D)	92	330 Daly Ave, Missoula MT 59801-4338
Harris, Chris	(D)	66	1511 W Babcock St, Bozeman MT 59715-4139
Hawk, Ray	(R)	90	NW 4878 Hoblitt Ln, Florence MT 59833-6832
Heinert, Ralph	(R)	1	PO Box 577, Libby MT 59923-0577
Hendrick, Gordon	(R)	14	PO Box 262, Superior MT 59872-0262
Henry, Teresa	(D)	96	204 Chestnut St, Missoula MT 59801-1809

Himmelberger, Dennis	(R)	47	PO Box 22272, Billings MT 59104-2272
Hiner, Cynthia	(D)	85	1027 Kentucky St, Deer Lodge MT 59722-2041
Jackson, Verdell	(R)	6	555 Wagner Ln, Kalispell MT 59901-8079
Jacobson, Hal	(D)	82	4813 US Hwy 12 W, Helena MT 59601-9694
Jayne, Joey	(D)	15	299 Lumpry Rd, Arlee MT 59821-9747
Jent, Larry	(D)	64	1201 S 3rd St, Bozeman MT 59715-5503
Jones, Llew	(R)	27	1102 4th Ave SW, Conrad MT 59425-1919
Jones, Bill	(R)	9	567 East Village Dr, Bigfork MT 59911-6152
Jopek, Mike	(D)	4	PO Box 4272, Whitefish MT 59937-4272
Juneau, Carol	(D)	16	PO Box 55, Browning MT 59417-0055
Kaufmann, Christine	(D)	81	825 Breckenridge St, Helena MT 59601-4433
Keane, Jim	(D)	75	2131 Wall St, Butte MT 59701-5527
Klock, Harry	(R)	83	PO Box 452, Harlowton MT 59036-0452
Koopman, Roger	(R)	70	811 S Tracy Ave, Bozeman MT 59715-5325
Lake, Bob	(R)	88	PO Box 2096, Hamilton MT 59840-2096
Lambert, Carol	(R)	39	PO Box 2, Broadus MT 59317-0002
Lange, Michael	(R)	55	208 Fair Park Dr, Billings MT 59102-5734
Lenhart, Ralph	(D)	38	PO Box 1225, Glendive MT 59330-1225
Lindeen, Monica	(D)	43	1626 Heath St, Huntley MT 59037-9137
MacLaren, Gary	(R)	89	429 Curlew Orchard Rd, Victor MT 59875-9519
Maedje, Rick	(R)	2	PO Box 447, Fortine MT 59918-0447
Malcolm, Bruce	(R)	61	2319 Hwy 89 S, Emigrant MT 59027-6023
Matthews, Gary	(D)	40	1708 Main St, Miles City MT 59301-3652
McAlpin, Dave	(D)	94	800 Woodworth Ave, Missoula MT 59801-7046
McGillvray, Tom	(R)	50	3642 Donna Dr, Billings MT 59102-1119
McKenney, Joe	(R)	18	500 Deer Dr, Great Falls MT 59404-3829
McNutt, Walt	(R)	37	110 12th Ave SW, Sidney MT 59270-3614
Mendenhall, Scott	(R)	77	214 Solomon Mountain Rd, Clancy MT 59634-9213
Milburn, Mike	(R)	19	276 Chestnut Valley Rd, Cascade MT 59421-8204
Morgan, Penny	(R)	57	3401 Waterloo Cir, Billings MT 59101-8000
Musgrove, John	(D)	34	810 8th St, Havre MT 59501-4127
Noennig, Mark	(R)	46	3441 Powderhorn Cir, Billings MT 59102-0332
Noonan, Art	(D)	73	1621 Whitman Ave, Butte MT 59701-5380
Olson, Alan	(R)	45	18 Halfbreed Creek Rd, Roundup MT 59072-6524
Olson, Bernie	(R)	10	161 Lakeside Blvd, Lakeside MT 59922-9723
Parker, John	(D)	23	PO Box 558, Great Falls MT 59403-0558
Peterson, Jim	(R)	30	RR 1 Box 2, Buffalo MT 59418-9501
Raser, Holly	(D)	98	4304 Spurgin Rd, Missoula MT 59804-4520
Rice, Diane	(R)	71	PO Box 216, Harrison MT 59735-0216
Ripley, Rick	(R)	17	8920 MT Hwy 200, Wolf Creek MT 59648-8639
Roberts, Don	(R)	56	5414 Walter Hagen Dr, Billings MT 59106-1007
Ross, John	(R)	60	129 N Stillwater Rd, Absarokee MT 59001-6235
Sales, Scott	(R)	68	5200 Bostwick Rd, Bozeman MT 59715-7721
Sesso, Jon	(D)	76	155 W Granite, Butte MT 59701-9256
Sinrud, John	(R)	67	284 Frontier Dr, Bozeman MT 59718-7975
Small-Eastman, Veronica	(D)	42	PO Box 262, Lodge Grass MT 59050-0262
Sonju, Jon	(R)	7	PO Box 2954, Kalispell MT 59903-2954
Stahl, Wayne	(R)	35	PO Box 345, Saco MT 59261-0345
Stoker, Ron	(R)	87	PO Box 1059, Darby MT 59829-1059
Taylor, Janna	(R)	11	PO Box 233, Dayton MT 59914-0233
Villa, Dan	(D)	86	1619 W Park Ave, Anaconda MT 59711-1831
Wagman, Pat	(R)	62	202 S 9th St, Livingston MT 59047-2906
Waitschies, Karl	(R)	36	PO Box A-18, Peerless MT 59253
Wanzenried, David	(D)	97	903 Sky Dr, Missoula MT 59804-3121
Ward, John	(R)	84	4525 Glass Dr, Helena MT 59602-9509
Warden, Bill	(R)	63	6507 Leverich Ln, Bozeman MT 59715-9535
Wells, Jack	(R)	69	150 Coulee Dr, Bozeman MT 59718-7717
Wilson, Bill	(D)	22	1305 2nd Ave N, Great Falls MT 59401-3217
Windham, Jeanne	(D)	12	894 Finley Point Rd, Polson MT 59860-9171
Windy Boy, Jonathan	(D)	32	PO Box 269, Box Elder MT 59521-0269
Wiseman, Brady	(D)	65	2 Haley Rd, Bozeman MT 59715-9525
Witt, John	(R)	28	2555 Russell Rd, Carter MT 59420-8230

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LAWS

Enacted by the

FIFTY-NINTH LEGISLATURE IN SPECIAL SESSION

Held at Helena, the Seat of Government
December 14 & 15, 2005

Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.

COMPILED BY MONTANA LEGISLATIVE SERVICES DIVISION

CHAPTER NO. 1

[HB 1]

AN ACT APPROPRIATING MONEY FOR THE PURPOSES SPECIFIED IN THE CALL FOR THE SPECIAL SESSION AND FOR OTHER PURPOSES RELATED TO THE ITEMS SPECIFIED IN THE CALL; APPROPRIATING MONEY FROM THE STATE GENERAL FUND TO THE DEPARTMENT OF ADMINISTRATION FOR A CONDITION AND NEEDS ASSESSMENT AND ENERGY AUDIT OF K-12 PUBLIC SCHOOL FACILITIES; APPROPRIATING MONEY FROM THE STATE GENERAL FUND TO THE OFFICE OF PUBLIC INSTRUCTION FOR DISTRIBUTION TO SCHOOL DISTRICTS FOR THE COSTS OF WEATHERIZATION OR DEFERRED MAINTENANCE, FOR ENERGY COST RELIEF, FOR INDIAN EDUCATION FOR ALL, FOR AT-RISK STUDENT PAYMENTS, FOR TRANSPORTATION PAYMENTS, AND FOR BASE AID; APPROPRIATING MONEY FROM THE GENERAL FUND TO THE MONTANA SCHOOL FOR THE DEAF AND BLIND AND TO THE DEPARTMENT OF CORRECTIONS; APPROPRIATING MONEY FROM THE GENERAL FUND TO THE TEACHERS' RETIREMENT SYSTEM PENSION TRUST FUND; APPROPRIATING MONEY FROM THE GENERAL FUND TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM PENSION TRUST FUND; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations. (1) (a) There is appropriated $2.5 million from the general fund to the department of administration to be used through June 30, 2009, to pay for the costs of completing a condition and needs assessment and energy audit of K-12 public school facilities or for contracting with a private vendor to complete a condition and needs assessment and energy audit of K-12 public school facilities in the state.

(b) The department shall work in conjunction with the legislative finance committee to design the process for collecting and analyzing data, including data related to the total square footage, the percentage of the total square footage that is being utilized for educational programs, and the square footage per student, to be used in the facility condition and needs assessment and energy audit.

(c) On or before July 1, 2008, the department of administration shall report the findings and recommendations of the K-12 public school facility condition and needs assessment and energy audit to the appropriate committee of the legislature.

(2) (a) There is appropriated $23 million from the general fund to the office of public instruction to be distributed as follows to each school district to pay for the costs of weatherization or deferred maintenance in the district:

(i) $1,000 for each district; and

(ii) $153 for each ANB, calculated as provided in 20-9-311, in each district.

(b) Each district that receives money under subsection (2)(a):

(i) shall deposit the money in the miscellaneous programs fund;

(ii) may retain the money for a maximum of 3 years and shall return any unexpended balance to the state for deposit in the general fund; and

(iii) may use the money as a match for any other local, state, or federal money.

(c) A district may not transfer money received under this subsection (2) to another fund.

(3) (a) There is appropriated $2 million from the general fund to the office of public instruction for energy cost relief to be used for utilities or transportation only. The office of public instruction shall distribute the money to school districts on a per-ANB basis, calculated as provided in 20-9-311.

(b) A district receiving funds under this subsection (3) shall deposit the money in the miscellaneous programs fund and may not transfer money received under this subsection (3) to another fund.

(4) (a) There is appropriated $7 million from the general fund to the office of public instruction for Indian education for all to be allocated to districts on a per-ANB basis, calculated as provided in 20-9-311.

(b) A district receiving funds under this subsection (4) shall deposit the money in the miscellaneous programs fund and may not transfer money received under this subsection (4) to another fund.

(5) There is appropriated $28,668,278 from the general fund to the office of public instruction for BASE aid to public schools as provided for in Senate Bill No. 1.

(6) There is appropriated $5 million from the general fund to the office of public instruction for at-risk student payments, as provided for in Senate Bill No. 1.

(7) The following is appropriated from the general fund to provide funding for the quality educator, Indian education for all, and American Indian achievement gap components at the Montana school for the deaf and blind and Pine Hills and Riverside youth correctional facilities:

Montana school for the deaf and blind	$85,000
Department of corrections	$63,800

(8) There is appropriated $130,000 from the general fund to the office of public instruction for transportation payments.

(9) There is appropriated $100 million from the general fund to the teachers' retirement system pension trust fund.

(10) There is appropriated $25 million from the general fund to the public employees' retirement system pension trust fund.

Section 2. Contingent voidness. If Senate Bill No. 1 is not passed and approved, then [section 1(5) and (6)] are void.

Section 3. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2006.

(2) [Section 1(1), (3), (9), and (10) and this section] are effective on passage and approval.

Approved December 16, 2005

CHAPTER NO. 2

[HB 2]

AN ACT REQUIRING THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE TO CONSIDER THE ACTUARIAL AND FISCAL SOUNDNESS AND EQUITY OF THE STATE'S PUBLIC EMPLOYEE RETIREMENT SYSTEMS, REVIEW AND REPORT ON CERTAIN LEGISLATION RELATED TO PUBLIC EMPLOYEE RETIREMENT SYSTEMS, ESTABLISH PRINCIPLES OF SOUND FISCAL AND PUBLIC POLICY AS GUIDELINES FOR LEGISLATION AFFECTING PUBLIC EMPLOYEE RETIREMENT SYSTEMS, GENERALLY MONITOR PUBLIC EMPLOYEE RETIREMENT SYSTEMS AND LEGISLATION AFFECTING THE SYSTEMS, AND INFORM LEGISLATORS ABOUT ISSUES REGARDING PUBLIC EMPLOYEE RETIREMENT SYSTEMS; AUTHORIZING THE COMMITTEE TO REQUEST ASSISTANCE FROM STATE AGENCIES, INCLUDING BOARDS, POLITICAL SUBDIVISIONS, AND THE STATE PUBLIC EMPLOYEE RETIREMENT SYSTEMS; PROVIDING AN APPROPRIATION; AMENDING SECTION 5-5-228, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-5-228, MCA, is amended to read:

"5-5-228. State administration and veterans' affairs interim committee. *(1)* The state administration and veterans' affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the public employee retirement plans and for the following executive branch agencies and the entities attached to the agencies for administrative purposes:

~~(1)~~*(a)* department of administration;

~~(2)~~*(b)* department of military affairs; and

~~(3)~~*(c)* office of the secretary of state.

(2) The committee shall:

(a) consider the actuarial and fiscal soundness of the state's public employee retirement systems, based on reports from the teachers' retirement board, the public employees' retirement board, and the board of investments, and study and evaluate the equity and benefit structure of the state's public employee retirement systems;

(b) establish principles of sound fiscal and public policy as guidelines;

(c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles;

(d) solicit and review proposed statutory changes to any of the state's public employee retirement systems;

(e) report to the legislature on each legislative proposal reviewed by the committee. The report must include but is not limited to:

(i) a summary of the fiscal implications of the proposal;

(ii) an analysis of the effect that the proposal may have on other public employee retirement systems;

(iii) an analysis of the soundness of the proposal as a matter of public policy;

(iv) any amendments proposed by the committee; and

(v) the committee's recommendation on whether the proposal should be enacted by the legislature.

(f) attach the committee's report to any proposal that the committee considered and that is or has been introduced as a bill during a legislative session; and

(g) publish, for legislators' use, information on the state's public employee retirement systems.

(3) The committee may:

(a) specify the date by which proposals affecting a retirement system must be submitted to the committee for the review contemplated under subsection (2)(d); and

(b) request personnel from state agencies, including boards, political subdivisions, and the state public employee retirement systems, to furnish any information and render any assistance that the committee may request."

Section 2. Appropriation. (1) There is appropriated $5,000 from the state general fund to the legislative services division to be used to pay for the activities of the state administration and veterans' affairs interim committee in executing the provisions of 5-5-228.

(2) The appropriation in subsection (1) is a biennial appropriation for the fiscal biennium ending June 30, 2007.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved December 19, 2005

CHAPTER NO. 3

[HB 5]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE SPECIAL SESSION OF THE 59TH LEGISLATURE CONVENING DECEMBER 14, 2005, AND FOR OTHER RELATED LEGISLATIVE PURPOSES; PROVIDING EXPLICITLY FOR REVERSION OF EXCESS FUNDING; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations. The following amounts are appropriated from the general fund for the fiscal year ending June 30, 2006, for costs of the special legislative session of December 2005:

LEGISLATIVE BRANCH (1104)

1. Senate (25)	$14,538
2. House of Representatives (26)	33,019
3. Legislative Services Division (22)	17,649

Section 2. Reversion. Money appropriated in [section 1] that is not expended or obligated at the end of the fiscal year ending June 30, 2006, reverts to the general fund.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved December 19, 2005

CHAPTER NO. 4

[SB 1]

AN ACT GENERALLY REVISING THE LAWS GOVERNING SCHOOL FUNDING IN ACCORDANCE WITH THE MONTANA CONSTITUTIONAL REQUIREMENT THAT SCHOOL FUNDING BE BASED ON A DEFINITION OF THE BASIC SYSTEM OF FREE QUALITY PUBLIC ELEMENTARY AND SECONDARY SCHOOLS; PROVIDING FOR A QUALITY EDUCATOR PAYMENT AND A METHOD FOR CALCULATING FUNDING FOR THAT PAYMENT; PROVIDING FOR AN AT-RISK STUDENT PAYMENT AND A METHOD FOR CALCULATING FUNDING FOR THAT PAYMENT; PROVIDING FOR AN INDIAN EDUCATION FOR ALL PAYMENT AND A METHOD FOR CALCULATING FUNDING FOR THAT PAYMENT; PROVIDING FOR AN AMERICAN INDIAN STUDENT ACHIEVEMENT GAP PAYMENT AND A METHOD FOR CALCULATING FUNDING FOR THAT PAYMENT; DEFINING TOTAL QUALITY EDUCATOR PAYMENT, TOTAL AT-RISK STUDENT PAYMENT, TOTAL INDIAN EDUCATION FOR ALL PAYMENT, AND TOTAL AMERICAN INDIAN STUDENT ACHIEVEMENT GAP PAYMENT; RETAINING 3-YEAR AVERAGING FOR ANB; RETAINING INCREASES IN THE PER-ANB ENTITLEMENT AND THE BASIC ENTITLEMENT; INCREASING RATES FOR INDIVIDUAL TRANSPORTATION FROM 25 CENTS A MILE TO 35 CENTS A MILE; AMENDING SECTIONS 20-5-323, 20-7-102, 20-9-306, 20-9-311, 20-9-321, 20-9-344, AND 20-10-142, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Quality educator payment. (1) (a) The state shall provide a quality educator payment to:

(i) public school districts, as defined in 20-6-101 and 20-6-701;

(ii) special education cooperatives, as described in 20-7-451;

(iii) the Montana school for the deaf and blind, as described in 20-8-101; and

(iv) state youth correctional facilities, as defined in 41-5-103.

(b) A special education cooperative that has not met the requirements of 20-7-453 and 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction.

(2) (a) The quality educator payment for special education cooperatives must be distributed directly to those entities by the superintendent of public instruction.

(b) The quality educator payment for the Montana school for the deaf and blind must be distributed to the Montana school for the deaf and blind.

(c) The quality educator payment for Pine Hills and Riverside youth correctional facilities must be distributed to those facilities by the department of corrections.

(3) The quality educator payment is $2,000 times the number of full-time equivalent educators, as reported to the superintendent of public instruction for accreditation purposes in the previous school year, each of whom:

(a) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in subsection (1) in a position that requires an educator license in accordance with the administrative rules adopted by the board of public education; or

(b) (i) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-23-201, 37-24-301, or 37-25-302; and

(ii) is employed by an entity listed in subsection (1) to provide services to students.

Section 2. At-risk student payment. (1) The state shall provide an at-risk student payment to public school districts, as defined in 20-6-101 and 20-6-701, for at-risk students, as defined in 20-1-101 and referred to in 20-9-309.

(2) The at-risk student payment must be distributed to public school districts by the office of public instruction in the same manner that the office of public instruction allocates the funds received under 20 U.S.C. 6332, et seq. The office of public instruction shall prorate payments to districts based upon the available appropriation.

(3) On or before September 15, 2010, the office of public instruction shall report to the governor and the legislature on the change in status of standardized test scores, graduation rates, and drop-out rates of at-risk students using fiscal year 2006 data as a baseline.

Section 3. Indian education for all payment. (1) The state shall provide an Indian education for all payment to public school districts, as defined in 20-6-101 and 20-6-701, to implement the provisions of Article X, section 1(2), of the Montana constitution and Title 20, chapter 1, part 5.

(2) The Indian education for all payment is the greater of $100 for each district or $20.40 for each ANB, calculated as provided in 20-9-311, for each fiscal year.

(3) The district shall deposit the payment in the general fund of the district.

Section 4. American Indian achievement gap payment. (1) The state shall provide an American Indian achievement gap payment to public school districts, as defined in 20-6-101 and 20-6-701, for the purpose of closing the educational achievement gap that exists between American Indian students and non-Indian students.

(2) (a) The American Indian achievement gap payment is $200 for each American Indian student enrolled in the district based on the count of regularly enrolled students on the first Monday in October of the prior school year as reported to the office of public instruction.

(b) A school district may not require a student to disclose the student's race.

(3) The district shall deposit the payment in the general fund of the district.

(4) On or before September 15, 2010, the office of public instruction shall report to the governor and the legislature on the change in status of standardized test scores, graduation rates, and drop-out rates of American Indian students using fiscal year 2006 data as a baseline.

Section 5. Section 20-5-323, MCA, is amended to read:

"20-5-323. Tuition and transportation rates. (1) Except as provided in subsections (2) through (5), whenever a child has approval to attend a school outside of the child's district of residence under the provisions of 20-5-320 or 20-5-321, the rate of tuition charged for a Montana resident student may not exceed 20% of the per-ANB maximum rate established in 20-9-306 for the year of attendance.

(2) The tuition for a child with a disability must be determined under rules adopted by the superintendent of public instruction for the calculation of tuition for special education pupils.

(3) The tuition rate for out-of-district placement pursuant to 20-5-321(1)(d) and (1)(e) for a student without disabilities who requires a program with costs that exceed the average district costs must be determined as the actual individual costs of providing that program according to the following:

(a) the district of attendance and the district, person, or entity responsible for the tuition payments shall approve an agreement with the district of attendance for the tuition cost;

(b) for a Montana resident student, 80% of the maximum per-ANB rate established in 20-9-306, received in the year for which the tuition charges are calculated, must be subtracted from the per-student program costs for a Montana resident student; and

(c) the maximum tuition rate paid to a district under this section may not exceed $2,500 per ANB.

(4) When a child attends a public school of another state or province, the amount of daily tuition may not be greater than the average annual cost for each student in the child's district of residence. This calculation for tuition purposes is determined by totaling all of the expenditures for all of the district budgeted funds for the preceding school fiscal year and dividing that amount by the October 1 enrollment in the preceding school fiscal year. For the purposes of this subsection, the following do not apply:

(a) placement of a child with a disability pursuant to Title 20, chapter 7, part 4;

(b) placement made in a state or province with a reciprocal tuition agreement pursuant to 20-5-314;

(c) an order issued under Title 40, chapter 4, part 2; or

(d) out-of-state placement by a state agency.

(5) When a child is placed by a state agency in an out-of-state residential facility, the state agency making the placement is responsible for the education costs resulting from the placement.

(6) The amount, if any, charged for transportation may not exceed the lesser of the average transportation cost for each student in the child's district of residence or ~~25~~ *35* cents a mile. The average expenditures for the district transportation fund for the preceding school fiscal year must be calculated by dividing the transportation fund expenditures by the October 1 enrollment for the preceding fiscal year."

Section 6. Section 20-7-102, MCA, is amended to read:

"20-7-102. (Temporary) Accreditation of schools. (1) The conditions under which each elementary school, each middle school, each junior high school, 7th and 8th grades funded at high school rates, and each high school

operates must be reviewed by the superintendent of public instruction to determine compliance with the standards of accreditation. The accreditation status of ~~every~~ *each* school must then be established by the board of public education upon the recommendation of the superintendent of public instruction. Notification of the accreditation status for the applicable school year or years must be given to each district by the superintendent of public instruction.

(2) A school may be accredited for a period consisting of 1, 2, 3, 4, or 5 school years, except that multiyear accreditation may be granted only to schools that are in compliance with 20-4-101.

(3) A nonpublic school may, through its governing body, request that the board of public education accredit the school. Nonpublic schools may be accredited in the same manner as provided in subsection (1).

(4) As used in this section, "7th and 8th grades funded at high school rates" means an elementary school district or K-12 district elementary program whose 7th and 8th grades are funded as provided in ~~20-9-306(11)(c)(ii)~~ *20-9-306(14)(c)(ii)*. (Terminates June 30, 2007—sec. 25(2), Ch. 462, L. 2005.)

20-7-102. (Effective July 1, 2007) Accreditation of schools. (1) The conditions under which each elementary school, each middle school, each junior high school, 7th and 8th grades funded at high school rates, and each high school operates must be reviewed by the superintendent of public instruction to determine compliance with the standards of accreditation. The accreditation status of ~~every~~ *each* school must then be established by the board of public education upon the recommendation of the superintendent of public instruction. Notification of the accreditation status for the applicable school year or years must be given to each district by the superintendent of public instruction.

(2) A school may be accredited for a period consisting of 1, 2, 3, 4, or 5 school years, except that multiyear accreditation may be granted only to schools that are in compliance with 20-4-101.

(3) A nonpublic school may, through its governing body, request that the board of public education accredit the school. Nonpublic schools may be accredited in the same manner as provided in subsection (1).

(4) As used in this section, "7th and 8th grades funded at high school rates" means an elementary school district or K-12 district elementary program whose 7th and 8th grades are funded as provided in ~~20-9-306(10)(c)(ii)~~ *20-9-306(14)(c)(ii)*."

Section 7. Section 20-9-306, MCA, is amended to read:

"20-9-306. (Temporary) Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district; and

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) $225,273 for each high school district;

(b) $20,275 for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows using either the current year ANB or the 3-year ANB provided for in 20-9-311:

(i) $20,275 times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) $225,273 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

(8) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(9) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and the greater of:

(a) 175% of special education allowable cost payments; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

(10) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(11) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations and using either the current year ANB or the 3-year ANB provided for in 20-9-311:

(a) for a high school district or a K-12 district high school program, a maximum rate of $5,584 for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each

ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of $4,366 for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of $4,366 for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of $5,584 for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB. (Terminates June 30, 2006—sec. 25(1), Ch. 462, L. 2005.)

20-9-306. (Temporary—effective July 1, 2006) Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district; ~~and~~

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment*;*

(c) the total quality educator payment;

(d) the total at-risk student payment;

(e) the total Indian education for all payment; and

(f) the total American Indian achievement gap payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, *100% of the total quality educator payment, 100% of the total at-risk student payment, 100% of the total Indian education for all payment, 100% of the total American Indian achievement gap payment,* and 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in

20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) $230,199 for each high school district;

(b) $20,718 for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows using either the current year ANB or the 3-year ANB provided for in 20-9-311:

(i) $20,718 times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) $230,199 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

(8) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(9) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, *the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement gap payment,* and the greater of:

(a) 175% of special education allowable cost payments; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

(10) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(11) "Total American Indian achievement gap payment" means the payment resulting from multiplying $200 times the number of American Indian students enrolled in the district as provided in [section 4].

(12) "Total at-risk student payment" means the payment resulting from the distribution of any funds appropriated for the purposes of [section 2].

(13) "Total Indian education for all payment" means the payment resulting from multiplying $20.40 times the ANB of the district or $100 for each district, whichever is greater, as provided for in [section 3].

~~(11)~~*(14)* "Total per-ANB entitlement" means the district entitlement resulting from the following calculations and using either the current year ANB or the 3-year ANB provided for in 20-9-311:

(a) for a high school district or a K-12 district high school program, a maximum rate of $5,704 for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each

ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of $4,456 for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of $4,456 for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of $5,704 for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.

(15) "Total quality educator payment" means the payment resulting from multiplying $2,000 times the number of full-time equivalent educators as provided in [section 1]. (Terminates June 30, 2007—sec. 25(2), Ch. 462, L. 2005.)

20-9-306. (Effective July 1, 2007) Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district; ~~and~~

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment*;*

(c) the total quality educator payment;

(d) the total at-risk student payment;

(e) the total Indian education for all payment; and

(f) the total American Indian achievement gap payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, *100% of the total quality educator payment, 100% of the total at-risk student payment, 100% of the total Indian education for all payment, 100% of the total American Indian achievement gap payment,* and ~~up to~~ 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as

provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) ~~$220,646~~ *$230,199* for each high school district;

(b) ~~$19,859~~ *$20,718* for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows *using either the current year ANB or the 3-year ANB provided for in 20-9-311*:

(i) ~~$19,859~~ *$20,718* times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) ~~$220,646~~ *$230,199* times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

~~(7)~~*(8)* "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

~~(8)~~*(9)* "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, *the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement gap payment,* and the greater of:

(a) 175% of special education allowable cost payments; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

~~(9)~~*(10)* "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(11) "Total American Indian achievement gap payment" means the payment resulting from multiplying $200 times the number of American Indian students enrolled in the district as provided in [section 4].

(12) "Total at-risk student payment" means the payment resulting from the distribution of any funds appropriated for the purposes of [section 2].

(13) "Total Indian education for all payment" means the payment resulting from multiplying $20.40 times the ANB of the district or $100 for each district, whichever is greater, as provided for in [section 3].

~~(10)~~*(14)* "Total per-ANB entitlement" means the district entitlement resulting from the following calculations *and using either the current year ANB or the 3-year ANB provided for in 20-9-311*:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~$5,371~~ *$5,704* for the first ANB is decreased at the rate of 50

cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of ~~$4,031~~ *$4,456* for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of ~~$4,031~~ *$4,456* for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~$5,371~~ *$5,704* for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.

(15) "Total quality educator payment" means the payment resulting from multiplying $2,000 times the number of full-time equivalent educators as provided in [section 1]."

Section 8. Section 20-9-311, MCA, is amended to read:

"20-9-311. (Temporary) Calculation of average number belonging (ANB) — 3-year averaging. (1) Average number belonging (ANB) must be computed for each budget unit as follows:

(a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the next school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of 180 and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than the minimum aggregate hours under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) (a) Except as provided in subsection (5), for the purpose of calculating ANB, enrollment in an education program:

(i) from 181 to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time enrollment;

(ii) from 360 to 539 aggregate hours of pupil instruction per school year is counted as half-time enrollment;

(iii) from 540 to 719 aggregate hours of pupil instruction per school year is counted as three-quarter-time enrollment; and

(iv) 720 or more aggregate hours of pupil instruction per school year is counted as full-time enrollment.

(b) Enrollment in a program intended to provide fewer than 180 aggregate hours of pupil instruction per school year may not be included for purposes of ANB.

(c) Enrollment in a self-paced program or course may be converted to an hourly equivalent based on the hours necessary and appropriate to provide the course within a regular classroom schedule.

(d) A pupil in grades 1 through 12 who is concurrently enrolled in more than one public school, program, or district may not be counted as more than one full-time pupil for ANB purposes.

(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment in a program that provides 360 or more aggregate hours of pupil instruction per school year must be counted as one-half pupil for ANB purposes.

(6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of prekindergarten pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that the ANB is calculated as a separate budget unit when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated as a separate budget unit for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more districts consolidate or annex under the provisions of 20-6-422 or 20-6-423, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

(A) 75% of the basic entitlement for the fourth year;

(B) 50% of the basic entitlement for the fifth year; and

(C) 25% of the basic entitlement for the sixth year.

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) The district shall provide the superintendent of public instruction with semiannual reports of school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent.

(10) (a) Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education program provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes only if the pupil is offered access to the complete range of educational services for the basic education program required by the accreditation standards adopted by the board of public education.

(b) Access to school programs and services for a student placed by the trustees in a private program for special education may be limited to the programs and services specified in an approved individual education plan supervised by the district.

(c) Access to school programs and services for a student who is incarcerated in a facility, other than a youth detention center, may be limited to the programs and services provided by the district at district expense under an agreement with the incarcerating facility.

(d) This subsection (10) may not be construed to require a school district to offer access to activities governed by an organization having jurisdiction over interscholastic activities, contests, and tournaments to a pupil who is not otherwise eligible under the rules of the organization.

(11) A district may include only, for ANB purposes, an enrolled pupil who is otherwise eligible under this title and who is:

(a) a resident of the district or a nonresident student admitted by trustees under a student attendance agreement and who is attending a school of the district;

(b) unable to attend school due to a medical reason certified by a medical doctor and receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(c) unable to attend school due to the student's incarceration in a facility, other than a youth detention center, and who is receiving individualized

educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(d) receiving special education and related services, other than day treatment, under a placement by the trustees at a private nonsectarian school or private program if the pupil's services are provided at the district's expense under an approved individual education plan supervised by the district;

(e) participating in the running start program at district expense under 20-9-706;

(f) receiving educational services, provided by the district, using appropriately licensed district staff at a private residential program or private residential facility licensed by the department of public health and human services;

(g) enrolled in an educational program or course provided at district expense using electronic or offsite delivery methods, including but not limited to tutoring, distance learning programs, online programs, and technology delivered learning programs, while attending a school of the district or any other nonsectarian offsite instructional setting with the approval of the trustees of the district. The pupil shall:

(i) meet the residency requirements for that district as provided in 1-1-215;

(ii) live in the district and must be eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; or

(iii) attend school in the district under a mandatory attendance agreement as provided in 20-5-321.

(h) a resident of the district attending a Montana job corps program under an interlocal agreement with the district under 20-9-707.

(12) (a) For an elementary or high school district that has been in existence for 3 ~~or more~~ years *or more*, the district's maximum general fund budget and BASE budget for the ensuing *school fiscal* year must be calculated using the current year ANB for all budget units or the 3-year average ANB for all budget units, whichever generates the greatest maximum general fund budget.

(b) For a K-12 district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing *school fiscal* year must be calculated separately for the elementary and high school programs pursuant to subsection (12)(a) and then combined.

(13) The term "3-year ANB" means an average ANB over the most recent 3-year period, calculated by:

(a) adding the ANB for the budget unit for the ensuing school fiscal year to the ANB for each of the previous 2 school fiscal years; and

(b) dividing the sum calculated under subsection (13)(a) by three. (Terminates June 30, 2007—sec. 25(2), Ch. 462, L. 2005.)

20-9-311. (Effective July 1, 2007) Calculation of average number belonging (ANB). (1) Average number belonging (ANB) must be computed as follows:

(a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the

prior school fiscal year, or the next school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of 180 and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than the minimum aggregate hours under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) (a) Except as provided in subsection (5), for the purpose of calculating ANB, enrollment in an education program:

(i) from 181 to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time enrollment;

(ii) from 360 to 539 aggregate hours of pupil instruction per school year is counted as half-time enrollment;

(iii) from 540 to 719 aggregate hours of pupil instruction per school year is counted as three-quarter-time enrollment; and

(iv) 720 or more aggregate hours of pupil instruction per school year is counted as full-time enrollment.

(b) Enrollment in a program intended to provide fewer than 180 aggregate hours of pupil instruction per school year may not be included for purposes of ANB.

(c) Enrollment in a self-paced program or course may be converted to an hourly equivalent based on the hours necessary and appropriate to provide the course within a regular classroom schedule.

(d) A pupil in grades 1 through 12 who is concurrently enrolled in more than one public school, program, or district may not be counted as more than one full-time pupil for ANB purposes.

(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment in a program that provides 360 or more aggregate hours of pupil instruction per school year must be counted as one-half pupil for ANB purposes.

(6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of prekindergarten pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the

district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more districts consolidate or annex under the provisions of 20-6-422 or 20-6-423, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

(A) 75% of the basic entitlement for the fourth year;

(B) 50% of the basic entitlement for the fifth year; and

(C) 25% of the basic entitlement for the sixth year.

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) The district shall provide the superintendent of public instruction with semiannual reports of school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent.

(10) (a) Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education program provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes only if the pupil is offered access to the complete range of educational services for the basic education program required by the accreditation standards adopted by the board of public education.

(b) Access to school programs and services for a student placed by the trustees in a private program for special education may be limited to the programs and services specified in an approved individual education plan supervised by the district.

(c) Access to school programs and services for a student who is incarcerated in a facility, other than a youth detention center, may be limited to the programs and services provided by the district at district expense under an agreement with the incarcerating facility.

(d) This subsection (10) may not be construed to require a school district to offer access to activities governed by an organization having jurisdiction over interscholastic activities, contests, and tournaments to a pupil who is not otherwise eligible under the rules of the organization.

(11) A district may include only, for ANB purposes, an enrolled pupil who is otherwise eligible under this title and who is:

(a) a resident of the district or a nonresident student admitted by trustees under a student attendance agreement and who is attending a school of the district;

(b) unable to attend school due to a medical reason certified by a medical doctor and receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(c) unable to attend school due to the student's incarceration in a facility, other than a youth detention center, and who is receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(d) receiving special education and related services, other than day treatment, under a placement by the trustees at a private nonsectarian school or private program if the pupil's services are provided at the district's expense under an approved individual education plan supervised by the district;

(e) participating in the running start program at district expense under 20-9-706;

(f) receiving educational services, provided by the district, using appropriately licensed district staff at a private residential program or private residential facility licensed by the department of public health and human services;

(g) enrolled in an educational program or course provided at district expense using electronic or offsite delivery methods, including but not limited to tutoring, distance learning programs, online programs, and technology delivered learning programs, while attending a school of the district or any other nonsectarian offsite instructional setting with the approval of the trustees of the district. The pupil shall:

(i) meet the residency requirements for that district as provided in 1-1-215;

(ii) live in the district and must be eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; or

(iii) attend school in the district under a mandatory attendance agreement as provided in 20-5-321.

(h) a resident of the district attending a Montana job corps program under an interlocal agreement with the district under 20-9-707.

(12) (a) For an elementary or high school district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated using the current year ANB

for all budget units or the 3-year average ANB for all budget units, whichever generates the greatest maximum general fund budget.

(b) For a K-12 district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated separately for the elementary and high school programs pursuant to subsection (12)(a) and then combined.

(13) The term "3-year ANB" means an average ANB over the most recent 3-year period, calculated by:

(a) adding the ANB for the budget unit for the ensuing school fiscal year to the ANB for each of the previous 2 school fiscal years; and

(b) dividing the sum calculated under subsection (13)(a) by three."

Section 9. Section 20-9-321, MCA, is amended to read:

"20-9-321. (Temporary) Allowable cost payment for special education. (1) As used in this section, "ANB" means the current year ANB.

(2) The 3-year average ANB provided for in 20-9-311~~(12)~~ does not apply to the calculation and distribution of state special education allowable cost payments provided for in this section.

(3) For the purpose of establishing the allowable cost payment for a current year special education program for a school district, the superintendent of public instruction shall determine the total special education payment to a school district, cooperative, or joint board for special education services formed under 20-3-361 prior to July 1, 1992, using the following factors:

(a) the district ANB student count as established pursuant to 20-9-311 and 20-9-313;

(b) a per-ANB amount for the special education instructional block grant;

(c) a per-ANB amount for the special education-related services block grant;

(d) an amount for cooperatives or joint boards meeting the requirements of 20-7-457, to compensate for the additional costs of operations and maintenance, travel, supportive services, recruitment, and administration; and

(e) any other data required by the superintendent of public instruction to administer the provisions of this section.

(4) (a) The total special education allocation must be distributed according to the following formula:

(i) 52.5% through instructional block grants;

(ii) 17.5% through related services block grants;

(iii) 25% to reimbursement of local districts; and

(iv) 5% to special education cooperatives and joint boards for administration and travel.

(b) Special education allowable cost payments outlined in subsection (4)(a) must be granted to each school district and cooperative with a special education program as follows:

(i) The instructional block grant limit prescribed in subsection (4)(a)(i) must be awarded to each school district, based on the district ANB and the per-ANB special education instructional amount.

(ii) The special education-related services block grant limit prescribed in subsection (4)(a)(ii) must be awarded to each school district that is not a cooperative member, based on the district ANB and the per-ANB special education-related services amount, or to a cooperative or joint board that meets the requirements of 20-7-457. The special education-related services block grant amount for districts that are members of approved cooperatives or a joint board must be awarded to the cooperatives or joint board.

(iii) If a district's allowable costs of special education exceed the total of the special education instructional and special education-related services block grant plus the required district match required by subsection (6), the district is eligible to receive at least a 40% reimbursement of the additional costs. To ensure that the total of reimbursements to all districts does not exceed 25% of the total special education allocation limit established in subsection (4)(a)(iii), reimbursement must be made to districts for amounts that exceed a threshold level calculated annually by the office of public instruction. The threshold level is calculated as a percentage amount above the sum of the district's block grants plus the required district match.

(iv) Of the amount distributed under subsection (4)(a)(iv), three-fifths must be distributed based on the ANB count of the school districts that are members of the special education cooperative or joint board and two-fifths must be distributed based on distances, population density, and the number of itinerant personnel under rules adopted by the superintendent of public instruction.

(5) The superintendent of public instruction shall adopt rules necessary to implement this section.

(6) A district shall provide a 25% local contribution for special education, matching every $3 of state special education instructional and special education-related services block grants with at least one local dollar. A district that is a cooperative member is required to provide the 25% match of the special education-related services grant amount to the special education cooperative.

(7) The superintendent of public instruction shall determine the actual district match based on the trustees' reports. Any unmatched portion reverts to the state and must be subtracted from the district's ensuing year's special education allowable cost payment.

(8) A district that demonstrates severe economic hardship because of exceptional special education costs may apply to the superintendent of public instruction for an advance on the reimbursement for the year in which the actual costs will be incurred. (Terminates June 30, 2007—sec. 25(2), Ch. 462, L. 2005.)

20-9-321. (Effective July 1, 2007) Allowable cost payment for special education. *(1) As used in this section, "ANB" means the current year ANB.*

(2) The 3-year average ANB provided for in 20-9-311 does not apply to the calculation and distribution of state special education allowable cost payments provided for in this section.

~~(1)~~*(3)* For the purpose of establishing the allowable cost payment for a current year special education program for a school district, the superintendent of public instruction shall determine the total special education payment to a school district, cooperative, or joint board for special education services formed under 20-3-361 prior to July 1, 1992, using the following factors:

(a) the district ANB student count as established pursuant to 20-9-311 and 20-9-313;

(b) a per-ANB amount for the special education instructional block grant;

(c) a per-ANB amount for the special education-related services block grant;

(d) an amount for cooperatives or joint boards meeting the requirements of 20-7-457, to compensate for the additional costs of operations and maintenance, travel, supportive services, recruitment, and administration; and

(e) any other data required by the superintendent of public instruction to administer the provisions of this section.

~~(2)~~*(4)* (a) The total special education allocation must be distributed according to the following formula:

(i) 52.5% through instructional block grants;

(ii) 17.5% through related services block grants;

(iii) 25% to reimbursement of local districts; and

(iv) 5% to special education cooperatives and joint boards for administration and travel.

(b) Special education allowable cost payments outlined in subsection ~~(2)(a)~~ *(4)(a)* must be granted to each school district and cooperative with a special education program as follows:

(i) The instructional block grant limit prescribed in subsection ~~(2)(a)(i)~~ *(4)(a)(i)* must be awarded to each school district, based on the district ANB and the per-ANB special education instructional amount.

(ii) The special education-related services block grant limit prescribed in subsection ~~(2)(a)(ii)~~ *(4)(a)(ii)* must be awarded to each school district that is not a cooperative member, based on the district ANB and the per-ANB special education-related services amount, or to a cooperative or joint board that meets the requirements of 20-7-457. The special education-related services block grant amount for districts that are members of approved cooperatives or a joint board must be awarded to the cooperatives or joint board.

(iii) If a district's allowable costs of special education exceed the total of the special education instructional and special education-related services block grant plus the required district match required by subsection ~~(4)~~ *(6)*, the district is eligible to receive at least a 40% reimbursement of the additional costs. To ensure that the total of reimbursements to all districts does not exceed 25% of the total special education allocation limit established in subsection ~~(2)(a)(iii)~~ *(4)(a)(iii)*, reimbursement must be made to districts for amounts that exceed a threshold level calculated annually by the office of public instruction. The threshold level is calculated as a percentage amount above the sum of the district's block grants plus the required district match.

(iv) Of the amount distributed under subsection ~~(2)(a)(iv)~~ *(4)(a)(iv)*, three-fifths must be distributed based on the ANB count of the school districts that are members of the special education cooperative or joint board and two-fifths must be distributed based on distances, population density, and the number of itinerant personnel under rules adopted by the superintendent of public instruction.

~~(3)~~*(5)* The superintendent of public instruction shall adopt rules necessary to implement this section.

~~(4)~~*(6)* A district shall provide a 25% local contribution for special education, matching every $3 of state special education instructional and special education-related services block grants with at least one local dollar. A district that is a cooperative member is required to provide the 25% match of the special education-related services grant amount to the special education cooperative.

~~(5)~~*(7)* The superintendent of public instruction shall determine the actual district match based on the trustees' reports. Any unmatched portion reverts to the state and must be subtracted from the district's ensuing year's special education allowable cost payment.

~~(6)~~*(8)* A district that demonstrates severe economic hardship because of exceptional special education costs may apply to the superintendent of public instruction for an advance on the reimbursement for the year in which the actual costs will be incurred."

Section 10. Section 20-9-344, MCA, is amended to read:

"20-9-344. Duties of board of public education for distribution of BASE aid. (1) The board of public education shall administer and distribute the BASE aid and state advances for county equalization in the manner and with the powers and duties provided by law. The board of public education:

(a) shall adopt policies for regulating the distribution of BASE aid and state advances for county equalization in accordance with the provisions of law;

(b) may require reports from the county superintendents, county treasurers, and trustees ~~as~~ *that* it considers necessary; and

(c) shall order the superintendent of public instruction to distribute the BASE aid on the basis of each district's annual entitlement to the aid as established by the superintendent of public instruction. In ordering the distribution of BASE aid, the board of public education may not increase or decrease the BASE aid distribution to any district on account of any difference that may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(2) The board of public education may order the superintendent of public instruction to withhold distribution of BASE aid from a district when the district fails to:

(a) submit reports or budgets as required by law or rules adopted by the board of public education; or

(b) maintain accredited status.

(3) Prior to any proposed order by the board of public education to withhold distribution of BASE aid or county equalization money, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.

(4) If a district or county receives more BASE aid than it is entitled to, the county treasurer shall return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the superintendent of public instruction.

(5) Except as provided in 20-9-347(2), the BASE aid payment must be distributed according to the following schedule:

(a) from August to October of the school fiscal year, *to each district* 10% of*:*

(i) ~~the~~ direct state aid ~~to each district~~*;*

(ii) the total quality educator payment;

(iii) the total at-risk student payment;

(iv) the total Indian education for all payment; and

(v) the total American Indian achievement gap payment;

(b) from December to April of the school fiscal year, *to each district* 10% of*:*

(i) ~~the~~ direct state aid ~~to each district~~*;*

(ii) the total quality educator payment;

(iii) the total at-risk student payment;

(iv) the total Indian education for all payment; and

(v) the total American Indian achievement gap payment;

(c) in November of the school fiscal year, one-half of the guaranteed tax base aid payment to each district or county that has submitted a final budget to the superintendent of public instruction in accordance with the provisions of 20-9-134;

(d) in May of the school fiscal year, the remainder of the guaranteed tax base aid payment to each district or county; and

(e) in June of the school fiscal year, the remaining payment to each district of direct state aid*, the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, and the total American Indian achievement gap payment*.

(6) The distribution provided for in subsection (5) must occur by the last working day of each month."

Section 11. Section 20-10-142, MCA, is amended to read:

"20-10-142. Schedule of maximum reimbursement for individual transportation. The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates constitute the limitation of the budgeted amounts for individual transportation for the ensuing school fiscal year. The schedules provided in this section may not be altered by any authority other than the legislature. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall reimburse the parent or guardian for actual miles transported on the basis of the following schedule:

(1) When a parent or guardian transports an eligible transportee or transportees from the residence of the parent or guardian to a school or to schools located within 3 miles of one another, the total reimbursement for each day of attendance is determined by multiplying the distance in miles between the residence and the school, or the most distant school if more than one, by 2, subtracting 6 miles from the product, and multiplying the difference by ~~25~~ *35* cents, provided that:

(a) if two or more eligible transportees are transported by a parent or guardian to two or more schools located within 3 miles of one another and if the schools are operated by different school districts, the total amount of the reimbursement must be divided equally between the districts;

(b) if two or more eligible transportees are transported by a parent or guardian to two or more schools located more than 3 miles from one another, the parent or guardian must be separately reimbursed for transporting the eligible transportee or transportees to each school;

(c) if a parent transports two or more eligible transportees to a school and a bus stop that are located within 3 miles of one another, the total reimbursement must be determined under the provisions of this subsection (1) and must be divided equally between the district operating the school and the district operating the bus;

(d) if a parent transporting two or more eligible transportees to a school or bus stop must, because of varying arrival and departure times, make more than one round-trip journey to the bus stop or school, the total reimbursement allowed by this section is limited to one round trip a day for each scheduled arrival or departure time;

(e) notwithstanding subsection (1)(a), (1)(b), (1)(c), or (1)(d), a reimbursement may not be less than ~~25~~ *35* cents a day.

(2) When the parent or guardian transports an eligible transportee or transportees from the residence to a bus stop of a bus route approved by the trustees for the transportation of the transportee or transportees, the total reimbursement for each day of attendance is determined by multiplying the distance in miles between the residence and the bus stop by 2, subtracting 6 miles from the product, and multiplying the difference by ~~25~~ *35* cents, provided that:

(a) if the eligible transportees attend schools in different districts but ride on one bus, the districts shall divide the total reimbursement equally; and

(b) if the parent or guardian is required to transport the eligible transportees to more than one bus, the parent or guardian must be separately reimbursed for transportation to each bus.

(3) When, because of excessive distances, impassable roads, or other special circumstances of isolation, the rates prescribed in subsection (1) or (2) would be an inadequate reimbursement for the transportation costs or would result in a physical hardship for the eligible transportee, a parent or guardian may request an increase in the reimbursement rate. A request for increased rates because of isolation must be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year by indicating the special facts and circumstances that exist to justify the increase. Before an increased rate because of isolation may be paid to the requesting parent or guardian, the rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by the committee and the superintendent of public instruction, the trustees shall pay the increased rate because of isolation. The increased rate is 1 1/2 times the rate prescribed in subsection (1).

(4) The state and county transportation reimbursement for an individual transportation contract may not exceed ~~$9.25~~ *$12.95* for each day of attendance for the first eligible transportee and ~~$6~~ *$8.40* for each day of attendance for each additional eligible transportee.

(5) When the isolated conditions of the household where an eligible transportee resides require an eligible transportee to live away from the household in order to attend school, the eligible transportee is eligible for the

room and board reimbursement. Approval to receive the room and board reimbursement must be obtained in the same manner prescribed in subsection (3). The per diem rate for room and board is ~~$9.25~~ *$12.95* for one eligible transportee and ~~$6~~ *$8.40* for each additional eligible transportee of the same household.

(6) When the individual transportation provision is to be satisfied by supervised home study or supervised correspondence study, the reimbursement rate is the cost of the study, provided that the course of instruction is approved by the trustees and supervised by the district."

Section 12. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 20, chapter 9, part 3, and the provisions of Title 20, chapter 9, part 3, apply to [sections 1 through 4].

Section 13. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 14. Contingent voidness. If House Bill No. 1 is not passed and approved with an appropriation for BASE aid, then [this act] is void.

Section 15. Effective date — applicability. [This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006.

Approved December 19, 2005

RESOLUTIONS

Passed by the

FIFTY-NINTH LEGISLATURE
IN SPECIAL SESSION

Held at Helena, the Seat of Government
December 14 & 15, 2005

Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE CHIEF JUSTICE OF THE MONTANA SUPREME COURT AND SUBMITTED TO THE SENATE OF THE HONORABLE C. BRUCE LOBLE AS CHIEF WATER JUDGE OF THE STATE OF MONTANA.

WHEREAS, Chief Justice Karla Gray of the Montana Supreme Court made the appointment, below designated, pursuant to an Order of the Court, dated June 20, 2005; and

WHEREAS, the appointment has been submitted to the Senate, to wit:

C. Bruce Loble as Chief Water Judge of the State of Montana, to serve a 4-year term commencing July 1, 2005, and ending June 30, 2009.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the December 2005 Special Session of the 59th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment.

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified by the President and Secretary of the Senate, to the Secretary of State and a copy, certified by the Secretary of the Senate, to the Governor pursuant to section 5-5-303, MCA.

Adopted December 14, 2005

SENATE RESOLUTION NO. 2

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE OF HONORABLE JAMES JEREMIAH SHEA AS WORKERS' COMPENSATION JUDGE.

WHEREAS, the Governor of the State of Montana made the appointment, below designated, on July 22, 2005; and

WHEREAS, the appointment has been submitted to the Senate, to wit:

James Jeremiah Shea as Workers' Compensation Judge for the State of Montana, for a 6-year term of office commencing September 7, 2005, and ending September 6, 2011.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the December 2005 Special Session of the 59th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment.

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified by the President and

Secretary of the Senate, to the Secretary of State and a copy, certified by the Secretary of the Senate, to the Governor pursuant to section 5-5-303, MCA.

Adopted December 14, 2005

SENATE RESOLUTION NO. 3

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED DECEMBER 6, 2005, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Public Health and Human Services, in accordance with sections 2-15-111 and 2-15-2201, MCA, Joan Miles, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the December 2005 Special Session of the 59th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted December 14, 2005

TABLES

Code Sections Affected
Senate Bill to Chapter Number
House Bill to Chapter Number
Chapter Number to Bill Number
Effective Dates By Chapter Number
Effective Dates by Date
Session Law to Code

CODE SECTIONS AFFECTED

Title-Chapter-Section	Action	Chapter	Bill Number
5-5-228	amended	Ch. 2	HB 2
20-5-323	amended	Ch. 4	SB 1
20-7-102	amended	Ch. 4	SB 1
20-9-306	amended	Ch. 4	SB 1
20-9-311	amended	Ch. 4	SB 1
20-9-321	amended	Ch. 4	SB 1
20-9-327	enacted	Ch. 4	SB 1
20-9-328	enacted	Ch. 4	SB 1
20-9-329	enacted	Ch. 4	SB 1
20-9-330	enacted	Ch. 4	SB 1
20-9-344	amended	Ch. 4	SB 1
20-10-142	amended	Ch. 4	SB 1

SENATE BILL TO CHAPTER NUMBER

Bill Number	Chapter Number
SB 1	4

HOUSE BILL TO CHAPTER NUMBER

Bill Number	Chapter Number	Bill Number	Chapter Number
HB 1	1	HB 5	3
HB 2	2		

CHAPTER NUMBER TO BILL NUMBER

Chapter Number	Bill Number	Chapter Number	Bill Number
Ch. 1	HB 1	Ch. 3	HB 5
Ch. 2	HB 2	Ch. 4	SB 1

EFFECTIVE DATES BY CHAPTER NUMBER

Chapter Number	Bill Number	Effective Date
Ch. 1 §§ 1(1), (3), (9), and (10), and 3	HB 1	12/16/2005
§§ 1(2), (4)-(8), and 2		07/01/2006
Ch. 2	HB 2	12/19/2005
Ch. 3	HB 5	12/19/2005
Ch. 4	SB 1	07/01/2006

EFFECTIVE DATES BY DATE

Effective Date	Chapter Number	Bill Number
12/16/2005	Ch. 1	HB 1
	§§ 1(1), (3), (9), and (10), and 3	
12/19/2005	Ch. 2	HB 2
12/19/2005	Ch. 3	HB 5
07/01/2006	Ch. 1	HB 1
	§§ 1(2), (4)-(8), and 2	
07/01/2006	Ch. 4	SB 1

SESSION LAW TO CODE

Ch.	Sec.	MCA
1	1	Appropriations
	2	Contingent voidness
	3	Effective dates
2	1	5-5-228
	2	Appropriation
	3	Effective date
3	1	Appropriations
	2	Reversion
	3	Effective date
4	1	20-9-327
	2	20-9-328
	3	20-9-329
	4	20-9-330
	5	20-5-323
	6	20-7-102
	7	20-9-306
	8	20-9-311
	9	20-9-321
	10	20-9-344
	11	20-10-142
	12	Codification instruction
	13	Notification to tribal governments
	14	Contingent voidness
	15	Effective date — applicability

LAWS

Enacted by the

SIXTIETH LEGISLATURE
IN SPECIAL SESSION

Held at Helena, the Seat of Government
May 10, 2007, through May 15, 2007

Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

OFFICERS AND MEMBERS OF THE MONTANA SENATE

MAY 2007

50 Members

26 Democrats 24 Republicans

OFFICERS

President.....Mike Cooney
President Pro Tempore .....Dan Harrington
Majority Leader .....Carol Williams
Majority Whips .....Lane Larson, Lynda Moss
Minority Leader .....Corey Stapleton
Minority Whips .....Greg Barkus, Dan McGee
Secretary of the Senate .....John Mudd

MEMBERS

Name	Party	District	Preferred Mailing Address
Bales, Keith	(R)	20	HC 39 Box 33, Otter MT 59062-9703
Balyeat, Joe	(R)	34	6909 Rising Eagle Rd, Bozeman MT 59715-8621
Barkus, Gregory	(R)	4	PO Box 2647, Kalispell MT 59903-2647
Black, Jerry	(R)	14	445 O'Haire Blvd, Shelby MT 59474-1950
Brown, Roy	(R)	25	PO Box 22273, Billings MT 59104-2273
Brueggeman, John	(R)	6	321 Lakeview Dr, Polson MT 59860-9317
Cobb, John	(R)	9	PO Box 388, Augusta MT 59410-0388
Cocchiarella, Vicki	(D)	47	515 8th Ave, Helena MT 59601-3778
Cooney, Mike	(D)	40	713 Pyrite Court, Helena MT 59601-5877
Curtiss, Aubyn	(R)	1	PO Box 216, Fortine MT 59918-0216
Elliott, Jim	(D)	7	100 Trout Creek Rd, Trout Creek MT 59874-9609
Esp, John	(R)	31	PO Box 1024, Big Timber MT 59011-1024
Essmann, Jeff	(R)	28	2101 PO Box 80945, Billings MT 59108-0945
Gallus, Steve	(D)	37	2319 Harvard Ave, Butte MT 59701-3854
Gebhardt, Kelly	(R)	23	PO Box 724, Roundup MT 59072-0724
Gillan, Kim	(D)	24	750 Judicial Ave, Billings MT 59105-2130
Hansen, Ken (Kim)	(D)	17	PO Box 686, Harlem MT 59526-0686
Harrington, Dan	(D)	38	1201 N Excelsior Ave, Butte MT 59701-8505
Hawks, Bob	(D)	33	703 W Koch St, Bozeman MT 59715-4477
Jackson, Verdell	(R)	5	555 Wagner Ln, Kalispell MT 59901-8079
Jent, Larry	(D)	32	1201 S 3rd St, Bozeman MT 59715-5503
Juneau, Carol	(D)	8	PO Box 55, Browning MT 59417-0055
Kaufmann, Christine	(D)	41	825 Breckenridge St, Helena MT 59601-4433
Kitzenberg, Sam	(D)	18	130 Bonnie St Apt 1, Glasgow MT 59230-2101
Laible, Rick	(R)	44	PO Box 370, Darby MT 59829-0370
Larson, Lane	(D)	22	1417 Cedar Canyon Rd, Billings MT 59101-6440
Laslovich, Jesse	(D)	43	112 Mountain View St, Anaconda MT 59711-1616
Lewis, Dave	(R)	42	5871 Collins Rd, Helena MT 59602-9584
Lind, Greg	(D)	50	PO Box 16720, Missoula MT 59808-6720
McGee, Daniel	(R)	29	1925 Pinyon Dr, Laurel MT 59044-9381
Moss, Lynda	(D)	26	552 Highland Park Dr, Billings MT 59102-1046
Murphy, Terry	(R)	39	893 Boulder Cutoff Rd, Cardwell MT 59721
O'Neil, Jerry	(R)	3	985 Walsh Rd, Columbia Falls MT 59912-9044
Pease, Gerald	(D)	21	PO Box 556, Lodge Grass MT 59050-0556
Perry, Gary	(R)	35	3325 W Cedar Meadow Ln, Manhattan MT 59741-8240
Peterson, Jim	(R)	15	RR 1 Box 2, Buffalo MT 59418-9501
Ryan, Don	(D)	10	2101 7th Ave S, Great Falls MT 59405-2821
Schmidt, Trudi	(D)	11	4029 6th Ave S, Great Falls MT 59405-3746

Shockley, Jim	(R)	45	PO Box 608, Victor MT 59875-0608
Smith, Frank	(D)	16	PO Box 729, Poplar MT 59255-0729
Squires, Carolyn	(D)	48	2111 S 10th St W, Missoula MT 59801-3412
Stapleton, Corey	(R)	27	2015 Eastridge Dr, Billings MT 59102-7904
Steinbeisser, Donald	(R)	19	11918 County Rd 348, Sidney MT 59270-9620
Story, Robert	(R)	30	133 Valley Creek Rd, Park City MT 59063-8040
Tash, Bill	(R)	36	240 Vista Dr, Dillon MT 59725-3111
Tropila, Joseph	(D)	13	209 2nd St NW, Great Falls MT 59404-1301
Tropila, Mitch	(D)	12	PO Box 2286, Great Falls MT 59403-2286
Wanzenried, David	(D)	49	903 Sky Dr, Missoula MT 59804-3121
Weinberg, Dan	(D)	2	575 Delrey Rd, Whitefish MT 59937-8042
Williams, Carol	(D)	46	3533 Lincoln Hills Pt, Missoula MT 59802

OFFICERS AND MEMBERS OF THE MONTANA HOUSE OF REPRESENTATIVES

MAY 2007

100 Members

50 Republicans 49 Democrats 1 Constitutionalist

OFFICERS

Speaker ..... Scott Sales
Speaker Pro Tempore ..... Debby Barrett
Majority Leader ..... Michael Lange
Majority Whips ..... Tom McGillvray, Gary MacLaren
Minority Leader ..... John Parker
Deputy Minority Leader ..... Bob Bergren
Minority Floor Leader ..... Art Noonan
Minority Whips ..... Margarett Campbell, Dave McAlpin
Minority Caucus Leader ..... Dan Villa
Chief Clerk of the House ..... Marilyn Miller

MEMBERS

Name	Party	District	Preferred Mailing Address
Ankney, Duane	(R)	43	PO Box 2138, Colstrip MT 59323-2138
Arntzen, Elsie	(R)	53	850 Senora Ave, Billings MT 59105-2051
Augare, Shannon	(D)	16	PO Box 2031, Browning MT 59417-2031
Barrett, Debby	(R)	72	18580 MT Hwy 324, Dillon MT 59725-8031
Beck, Bill	(R)	6	PO Box 2049, Whitefish MT 59937-2049
Becker, Arlene	(D)	52	1440 Lewis Ave, Billings MT 59101-4240
Bergren, Bob	(D)	33	1132 26th Ave W, Havre MT 59501-8609
Bixby, Norma	(D)	41	PO Box 1165, Lame Deer MT 59043-1165
Blasdel, Mark	(R)	10	PO Box 291, Somers MT 59932-0291
Boggio, Scott	(R)	59	HC 50 Box 4754, Red Lodge MT 59068-4754
Branae, Gary	(D)	54	415 Yellowstone Ave, Billings MT 59101-1730
Butcher, Edward	(R)	29	PO Box 89, Winifred MT 59489-0089
Caferro, Mary	(D)	80	PO Box 1036, Helena MT 59624-1036
Callahan, Tim	(D)	21	728 36 Ave NE, Great Falls MT 59404-1132
Campbell, Margarett	(D)	31	PO Box 228, Poplar MT 59255-0228
Clark, Edith	(R)	28	PO Box 34, Sweetgrass MT 59484-0034
Cohenour, Jill	(D)	78	2610 Colt Dr, East Helena MT 59635-3442
Cordier, Douglas	(D)	3	1930 Tamarack Ln, Columbia Falls MT 59912-8816
Dickenson, Sue	(D)	25	620 Riverview Dr E, Great Falls MT 59404-1637
Driscoll, Robyn	(D)	51	724 N 16th St, Billings MT 59101-0418
Dutton, Ernie	(R)	56	2046 Mariposa Ln, Billings MT 59102-2347
Ebinger, Bob	(D)	62	128 S Yellowstone St, Livingston MT 59047-2634
Erickson, Ron	(D)	93	3250 Pattee Canyon Rd, Missoula MT 59803-1703
Everett, George	(R)	5	1344 Helena Flats Rd, Kalispell MT 59901-6548
Franklin, Eve	(D)	24	PO Box 6507, Great Falls MT 59406-6507
French, Julie	(D)	36	PO Box 356, Scobey MT 59263-0356
*Furey, Timothy	(D)	91	280 Hellgate Dr, Missoula MT 59802-8739
Gallik, Dave	(D)	79	1124 Billings Ave, Helena MT 59601-3505
Glaser, William	(R)	44	1402 Indian Creek Rd, Huntley MT 59037-9338
Grinde, Wanda	(D)	48	1910 Bannack Dr, Billings MT 59105-4236
Groesbeck, George	(D)	74	2044 Carolina Ave, Butte MT 59701-6025
Hamilton, Robin	(D)	92	330 Daly Ave, Missoula MT 59801-4338
Hands, Betsy	(D)	99	1337 Sherwood St, Missoula MT 59802-2301
Hawk, Ray	(R)	90	NW 4878 Hoblitt Ln, Florence MT 59833-6832
Heinert, Ralph	(R)	1	PO Box 577, Libby MT 59923-0577
Hendrick, Gordon	(R)	14	PO Box 262, Superior MT 59872-0262
Henry, Teresa	(D)	96	204 Chestnut St, Missoula MT 59801-1809

Hilbert, Edward	(R)	38	120 Hillcrest Ave, Glendive MT 59330-2815
Himmelberger, Dennis	(R)	47	PO Box 22272, Billings MT 59104-2272
Hiner, Cynthia	(D)	85	1027 Kentucky St, Deer Lodge MT 59722-2041
Hollenbaugh, Galen	(D)	81	907 N Ewing St, Helena MT 59601-3405
Ingraham, Pat	(R)	13	PO Box 1151, Thompson Falls MT 59873-1151
Jacobson, Hal	(D)	82	4813 US Hwy 12 W, Helena MT 59601-9694
Jayne, Joey	(D)	15	299 Lumpry Rd, Arlee MT 59821-9747
Jones, Llew	(R)	27	1102 4th Ave SW, Conrad MT 59425-1919
Jones, William	(R)	9	567 East Village Dr, Bigfork MT 59911-6152
Jopek, Mike	(D)	4	PO Box 4272, Whitefish MT 59937-4272
Jore, Rick	(C)	12	30488 Mount Harding Ln, Ronan MT 59864-9446
Kasten, Dave	(R)	30	113 Bob Fudge Rd, Brockway MT 59214-8706
Keane, Jim	(D)	75	2131 Wall St, Butte MT 59701-5527
Kerns, Krayton	(R)	58	1408 Golf Course Rd, Laurel MT 59044-3600
Klock, Harry	(R)	83	PO Box 308, Harlowton MT 59036-0308
Koopman, Roger	(R)	70	811 S Tracy Ave, Bozeman MT 59715-5325
Kottel, Deborah	(D)	20	6301 43rd St SW, Great Falls MT 59404-5249
Lake, Bob	(R)	88	PO Box 2096, Hamilton MT 59840-2096
Lambert, Carol	(R)	39	PO Box 2, Broadus MT 59317-0002
Lange, Michael	(R)	55	208 Fair Park Dr, Billings MT 59102-5734
MacLaren, Gary	(R)	89	429 Curlew Orchard Rd, Victor MT 59875-9519
Malcolm, Bruce	(R)	61	2319 Hwy 89 S, Emigrant MT 59027-6023
McAlpin, Dave	(D)	94	800 Woodworth Ave, Missoula MT 59801-7046
McChesney, Bill	(D)	40	316 Missouri Ave, Miles City MT 59301-4140
McGillvray, Tom	(R)	50	3642 Donna Dr, Billings MT 59102-1119
McNutt, Walter	(R)	37	110 12th Ave SW, Sidney MT 59270-3614
Mendenhall, Scott	(R)	77	214 Solomon Mountain Rd, Clancy MT 59634-9213
Milburn, Mike	(R)	19	276 Chestnut Valley Rd, Cascade MT 59421-8204
Morgan, Penny	(R)	57	3401 Waterloo Cir, Billings MT 59101-8000
Musgrove, John	(D)	34	810 8th St, Havre MT 59501-4127
Noonan, Art	(D)	73	1621 Whitman Ave, Butte MT 59701-5380
Nooney, Bill	(R)	100	PO Box 4892, Missoula MT 59806-4892
O'Hara, Jesse	(R)	18	2221 Holly Ct, Great Falls MT 59404-3562
Olson, Alan	(R)	45	18 Halfbreed Creek Rd, Roundup MT 59072-6524
Parker, John	(D)	23	PO Box 558, Great Falls MT 59403-0558
Peterson, Ken	(R)	46	424 48th St W, Billings MT 59106-2306
Phillips, Mike	(D)	66	615 S Black Ave, Bozeman MT 59715-5303
Pomnichowski, JP	(D)	63	222 Westridge Dr, Bozeman MT 59715-6025
Raser, Holly	(D)	98	4304 Spurgin Rd, Missoula MT 59804-4520
Reinhart, Michele	(D)	97	PO Box 5945, Missoula MT 59806-5945
Rice, Diane	(R)	71	PO Box 216, Harrison MT 59735-0216
Ripley, Rick	(R)	17	8920 MT Hwy 200, Wolf Creek MT 59648-8639
Ross, John	(R)	60	129 N Stillwater Rd, Absarokee MT 59001-6235
Sales, Scott	(R)	68	5200 Bostwick Rd, Bozeman MT 59715-7721
Sands, Diane	(D)	95	4487 Nicole Ct, Missoula MT 59803-2791
Sesso, Jon	(D)	76	155 W Granite, Butte MT 59701-9256
Sinrud, John	(R)	67	284 Frontier Dr, Bozeman MT 59718-7975
Small-Eastman, Veronica	(D)	42	PO Box 262, Lodge Grass MT 59050-0262
Sonju, Jon	(R)	7	PO Box 2954, Kalispell MT 59903-2954
Stahl, Wayne	(R)	35	PO Box 345, Saco MT 59261-0345
Stoker, Ron	(R)	87	PO Box 1059, Darby MT 59829-1059
Taylor, Janna	(R)	11	PO Box 233, Dayton MT 59914-0233
Thomas, Bill	(D)	26	1200 Adobe Dr, Great Falls MT 59404-3732
Van Dyk, Kendall	(D)	49	PO Box 441, Billings MT 59103-0441
Villa, Dan	(D)	86	1619 W Park Ave, Anaconda MT 59711-1831
Vincent, Chas	(R)	2	5957 Champion Rd, Libby MT 59923
Ward, John	(R)	84	4525 Glass Dr, Helena MT 59602-9509
Wells, Jack	(R)	69	150 Coulee Dr, Bozeman MT 59718-7717
Wilmer, Franke	(D)	64	7205 Lorelei Dr, Bozeman MT 59715-8925
Wilson, Bill	(D)	22	1305 2nd Ave N, Great Falls MT 59401-3217
Windy Boy, Jonathan	(D)	32	PO Box 269, Box Elder MT 59521-0269
Wiseman, Brady	(D)	65	3247 Gardenbrook Ln, Bozeman MT 59715-0686
Witte, Craig	(R)	8	131 Collier Ln, Kalispell MT 59901-4621

*Timothy Furey was appointed on May 9, 2007, to fill the seat of Kevin Furey, who was unable to be present at the May 2007 Special Session due to being called to active military duty.

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CHAPTER NO. 1

[SB 2]

AN ACT GENERALLY REVISING LAWS RELATING TO EDUCATION; ESTABLISHING A LOAN ASSISTANCE PROGRAM FOR AREAS WITH QUALIFIED EDUCATOR SHORTAGES; PROVIDING A SOURCE OF FUNDING FOR SCHOOL FACILITY IMPROVEMENTS; PROVIDING THAT MINERAL ROYALTIES PURCHASED THROUGH A LOAN FROM THE COAL SEVERANCE TAX PERMANENT FUND IN EXCESS OF THE AMOUNT NECESSARY TO REPAY THE LOAN BE TRANSFERRED FROM THE GUARANTEE ACCOUNT TO A SCHOOL FACILITY IMPROVEMENT ACCOUNT; PROVIDING FULL-TIME ANB FUNDING TO PUBLIC SCHOOL DISTRICTS FOR OPTIONAL ENROLLMENT OF STUDENTS IN A FULL-TIME KINDERGARTEN PROGRAM OFFERED BY A DISTRICT; PROVIDING STARTUP COSTS FOR FULL-TIME KINDERGARTEN; CHANGING THE METHOD FOR CALCULATING THE BASIC ENTITLEMENT FOR APPROVED AND ACCREDITED JUNIOR HIGH AND MIDDLE SCHOOLS; INCREASING THE QUALITY EDUCATOR PAYMENT AND EXPANDING ELIGIBLE INDIVIDUALS; PROVIDING INFLATIONARY INCREASES TO SCHOOLS; INCREASING THE PERCENTAGE OF GUARANTEED TAX BASE AID; PROHIBITING DIVERSION OF INDIAN EDUCATION FOR ALL FUNDS; REVISING THE GOVERNOR'S POSTSECONDARY SCHOLARSHIP PROGRAM; AUTHORIZING ONE-TIME-ONLY PAYMENTS TO SCHOOLS FOR PURPOSES OF CAPITAL INVESTMENT AND DEFERRED MAINTENANCE CONTINGENT ON THE AVAILABILITY OF FUNDS; PROVIDING A DISTRIBUTION MECHANISM FOR ONE-TIME-ONLY INDIAN EDUCATION FOR ALL MONEY; AMENDING SECTIONS 17-6-340, 20-1-301, 20-3-205, 20-7-117, 20-9-306, 20-9-311, 20-9-313, 20-9-314, 20-9-327, 20-9-329, 20-9-330, 20-9-366, 20-9-622, 20-26-602, AND 20-26-603, MCA; REPEALING SECTIONS 20-26-611, 20-26-612, AND 20-26-613, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Quality educator loan assistance program. There is a quality educator loan assistance program administered by the board of regents through the office of the commissioner of higher education. The program must provide for the direct repayment of educational loans of eligible quality educators in accordance with policies and procedures adopted by the board of regents in accordance with [sections 1 through 6].

Section 2. Definitions. For purposes of [sections 1 through 6], unless the context requires otherwise, the following definitions apply:

(1) "Education cooperative" means a cooperative of Montana public schools as described in 20-7-451.

(2) "Educational loans" means all loans made pursuant to a federal loan program, except federal parent loans for undergraduate students (PLUS) loans, as provided in 20 U.S.C. 1078-2.

(3) "Federal loan program" means educational loans authorized by 20 U.S.C. 1071, et seq., 20 U.S.C. 1087a, et seq., and 20 U.S.C. 1087aa, et seq.

(4) (a) "Quality educator" means a full-time equivalent educator, as reported to the superintendent of public instruction for accreditation purposes in the previous school year, who:

(i) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in subsection (4)(b) in a position that requires an educator license in accordance with administrative rules adopted by the board of public education; or

(ii) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-17-302, 37-22-301, 37-23-201, 37-24-301, or 37-25-302 and is employed by an entity listed in subsection (4)(b) of this section to provide services to students.

(b) For purposes of subsection (4)(a), an entity means:

(i) a school district;

(ii) an education cooperative;

(iii) the Montana school for the deaf and blind, as described in 20-8-101;

(iv) the Montana youth challenge program; and

(v) a state youth correctional facility, as defined in 41-5-103.

(5) "School district" means a public school district, as provided in 20-6-101 and 20-6-701.

Section 3. Critical quality educator shortages. (1) The board of public education, in consultation with the office of public instruction, shall identify:

(a) specific schools that are impacted by critical quality educator shortages; and

(b) within the schools identified in subsection (1)(a), the specific quality educator licensure or endorsement areas that are impacted by critical quality educator shortages.

(2) The board of public education shall publish an annual report listing the schools and the licensure or endorsement areas identified as impacted by critical quality educator shortages, explaining the reasons that specific schools and licensure or endorsement areas have been identified and providing information regarding any success in retention.

(3) Quality educators working at schools identified in subsection (1) are eligible for repayment of all or part of the quality educator's outstanding educational loans existing at the time of application in accordance with the eligibility and award criteria established under [sections 1 through 6].

Section 4. Loan repayment assistance. Loan repayment assistance may be provided on behalf of a quality educator who:

(1) is employed in an identified school described in [section 3(1)]; and

(2) has an educational loan that is not in default and that has a minimum unpaid current balance of at least $1,000 at the time of application.

Section 5. Loan repayment assistance documentation. (1) A quality educator shall submit an application for loan repayment assistance to the board of regents in accordance with policies and procedures adopted by the board of regents. The application must include official verification or proof of the applicant's total unpaid accumulated educational loan debt and other documentation required by the board of regents that is necessary for verification of the applicant's eligibility.

(2) A quality educator is eligible for loan repayment assistance for up to a maximum of 4 years. The total annual loan repayment assistance for an eligible quality educator may not exceed $3,000. The board of regents may require an eligible quality educator to provide documentation that the quality educator has exhausted repayment assistance from other federal, state, or local loan forgiveness, discharge, or repayment incentive programs.

(3) The board of regents may remit payment of the loan on behalf of the quality educator in accordance with the requirements of [sections 1 through 6] and policies and procedures adopted by the board of regents.

Section 6. Funding — priorities. (1) If the funding for [sections 1 through 6] in any year is less than the total amount for which Montana quality educators qualify, the board of regents shall provide preference in the award of loan repayment assistance to quality educators working in the specific schools that are most impacted by quality educator shortages identified as provided in [section 3].

(2) [Sections 1 through 6] may not be construed to require the provision of loan repayment assistance without an express appropriation for that purpose. [Sections 1 through 6] may not be construed to require loan repayment assistance for school years prior to [the effective date of this section].

Section 7. Section 17-6-340, MCA, is amended to read:

"17-6-340. Purchase of permanent fund mineral estate. The department of natural resources and conservation may purchase the mineral production rights held by the public school fund established in Article X, section 2, of the Montana constitution for fair market value. If the department of natural resources and conservation purchases mineral production rights, any royalty payments received by the board that are not used to reimburse the coal severance tax trust fund for the loan used for purchasing the mineral production rights must be deposited in the guarantee account provided for in 20-9-622 *and transferred to the school facility improvement account provided for in [section 8]*."

Section 8. School facility improvement account. There is a school facility improvement account in the state special revenue fund provided for in 17-2-102. The purpose of the account is to provide money to schools to implement the recommendations of the school facility condition and needs assessment and energy audit conducted pursuant to section 1, Chapter 1, Special Laws of December 2005, for:

(1) major deferred maintenance;

(2) improving energy efficiency in school facilities; or

(3) critical infrastructure in school districts.

Section 9. Section 20-1-301, MCA, is amended to read:

"20-1-301. School fiscal year. (1) The school fiscal year begins on July 1 and ends on June 30. At least the minimum aggregate hours defined in subsection (2) must be conducted during each school fiscal year, except that 1,050 aggregate hours of pupil instruction for graduating seniors may be sufficient ~~or a minimum of 360 aggregate hours of pupil instruction must be conducted for a kindergarten program, as provided in 20-7-117~~.

(2) The minimum aggregate hours required by grade are:

(a) 360 hours for a half-time kindergarten program or 720 hours for a full-time kindergarten program, as provided in 20-7-117;

~~(a)~~*(b)* 720 hours for grades 1 through 3; and

~~(b)~~*(c)* 1,080 hours for grades 4 through 12.

(3) For any elementary or high school district that fails to provide for at least the minimum aggregate hours, as listed in subsections (1) and (2), the superintendent of public instruction shall reduce the direct state aid for the district for that school year by two times an hourly rate, as calculated by the office of public instruction, for the aggregate hours missed."

Section 10. Section 20-3-205, MCA, is amended to read:

"20-3-205. Powers and duties. (1) The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(a) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(b) administer and file the oaths of members of the boards of trustees of the districts in the county in accordance with the provisions of 20-3-307;

(c) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(d) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(e) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(f) keep a transcript of the district boundaries of the county;

(g) fulfill all responsibilities assigned under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(h) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(i) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(j) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(k) complete the budgets, compute the budgeted revenue and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned under the provisions of this title regulating school budgeting systems;

(l) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(m) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-347, 20-10-145, or 20-10-146;

(n) act on any request to transfer average number belonging (ANB) in accordance with the provisions of ~~20-9-313(3)~~ *20-9-313(1)(c)*;

(o) calculate the estimated budgeted general fund sources of revenue in accordance with the general fund revenue provisions of the general fund part of this title;

(p) compute the revenue and compute the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(q) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(r) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(s) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(t) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(u) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(v) administer the oath of office to trustees without the receipt of pay for administering the oath;

(w) keep a record of official acts, preserve all reports submitted to the superintendent under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to the next superintendent;

(x) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(i) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(ii) the total receipts that were realized in each fund maintained by the district;

(iii) the total expenditures that were made from each fund maintained by the district; and

(iv) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(y) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed.

(2) (a) When a district in one county annexes a district in another county, the county superintendent of the county where the annexing district is located shall perform the duties required by this section.

(b) When two or more districts in more than one county consolidate, the duties required by this section must be performed by the county superintendent designated in the same manner as other county officials in 20-9-202."

Section 11. Section 20-7-117, MCA, is amended to read:

"20-7-117. Five-year-old schooling and preschool programs. (1) The trustees of an elementary district ~~shall~~ *shall* establish or make available a *kindergarten* program capable of accommodating, at a minimum, all the children in the district who will be 5 years old on or before September 10 of the school year for which the program is to be conducted or who have been enrolled by special permission of the board of trustees. The *kindergarten* program*, which the trustees may designate as either a half-time or full-time program,* must be an integral part of the elementary school and must be financed and governed accordingly, provided that to be eligible for inclusion in the calculation of ANB pursuant to 20-9-311, a child must have reached ~~the age of~~ 5 *years of age* on or before September 10 of the school year covered by the calculation or have been enrolled by special permission of the board of trustees. *A kindergarten program must meet the minimum aggregate hour requirements established in 20-1-301. A kindergarten program that is designated as a full-time program must allow a parent, guardian, or other person who is responsible for the enrollment of a child in school, as provided in 20-5-102, to enroll the child half-time.*

(2) The trustees of an elementary school district may establish and operate a free preschool program for children between the ages of 3 and 5 years. When preschool programs are established, they must be an integral part of the elementary school and must be governed accordingly. Financing of preschool programs may not be supported by money available from state equalization aid."

Section 12. Section 20-9-306, MCA, is amended to read:

"20-9-306. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district;

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment;

(c) the total quality educator payment;

(d) the total at-risk student payment;

(e) the total Indian education for all payment; and

(f) the total American Indian achievement gap payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, 100% of the total quality educator payment, 100% of the total at-risk student payment, 100% of the total Indian education for all payment, 100% of the total American Indian achievement gap payment, and 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) ~~$230,199~~ for each high school district*:*

(i) $236,552 for fiscal year 2008; and

(ii) $243,649 for each succeeding fiscal year;

(b) ~~$20,718~~ for each elementary school district or K-12 district elementary program without an approved and accredited junior high school*, 7th and 8th grade program,* or middle school*:*

(i) $21,290 for fiscal year 2008;

(ii) $21,922 for each succeeding fiscal year; and

(c) ~~the prorated entitlement~~ for each elementary school district or K-12 district elementary program with an approved and accredited junior high school*, 7th and 8th grade program,* or middle school~~, calculated as follows using either the current year ANB or the 3-year ANB provided for in 20-9-311~~:

(i) ~~$20,718 times the ratio of the ANB~~ for kindergarten through grade 6 ~~to the total ANB of kindergarten through grade 8~~ *elementary program:*

(A) $21,290 for fiscal year 2008; and

(B) $21,922 for each succeeding fiscal year; plus

(ii) ~~$230,199 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8~~ *for an approved and accredited junior high school program, 7th and 8th grade program, or middle school:*

(A) $60,275 for fiscal year 2008; and

(B) $62,083 for each succeeding fiscal year.

(7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

(8) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(9) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement gap payment, and the greater of:

(a) 175% of special education allowable cost payments; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

(10) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(11) "Total American Indian achievement gap payment" means the payment resulting from multiplying $200 times the number of American Indian students enrolled in the district as provided in 20-9-330.

(12) "Total at-risk student payment" means the payment resulting from the distribution of any funds appropriated for the purposes of 20-9-328.

(13) "Total Indian education for all payment" means the payment resulting from multiplying $20.40 times the ANB of the district or $100 for each district, whichever is greater, as provided for in 20-9-329.

(14) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations and using either the current year ANB or the 3-year ANB provided for in 20-9-311:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~$5,704~~ *$5,861 for fiscal year 2008 and $6,037 for each succeeding fiscal year* for the first ANB, ~~is~~ decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school, *7th and 8th grade program,* or middle school, a maximum rate of ~~$4,456~~ *$4,579 for fiscal year 2008 and $4,716 for each succeeding fiscal year* for the first ANB, ~~is~~ decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school, *7th and 8th grade program,* or middle school, the sum of:

(i) a maximum rate of ~~$4,456~~ *$4,579 for fiscal year 2008 and $4,716 for each succeeding fiscal year* for the first ANB for kindergarten through grade 6, ~~is~~ decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~$5,704~~ *$5,861 for fiscal year 2008 and $6,037 for each succeeding fiscal year* for the first ANB for grades 7 and 8, ~~is~~ decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.

(15) "Total quality educator payment" means the payment resulting from multiplying ~~$2,000~~ *$3,036 for fiscal year 2008 and $3,042 for each succeeding fiscal year* times the number of full-time equivalent educators as provided in 20-9-327."

Section 13. Section 20-9-311, MCA, is amended to read:

"20-9-311. (Temporary) Calculation of average number belonging (ANB) — three-year averaging. (1) Average number belonging (ANB) must be computed for each budget unit as follows:

(a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the next school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of 180 and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than the minimum aggregate hours under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) (a) ~~Except as provided in subsection (5), for~~ *For* the purpose of calculating ANB, enrollment in an education program:

(i) from ~~181~~ *180* to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time enrollment;

(ii) from 360 to 539 aggregate hours of pupil instruction per school year is counted as half-time enrollment;

(iii) from 540 to 719 aggregate hours of pupil instruction per school year is counted as three-quarter-time enrollment; and

(iv) 720 or more aggregate hours of pupil instruction per school year is counted as full-time enrollment.

(b) Enrollment in a program intended to provide fewer than 180 aggregate hours of pupil instruction per school year may not be included for purposes of ANB.

(c) Enrollment in a self-paced program or course may be converted to an hourly equivalent based on the hours necessary and appropriate to provide the course within a regular classroom schedule.

(d) A pupil in ~~grades 1~~ *kindergarten* through *grade* 12 who is concurrently enrolled in more than one public school, program, or district may not be counted as more than one full-time pupil for ANB purposes.

(5) ~~In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment in a program that provides 360 or more aggregate hours of pupil instruction per school year must be counted as one-half pupil for ANB purposes.~~ *For a district that is transitioning from a half-time to a full-time kindergarten program, the state superintendent shall count kindergarten enrollment in the previous year as full-time enrollment for the purpose of calculating ANB for the elementary programs offering full-time kindergarten in the current year. For the purposes of calculating the 3-year ANB, the superintendent of public instruction shall count the kindergarten enrollment as one-half enrollment and then add the additional kindergarten ANB to the 3-year average ANB for districts offering full-time kindergarten.*

(6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of ~~prekindergarten~~ *preschool* pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that the ANB is calculated as a separate budget unit when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated as a separate budget unit for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more districts consolidate or annex under the provisions of 20-6-422 or 20-6-423, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

(A) 75% of the basic entitlement for the fourth year;

(B) 50% of the basic entitlement for the fifth year; and

(C) 25% of the basic entitlement for the sixth year.

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) The district shall provide the superintendent of public instruction with semiannual reports of school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent.

(10) (a) Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education program provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes only if the pupil is offered access to the complete range of educational services for the basic education program required by the accreditation standards adopted by the board of public education.

(b) Access to school programs and services for a student placed by the trustees in a private program for special education may be limited to the programs and services specified in an approved individual education plan supervised by the district.

(c) Access to school programs and services for a student who is incarcerated in a facility, other than a youth detention center, may be limited to the programs and services provided by the district at district expense under an agreement with the incarcerating facility.

(d) This subsection (10) may not be construed to require a school district to offer access to activities governed by an organization having jurisdiction over interscholastic activities, contests, and tournaments to a pupil who is not otherwise eligible under the rules of the organization.

(11) A district may include only, for ANB purposes, an enrolled pupil who is otherwise eligible under this title and who is:

(a) a resident of the district or a nonresident student admitted by trustees under a student attendance agreement and who is attending a school of the district;

(b) unable to attend school due to a medical reason certified by a medical doctor and receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(c) unable to attend school due to the student's incarceration in a facility, other than a youth detention center, and who is receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(d) receiving special education and related services, other than day treatment, under a placement by the trustees at a private nonsectarian school or private program if the pupil's services are provided at the district's expense under an approved individual education plan supervised by the district;

(e) participating in the running start program at district expense under 20-9-706;

(f) receiving educational services, provided by the district, using appropriately licensed district staff at a private residential program or private residential facility licensed by the department of public health and human services;

(g) enrolled in an educational program or course provided at district expense using electronic or offsite delivery methods, including but not limited to tutoring, distance learning programs, online programs, and technology delivered learning programs, while attending a school of the district or any other nonsectarian offsite instructional setting with the approval of the trustees of the district. The pupil shall:

(i) meet the residency requirements for that district as provided in 1-1-215;

(ii) live in the district and must be eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; or

(iii) attend school in the district under a mandatory attendance agreement as provided in 20-5-321.

(h) a resident of the district attending a Montana job corps program under an interlocal agreement with the district under 20-9-707.

(12) (a) For an elementary or high school district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated using the current year ANB for all budget units or the 3-year average ANB for all budget units, whichever generates the greatest maximum general fund budget.

(b) For a K-12 district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated separately for the elementary and high school programs pursuant to subsection (12)(a) and then combined.

(13) The term "3-year ANB" means an average ANB over the most recent 3-year period, calculated by:

(a) adding the ANB for the budget unit for the ensuing school fiscal year to the ANB for each of the previous 2 school fiscal years; and

(b) dividing the sum calculated under subsection (13)(a) by three. (Terminates June 30, 2007—sec. 25(2), Ch. 462, L. 2005.)

20-9-311. (Effective July 1, 2007) Calculation of average number belonging (ANB) — three-year averaging. (1) Average number belonging (ANB) must be computed *for each budget unit* as follows:

(a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the next school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of 180 and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than the minimum aggregate hours under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) (a) ~~Except as provided in subsection (5), for~~ *For* the purpose of calculating ANB, enrollment in an education program:

(i) from ~~181~~ *180* to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time enrollment;

(ii) from 360 to 539 aggregate hours of pupil instruction per school year is counted as half-time enrollment;

(iii) from 540 to 719 aggregate hours of pupil instruction per school year is counted as three-quarter-time enrollment; and

(iv) 720 or more aggregate hours of pupil instruction per school year is counted as full-time enrollment.

(b) Enrollment in a program intended to provide fewer than 180 aggregate hours of pupil instruction per school year may not be included for purposes of ANB.

(c) Enrollment in a self-paced program or course may be converted to an hourly equivalent based on the hours necessary and appropriate to provide the course within a regular classroom schedule.

(d) A pupil in ~~grades 1~~ *kindergarten* through *grade* 12 who is concurrently enrolled in more than one public school, program, or district may not be counted as more than one full-time pupil for ANB purposes.

(5) ~~In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment in a program that provides 360 or more aggregate hours of pupil instruction per school year must be counted as one-half pupil for ANB purposes.~~ *For a district that is transitioning from a half-time to a full-time kindergarten program, the state superintendent shall count kindergarten enrollment in the previous year as full-time enrollment for the purpose of calculating ANB for the elementary programs offering full-time kindergarten in the current year. For the purposes of calculating the 3-year ANB, the superintendent of public instruction shall count the kindergarten enrollment as one-half enrollment and then add the additional kindergarten ANB to the 3-year average ANB for districts offering full-time kindergarten.*

(6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of ~~prekindergarten~~ *preschool* pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that *the ANB is calculated as a separate budget unit* when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated ~~separately~~ *as a separate budget unit* for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more districts consolidate or annex under the provisions of 20-6-422 or 20-6-423, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

(A) 75% of the basic entitlement for the fourth year;

(B) 50% of the basic entitlement for the fifth year; and

(C) 25% of the basic entitlement for the sixth year.

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) The district shall provide the superintendent of public instruction with semiannual reports of school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent.

(10) (a) Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education program provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes only if the pupil is offered access to the complete range of educational services for the basic education program required by the accreditation standards adopted by the board of public education.

(b) Access to school programs and services for a student placed by the trustees in a private program for special education may be limited to the programs and services specified in an approved individual education plan supervised by the district.

(c) Access to school programs and services for a student who is incarcerated in a facility, other than a youth detention center, may be limited to the programs and services provided by the district at district expense under an agreement with the incarcerating facility.

(d) This subsection (10) may not be construed to require a school district to offer access to activities governed by an organization having jurisdiction over interscholastic activities, contests, and tournaments to a pupil who is not otherwise eligible under the rules of the organization.

(11) A district may include only, for ANB purposes, an enrolled pupil who is otherwise eligible under this title and who is:

(a) a resident of the district or a nonresident student admitted by trustees under a student attendance agreement and who is attending a school of the district;

(b) unable to attend school due to a medical reason certified by a medical doctor and receiving individualized educational services supervised by the

district, at district expense, at a home or facility that does not offer an educational program;

(c) unable to attend school due to the student's incarceration in a facility, other than a youth detention center, and who is receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(d) receiving special education and related services, other than day treatment, under a placement by the trustees at a private nonsectarian school or private program if the pupil's services are provided at the district's expense under an approved individual education plan supervised by the district;

(e) participating in the running start program at district expense under 20-9-706;

(f) receiving educational services, provided by the district, using appropriately licensed district staff at a private residential program or private residential facility licensed by the department of public health and human services;

(g) enrolled in an educational program or course provided at district expense using electronic or offsite delivery methods, including but not limited to tutoring, distance learning programs, online programs, and technology delivered learning programs, while attending a school of the district or any other nonsectarian offsite instructional setting with the approval of the trustees of the district. The pupil shall:

(i) meet the residency requirements for that district as provided in 1-1-215;

(ii) live in the district and must be eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; or

(iii) attend school in the district under a mandatory attendance agreement as provided in 20-5-321.

(h) a resident of the district attending a Montana job corps program under an interlocal agreement with the district under 20-9-707.

(12) (a) For an elementary or high school district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated using the current year ANB for all budget units or the 3-year average ANB for all budget units, whichever generates the greatest maximum general fund budget.

(b) For a K-12 district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated separately for the elementary and high school programs pursuant to subsection (12)(a) and then combined.

(13) The term "3-year ANB" means an average ANB over the most recent 3-year period, calculated by:

(a) adding the ANB for the budget unit for the ensuing school fiscal year to the ANB for each of the previous 2 school fiscal years; and

(b) dividing the sum calculated under subsection (13)(a) by three."

Section 14. Section 20-9-313, MCA, is amended to read:

"20-9-313. Circumstances under which regular average number belonging may be increased. *(1)* The average number belonging of a school,

calculated in accordance with the ANB formula prescribed in 20-9-311, may be increased when:

~~(1)~~*(a)* the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with 20-6-502. The average number belonging for the school must be established by the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction.

~~(2)~~*(b)* the opening or reopening of a high school or a branch of the county high school has been approved in accordance with 20-6-503, 20-6-504, or 20-6-505. The average number belonging for the high school must be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend the high school.

~~(3)~~*(c)* a district anticipates an increase in the average number belonging due to the closing of a private or public school in the district or a neighboring district. The estimated increase in average number belonging must be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June.

~~(4)~~*(d)* a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging must be based on estimates of increased enrollment approved by the superintendent of public instruction and must be computed in the manner prescribed by 20-9-314.

~~(5)~~*(e)* for the initial year of operation of a *kindergarten* program established under 20-7-117(1), the ANB to be used for budget purposes is ~~the same as~~*:*

(i) one-half the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction*, for the purpose implementing a half-time kindergarten program as provided in 20-1-301*; or

(ii) the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction, for the purpose of implementing a full-time kindergarten program as provided in 20-1-301; or

~~(6)~~*(f)* a high school district provides early graduation for a student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment. The increase must be established by the trustees as though the student had attended to the end of the school fiscal year and must be approved, disapproved, or adjusted by the superintendent of public instruction.

(2) This section does not apply to the expansion of a half-time kindergarten program to a full-time kindergarten program."

Section 15. Section 20-9-314, MCA, is amended to read:

"20-9-314. (Temporary) Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase. A district that anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in ~~20-9-313(4)~~ *20-9-313(1)(d)*, may increase its basic entitlement and total per-ANB

entitlement for the ensuing school fiscal year in accordance with the following provisions:

(1) Prior to June 1, the district shall estimate the elementary or high school enrollment to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

(2) No later than June 1, the district shall submit its application for an unusual enrollment increase by elementary or high school level to the superintendent of public instruction. The application must include:

(a) the enrollment for the current school fiscal year;

(b) the average number belonging used to calculate the basic entitlement and total per-ANB entitlement for the current school fiscal year;

(c) the average number belonging that will be used to calculate the basic entitlement and total per-ANB entitlement for the ensuing school fiscal year;

(d) the estimated enrollment, including the factual information on which the estimate is based, as provided in subsection (1); and

(e) any other information or data that may be requested by the superintendent of public instruction.

(3) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the estimated average number belonging for the ensuing ANB calculation period. After approving an estimate, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage by which the estimated enrollment exceeds the enrollment used for the budgeted ANB; and

(b) approve an increase of the average number belonging used to establish the ensuing year's basic entitlement and total per-ANB entitlement in accordance with subsection (5) if the increase in subsection (3)(a) is greater than 6%.

(4) The superintendent of public instruction shall notify the district of the decision by the fourth Monday in June.

(5) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the increase of the average number belonging used to establish the basic entitlement and total per-ANB entitlement for the ensuing ANB calculation period is determined using the difference between the enrollment for the ensuing school fiscal year and 106% of the enrollment used to calculate the budgeted ANB. The amount determined is the maximum allowable increase added to the average number belonging for the purpose of establishing the ensuing year's basic entitlement and total per-ANB entitlement.

(6) (a) Any entitlement increases resulting from provisions of this section must be reviewed at the end of the ensuing school fiscal year.

(b) If the actual enrollment is less than the enrollment used to determine budgeted ANB, the superintendent of public instruction shall revise the total per-ANB entitlement and basic entitlement calculations, as provided in subsection (5), using the actual enrollment in place of the estimated enrollment.

(c) All total per-ANB entitlements received by the district in excess of the revised entitlements are overpayments subject to the refund provisions of 20-9-344(4). (Terminates June 30, 2007—sec. 25(2), Ch. 462, L. 2005.)

20-9-314. (Effective July 1, 2007) Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase. A district that anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in ~~20-9-313(4)~~ *20-9-313(1)(d)*, may increase its basic entitlement and total per-ANB entitlement for the ensuing school fiscal year in accordance with the following provisions:

(1) Prior to June 1, the district shall estimate the elementary or high school enrollment to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

(2) No later than June 1, the district shall submit its application for an unusual enrollment increase by elementary or high school level to the superintendent of public instruction. The application must include:

(a) the enrollment for the current school fiscal year;

(b) the average number belonging used to calculate the basic entitlement and total per-ANB entitlement for the current school fiscal year;

(c) the average number belonging that will be used to calculate the basic entitlement and total per-ANB entitlement for the ensuing school fiscal year;

(d) the estimated enrollment, including the factual information on which the estimate is based, as provided in subsection (1); and

(e) any other information or data that may be requested by the superintendent of public instruction.

(3) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the estimated average number belonging for the ensuing ANB calculation period. After approving an estimate, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage ~~increase~~ by which the estimated enrollment ~~increase~~ exceeds the ~~current~~ enrollment *used for the budgeted ANB*; and

(b) approve an increase of the average number belonging used to establish the ensuing year's basic entitlement and total per-ANB entitlement in accordance with subsection (5) if the increase in subsection (3)(a) is at least 6%.

(4) The superintendent of public instruction shall notify the district of the decision by the fourth Monday in June.

(5) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the increase of the average number belonging used to establish the basic entitlement and total per-ANB entitlement for the ensuing ANB calculation period is *determined using* the difference between the enrollment for the ensuing school fiscal year and 106% of the ~~current~~ enrollment *used to calculate the budgeted ANB*. The amount determined is the maximum allowable increase added to the average number belonging for the purpose of establishing the ensuing year's basic entitlement and total per-ANB entitlement.

(6) *(a)* Any entitlement increases resulting from provisions of this section must be reviewed at the end of the ensuing school fiscal year.

(b) If the actual enrollment is less than ~~the average number belonging used for BASE funding program and entitlement calculations~~ *the enrollment used to determine the budgeted ANB*, the superintendent of public instruction shall revise the total per-ANB entitlement and basic entitlement calculations*, as provided in subsection (5),* using the actual ~~average number belonging~~ *enrollment in place of the estimated enrollment*. All total per-ANB entitlements received by the district in excess of the revised entitlements are overpayments subject to the refund provisions of 20-9-344(4)."

Section 16. Section 20-9-327, MCA, is amended to read:

"20-9-327. Quality educator payment. (1) (a) The state shall provide a quality educator payment to:

(i) public school districts, as defined in 20-6-101 and 20-6-701;

(ii) special education cooperatives, as described in 20-7-451;

(iii) the Montana school for the deaf and blind, as described in 20-8-101; and

(iv) state youth correctional facilities, as defined in 41-5-103.

(b) A special education cooperative that has not met the requirements of 20-7-453 and 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction.

(2) (a) The quality educator payment for special education cooperatives must be distributed directly to those entities by the superintendent of public instruction.

(b) The quality educator payment for the Montana school for the deaf and blind must be distributed to the Montana school for the deaf and blind.

(c) The quality educator payment for Pine Hills and Riverside youth correctional facilities must be distributed to those facilities by the department of corrections.

(3) The quality educator payment is ~~$2,000 times~~ *calculated as provided in 20-9-306, using* the number of full-time equivalent educators, as reported to the superintendent of public instruction for accreditation purposes in the previous school year, each of whom:

(a) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in subsection (1) in a position that requires an educator license in accordance with the administrative rules adopted by the board of public education; or

(b) (i) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, *37-17-302, 37-22-301,* 37-23-201, 37-24-301, or 37-25-302; and

(ii) is employed by an entity listed in subsection (1) to provide services to students."

Section 17. Section 20-9-329, MCA, is amended to read:

"20-9-329. Indian education for all payment. (1) The state shall provide an Indian education for all payment to public school districts, as defined in 20-6-101 and 20-6-701, to implement the provisions of Article X, section 1(2), of the Montana constitution and Title 20, chapter 1, part 5.

(2) The Indian education for all payment is ~~the greater of $100 for each district or $20.40 for each ANB,~~ calculated as provided in ~~20-9-311, for each fiscal year~~ *20-9-306 and is a component of the BASE budget of the district.*

(3) The district shall deposit the payment in the general fund of the district.

(4) A public school district that receives an Indian education for all payment may not divert the funds to any purpose other than curriculum development, providing curriculum and materials to students, and providing training to teachers about the curriculum and materials. A public school district shall file an annual report with the office of public instruction, in a form prescribed by the superintendent of public instruction, that specifies how the Indian education for all funds were expended."

Section 18. Section 20-9-330, MCA, is amended to read:

"20-9-330. American Indian achievement gap payment. (1) The state shall provide an American Indian achievement gap payment to public school districts, as defined in 20-6-101 and 20-6-701, for the purpose of closing the educational achievement gap that exists between American Indian students and non-Indian students.

(2) (a) The American Indian achievement gap payment is ~~$200 for each~~ *calculated as provided in 20-9-306, using the number of* American Indian ~~student~~ *students* enrolled in the district based on the count of regularly enrolled students on the first Monday in October of the prior school year as reported to the office of public instruction.

(b) A school district may not require a student to disclose the student's race.

(3) The district shall deposit the payment in the general fund of the district.

(4) On or before September 15, 2010, the office of public instruction shall report to the governor and the legislature on the change in status of standardized test scores, graduation rates, and drop-out rates of American Indian students using fiscal year 2006 data as a baseline."

Section 19. Section 20-9-366, MCA, is amended to read:

"20-9-366. Definitions. As used in 20-9-366 through 20-9-371, the following definitions apply:

(1) "County retirement mill value per elementary ANB" or "county retirement mill value per high school ANB" means the sum of the taxable valuation in the previous year of all property in the county divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts.

(2) (a) "District guaranteed tax base ratio" for guaranteed tax base funding for the BASE budget of an eligible district means the taxable valuation in the previous year of all property in the district divided by the sum of the district's current year BASE budget amount less direct state aid and the state special education allowable cost payment.

(b) "District mill value per ANB", for school facility entitlement purposes, means the taxable valuation in the previous year of all property in the district divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year total per-ANB entitlement amount.

(3) "Facility guaranteed mill value per ANB", for school facility entitlement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 140% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school

districts' and high school districts' current year total per-ANB entitlement amounts.

(4) (a) "Statewide elementary guaranteed tax base ratio" or "statewide high school guaranteed tax base ratio", for guaranteed tax base funding for the BASE budget of an eligible district, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by ~~175%~~ *193%* and divided by the total sum of either the state elementary school districts' or the high school districts' current year BASE budget amounts less total direct state aid.

(b) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB", for school retirement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 121% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB amount used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts."

Section 20. Section 20-9-622, MCA, is amended to read:

"20-9-622. Guarantee account. (1) There is a guarantee account in the state special revenue fund. The guarantee account is intended to:

(a) stabilize the long-term growth of the permanent fund; and

(b) maintain a constant and increasing distributable revenue stream. All realized capital gains and all distributable revenue must be deposited in the guarantee account. Except as provided in subsections (2) and (3), the guarantee account is statutorily appropriated, as provided in 17-7-502, for distribution to school districts through school equalization aid as provided in 20-9-343.

(2) As long as a portion of the coal severance tax loan authorized in section 8, Chapter 418, Laws of 2001, is outstanding, the department of natural resources and conservation shall monthly transfer from the guarantee account to the general fund an amount that represents the amount of interest income that would be earned from the investment of the amount of the loan that is currently outstanding. *When the loan is fully paid, all mineral royalties deposited in the guarantee account must be transferred to the school facility improvement account pursuant to 17-6-340.*

(3) The revenue distributed through 20-9-534 must be used for the purposes of 20-9-533."

Section 21. Section 20-26-602, MCA, is amended to read:

"20-26-602. Governor's postsecondary scholarship program — duties of council — duties of board. (1) There is a governor's postsecondary scholarship program administered by the board through the office of the commissioner of higher education with assistance from ~~a three-member~~ *the* council ~~created in 2-15-1524~~.

~~(2) The council shall review the lists and applications submitted in accordance with procedures adopted by the board pursuant to 20-26-611. From those lists and applications, the council shall prepare and submit a final list of qualified scholarship recipients to the board. Following consultation with the council, the board shall pay for scholarships awarded to qualified recipients.~~

~~(3) The board may accept donations from public or private sources and shall distribute these funds to the scholarship program and in accordance with the criteria determined by the board in consultation with the council.~~

~~(4) Funds from public sources may not be used to pay for scholarships to students enrolled in Montana private colleges.~~

~~(5) Funds from private sources must be deposited into an account in the state special revenue fund established in 17-2-102 to be used by the board to pay for scholarships for students enrolled in postsecondary institutions or, when designated by the donor, in Montana private colleges.~~

(2) The purpose of the governor's postsecondary scholarship program is to provide scholarships on the basis of need and merit to Montana residents towards the cost of attendance at 2-year and 4-year postsecondary institutions and to allocate some of the scholarships to specific areas of study that promote economic development or address critical workforce shortage areas in Montana.

(3) The council shall gather information and make recommendations for the board to consider in the board's adoption of policies and procedures under this part. The recommendations must attempt to promote efficient administration of the governor's postsecondary scholarship program.

(4) After consideration of the council's recommendations pursuant to subsection (3), the board shall adopt policies and procedures for administration of the governor's postsecondary scholarship program consistent with this part.

(5) Subject to available funding, scholarships must be awarded on an annual basis to qualified recipients pursuant to policies adopted by the board. The board may delegate to Montana high schools and postsecondary institutions the authority to review scholarship applications and select scholarship recipients."

Section 22. Section 20-26-603, MCA, is amended to read:

"20-26-603. Definitions. As used in this part, the following definitions apply:

(1) "Accredited" means a school that is accredited by the board of public education pursuant to 20-7-102.

~~(2) "At-large student" means a Montana resident who meets the admission requirements established by board policy or by the admissions office of a Montana private college.~~

~~(3)~~*(2)* "Board" means the board of regents of higher education created by Article X, section 9(2), of the Montana constitution.

~~(4) "Certificate program" or "certificate" means a program generally completed in 1 academic year that requires less than 60 credits and that is not a self-supporting, customized training course or the certificate awarded for completion of the program.~~

~~(5)~~*(3)* "Council" means the governor's postsecondary scholarship advisory council created in 2-15-1524.

~~(6)~~*(4)* "Montana private college" means a nonprofit private educational institution as defined in 15-30-163(3)(b).

~~(7) "Nontraditional student" means a first-time student who enters a postsecondary institution or Montana private college more than 3 years after high school graduation. As used in this subsection, "first-time student" means a student who is attending a postsecondary institution to receive a first certificate or associate or baccalaureate degree.~~

~~(8)~~*(5)* "Postsecondary institution" means:

(a) a unit of the Montana university system, as defined in 20-25-201;

(b) a Montana community college, defined and organized as provided in 20-15-101; or

(c) an accredited tribal community college located in the state of Montana.

~~(9)~~*(6)* "Scholarship" means a payment toward ~~tuition and mandatory fees, excluding room and board~~ *the cost of attendance at a qualifying postsecondary institution*, rounded up to the nearest dollar.

~~(10)~~*(7)* "Title IV" refers to Title IV of the Higher Education Act of 1965, as amended."

Section 23. Types and amounts of scholarships — criteria. (1) Scholarships must be awarded under the governor's postsecondary scholarship program in accordance with the requirements of this section and criteria established by board policy and procedures pursuant to 20-26-602 and this section.

(2) Scholarships must be awarded on the basis of merit or need. Scholarships may be for either $1,000 or $2,000. Merit-based and need-based scholarships must be awarded in approximately equal monetary amounts.

(3) A merit-based scholarship must be awarded to at least one graduate of every accredited high school in Montana, including accredited nonpublic high schools.

(4) A portion of the money appropriated for need-based scholarships must be designated for applicants planning to attend 2-year postsecondary institutions or 2-year programs at 4-year postsecondary institutions and who plan to focus on specific areas of study that promote economic development or address current or projected critical workforce shortage areas in Montana, such as technology, health sciences, or trades, as provided under policies established by the board pursuant to 20-26-602.

Section 24. Eligibility requirements — renewals — limited appeals. (1) Scholarships must be awarded under the governor's postsecondary scholarship program in accordance with the eligibility requirements of this section and pursuant to policies and procedures established by the board pursuant to 20-26-602 and this section.

(2) To be eligible to receive a scholarship, a student must be a Montana resident eligible for in-state tuition as determined by board policy.

(3) To be eligible to receive a merit-based scholarship, a student must have attained a minimum grade point average or numerical score on a standardized college admission test as prescribed by board policy.

(4) To be eligible to receive a need-based scholarship, a student must complete the standard free application for federal student aid form and the student's expected family contributions may not exceed the cost of attendance at the postsecondary institution that the student expects to attend.

(5) Scholarships must be awarded to students seeking their first certificate or their 2-year or 4-year degree at a postsecondary institution.

(6) Scholarships may be renewed in accordance with board policy. The policy must include proof of satisfactory academic performance.

(7) Scholarships may be terminated in accordance with board policy.

(8) The board shall establish policies and procedures:

(a) to allow a student to transfer from one postsecondary institution to another without loss of the scholarship; and

(b) to ensure compliance with [section 25(3)] if a student transfers from a postsecondary institution to a Montana private college.

(9) A scholarship recipient's right to receive other financial aid, awards, and scholarships may be limited as required by federal or state law or board policy.

(10) A student is ineligible to receive a scholarship under the provisions of this part if the student:

(a) has been awarded a Montana university system honor scholarship;

(b) has failed to meet the federal Title IV selective service registration requirements;

(c) is in default on a Title IV or state of Montana educational loan or owes a refund to a federal Title IV or state of Montana student financial aid program; or

(d) is incarcerated. Upon release, the student may begin receiving scholarship payments if the student meets all other eligibility requirements. If approved by the board, credits earned during incarceration may be counted toward eligibility.

(11) (a) Except as provided in subsection (11)(b), scholarship awards are not subject to appeal.

(b) A student may appeal the termination of a scholarship based on extenuating circumstances in accordance with board policy.

Section 25. Public and private sources of funding — restrictions on use — accounting. (1) The board may accept donations from public or private sources and shall distribute those funds in accordance with this part.

(2) Except when a donor of private funds designates that scholarship funds must be given to students attending a private college, scholarship awards are determined solely by the board or an entity designated by the board pursuant to board policy adopted under 20-26-602.

(3) Funds from public sources may not be used to pay for scholarships for students enrolled in Montana private colleges.

(4) Funds from private sources must be deposited into an account in the state special revenue fund established in 17-2-102 to pay for scholarships for students enrolled in postsecondary institutions or, when designated by the donor, in Montana private colleges.

(5) Each postsecondary institution or Montana private college that receives scholarship payments shall prepare and submit to the board, in accordance with procedures and policies established by the board, a report of the postsecondary institution's or Montana private college's administration of the scholarships and a complete accounting of scholarship funds.

(6) Funds from a scholarship may not be used to pay for remedial or college-preparatory course work.

(7) Except for funds donated from private sources, the obligation for funding the governor's postsecondary scholarship program is an obligation of the state. This section may not be construed to require the board to provide scholarships to an eligible student without an appropriation to the board for the purposes of this part. Funds from private sources may not be used as an offset to general fund appropriations.

Section 26. Capital investment and deferred maintenance one-time-only payment — definition — funding. (1) For fiscal year 2008, there is a one-time-only school unit payment to each school district based upon the calculated number of school units within the school district as provided in subsection (3). The one-time-only school unit payment may be used by schools for capital investments and deferred maintenance.

(2) (a) For the purposes of this section, "school unit" means, subject to subsection (2)(b):

(i) 800 ANB for a high school district;

(ii) 250 ANB for the K-6 ANB of an elementary district with an approved junior high school, 7th and 8th grade program, or middle school;

(iii) 250 ANB for the K-8 ANB of an elementary district without an approved junior high school, 7th and 8th grade program, or middle school; and

(iv) 450 for the 7th and 8th grade ANB of an elementary district with an approved junior high school, 7th and 8th grade program, or middle school.

(b) Each school district must receive a payment for at least one school unit. A district with ANB greater than the applicable number described in subsection (2)(a) must receive an additional unit calculated by dividing the current year ANB by the appropriate number in subsection (2)(a) and rounding that number up to the nearest tenth.

(3) The capital investment and deferred maintenance one-time-only school unit payment is calculated by dividing the one-time-only appropriation for capital investment and deferred maintenance as provided in House Bill No. 2, not to exceed $30 million, by the number of school units in the state. The office of public instruction shall distribute the calculated total one-time-only school unit payment to each school district based upon the number of school units in each school district according to the schedule provided in 20-9-344. School districts must deposit the money in the miscellaneous programs fund to be used for capital investment and deferred maintenance. Money may be retained by the district and spent for the purposes authorized in this section over a period of 10 years, after which, if the money is not spent, it must be reverted to the state general fund.

Section 27. Distribution of funds for kindergarten. Money appropriated to the office of public instruction for startup costs for full-time kindergarten in the 2009 biennium must be distributed based on the kindergarten enrollment in school fiscal year 2007 to all school districts that the trustees of which have designated, prior to July 1, 2012, will offer a full-time kindergarten program in accordance with 20-7-117. The school district shall deposit the money in the miscellaneous programs fund and shall use the money for startup costs associated with the development of a full-time kindergarten program. Money remaining with the office of public instruction on July 1, 2012, for school districts that have not indicated their intent to participate in the full-time kindergarten program must be reverted to the state general fund.

Section 28. Distribution of one-time-only money for Indian education for all. Money appropriated from the general fund as one-time-only money in the 2009 biennium to the office of public instruction for Indian education for all must be allocated to districts on a per-ANB basis, calculated as provided in 20-9-311, with a minimum of $500 for each district. A district receiving funds under this section shall deposit the money in the miscellaneous programs fund and may not transfer the money to another fund.

Section 29. Repealer. Sections 20-26-611, 20-26-612, and 20-26-613, MCA, are repealed.

Section 30. Codification instruction. (1) [Sections 1 through 6] are intended to be codified as an integral part of Title 20, chapter 4, and the provisions of Title 20, chapter 4, apply to [sections 1 through 6].

(2) [Section 8] is intended to be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to [section 8].

(3) [Sections 23 through 25] are intended to be codified as an integral part of Title 20, chapter 26, part 6, and the provisions of Title 20, chapter 26, part 6, apply to [sections 23 through 25].

Section 31. Effective date. [This act] is effective July 1, 2007.

Section 32. Applicability. [This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007.

Approved May 17, 2007

CHAPTER NO. 2

[HB 3]

AN ACT PROVIDING PROPERTY TAX INCENTIVES FOR NEW INVESTMENT IN THE CONVERSION, TRANSPORT, MANUFACTURING RELATED TO, AND RESEARCH AND DEVELOPMENT OF RENEWABLE ENERGY, NEW TECHNOLOGY ENERGY, AND CLEAN COAL ENERGY AND CARBON DIOXIDE EQUIPMENT AND FACILITIES; PROVIDING PROPERTY TAX ABATEMENTS FOR CERTAIN RENEWABLE ENERGY, NEW TECHNOLOGY ENERGY, AND CLEAN COAL ENERGY-RELATED PROPERTY; ALLOWING A PROPERTY TAX EXEMPTION, UNDER CERTAIN CONDITIONS, FOR LAND ADJACENT TO TRANSMISSION LINES; CREATING A NEW CLASS OF PROPERTY TAXES FOR CERTAIN PIPELINES AND CARBON DIOXIDE EQUIPMENT AND FACILITIES; CREATING A NEW CLASS OF PROPERTY FOR CERTAIN DIRECT-CURRENT CONVERTER STATION PROPERTY; REVISING CLASS FOURTEEN PROPERTY TO INCLUDE TAXATION OF CERTAIN RENEWABLE ENERGY, NEW TECHNOLOGY ENERGY, CLEAN COAL ENERGY FACILITIES, CARBON CAPTURE EQUIPMENT, AND TRANSMISSION LINES; AMENDING SECTIONS 15-6-141 AND 15-6-157, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [This act] may be cited as the "Jobs and Energy Development Incentives Act".

Section 2. Policy. It is the policy of the state of Montana that the tax classifications, rates, abatements, and exemptions in [sections 2 through 8] and amendments made by [this act in 15-6-141 and 15-6-157] are to be strictly limited to new investments that qualify under the standards established in [sections 2 through 8] and amendments made by [this act in 15-6-141 and 15-6-157]. The provisions of [sections 2 through 8] and amendments made by [this act in 15-6-141 and 15-6-157] do not apply to any previously existing properties or to any new investments or property that does not qualify under [sections 2 through 8] and amendments made by [this act in 15-6-141 and

15-6-157]. It is also the policy of the state of Montana that the classifications, rates, abatements, and exemptions in [sections 2 through 8] and amendments made by [this act in 15-6-141 and 15-6-157] are to encourage investment in energy development that is consistent with maintaining a clean and healthful environment and that may not otherwise occur without [sections 2 through 8] and amendments made by [this act in 15-6-141 and 15-6-157]. [Sections 2 through 8] and amendments made by [this act in 15-6-141 and 15-6-157] are not to be interpreted as a precedent for reducing the taxation of any other property in the state or for affecting the use of any property valuation method for tax purposes established under law to meet the standards of the Montana constitution and law. The department of environmental quality and the department of revenue are directed to administer and interpret [sections 2 through 8] and amendments made by [this act in 15-6-141 and 15-6-157] strictly in accordance with this policy. Any ambiguities in [sections 2 through 8] and amendments made by [this act in 15-6-141 and 15-6-157] are to be resolved in favor of the strict reading of this policy.

Section 3. Definitions. As used in [sections 1 through 6], unless the context requires otherwise, the following definitions apply:

(1) "Biodiesel" has the meaning provided in 15-70-301.

(2) "Biodiesel production facility" means improvements and personal property used for the production and onsite storage of biodiesel.

(3) "Biogas" means methane gas produced through controlled biochemical processes in which bacteria digest animal, municipal, or other organic wastes in an oxygen-free environment. The term includes naturally occurring methane gas formed underground in landfills.

(4) "Biogas production facility" means improvements and personal property used for the production of biogas and the generation of electricity at the facility.

(5) "Biomass" means any renewable organic matter, including dedicated energy crops and trees, agricultural food and feed crops, agricultural crop wastes and residues, wood wastes and residues, aquatic plants, animal wastes, municipal wastes, and other organic waste materials.

(6) "Biomass gasification" means a technology that uses a thermochemical process to convert biomass into a low-Btu or medium-Btu gas for the purpose of producing electricity, methane gas, transportation fuels, or chemicals. The technology includes the pretreatment of biomass feedstock involving drying, pulverizing, and screening.

(7) "Biomass gasification facility" means improvements and personal property used for the production of fuel or chemicals and the generation of electricity from biomass at the facility.

(8) "Carbon sequestration" means the long-term storage of carbon dioxide from a plant or facility that produces or captures carbon dioxide, as defined in [section 7], in geologic formations, including but not limited to deep saline formations, basalt or oil shale formations, depleted oil and gas reservoirs, unmineable coal beds, and closed-loop enhanced oil recovery operations.

(9) "Clean advanced coal research and development equipment" means equipment used primarily for research and development of emerging methods for pollution control, carbon capture, and carbon sequestration. The term includes equipment used for research and development of effective and efficient removal of various pollutants and the capture, storage, transportation,

compression, and injection of carbon dioxide from coal combustion utility and industrial facilities and advanced coal conversion facilities.

(10) "Coal gasification" means a process that converts coal into a synthesis gas composed of carbon monoxide, hydrogen, and other gases. The coal gasification process includes the reaction of coal feedstock, prepared in either a dry or slurried form, with steam and oxygen at high temperature and pressure in a reducing atmosphere. The synthesis gas is then used to produce electricity, liquid fuels, methane gas, or chemicals.

(11) "Coal gasification facility" means improvements and personal property used for coal gasification that is used for the production of fuel or chemicals or the generation of electricity, or any combination of those things, at the facility. The term includes a coal-to-liquid facility or an integrated gasification combined cycle facility.

(12) "Coal-to-liquid facility" means improvements and personal property used for the production of synthetic liquid fuels from coal. The term includes a facility that uses the Fischer-Tropsch process, or other processes, to convert synthesis gas produced by coal gasification into liquid fuel.

(13) "Commencement of construction" means initiation of onsite fabrication, erection, or installation of, but not limited to, the following:

(a) building supports or foundations;

(b) laying of underground pipework; or

(c) construction of storage structures.

(14) "Ethanol" means nominally anhydrous ethyl alcohol that has been denatured as specified in 27 CFR, parts 20 and 21, and that meets the standards for ethanol adopted pursuant to 82-15-103.

(15) "Ethanol production facility" means improvements and personal property used for the production and onsite storage of ethanol made from cellulose or other nonfoodstuff materials.

(16) "Geothermal facility" means improvements and personal property used for the production of electricity from geothermal sources.

(17) "Integrated gasification combined cycle facility" means improvements and personal property of an electrical generation facility that uses a coal gasification process and routes synthesis gas to a combustion turbine to generate electricity and captures the heat from the combustion to drive a steam turbine to produce more electricity. The facility may also use incidental amounts of natural gas or other fuels in the combustion turbine.

(18) "Renewable energy" includes the following:

(a) solar energy;

(b) wind energy;

(c) geothermal energy;

(d) energy from the conversion of biomass;

(e) energy from biogas;

(f) energy from fuel cells that do not require a petroleum-based fuel;

(g) energy from waste heat; and

(h) cellulosic ethanol.

(19) (a) "Renewable energy manufacturing facility" means improvements and personal property used by a facility with its principal business being the manufacturing of material, component parts, systems, or similar equipment for use in facilities that convert renewable energy into forms of energy useful to people, including electricity. The term includes facilities for manufacturing of electric motor vehicles or hybrid electric motor vehicles.

(b) For purposes of subsection (19)(a), "principal business" means a renewable energy manufacturing facility with at least 50%, by value, of its annual production suitable for sale as renewable energy material, component parts, systems, or similar equipment.

(20) "Renewable energy research and development equipment" means equipment used primarily for research and development of the efficient use of renewable energy sources. The term includes equipment used for research and development of electric motor vehicles or hybrid electric motor vehicles.

Section 4. Energy production or development — tax abatement — eligibility. (1) A facility listed in subsection (3), clean advanced coal research and development equipment, and renewable energy research and development equipment may qualify for an abatement of property tax liability pursuant to [sections 2 through 6].

(2) (a) If the abatement is granted for a facility listed in subsection (3), the qualifying facility must be assessed at 50% of its taxable value for the qualifying period.

(b) If the abatement is granted for clean advanced coal research and development equipment or renewable energy research and development equipment, the qualifying equipment, up to the first $1 million of the value of equipment at a facility, must be assessed at 50% of its taxable value for the qualifying period. There is no abatement for any portion of the value of equipment at a facility in excess of $1 million.

(c) The abatement applies to all mills levied against the qualifying facility or equipment.

(3) Subject to subsections (4) and (5), the following facilities or property may qualify for the abatement allowed under [sections 2 through 6]:

(a) biodiesel production facilities;

(b) biogas production facilities;

(c) biomass gasification facilities;

(d) coal gasification facilities for which carbon dioxide from the coal gasification process is sequestered;

(e) ethanol production facilities;

(f) geothermal facilities;

(g) renewable energy manufacturing facilities;

(h) clean advanced coal research and development equipment and renewable energy research and development equipment;

(i) a natural gas combined cycle facility that offsets a portion of the carbon dioxide produced through carbon credit offsets;

(j) transmission lines and associated equipment and structures classified in 15-6-157;

(k) converter stations classified under [section 8];

(l) carbon sequestration equipment as defined in [section 7]; and

(m) pipelines classified under [section 7].

(4) (a) In order to qualify for the abatement under [sections 2 through 6], a facility listed in subsection (3) must meet the following requirements:

(i) commencement of construction of the facility must occur after June 1, 2007; and

(ii) the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), must be paid during the construction phase of the facility.

(b) In order to qualify for the abatement under [sections 2 through 6], clean advanced coal research and development equipment and renewable energy research and development equipment must be placed into service after June 30, 2007.

(c) For the facility to qualify under subsection (3)(d), the carbon dioxide produced from the gasification process must be sequestered at a rate that is practically obtainable but may not be less than 65%.

(d) Integrated gasification combined cycle facilities for which a permit under Title 75, chapter 2, is applied for after December 31, 2014, do not qualify under subsection (3)(d).

(e) To qualify under subsection (3)(i), the facility shall offset carbon dioxide emissions by the percentage determined in [section 6].

(5) To qualify for an abatement, the facility or clean advanced coal research and development equipment and renewable energy research and development equipment must be certified as provided in [section 5].

(6) Upon termination of the qualifying period, the abatement ceases and the property for which the abatement had been granted must be assessed at 100% of its taxable value.

(7) For the purposes of this section, "qualifying period" means the construction period and the first 15 years after the facility commences operation or the clean advanced coal research and development equipment or renewable energy research and development equipment is purchased. The total time of the qualifying period may not exceed 19 years.

Section 5. Certification. (1) (a) Upon application by a taxpayer, the department of environmental quality shall determine whether a facility or equipment qualifies for a tax abatement under [section 4] or rules adopted under [section 6]. If the department determines that a facility or equipment qualifies for abatement or a classification, it shall issue a certification of eligibility.

(b) An application for certification must be made on forms available from the department.

(c) Certification remains in effect only as long as substantial compliance with [sections 2 through 6] continues.

(2) The department of environmental quality shall identify and track compliance with [sections 2 through 6] in the use of certified property. The department may revoke a certification for failure to maintain substantial compliance with eligibility requirements in [section 4] or with rules adopted

pursuant to [section 6]. Revocation of a certificate must be reported to the department of revenue within 30 days of revocation.

(3) If a taxpayer's certification is revoked, the taxpayer forfeits the abatement or classification under 15-6-157 or [section 7]. Upon revocation, the property must be assessed at 100% of its taxable value beginning on January 1 of the year or years for which the certification is revoked. Any remaining abatement must be forfeited. The taxpayer is immediately liable for any additional taxes, penalty, and interest resulting from the revocation.

(4) A taxpayer that has forfeited any portion of its abatement because of revocation may not reapply for an abatement under [sections 2 through 6].

(5) A taxpayer aggrieved by a determination made by the department of environmental quality or the department of revenue has the right to the review procedures in 15-1-211 or to a hearing under Title 2, chapter 4, part 6.

Section 6. Rules. (1) The department of revenue shall adopt rules for the implementation of [sections 2 through 6], including the valuation of qualifying property and administration of property certified under [section 5] or classified under 15-6-157 or [section 7].

(2) The department of environmental quality shall adopt rules necessary for certification, compliance, and revocation of certificates, as provided in [section 5], and for classification as class fourteen property, as provided in 15-6-157, or class fifteen property, as provided in [section 7]. The rules may include specifying procedures, including timeframes for certification application, and definitions necessary to identify property for certification and compliance. The percentage of the carbon dioxide produced by a facility that is to be sequestered or offset must be based on technology that is practically obtainable as determined by the department.

Section 7. Class fifteen property — description — taxable percentage. (1) Class fifteen property includes:

(a) carbon dioxide pipelines certified by the department of environmental quality under [section 5] for the transportation of carbon dioxide for the purposes of sequestration or for use in closed-loop enhanced oil recovery operations;

(b) qualified liquid pipelines certified by the department of environmental quality under [section 5];

(c) carbon sequestration equipment;

(d) equipment used in closed-loop enhanced oil recovery operations; and

(e) all property of pipelines, including pumping and compression equipment, carrying products other than carbon dioxide, that originate at facilities specified in 15-6-157(1), with at least 90% of the product carried by the pipeline originating at facilities specified in 15-6-157(1) and terminating at an existing pipeline or facility.

(2) For the purposes of this section, the following definitions apply:

(a) "Carbon dioxide pipeline" means a pipeline that transports carbon dioxide from a plant or facility that produces or captures carbon dioxide to a carbon sequestration point, including a closed-loop enhanced oil recovery operation.

(b) "Carbon sequestration" means the long-term storage of carbon dioxide from a carbon dioxide pipeline in geologic formations, including but not limited

to deep saline formations, basalt or oil shale formations, depleted oil and gas reservoirs, unmineable coal beds, and closed-loop enhanced oil recovery operations.

(c) "Carbon sequestration equipment" means the equipment used for carbon sequestration, including equipment used to inject carbon dioxide at the carbon sequestration point and equipment used to retain carbon dioxide in the sequestration location.

(d) "Carbon sequestration point" means the location where the carbon dioxide is to be confined for sequestration.

(e) "Closed-loop enhanced oil recovery operation" means all oil production equipment, as described in 15-6-138(1)(c), owned by an entity that owns or operates an operation that, after construction, installation, and testing has been completed and the full enhanced oil recovery process has been commenced, injects carbon dioxide to increase the amount of crude oil that can be recovered from a well and retains as much of the injected carbon dioxide as practicable, but not less than 85% of the carbon dioxide injected each year absent catastrophic or unforeseen occurrences.

(f) "Liquid pipeline" means a pipeline that is dedicated to using 90% of its pipeline capacity for transporting fuel or methane gas from a coal gasification facility, biodiesel production facility, biogas production facility, or ethanol production facility.

(g) "Plant or facility that produces or captures carbon dioxide" means a facility that produces a flow of carbon dioxide that can be sequestered or used in a closed-loop enhanced oil recovery operation. This does not include wells from which the primary product is carbon dioxide.

(3) Class fifteen property does not include a carbon dioxide pipeline, liquid pipeline, or closed-loop enhanced oil recovery operation for which, during construction, the standard prevailing wages for heavy construction, as provided in 18-2-401(13)(a), were not paid during the construction phase.

(4) Class fifteen property is taxed at 3% of its market value.

Section 8. Class sixteen property — description — taxable percentage. (1) Class sixteen property includes high-voltage direct-current converter stations that are constructed in a location and manner so that the converter station can direct power to two different regional power grids.

(2) Class sixteen property does not include property described in subsection (1) for which the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), was not paid during the construction phase.

(3) (a) The department shall determine whether to certify that the property meets the criteria of subsection (1).

(b) If the department finds that a certification previously granted was based on an application that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-6-141. If the application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest from the time that the certification was in effect.

(4) Class sixteen property is taxed at 2.25% of its market value.

Section 9. Exemption for land adjacent to transmission line right-of-way easement — application — limitations. (1) Subject to the conditions of this section, for tax years beginning after December 31, 2007, there

is allowed an exemption from property taxes for land that is within 660 feet on either side of the midpoint of a transmission line right-of-way or easement.

(2) (a) An owner or operator of a transmission line shall apply to the department for an exemption under this section on a form provided by the department. The application must include a legal description and a digitized certificate of survey prepared by a surveyor registered with the board of professional engineers and professional land surveyors provided for in 2-15-1763 of the property in the county for which the exemption is sought and other information required by the department. A separate application must be made for each county in which an exemption is sought.

(b) An application for an exemption that would be in effect for the tax year and subsequent tax years must be filed with the department by March 1 in the tax year that the exemption is sought.

(3) (a) The owner or operator of a transmission line shall inform the department of any change in ownership of the land or other circumstances that may affect the eligibility of the land for the exemption. The department shall determine whether any changes have occurred that affect the eligibility of the land for the exemption.

(b) The exemption allowed under this section does not apply to:

(i) the boundaries of an incorporated or unincorporated city or town;

(ii) a platted and filed subdivision;

(iii) tracts of land used for residential, commercial, or industrial purposes; or

(iv) the 1 acre of land beneath improvements on land described in 15-6-133(1)(c) and 15-7-206(2).

(4) For the purposes of this section, "transmission line" means an electric line with a design capacity of 30 megavoltamperes or greater that is constructed after January 1, 2007.

Section 10. Section 15-6-141, MCA, is amended to read:

"15-6-141. Class nine property — description — taxable percentage. (1) Class nine property includes:

(a) centrally assessed allocations of an electric power company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives. However, rural electric cooperatives' property, except wind generation facilities classified under 15-6-157, used for the sole purpose of serving customers representing less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property or serving an incorporated municipality with a population that is greater than 3,500 persons formerly served by a public utility that after January 1, 1998, received service from the facilities of an electric cooperative is included. For purposes of this subsection (1)(a), "property used for the sole purpose" does not include a headquarters, office, shop, or other similar facility.

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) electrical generation facilities classified under 15-6-156 ~~and wind generation facilities~~*;*

(ii) all property classified under 15-6-157;

(iii) all property classified under [sections 7 and 8];

~~(ii)~~*(iv)* property owned by cooperative rural electric and cooperative rural telephone associations and classified under 15-6-135;

~~(iii)~~*(v)* property owned by organizations providing telephone communications to rural areas and classified under 15-6-135;

~~(iv)~~*(vi)* railroad transportation property included in 15-6-145;

~~(v)~~*(vii)* airline transportation property included in 15-6-145; and

~~(vi)~~*(viii)* telecommunications property included in 15-6-156.

(2) Class nine property is taxed at 12% of market value."

Section 11. Section 15-6-157, MCA, is amended to read:

"15-6-157. Class fourteen property — description — taxable percentage. (1) Class fourteen property includes:

(a) wind generation facilities of a centrally assessed electric power company;

(b) wind generation facilities owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a;

(c) noncentrally assessed wind generation facilities owned or operated by any electrical energy producer;

(d) wind generation facilities owned or operated by cooperative rural electric associations described under 15-6-137*;*

(e) all property of a biodiesel production facility, as defined in [section 3], that has commenced construction after June 1, 2007;

(f) all property of a biogas production facility, as defined in [section 3], that has commenced construction after June 1, 2007;

(g) all property of a biomass gasification facility, as defined in [section 3];

(h) all property of a coal gasification facility, as defined in [section 3], except for property in subsection (1)(k) of this section, that sequesters carbon dioxide;

(i) all property of an ethanol production facility, as defined in [section 3], that has commenced construction after June 1, 2007;

(j) all property of a geothermal facility, as defined in [section 3];

(k) all property of an integrated gasification combined cycle facility, as defined in [section 3], that sequesters carbon dioxide, as required by [section 4(4)(c)];

(l) all property or a portion of the property of a renewable energy manufacturing facility, as defined in [section 3], that has commenced construction after June 1, 2007;

(m) all property of a natural gas combined cycle facility;

(n) equipment that is used to capture and to prepare for transport carbon dioxide that will be sequestered or injected for the purpose of enhancing the recovery of oil and gas, other than that equipment at coal combustion plants of the types that are generally in commercial use as of December 31, 2007, that commence construction after December 31, 2007;

(o) high-voltage direct-current transmission lines and associated equipment and structures, including converter stations and interconnections, other than property classified under [section 8], that:

(i) originate in Montana with a converter station located in Montana east of the continental divide that is constructed after July 1, 2007;

(ii) are certified under the Montana Major Facility Siting Act; and

(iii) provide access to energy markets for Montana electrical generation facilities listed in this section that commenced construction after June 1, 2007;

(p) all property of electric transmission lines, including substations, that originate at facilities specified in this subsection (1), with at least 90% of electricity carried by the line originating at facilities specified in this subsection (1) and terminating at an existing transmission line or substation that has commenced construction after June 1, 2007;

(q) the qualified portion of an alternating current transmission line and its associated equipment and structures, including interconnections, that has commenced construction after June 1, 2007.

(2) (a) The qualified portion of an alternating current transmission line in subsection (1)(q) is that percentage, as determined by the department of environmental quality, of rated transmission capacity of the line contracted for on a firm basis by buyers or sellers of electricity generated by facilities specified in subsection (1) that are located in Montana.

(b) The department of revenue shall classify the total value of an alternating current transmission line in accordance with the determination made by the department of environmental quality pursuant to subsection (2)(a).

(c) The owner of property described under this subsection (2) shall disclose the location of the generation facilities specified in subsection (1) and information sufficient to demonstrate that there is a firm contract for transmission capacity available throughout the year. For purposes of the initial qualification, the owner is not required to disclose financial terms and conditions of contracts beyond that needed for classification.

~~(2)~~*(3)* Class fourteen property does not include ~~wind generation~~ facilities:

(a) at which the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), was not paid during the construction phase; or

(b) that are exempt under 15-6-225.

~~(3)~~*(4)* For the purposes of this section, "wind generation facilities" means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from wind.

(5) (a) The department of environmental quality shall determine whether to certify that a transmission line meets the criteria of either subsection (1)(o), (1)(p), or (1)(q), as applicable, based on an application provided for in [section 5]. The department of environmental quality shall review the certification 10 years

after the line is operational, and if the property no longer meets the requirements of either subsection (1)(o), (1)(p), or (1)(q), the certification must be revoked.

(b) If the department of revenue finds that a certification previously granted was based on an application that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-6-141. If the application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest from the time that the certification was in effect.

~~(4)~~*(6)* Class fourteen property is taxed at 3% of its market value."

Section 12. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 13. Codification instruction. (1) [Sections 2 through 6] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 2 through 6].

(2) [Sections 7 and 8] are intended to be codified as an integral part of Title 15, chapter 6, part 1, and the provisions of Title 15, chapter 6, part 1, apply to [sections 7 and 8].

(3) [Section 9] is intended to be codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to [section 9].

Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. Effective date. [This act] is effective on passage and approval.

Approved May 25, 2007

CHAPTER NO. 3

[HB 4]

AN ACT APPROPRIATING MONEY FOR CAPITAL PROJECTS AND INFORMATION TECHNOLOGY CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2009; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE LONG-RANGE BUILDING PROGRAM ACCOUNT; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE FISH, WILDLIFE, AND PARKS CAPITAL PROJECTS ACCOUNT; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE LONG-RANGE INFORMATION TECHNOLOGY PROGRAM ACCOUNT; PROVIDING FOR THE DEVELOPMENT AND ACQUISITION OF NEW INFORMATION TECHNOLOGY SYSTEMS FOR THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, THE DEPARTMENT OF ADMINISTRATION, AND THE JUDICIAL BRANCH; PROVIDING FOR THE REAPPROPRIATION OF LONG-RANGE INFORMATION TECHNOLOGY CAPITAL PROJECT FUNDS; REQUIRING APPROVAL OF PROJECT AND SECURITY PLANS FOR CERTAIN PROJECTS; REVISING CAPITAL PROJECTS AUTHORIZED FOR THE BIENNIUM ENDING JUNE 30, 2007;

APPROPRIATING STATE GENERAL FUND MONEY FROM THE SALE OF THE MISSOULA ARMORY; APPROPRIATING MONEY FROM THE STATE GENERAL FUND FOR OPERATING EXPENSES ASSOCIATED WITH INFORMATION TECHNOLOGY PROJECTS AND ENERGY CONSERVATION PROJECTS IN STATE BUILDINGS; REQUIRING PAYMENT OF ENERGY COST SAVINGS TO A SPECIAL REVENUE ACCOUNT; PROHIBITING TELECOMMUNICATIONS AND INFORMATION SERVICES COMPETITION; AMENDING SECTION 2, CHAPTER 560, LAWS OF 2005; REPEALING SECTION 8, CHAPTER 560, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [sections 1 through 19], unless otherwise stated, the following definitions apply:

(1) "Authority only" means approval provided by the legislature to expend money that does not require an appropriation, including grants, donations, auxiliary funds, proprietary funds, and university funds.

(2) "Capital project" means the acquisition of land or improvements or the planning, capital construction, renovation, furnishing, or major repair projects authorized in [sections 1 through 19].

(3) "Chief information officer" has the meaning provided in 2-17-506.

(4) "Information technology" has the meaning provided in 2-17-506.

(5) "Information technology capital project" means a group of interrelated information technology activities that are planned and executed in a structured sequence to create a unique product or service.

(6) "LRBP" means the long-range building program account in the capital projects fund type.

(7) "LRITP" means the long-range information technology program account in the capital projects fund type.

(8) "Other funding sources" means money other than LRBP money, including special revenue fund money, that accrues to an agency under the provisions of law.

Section 2. Capital project appropriations and authorizations. The following money is appropriated for the indicated capital projects from the indicated sources to the department of administration. Funds not requiring legislative appropriation are included for the purpose of authorization. The department of administration is authorized to transfer the appropriations and authority among the necessary fund types for these projects:

Agency/Project	LRBP Fund Revenue	State Special Revenue	Federal Special Sources	Other Funding	Authority Only	Total
MONTANA SCHOOL FOR THE DEAF AND BLIND						
Replace Boiler	600,000					600,000
Cottage Improvement					372,000	372,000
Authority only funds consist of federal special revenue, donations, and grants.						
DEPARTMENT OF ADMINISTRATION						
Roof Repairs and Replacements, Statewide	3,000,000	392,160	68,040			3,460,200

Code/Deferred Maintenance Projects, Statewide	2,300,000				2,300,000
Hazardous Materials Abatement, Statewide	500,000				500,000
Code/Deferred Maintenance Projects, Capitol Complex				550,000	550,000
Authority only funds consist of general services division internal service funds.					
Upgrade Fire Protection Systems, Statewide	500,000				500,000
Fire Protection Measures, Capitol Complex				500,000	500,000
Authority only funds consist of general services division internal service funds.					
Upgrade State Environmental Laboratory, Helena	1,000,000	1,000,000			2,000,000
Repair/Preserve Building Envelopes, Statewide	1,500,000				1,500,000
Campus Infrastructure Projects, Statewide	1,000,000				1,000,000
Mechanical System Improvements, Capitol Complex				1,900,000	1,900,000
Authority only funds consist of general services division internal service funds.					
Deferred Maintenance, Phase 2, MT Law Enforcement Academy	500,000				500,000
New Classroom Building, MT Law Enforcement Academy	3,750,000				3,750,000
Enterprise System Services Centers	10,500,000		4,000,000		14,500,000
Other funds consist of capitol land grant funds.					
Campus Master Planning, Statewide	400,000			250,000	650,000
Authority only funds consist of general services division internal service funds.					
Challenge Grant for Super Computer, UM-MT Tech	259,000			7,000,000	7,259,000
Authority only funds may include federal special revenue, donations, grants, and higher education funds.					
DEPARTMENT OF CORRECTIONS					
Housing Unit Upgrades, MT State Prison	1,200,000				1,200,000
Expand Work Dorm, MT State Prison	2,500,000				2,500,000
Expand Food Service Capacity, MT State Prison	1,637,000			293,000	1,930,000
Authority only funds consist of proprietary funds.					
DEPARTMENT OF FISH, WILDLIFE, AND PARKS					
Hatchery Maintenance	500,000				500,000
Administrative Facilities Repair and Maintenance	800,000				800,000

DEPARTMENT OF MILITARY AFFAIRS				
Readiness Center, Miles City	2,480,000	7,510,970		9,990,970
Armed Forces Reserve Center, Missoula		30,903,968		30,903,968
Construct Female Showers and Latrines	290,000	290,000		580,000
Montana State Veterans' Cemetery Expansion		1,206,000		1,206,000
Disaster and Emergency Services Mobile Command Post	172,500			172,500
MONTANA UNIVERSITIES AND COLLEGES				
Code Compliance/Deferred Maintenance, MT University System	3,600,000			3,600,000
Systems Improvements, MT-Tech College of Technology	925,000			925,000
Steam Distribution System Upgrades, Phase 2, UM-Missoula	2,000,000		1,000,000	3,000,000
Authority only funds consist of auxiliary funds.				
Renovate Clapp Building, UM-Missoula	821,000			821,000
Renovate Armory Gym, MSU-Northern	400,000		3,250,000	3,650,000
Authority only funds consist of auxiliary funds.				
Renovate Main Hall, UM-Western	4,500,000			4,500,000
Renovate McMullen Hall, MSU-Billings	1,924,500			1,924,500
Stabilize Masonry, MSU-Bozeman	2,600,000			2,600,000
Classroom/Laboratory Upgrades, MT University System	2,000,000			2,000,000
Utility Infrastructure Improvements, MSU-Bozeman	500,000		50,000	550,000
Authority only funds consist of auxiliary funds.				
Supplement UM-Helena College of Technology Expansion	4,500,000		135,000	4,635,000
Authority only funds consist of auxiliary funds.				
Supplement Great Falls College of Technology Addition	3,000,000			3,000,000
Supplement Billings College of Technology Expansion	2,217,000			2,217,000
COT Long-Range Planning, UM-Missoula	500,000			500,000
Auto Tech Center Design, MSU-Northern	800,000			800,000
Renovate Gaines Hall, MSU-Bozeman	28,500,000			28,500,000

Law School Addition, UM-Missoula	4,200,000	5,050,000	9,250,000

Authority only funds may include federal special revenue, donations, grants, and higher education funds.

Augment Petroleum, Bureau of Mines and Geology, UM-MT Tech	5,200,000		5,200,000
School of Journalism Building, UM-Missoula	500,000		500,000
Increase Authority, Museum of the Rockies, MSU-Bozeman		3,500,000	3,500,000

Authority only funds may include federal special revenue, donations, grants, and higher education funds.

School of Education Building, UM-Missoula		7,500,000	7,500,000

Authority only funds may include federal special revenue, donations, grants, and higher education funds.

New Parking Structure, UM-Missoula		5,000,000	5,000,000

Authority only funds may include federal special revenue, auxiliary, donations, grants, and higher education funds.

Montana Agricultural Extension Services			
Research Centers and Farms	5,000,000	1,250,000	6,250,000

Authority is granted to Montana state university in the indicated amounts for the purpose of making capital improvements to the designated facilities.

Authority only funds may include any type of nonstate funding.

Animal Bioscience Facility, MSU-Bozeman	3,570,000		3,570,000
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES			
Receiv. Hospital Renovat., MT State Hospital, Warm Springs	5,800,000		5,800,000
Renovate/Improve Support Services, MT State Hospital	4,500,000		4,500,000
MT Mental Health Nursing Care Center Improvements, Lewistown	750,000		750,000
Montana Veterans' Home Improvements		1,413,000	1,413,000
Improve Campus, MT State Hospital, Warm Springs	1,280,000		1,280,000
DEPARTMENT OF TRANSPORTATION			
Equipment Storage Buildings, Statewide		2,700,000	2,700,000
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION			
Code/Deferred Maintenance and Small Projects, DNRC Unit Campuses, Statewide	750,000		750,000
Co-locate DNRC/DEQ, Kalispell	3,500,000		3,500,000
Consolidate DNRC Divisions, Missoula	2,000,000		2,000,000

Building Addition, Billings Oil and Gas Office	750,000		750,000
DEPARTMENT OF JUSTICE			
Purchase Forensic Science Lab Building	7,250,000		7,250,000

Section 3. Fund transfers. (1) Subject to subsection (4), there is transferred from the state general fund $63,057,942 in fiscal year 2008 and $63,057,942 in fiscal year 2009 to the long-range building program account in the capital projects fund type for the projects enumerated in [section 2].

(2) Subject to subsection (4), there is transferred from the state general fund $5 million in fiscal year 2008 and $5 million in fiscal year 2009 to the fish, wildlife, and parks capital projects account in the capital projects fund type for the projects enumerated in [section 5].

(3) Subject to subsection (4), the following amounts are transferred from the state general fund to the LRITP in the capital projects fund type:

(a) $11,653,900 for fiscal year 2008; and

(b) $29,265,100 for fiscal year 2009.

(4) In order to maintain an adequate ending fund balance, if at any time during the 2009 biennium the office of budget and program planning projects a 2009 biennium unreserved ending general fund balance of less than $100 million, the office of budget and program planning may direct the department of administration to reduce the fund transfers in subsections (1) through (3). The department of administration shall transfer the funds on a schedule approved by the office of budget and program planning that enables the statewide management goals for cash flow and for fund balance. On occasions when reductions in transfers appear imminent, the office of budget and program planning may notify the legislative finance committee and seek input from the committee into the reduction plan. If the projected unreserved general fund ending fund balance increases at a later point in the biennium, the fund transfers may be increased back up to the original authorized level. The office of budget and program planning may not direct fund transfers to be reduced below the level of encumbrance obligations made against the appropriation at the time of the reduction.

(5) There is transferred from the general fund to the LRITP $2,909,470 in fiscal year 2008 to be used for the projects in [section 16].

Section 4. Capital improvements. (1) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for the purpose of making capital improvements to statewide facilities. Funds not requiring legislative appropriation are included for the purpose of authorization:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Future Fisheries		1,314,000				1,314,000
Fishing Access Site Maintenance		350,000				350,000
Fishing Access Site Protection		800,000				800,000
Community Fishing Ponds		50,000				50,000

Upland Game Bird Program		1,258,000			1,258,000
Wildlife Habitat Maintenance		1,200,000			1,200,000
Migratory Bird Stamp Program		360,000			360,000
Bighorn Sheep		250,000			250,000
Parks Program	500,000	4,950,000	2,300,000		7,750,000
Grant Programs/Federal Projects		320,000	2,800,000		3,120,000

(2) Authority is granted to the university of Montana in the indicated amount for the purpose of making capital improvements to campus facilities. Authority only funds may include federal special revenue, donations, grants, and higher education funds. All costs for the operations and maintenance of any new improvements constructed under this authorization must be paid by the university of Montana with nonstate revenue.

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
General Spending Authority, UM-All Campuses					4,000,000	4,000,000

(3) Authority is granted to Montana state university in the indicated amount for the purpose of making capital improvements to campus facilities. Authority only funds may include federal special revenue, donations, grants, and higher education funds. All costs for the operations and maintenance of any new improvements constructed under this authorization must be paid by Montana state university with nonstate revenue.

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
General Spending Authority, MSU-All Campuses					5,000,000	5,000,000

(4) The following money is appropriated to the department of military affairs in the indicated amount for the purpose of making capital improvements to statewide facilities. All costs for the operation and maintenance of any new improvements constructed with these funds must be paid by the department of military affairs with nonstate revenue.

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Federal Spending Authority			2,000,000			2,000,000

(5) The following money is appropriated to the department of transportation in the indicated amounts for the purpose of making capital improvements as indicated:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Statewide Maintenance Repair and Small Projects		1,050,000				1,050,000
US Highway 93 Projects		26,000,000				26,000,000

(6) The following money is appropriated to the department of commerce, Montana heritage preservation and development commission, in the indicated amount for the purpose of making capital improvements to facilities located in Virginia City and Nevada City:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Historic Preservation and Supporting Improvements, Virginia and Nevada Cities	2,000,000					2,000,000

(7) The following money is appropriated to the department of commerce in the indicated amount for a grant to assist in the site development and project planning at the cowboy hall of fame:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Grant to the Cowboy Hall of Fame				500,000		500,000

Other funds consist of one-time-only state general fund money.

Section 5. Land acquisition appropriations. The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for purposes of land acquisition, land leasing, easement purchase, or development agreement:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Fishing Access Site Acquisition		460,000	100,000			560,000
Habitat Montana		6,180,000				6,180,000
Access Montana				10,000,000		10,000,000

Other funds consist of fish, wildlife, and parks capital projects funds.

The department of fish, wildlife, and parks shall give highest priority consideration to the acquisition of the Culbertson overlook and the south half of Brush Lake in the access Montana initiative.

Section 6. Dams. (1) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amount for department dams:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
FWP Dams Repair		100,000				100,000

(2) In accordance with 85-1-101, the department of natural resources and conservation shall coordinate and manage the projects.

Section 7. Bridges. The following money is appropriated to the department of natural resources and conservation in the indicated amount for department bridge projects:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Bridge Replacement/Repair		750,000				750,000

Section 8. Transfer of appropriations. The department of fish, wildlife, and parks and the department of transportation are authorized to transfer the appropriations and authority in [sections 4 through 6] among the necessary fund types for these projects.

Section 9. Capital land grant revenue. The appropriation of $4 million in capitol land grant revenue to the department of administration for the enterprise system services centers is the last priority for the use of these funds during the 2009 biennium and is dependent upon the availability of revenue. If necessary, the department of administration, architecture and engineering division, shall reduce the project in scope or phase as capitol land grant revenue becomes available.

Section 10. Planning and design. The department of administration may proceed with the planning and design of capital projects prior to the receipt of other funding sources. The department may use interentity loans in accordance with 17-2-107 to pay planning and design costs incurred before the receipt of other funding sources.

Section 11. Capital projects — contingent funds. If a capital project is financed, in whole or in part, with appropriations contingent upon the receipt of other funding sources, the department of administration may not let the project for bid until the agency has submitted a financial plan for approval by the director of the department of administration. A financial plan may not be approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding level provided in [sections 2 through 7] for that project; or

(2) the scope of the project is substantially altered or revised from the preliminary plans presented for that project in the 2009 biennium long-range building program presented to the 60th legislature.

Section 12. Review by department of environmental quality. The department of environmental quality shall review capital projects authorized in [sections 2 through 7] for potential inclusion in the state building energy conservation program under Title 90, chapter 4, part 6. When a review shows that a capital project will result in energy improvements, that project must be submitted to the energy conservation program for funding consideration. Funding provided under the energy conservation program guidelines must be used to offset or add to the authorized funding for the project, and the amount will be dependent on the annual utility savings resulting from the facility improvement. Agencies must be notified of potential funding after the review.

Section 13. Department of military affairs projects. (1) All proceeds derived from the sale of the national guard armory located in Missoula must be deposited in the general fund. Up to $3.5 million of those proceeds is appropriated to the department of military affairs to pay the costs associated with the sale of the armory, to lease or otherwise provide replacement space for soldiers until a new facility is complete, and for the purchase of land for the new Missoula armed forces reserve center.

(2) If the department of military affairs is able to obtain 100% federal funding for the new readiness center at Miles City in [section 2], the federal special revenue fund appropriation for that project is increased to up to $14 million and the LRBP fund appropriation is reduced by up to $2.48 million. Of the LRBP funds released from this project as a result of the additional federal

funds, $80,000 is appropriated to the department of military affairs for facility improvements at the Montana military museum and $2.4 million must be transferred to the state general fund.

Section 14. Information technology appropriations and authorizations. (1) All business application systems funded under this section must have a plan approved by the chief information officer for the design, definition, creation, storage, and security of the data associated with the application system. The security aspects of the plan must address but are not limited to authentication and granting of system privileges, safeguards against unauthorized access to or disclosure of sensitive information, and, consistent with state records retention policies, plans for the removal of sensitive data from the system when it is no longer needed. It is the intent of this subsection that specific consideration be given to the potential sharing of data with other state agencies in the design, definition, creation, storage, and security of the data.

(2) Funds may not be released for the project until the chief information officer and budget director approve the plans described in subsection (1).

(3) The following money is appropriated to the department of administration for the indicated information technology capital projects:

Agency/Project	LRITP	Federal Special Revenue	Total
DEPARTMENT OF ADMINISTRATION			
Network Upgrades	2,042,000		2,042,000
University Research Network	568,000		568,000
Public Safety Radio Consortium	4,595,000		4,595,000
Public Safety Radio Interoperability	3,500,000		3,500,000
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES			
TANF Eligibility System	7,625,000	8,600,000	16,225,000
CHIMES System (Completion)	550,000	550,000	1,100,000
Food Stamps System	6,535,000	6,535,000	13,070,000
Child and Adult Protective Services (CAPS) System	15,204,000	11,946,000	27,150,000
ICD 10 (Medicaid Disease Codes)	300,000	2,700,000	3,000,000

(4) There is appropriated to the department of administration $5.618 million from the state general fund in the 2009 biennium for the operating costs associated with the network upgrades, the university research network, and the public safety radio consortium projects listed in subsection (3). If this appropriation is not fully expended for operating costs, then the remaining amount of the appropriation may be used to complete the network upgrades expansion and public safety radio consortium projects in subsection (3).

Section 15. Restrictions on information technology appropriations. The network upgrades and the university research network appropriations are restricted by the following conditions:

(1) The network upgrades appropriation may not be used to acquire, operate, or maintain unused fiber-optic facilities in competition with the private sector. The network upgrades project must be performed by contracted services pursuant to Title 18, chapter 4.

(2) The university research network, part of a national research network infrastructure, serves entities within and outside this state. The Montana

university system shall use the university research network infrastructure only for the purpose of supporting the research and education missions of the Montana university system. The Montana university system may not use the university research network infrastructure for traditional internet, voice, video, or other telecommunications services beyond those required for research networks.

(3) The Montana university system or any entity associated with the university system may not resell any portion of the university research network to nonuniversity entities other than research collaborators.

(4) The university research network may not replace any telecommunications network services that are provided by the department of administration to any state agency, city, county, consolidated government, or school district under Title 2, chapter 17, part 5.

(5) The Montana university system shall provide a comprehensive biennial report of the university research network activities for the biennium beginning July 1, 2007, to the legislature in its next regular session as provided in 5-11-210 and shall submit to a biennial audit of the university research network activities beginning with the biennium beginning July 1, 2009.

Section 16. Judicial branch information technology capital projects appropriation. (1) There is appropriated to the supreme court $2,909,470 from the LRITP for case management improvements and courtroom technology improvements in the judicial branch.

(2) Before encumbering any funds appropriated in subsection (1), the office of court administrator shall submit a project and security plan, as described in [section 14(1)], to the chief information officer. The chief information officer shall promptly review the plan and, if necessary, make timely recommendations to the office of court administrator regarding implementation of the plan.

(3) As part of the annual report to the law and justice interim committee and house appropriations subcommittee required under 3-1-702, the office of court administrator shall include an update on the implementation of projects funded under this section.

(4) There is appropriated to the judicial branch $1,025,530 from the state general fund in the 2009 biennium for operating costs associated with the judicial branch information technology project in subsection (1). If this appropriation is not fully expended for operating costs, then the remaining amount of the appropriation may be used to complete the judicial branch project in subsection (1).

Section 17. Legislative consent. The appropriations authorized in [sections 1 through 13] constitute legislative consent for the capital projects contained in [sections 1 through 13] within the meaning of 18-2-102.

Section 18. Reappropriation of long-range information technology capital project funds. The remaining balances for long-range information technology capital projects previously approved by the legislature and identified as long-range information technology capital projects in an appropriation act are reappropriated for the purposes of the original appropriation until the projects are completed.

Section 19. Approval required. Amounts appropriated by the legislature to executive branch agencies, other than the university system, for long-range information technology capital projects may not be encumbered until project

and security plans are approved by the chief information officer and the budget director if the legislature directs these approvals as a condition on the appropriations in the bill making the appropriations.

Section 20. Section 2, Chapter 560, Laws of 2005, is amended to read:

"**Section 2. Capital projects appropriations and authorizations.** (1) Subject to [section 9(2)], the following money is appropriated for the indicated capital projects from the indicated sources to the department of administration. Funds not requiring legislative appropriation are included for the purpose of authorization. The department of administration is authorized to transfer either or both the appropriations and authority among the necessary fund types for these projects:

Agency/Project	LRBP		Other Funding Sources
MONTANA SCHOOL FOR THE DEAF AND BLIND			
Facility Improvements, Montana School for the Deaf and Blind	$398,000		
DEPARTMENT OF ADMINISTRATION			
Roof Repair and Replacement, Statewide	3,076,242	$206,500	Federal Special Revenue
Repair/Preserve Building Exteriors, Statewide	497,500		
Window Repairs and Replacement, Statewide	1,268,625		
Deferred Maintenance, Montana Law Enforcement Academy	761,175		
Hazardous Materials Abatement, Statewide	497,500		
Code/Deferred Maintenance Projects, Statewide	1,255,989	90,000	Federal Special Revenue
Repair Deteriorated Campus Infrastructure, Statewide	547,250		
Major Maintenance and Repairs to State Capitol	497,500		
Upgrade Fire Alarm Systems, Statewide	398,000		
Repair Elevators, Capitol Complex	796,000		
Upgrade 1100 North Last Chance Gulch	1,201,960		
DPHHS Commodity Warehouse Expansion, Helena		2,000,000	Federal Special Revenue
Public Restrooms, Virginia City and Nevada City	99,450		
Public Safety Learning Center, Montana Law Enforcement Academy		3,450,000	Federal Special Revenue
Long-range Building Program Funding Interim Project	8,000		
~~Capitol Annex or Alternatives Feasibility Study~~		~~500,000~~	~~Capitol Land Grant Funds~~

MONTANA HISTORICAL SOCIETY			
Montana Historical Society Building, Helena		30,000,000	Donations and Grants

Authority is granted to the department of administration in the indicated amount for the construction of a new historical society building.

DEPARTMENT OF CORRECTIONS			
Improve Water System, Montana State Prison	124,375		
Improve High-Side Kitchen Ventilation, Montana State Prison	116,714		
Improve Perimeter Security, Montana State Prison	1,393,000		
DEPARTMENT OF FISH, WILDLIFE, AND PARKS			
Hatchery Maintenance, Statewide		575,000	State Special Revenue
		575,000	Federal Special Revenue
Rose Creek Hatchery		1,700,000	State Special Revenue
Fort Peck Storage/Office Space		50,000	State Special Revenue
		150,000	Federal Special Revenue
Administrative Facilities Repair, Maintenance and Improvements		800,000	State Special Revenue
DEPARTMENT OF MILITARY AFFAIRS			
Federal Spending Authority		2,100,000	Federal Special Revenue
Western Montana Veterans' Cemetery, Missoula		3,200,000	Federal Special Revenue
Montana State Veterans' Cemetery Columbarium, Fort Harrison		500,000	Federal Special Revenue
MONTANA UNIVERSITIES AND COLLEGES			
ADA/Code/Deferred Maintenance Projects, Montana University System	1,393,000		
Upgrade Steam Distribution System, UM-Missoula	5,905,325	3,060,000	Auxiliary Funds
Upgrade HVAC Systems, Pershing and Brockman Halls, MSU-Northern	521,380		
Heating System Improvements, Academic Center and McMullen Halls, MSU-Billings	243,775		
Mining and Geology Building Mechanical System Renovation, UM-Butte	915,400		
Upgrade Health Sciences HVAC System, Phase 2, UM-Missoula	965,150		
Renovate Domestic Water Distribution System, UM-Dillon	182,185		
Classroom/Laboratory Upgrades, Montana University System	995,000		
Facility Repairs and Improvements, MSU-Billings	542,275		
Heating Plant Phase 3, MSU-Bozeman	945,250		
Renovate HVAC Systems, Science Complex 3rd and 4th Floors, UM-Missoula	606,950		

Water/Sewer System Repairs and Maintenance, MSU-Bozeman	248,750	250,000	Auxiliary Funds
Upgrade Primary Electrical Distribution, MSU-Bozeman	746,250	750,000	Auxiliary Funds
Facility Repairs and Improvements, MSU-Agricultural Experiment Stations	477,600		
MSU-Agricultural Experiment Station Projects	646,750		
Campus Improvements, MSU-Northern	636,800	300,000	Auxiliary Funds
New Construction, Consolidate Campus, UM-Missoula College of Technology		24,500,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds

Authority is granted to the department of administration in the indicated amount for the purpose of constructing a new university of Montana-Missoula college of technology.

Native American Study Center, UM-Missoula	2,500,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds

Authority is granted to the department of administration in the indicated amount for the purpose of constructing the Native American center. This authority augments $3,500,000 of existing authority for this capital improvement.

New Gallery Space, UM-Missoula	6,000,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds

Authority is granted to the department of administration in the indicated amount for the purpose of constructing new gallery space.

New Forestry Complex, UM-Missoula	20,000,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds

Authority is granted to the department of administration in the indicated amount for the purpose of constructing the new forestry complex.

MBMG/Petroleum Building, UM-Tech, Butte	5,400,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds

Authority is granted to the department of administration in the indicated amount for the purpose of constructing the MBMG/petroleum building.

Research Lab Facility, UM-Missoula	3,000,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds

Authority is granted to the department of administration in the indicated amount for the purpose of constructing the research lab facility. Any increase in costs for the operations and maintenance of the research lab facility must be paid by the university of Montana with nonstate revenue.

Law Building ADA Improvements/Renovation/Expansion, UM-Missoula	500,000	

This state money augments $5,000,000 of existing authority for this project.

School of Journalism Building, UM-Missoula	500,000	

This state money augments $12,000,000 of existing authority for this project.

VisComm Black Box Theater, MSU-Bozeman	2,750,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds

Authority is granted to the department of administration in the indicated amount for the purpose of constructing the new viscomm black box theater.

Animal Bioscience Building, MSU-Bozeman	7,500,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds

Authority is granted to the department of administration in the indicated amount for the purpose of constructing the new animal bioscience building. This authority augments $5,000,000 of existing authority for this capital improvement.

Museum of the Rockies, MSU-Bozeman	12,000,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds

Authority is granted to the department of administration in the indicated amount for the purpose of constructing improvements to the museum of the rockies.

Native American Student Center, MSU-Bozeman	8,000,000	Federal Special Revenue, Donations, Grants, and Higher Education Funds

Authority is granted to the department of administration in the indicated amount for the purpose of constructing the new Native American student center.

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

Facility Improvements, Montana State Hospital, Warm Springs	592,523		
Facility Improvements, Montana Developmental Center, Boulder	218,044		
Demolish Abandoned Buildings, Public Health and Human Services	1,741,250		
Stabilize Old Administration Building, Montana Developmental Center, Boulder	179,100		
Housing for High-Risk Behaviors	2,529,290		
Special Care Unit Renovations, Eastern Montana Veterans' Home, Glendive		475,000	State Special Revenue
Facility Renovation and Improvements, Montana Veterans' Home, Columbia Falls		465,000	State Special Revenue
Construct Chapel, Montana State Hospital, Warm Springs		350,000	Donations and Grants

Authority is granted to the department of administration in the indicated amount for the purpose of constructing the chapel at the Montana state hospital in Warm Springs.

DEPARTMENT OF TRANSPORTATION

Equipment Storage Buildings, Statewide	635,000	State Special Revenue
Chiller/Cooling Towers Replacement, Helena Headquarters	350,000	State Special Revenue
Office Addition, Billings	500,000	State Special Revenue

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Replace Clearwater Unit Fire Cache	248,750		

OFFICE OF THE GOVERNOR

Historic and Cultural Properties
Interim Study 20,000

(2) (a) For the purpose of constructing a privately funded chapel at the Montana state hospital in Warm Springs, the department of administration may waive, in whole or in part, the requirements pertaining to:

(i) bidding and bonding for state building projects in Title 18;

(ii) labor requirements in Title 18; and

(iii) contractor registration in Title 39.

(b) The waiver pursuant to subsection (2)(a) may be exercised in the following circumstances:

(i) to obtain the volunteer services and donated materials from members of the public, civic organizations, and other entities;

(ii) to obtain the compensated services of contractors who are donating significant amounts of labor, time, and materials; and

(iii) to meet the terms and conditions for receipt of major sums of money from private or public funding sources, including individual donations.

(3) (a) For the purpose of selling the Jocko fish hatchery to the Confederated Salish and Kootenai tribes and in exchange for constructing and improving the fish hatchery at the Rose Creek hatchery, the department of fish, wildlife, and parks may waive, in whole or in part, the requirements pertaining to:

(i) public bids for land disposal in 87-1-209(3); and

(ii) the real property trust fund in 87-1-601.

(b) The waiver pursuant to subsection (3)(a) may be exercised only under the circumstances described in subsection (3)(a). The waiver does not affect the department's requirement to obtain full market value pursuant to Article X, section 11, of the Montana constitution."

Section 21. Appropriation. There is appropriated from the state general fund to the department of environmental quality for the 2009 biennium $3 million to be used to fund the costs of acquiring, constructing, and installing energy saving equipment, systems, and improvements in existing state buildings, structures, and facilities by the energy conservation program. The funds may be used only to fund projects for which the department of environmental quality determines that energy cost savings from the project will equal or exceed the costs of the project, including the costs of the investment-grade energy audit on and design of the project, within 15 years after installation or construction.

Section 22. Energy conservation repayment account. (1) There is an energy conservation repayment account in the state special revenue fund established in 17-2-102.

(2) There must be deposited in the energy conservation repayment account:

(a) the amount of energy costs saved as a result of the acquisition, installation, and construction of energy saving equipment, systems, or improvements in state buildings, facilities, or structures using general fund appropriations to the energy conservation program until total payments to the account for a project equal the cost of the project, including the cost of the investment grade energy audit on the project and the design of the project; and

(b) interest earned on the account.

(3) Money in the energy conservation repayment account is available to the department of environmental quality by appropriation to fund the costs of the energy conservation program.

Section 23. Repealer. Section 8, Chapter 560, Laws of 2005, is repealed.

Section 24. Codification instruction. (1) [Sections 18 and 19] are intended to be codified as an integral part of Title 2, chapter 17, part 5, and the provisions of Title 2, chapter 17, part 5, apply to [sections 18 and 19].

(2) [Section 22] is intended to be codified as an integral part of Title 90, chapter 4, part 6, and the provisions of Title 90, chapter 4, part 6, apply to [section 22].

Section 25. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 26. Effective date. [This act] is effective on passage and approval.

Approved May 25, 2007

CHAPTER NO. 4

[HB 6]

AN ACT GENERALLY REVISING THE LAWS APPLICABLE TO THE LEGISLATURE AND LEGISLATORS; DEFINING MAJORITY LEADER, MAJORITY PARTY, MINORITY LEADER, AND MINORITY PARTY; PROVIDING OPTIONS FOR APPOINTING LEGISLATORS TO A COMMITTEE, SUBCOMMITTEE, OR OTHER ENTITY; AMENDING SECTIONS 2-2-135, 2-15-212, 2-15-246, 2-15-1019, 2-15-2110, 5-1-103, 5-2-221, 5-5-211, 5-11-101, 5-11-305, 5-12-202, 5-13-202, 5-16-101, 13-37-102, 53-2-1203, 53-10-203, AND 75-6-231, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Terms relating to legislature. (1) Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(a) "Majority leader" means the leader of the majority party, elected by the caucus as provided in 5-2-221.

(b) "Majority party" means the party with the most members in a house of the legislature, subject to subsection (2).

(c) "Minority leader" means the leader of the minority party, elected by the caucus as provided in 5-2-221.

(d) "Minority party" means the party with the second most members in a house of the legislature, subject to subsection (2).

(2) If there are an equal number of members of each party in a house of the legislature, then the majority party is the party of the president of the senate or the speaker of the house and the minority party is the other party with an equal number of members.

Section 2. Appointments. (1) (a) Whenever a legislative appointing authority is required or authorized to appoint more than one legislative member of the majority party to a committee, subcommittee, or other statutorily recognized or authorized entity, the appointing authority may appoint a member of a party other than the majority party.

(b) Whenever a legislative appointing authority is required or authorized to appoint more than one legislative member of the minority party to a committee, subcommittee, other statutorily recognized or authorized entity, the appointing authority may, if requested by the minority leader, appoint a member of a party other than the minority party or majority party instead of a member of the minority party.

(2) (a) Whenever an elected state official, as defined in 5-7-102, is required or authorized to appoint more than one legislative member of the majority party to a statutorily recognized or authorized entity, the elected state official may, if requested by the senate president for a senate appointee or if requested by the speaker of the house for a house appointee, appoint a member of a party other than the majority party instead of a member of the majority party.

(b) Whenever an elected state official, as defined in 5-7-102, is required or authorized to appoint more than one legislative member of the minority party to a statutorily recognized or authorized entity, the elected state official may, if requested by the senate minority leader for a senate appointee or if requested by the house minority leader for a house appointee, appoint a member of a party other than the minority party or majority party instead of a member of the minority party.

(3) If a vacancy occurs in the membership of a committee, subcommittee, or statutorily recognized or authorized entity because of the resignation or disqualification of a member appointed under the provisions of subsection (1) or (2), the appointing authority authorized or required to make an appointment to fill the vacancy is subject to the provisions of subsections (1) and (2).

(4) If an individual appointed under subsection (1) or (2) is not a member of either the majority party or minority party and resigns from or is otherwise disqualified from serving, the appointing authority shall fill the vacancy under the provisions of subsection (1) or (2) as if the appointment were an initial appointment, and the appointing authority is not required to fill the vacancy with an individual who is a member of the same party of which the individual whose resignation or disqualification caused the vacancy.

Section 3. Section 2-2-135, MCA, is amended to read:

"2-2-135. Ethics committees. (1) Each house of the legislature shall establish an ethics committee. ~~The~~ *Subject to [section 2], the* committee must consist of two members of ~~each political~~ *the majority party and two members of the minority* party. The committees may meet jointly. Each committee shall educate members concerning the provisions of this part concerning legislators and may consider conflicts between public duty and private interest as provided in 2-2-112. The joint committee may consider matters affecting the entire legislature.

(2) Pursuant to Article V, section 10, of the Montana constitution, the legislature is responsible for enforcement of the provisions of this part concerning legislators."

Section 4. Section 2-15-212, MCA, is amended to read:

"2-15-212. Reserved water rights compact commission. (1) There is created a reserved water rights compact commission. In negotiations, the commission is acting on behalf of the governor.

(2) ~~Commissioners~~ *Subject to [section 2], commissioners* are appointed as follows:

(a) two members of the house of representatives appointed by the speaker, ~~each from a different political~~ *one from the majority party and one from the minority* party;

(b) two members of the senate appointed by the president, ~~each from a different political~~ *one from the majority party and one from the minority* party;

(c) four members designated by the governor; and

(d) one member designated by the attorney general.

(3) Legislative members of the commission are entitled to receive compensation and expenses as provided in 5-2-301 for each day actually spent on commission business. Other members are entitled to salary and expenses as state employees.

(4) The commission is attached to the department of natural resources and conservation for administrative purposes only, as prescribed in 2-15-121, unless inconsistent with the provisions of Title 85, chapter 2, part 7. A sufficient and appropriate staff must be assigned to serve the commission within the budget established by the legislature. The commission staff is a principal unit within the department, and the commission shall direct and assign the staff.

(5) Members are appointed for 4-year terms and may be reappointed. A legislative member position is vacant if the person no longer serves in the legislature. The position of a member appointed by the governor or attorney general is vacant if that person is elected to the legislature. A vacancy must be filled in the manner of the original appointment."

Section 5. Section 2-15-246, MCA, is amended to read:

"2-15-246. Rail service competition council. (1) There is a rail service competition council consisting of the following members:

(a) the director of the department of agriculture provided for in 2-15-3001;

(b) the director of the department of transportation provided for in 2-15-2501;

(c) the director of the department of revenue provided for in 2-15-1301;

(d) the chief business development officer of the office of economic development provided for in 2-15-218;

(e) six people appointed by the governor with the following qualifications:

(i) one person with substantial knowledge and experience related to Class I railroads;

(ii) one person with substantial knowledge and experience related to Class II railroads;

(iii) one person who is a farm commodity producer in the state of Montana and who has substantial knowledge and experience related to transportation of farm commodities;

(iv) one person with substantial knowledge and experience in the trucking industry in the state of Montana;

(v) one person with substantial knowledge and experience related to transportation for the mineral industry in the state of Montana; and

(vi) one person with substantial knowledge and experience related to transportation for the wood products industry in the state of Montana; and

(f) *subject to [section 2],* two members, one from ~~each political~~ *the majority party and one from the minority* party and one from each house of the legislature, from the economic affairs interim committee established in 5-5-223, selected by the presiding officer of the economic affairs interim committee with the concurrence of the vice presiding officer.

(2) The rail service competition council shall perform the following duties:

(a) promote rail service competition in the state of Montana that results in reliable and adequate service at reasonable rates;

(b) develop a comprehensive and coordinated plan to increase rail service competition in the state of Montana;

(c) reevaluate the state's railroad taxation practices to ensure reasonable competition while minimizing any transfer of tax burden. The reevaluation of the state's railroad taxation practices should include but is not limited to a reevaluation of property taxes, taxes that minimize highway damage, special fuel taxes, and corporate tax rates.

(d) develop various means to assist Montanans impacted by high rates and poor rail service;

(e) analyze the feasibility of developing legal structures to facilitate growth of producer transportation investment cooperatives and rural transportation infrastructure authorities;

(f) provide advice and recommendations to the department of transportation on the department's activities under 60-11-113 through 60-11-116;

(g) coordinate efforts and develop cooperative partnerships with other states and federal agencies to promote rail service competition; and

(h) act as the state's liaison in working with Class I railroads to promote rail service competition.

(3) The council shall cooperate with and report to any standing or interim legislative committee that is assigned to study or has oversight duties for rail service competition issues.

(4) The council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.

(5) The council is attached for administrative purposes only to the governor's office, which may assist the council by providing staff and budgetary, administrative, and clerical services that the council or its presiding officer requests.

(6) Staffing and other resources may be provided to the council only from state and nonstate resources donated to the council and from direct appropriations by each legislature."

Section 6. Section 2-15-1019, MCA, is amended to read:

"2-15-1019. Board of directors of state compensation insurance fund — legislative liaisons. (1) There is a board of directors of the state compensation insurance fund.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may employ its own staff.

(3) The board may provide for its own office space and the office space of the state fund.

(4) The board consists of seven members appointed by the governor. The executive director of the state fund is an ex officio nonvoting member.

(5) At least four of the seven members shall represent state fund policyholders and may be employees of state fund policyholders. At least four members of the board shall represent private, for-profit enterprises. One of the seven members may be a licensed insurance producer. A member of the board may not:

(a) except for the licensed insurance producer member, represent or be an employee of an insurance company that is licensed to transact workers' compensation insurance under compensation plan No. 2; or

(b) be an employee of a self-insured employer under compensation plan No. 1.

(6) A member is appointed for a term of 4 years. The terms of board members must be staggered. A member of the board may serve no more than two 4-year terms. A member shall hold office until a successor is appointed and qualified.

(7) The members must be appointed and compensated in the same manner as members of a quasi-judicial board as provided in 2-15-124, except that the requirement that at least one member be an attorney does not apply.

(8) There must be two legislative liaisons to the board consisting of members of the economic affairs interim committee provided for in 5-5-223. ~~The~~ *Subject to [section 2], the* presiding officer of the economic affairs interim committee shall appoint the liaisons from ~~two separate political parties~~ *the majority party and the minority party* at the first interim committee meeting.

(9) Legislative liaisons shall serve from appointment through each even-numbered calendar year.

(10) A legislative liaison may:

(a) attend board meetings; and

(b) receive board meeting agendas and information relating to agenda items from the staff of the state fund.

(11) Legislative liaisons appointed pursuant to subsection (8) are entitled to compensation and expenses, as provided in 5-2-302, to be paid by the economic affairs interim committee."

Section 7. Section 2-15-2110, MCA, is amended to read:

"2-15-2110. Small business compliance assistance advisory council. (1) There is a small business compliance assistance advisory council.

(2) The council consists of seven members, as follows:

(a) two members that are not owners or representatives of owners of small business stationary sources, appointed by the governor to represent the general public;

(b) four members that are owners or representatives of owners of small business stationary sources and who are not legislators, one to be appointed by the majority *leader* and minority ~~leadership~~ *leader* of the house of

representatives and one to be appointed by the majority *leader* and minority ~~leadership~~ *leader* of the senate; and

(c) one member that is a representative of the department of environmental quality, appointed by the director of that department.

(3) Appointed members shall serve for terms of 3 years.

(4) The provisions of 2-15-122(5) through (8) apply to the council and its members."

Section 8. Section 5-1-103, MCA, is amended to read:

"5-1-103. Vacancy on commission. (1) ~~In the event~~ *If* a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

(2) ~~In the event~~ *If* the appointing authority at the time a vacancy occurs is of ~~the opposite~~ *a different* political party than that of the appointing authority that made the appointment that is vacant, the majority *leader* or minority leader of the same political party as the appointing authority that made the original appointment of the commissioner whose position is vacated shall designate the successor."

Section 9. Section 5-2-221, MCA, is amended to read:

"5-2-221. Officers and employees of the senate and house of representatives. (1) The officers of the senate include a president, a president pro tempore, a majority ~~floor~~ leader, a minority ~~floor~~ leader, a majority whip, and a minority whip.

(2) The officers of the house of representatives include a speaker, a speaker pro tempore, a majority ~~floor~~ leader, a minority ~~floor~~ leader, a majority whip, and a minority whip.

(3) The president and president pro tempore of the senate and the speaker and speaker pro tempore of the house ~~shall~~ *must* be elected by the house of which they are a member.

(4) The majority ~~floor~~ leader, minority ~~floor~~ leader, majority whip, and minority whip of the senate and house ~~shall~~ *must* be elected by their respective caucuses.

(5) A secretary of the senate, sergeant at arms, and chaplain ~~shall~~ *must* be appointed by the president subject to confirmation by the senate, and a chief clerk of the house, sergeant at arms, and chaplain ~~shall~~ *must* be appointed by the speaker subject to confirmation by the house."

Section 10. Section 5-5-211, MCA, is amended to read:

"5-5-211. Appointment and composition of interim committees. (1) Senate interim committee members must be appointed by the committee on committees.

(2) House interim committee members must be appointed by the speaker of the house.

(3) Appointments to interim committees must be made by the time of adjournment of the legislative session.

(4) A legislator may not serve on more than two interim committees unless no other legislator is available or is willing to serve.

(5) (a) Subject to *[section 2] and* subsection (5)(b) *of this section*, the composition of each interim committee must be as follows:

(i) four members of the house, ~~no more than~~ two ~~of whom may be of one political~~ *from the majority party and two from the minority* party; and

(ii) four members of the senate, ~~no more than~~ two ~~of whom may be of one political~~ *from the majority party and two from the minority* party.

(b) If the committee workload requires, the legislative council may request the appointing authority to appoint one or two additional interim committee members from ~~each political~~ *the majority party and the minority* party.

(6) The membership of the interim committees must be provided for by legislative rules. The rules must identify the committees from which members are selected, and the appointing authority shall attempt to select not less than 50% of the members from the standing committees that consider issues within the jurisdiction of the interim committee. In making the appointments, the appointing authority shall take into account term limits of members so that committee members will be available to follow through on committee activities and recommendations in the next legislative session.

(7) An interim committee or the environmental quality council may create subcommittees. Nonlegislative members may serve on a subcommittee. Unless the person is a full-time salaried officer or employee of the state or a political subdivision of the state, a nonlegislative member appointed to a subcommittee is entitled to salary and expenses to the same extent as a legislative member. If the appointee is a full-time salaried officer or employee of the state or of a political subdivision of the state, the appointee is entitled to reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503."

Section 11. Section 5-11-101, MCA, is amended to read:

"5-11-101. Appointment and composition of council. (1) There is a legislative council. Subject to subsection ~~(3)~~ *(2)*, the legislative council consists of:

(a) the speaker of the house, the minority leader of the house, and, *subject to [section 2],* four members chosen by the speaker of the house, ~~no more than~~ two ~~of whom may be of the same political~~ *from the majority party and two from the minority* party; and

(b) the president of the senate, the minority leader of the senate, and, *subject to [section 2],* four members chosen by the committee on committees, ~~no more than~~ two ~~of whom may be of the same political~~ *from the majority party and two from the minority* party.

~~(2) No more than three members of each house may be of the same political party.~~

~~(3)~~*(2)* If a legislator is or would be a member of the legislative council by virtue of a legislative leadership position and the legislator will not serve in the following legislative session because of term limits, the legislator may designate another member of the same house and the same political party to serve on the legislative council in the legislator's place."

Section 12. Section 5-11-305, MCA, is amended to read:

"5-11-305. Legislative council appointments to interstate, international, and intergovernmental entities. (1) Unless otherwise provided by law, the legislative council shall appoint legislators to serve as

members of appropriate interstate, international, and intergovernmental entities.

(2) The president of the senate, the speaker of the house, the minority leader of the senate, and the minority leader of the house may recommend nominees for the legislative council's consideration in making appointments to interstate, international, and intergovernmental entities.

(3) If the legislative council appoints more than one legislator to participate as a member in an interstate, international, or intergovernmental entity, ~~no more than 50% of~~ the number of legislators appointed ~~may be~~ from ~~one political~~ *the majority party and the minority* party *must be equal.*

(4) If funds are available that the legislative council has the authority to expend, the legislative council, as the appropriate funding authority, may authorize that a legislator appointed as a member to an interstate, international, or intergovernmental entity be compensated, as provided in 5-2-302, for salary and expenses associated with participating in an entity-sponsored activity.

(5) If a vacancy occurs in membership to an interstate, international, or intergovernmental entity, appointment to fill the vacancy must be made in the same manner as the original appointment.

(6) The legislative council shall make appointments to any policy committee established by the Pacific Northwest economic region as provided in 5-11-707(2)."

Section 13. Section 5-12-202, MCA, is amended to read:

"5-12-202. Appointment of members. (1) The legislative finance committee consists of:

(a) four members of the senate finance and claims committee appointed by the ~~chairman~~ *presiding officer*;

(b) *subject to [section 2],* two members of the senate appointed at large by the committee on committees;

(c) four members of the house of representatives appropriations committee appointed by the ~~chairman~~ *presiding officer*; and

(d) *subject to [section 2],* two members of the house appointed at large by the speaker.

(2) These members ~~shall~~ *must* be appointed before the end of each legislative session. ~~No more than three~~ *Three* members of each house, two committee members and one at-large member, ~~may~~ *must* be from the ~~same political~~ *majority party and the other three members appointed from that house must be from the minority* party."

Section 14. Section 5-13-202, MCA, is amended to read:

"5-13-202. Appointment and term of members — officers — vacancies. (1) The legislative audit committee consists of six members of the senate and six members of the house of representatives appointed before the end of each regular session in the same manner as standing committees of the respective houses are appointed. ~~No more than three~~ *Subject to [section 2], three* of the appointees of each house ~~may~~ *must* be members of the ~~same political~~ *majority party and three of the appointees of each house must be members of the minority* party.

(2) A member of the committee shall serve until the member's term of office as a legislator ends or until a successor is appointed, whichever occurs first.

(3) The committee shall elect one of its members as presiding officer and other officers as it considers necessary.

(4) A vacancy on the committee occurring when the legislature is not in session ~~shall~~ *must* be filled by the selection of a member of the legislature by the remaining members of the committee. If there is a vacancy on the committee at the beginning of a legislative session because a member's term of office as a legislator has ended, a member of the same political party must be appointed in the same manner as the original appointment, no later than the 10th legislative day, to serve until a successor is appointed under subsection (1)."

Section 15. Section 5-16-101, MCA, is amended to read:

"5-16-101. Appointment and composition. The environmental quality council consists of 17 members as follows:

(1) the governor or the governor's designated representative is an ex officio member of the council and shall participate in council meetings as a nonvoting member;

(2) six members of the senate and six members of the house of representatives appointed before the 50th legislative day in the same manner as standing committees of the respective houses are appointed. ~~No more than three~~ *Subject to [section 2], three* of the appointees of each house ~~may~~ *must* be members of the ~~same political~~ *majority party and three appointees of each house must be members of the minority* party.

(3) four members of the general public. Two public members must be appointed by the speaker of the house with the consent of the house minority leader, and two must be appointed by the president of the senate with the consent of the senate minority leader."

Section 16. Section 13-37-102, MCA, is amended to read:

"13-37-102. Creation of office — removal. (1) There is a commissioner of political practices who is appointed by the governor, subject to confirmation by a majority of the senate. A four-member selection committee composed of the speaker of the house, the president of the senate, and the minority ~~floor~~ leaders of both houses of the legislature shall submit to the governor a list of not less than two or more than five names of individuals for the governor's consideration. A majority of the members of the selection committee shall agree upon each nomination.

(2) The individual selected to serve as commissioner may be removed by the governor prior to the expiration of the term only for incompetence, malfeasance, or neglect of duty. The governor's decision to remove the commissioner must be stated in writing, and the sufficiency of the governor's stated causes for removing the commissioner is subject to judicial review."

Section 17. Section 53-2-1203, MCA, is amended to read:

"53-2-1203. State workforce investment board — membership — duties. (1) There is a state workforce investment board.

(2) The state board consists of:

(a) the governor or a person designated by the governor to act on behalf of the governor;

(b) *subject to [section 2],* two members of the house of representatives, ~~each~~ *one* from ~~a different political~~ *the majority party and one from the minority* party, and two members of the senate, ~~each~~ *one* from ~~a different political~~ *the majority party and one from the minority* party, appointed by the presiding officer of each respective chamber; and

(c) individuals appointed by the governor, including:

(i) representatives of businesses located in Montana who:

(A) are owners of businesses, chief executive or operating officers, and other business executives or employers with optimum policymaking or hiring authority, including business members of local boards; and

(B) represent businesses with employment opportunities that reflect the employment opportunities in Montana;

(ii) chief elected officials of local government;

(iii) representatives of labor organizations;

(iv) representatives of individuals and organizations who have experience with respect to youth activities;

(v) representatives of individuals and organizations who have experience and expertise in the delivery of workforce investment activities;

(vi) representatives of the state agencies who are responsible for the programs and activities that are carried out by the one-stop centers, including but not limited to:

(A) the department of labor and industry;

(B) the department of public health and human services;

(C) the office of the commissioner of higher education; and

(D) the office of public instruction; and

(vii) other representatives that the governor may designate.

(3) The selection and appointment of members of the state board must follow the nominating provisions of section 111 of the Act (29 U.S.C. 2821).

(4) The governor shall appoint enough individuals described in subsection (2)(c)(i) so that those persons compose a majority of the membership of the state board.

(5) The governor shall consider the special needs of Montana's hard-to-serve Indian population and the state's relationship with tribal governments when making appointments to the state board.

(6) The state board shall perform the functions described in section 111 of the Act (29 U.S.C. 2821)."

Section 18. Section 53-10-203, MCA, is amended to read:

"53-10-203. Commission on provider rates and services. (1) The department shall form an advisory commission to be known as the commission on provider rates and services to provide information to the department concerning provider services, costs, and reimbursement rates. The commission membership must include a maximum of 15 individuals representing providers, consumers of provider services, and family members of consumers and is as follows:

(a) at least three providers;

(b) at least three of a combination of consumers of provider services and family members of consumers;

(c) two employees of the department;

(d) one representative from the legislative fiscal division;

(e) one representative from the governor's office on budget and program planning;

(f) *subject to [section 2],* one member ~~of each~~ of the ~~two major political parties~~ *majority party and one member of the minority party* of the house of representatives; and

(g) *subject to [section 2],* one member ~~of each~~ of the ~~two major political parties~~ *majority party and one member of the minority party* of the senate.

(2) Except as provided in this section, the commission is subject to the provisions of 2-15-122.

(3) Except as provided in this section, members shall serve for a term of 2 years and may be reappointed by the appointing authority for one additional term. A member appointed to fill an unexpired term may be appointed for an additional two terms. The appointing authority shall stagger the first terms of the first board to terms of 2 to 4 years. Members appointed to represent state departments, offices, or other state bodies may be appointed and reappointed as the department determines necessary.

(4) The commission shall elect a presiding officer and vice presiding officer and by vote determine its rules of operation. The commission shall meet at the call of the presiding officer, who shall determine meeting times in consultation with the department.

(5) The commission is allocated to the department for administrative purposes only as provided in 2-15-121."

Section 19. Section 75-6-231, MCA, is amended to read:

"75-6-231. Intended use plan — advisory committee. (1) The department shall prepare an annual intended use plan for the state that meets the requirements of section 300j-12(b) of the federal act, ~~(~~42 U.S.C. 300j-12(b)~~)~~.

(2) The intended use plan must include:

(a) a list of projects in the state that are eligible for assistance, including both the priority assigned to each project based on public health needs and on the financial needs of the project and, to the extent known, the expected funding schedule for each project; and

(b) a description of the funds to be allocated to activities under 75-6-212 and 75-6-221(2) and funds to be transferred to or received by the water pollution control state revolving fund, as allowed in 75-6-211(5), for the annual fiscal period following publication of the intended use plan.

(3) Before finalizing an intended use plan, the department shall prepare a draft document containing the information required in subsection (2) and shall provide public notice and opportunity to comment on the draft document.

(4) (a) Following the public comment period provided for in subsection (3) and any department modifications to the intended use plan resulting from the public comment, a summary of the public comment and the intended use plan must be presented for review, comment, and recommendations to an advisory committee formed by the department and consisting of six individuals from the

following entities appointed by their respective presiding officers, directors, or executive officials:

(i) one member from the Montana league of cities and towns;

(ii) one member from the Montana association of counties;

(iii) one member from the department of natural resources and conservation;

(iv) one member from the department of environmental quality; and

(v) two members from the legislature. One member must be from the house of representatives and one from the senate, and *subject to [section 2],* ~~they may not represent~~ *one must be from* the ~~same political~~ *majority party and one must be from the minority* party.

(b) The advisory committee is attached to the department for administrative purposes only.

(5) The department shall address in writing any comments and recommendations provided by the advisory committee provided for in subsection (4) before finalizing an intended use plan and prior to awarding any contracts under 75-6-212(1)(g)."

Section 20. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 2, and the provisions of Title 1, chapter 1, part 2, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 5, chapter 5, part 2, and the provisions of Title 5, chapter 5, part 2, apply to [section 2].

Section 21. Effective date. [This act] is effective on passage and approval.

Section 22. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to appointments made for members of the 60th legislature.

Approved May 25, 2007

CHAPTER NO. 5

[HB 2]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 2009; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [This act] may be cited as "The General Appropriations Act of 2007".

Section 2. First level expenditures. The agency and program appropriation tables in the legislative fiscal analyst narrative accompanying this bill, showing first level expenditures and funding for the 2009 biennium, are adopted as legislative intent.

Section 3. Severability. If any section, subsection, sentence, clause, or phrase of [this act] is for any reason held unconstitutional, the decision does not affect the validity of the remaining portions of [this act].

Section 4. Appropriation control. An appropriation item designated "Biennial" may be spent in either year of the biennium. An appropriation item

designated "Restricted" may be used during the biennium only for the purpose designated by its title and as presented to the legislature. An appropriation item designated "One Time Only" or "OTO" may not be included in the present law base for the 2011 biennium. The office of budget and program planning shall establish a separate appropriation on the statewide accounting, budgeting, and human resource system for any item designated "Biennial", "Restricted", "One Time Only", or "OTO". The office of budget and program planning shall establish at least one appropriation on the statewide accounting, budgeting, and human resource system for any appropriation that appears as a separate line item in [this act].

Section 5. Program definition. As used in [this act], "program" has the same meaning as defined in 17-7-102, is consistent with the management and accountability structure established on the statewide accounting, budgeting, and human resource system, and is identified as a major subdivision of an agency ordinally numbered with an Arabic numeral.

Section 6. Personal services funding — 2011 biennium. (1) Except as provided in subsection (2), present law and new proposal funding budget requests for the 2011 biennium submitted under Title 17, chapter 7, part 1, by each executive, judicial, and legislative branch agency must include funding of first level personal services separate from funding of other expenditures. The funding of first level personal services by accounting entity or equivalent for each fiscal year must be shown at the fourth reporting level or equivalent in the budget request for the 2011 biennium submitted by October 30 to the legislative fiscal analyst by the office of budget and program planning.

(2) The provisions of subsection (1) do not apply to the Montana university system.

Section 7. Totals not appropriations. The totals shown in [this act] are for informational purposes only and are not appropriations.

Section 8. Effective date. [This act] is effective July 1, 2007.

Section 9. Appropriations. The following money is appropriated for the respective fiscal years:

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
A. GENERAL GOVERNMENT AND TRANSPORTATION											
LEGISLATIVE BRANCH (1104)											
1. Legislative Services (20) (Biennial)											
5,425,156	864,666	0	0	0	6,289,822	5,696,835	337,059	0	0	0	6,033,894
a. Technology Allowance for Legislators (Biennial)											
75,000	0	0	0	0	75,000	0	0	0	0	0	0
b. TVMT (Restricted/Biennial/OTO)											
200,000	0	0	0	0	200,000	0	0	0	0	0	0
2. Legislative Committees and Activities (21) (Biennial)											
610,825	0	0	0	0	610,825	383,648	0	0	0	0	383,648
a. Interim Study on Mental Health (Biennial/OTO)											
200,000	0	0	0	0	200,000	0	0	0	0	0	0
3. Fiscal Analysis and Review (27) (Biennial)											
1,461,210	0	0	0	0	1,461,210	1,506,824	0	0	0	0	1,506,824
a. Government Performance Training (Restricted/Biennial/OTO)											
18,900	0	0	0	0	18,900	0	0	0	0	0	0
4. Audit and Examination (28) (Biennial)											
2,169,731	1,650,570	0	0	0	3,820,301	2,249,562	1,579,822	0	0	0	3,829,384
Total											
10,160,822	2,515,236	0	0	0	12,676,058	9,836,869	1,916,881	0	0	0	11,753,750
CONSUMER COUNSEL (1112)											
1. Administration Program (01)											
0	1,236,461	0	0	0	1,236,461	0	1,250,977	0	0	0	1,250,977
a. Contingency Reserve (Restricted)											
0	250,000	0	0	0	250,000	0	250,000	0	0	0	250,000

	Fiscal 2008					Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total											
0	1,486,461	0	0	0	1,486,461	0	1,500,977	0	0	0	1,500,977
JUDICIARY (2110)											
1. Supreme Court Operations (01)											
7,792,574	110,042	125,380	0	0	8,027,996	7,902,444	110,042	125,879	0	0	8,138,365
a. Legislative Audit (Restricted/Biennial)											
44,288	0	0	0	0	44,288	0	0	0	0	0	0
b. Drug Treatment Courts (Restricted/Biennial)											
597,500	0	0	0	0	597,500	747,500	0	0	0	0	747,500
~~c. Report on Progress Toward Measurable Goals and Objectives (Restricted/OTO)~~											
~~2,500~~	~~0~~	~~0~~	~~0~~	~~0~~	~~2,500~~	~~2,500~~	~~0~~	~~0~~	~~0~~	~~0~~	~~2,500~~
d. Self-Help Law Program (Restricted/Biennial/OTO)											
252,500	0	0	0	0	252,500	252,500	0	0	0	0	252,500
2. Boards and Commissions (02)											
254,673	25,006	0	0	0	279,679	255,080	25,006	0	0	0	280,086
a. Judicial Standards (Restricted/Biennial)											
25,000	0	0	0	0	25,000	0	0	0	0	0	0
3. Law Library (03)											
846,721	0	0	0	0	846,721	870,328	0	0	0	0	870,328
4. District Court Operations (04)											
22,917,999	253,447	0	0	0	23,171,446	23,052,167	253,447	0	0	0	23,305,614
a. District Court Safety and Security (OTO)											
300,000	0	0	0	0	300,000	0	0	0	0	0	0
5. Water Courts Supervision (05)											
0	1,383,541	0	0	0	1,383,541	0	1,386,782	0	0	0	1,386,782
6. Clerk of Court (06)											

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
417,922	0	0	0	0	417,922	419,705	0	0	0	0	419,705
Total											
33,451,677	1,772,036	125,380	0	0	35,349,093	33,502,224	1,775,277	125,879	0	0	35,403,380

Funds in Drug Treatment Courts may be used only to provide grants to drug treatment courts and for up to one full-time administrator, ongoing review of the operations of drug treatment courts, and the development of policies necessary to administer the provision of grants to drug treatment courts. ~~Funding includes $2,500 a year for the preparation of reports to the legislative finance committee on the program's measurable goals and objectives and achievement of those goals and objectives. If reports are not received by the legislative finance committee by December 31, 2007, and June 30, 2008, the fiscal year 2009 appropriation is reduced by $2,500.~~

~~Report on Progress Toward Measurable Goals and Objectives is funding for a semiannual report to the legislative finance committee of the following:~~

~~(1) progress toward the goals presented to the 2007 legislature in the agency's template; and~~

~~(2) attainment of measurable objectives as outlined in the agency's template presented to the 2007 legislature.~~

~~If the reports are not received by the legislative finance committee by December 31, 2007, and June 30, 2008, the fiscal year 2009 appropriation is void.~~

Funds in Self-Help Law Program may be used only to provide and support the development, maintenance, and availability of self-help legal forms and instructions regarding civil legal proceedings in Montana's courts; the development of curriculum and materials suitable for classes and clinics about civil legal proceedings and forms; the development, updating, and provision of information and training materials for judges, clerks of court, other court officers, judicial branch employees, and volunteers about self-help legal resources and how to assist self-represented litigants in a manner that is impartial, facilitates effective and efficient court operations, and does not constitute providing direct legal representation; the establishment and maintenance of multimedia materials that provide information about Montana's civil laws, courts, rules, legal forms, and available legal resources; coordination, recruitment, and training of volunteer attorneys to provide legal advice and direct legal representation to persons with civil legal needs who are unable to pay for those services; and coordination and cooperation with other access to justice efforts.

GOVERNOR'S OFFICE (3101)

1. Executive Office Program (01)

2,188,748	0	0	0	0	2,188,748	2,201,741	0	0	0	0	2,201,741

a. Marketing Montana and Business Recruitment (Biennial)

300,000	0	0	0	0	300,000	300,000	0	0	0	0	300,000

~~b. Agency's Goals and Objectives Reporting (Restricted)~~

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
~~2,500~~	~~0~~	~~0~~	~~0~~	~~0~~	~~2,500~~	~~2,500~~	~~0~~	~~0~~	~~0~~	~~0~~	~~2,500~~
2. Executive Residence Operations (02)											
94,461	0	0	0	0	94,461	95,191	0	0	0	0	95,191
a. Reauthorize Governor's Residence (OTO)											
25,000	0	0	0	0	25,000	25,000	0	0	0	0	25,000
3. Air Transportation Program (03)											
289,072	6,800	0	0	0	295,872	289,557	6,800	0	0	0	296,357
a. Aircraft Engine Purchase (Restricted/OTO)											
0	0	0	0	0	0	630,000	0	0	0	0	630,000
4. Office of Budget and Program Planning (04)											
1,525,167	0	0	0	0	1,525,167	1,546,586	0	0	0	0	1,546,586
a. Legislative Audit (Restricted/Biennial)											
15,817	0	0	0	0	15,817	0	0	0	0	0	0
5. Indian Affairs (05)											
152,006	0	0	0	0	152,006	152,528	0	0	0	0	152,528
6. Centralized Services (06)											
269,271	0	0	0	0	269,271	270,148	0	0	0	0	270,148
a. Legislative Audit (Restricted/Biennial)											
34,798	0	0	0	0	34,798	0	0	0	0	0	0
b. Computer Replacement (Restricted/OTO)											
17,100	0	0	0	0	17,100	35,800	0	0	0	0	35,800
7. Lieutenant Governor (12)											
322,088	0	0	0	0	322,088	323,579	0	0	0	0	323,579
8. Citizens' Advocate Office (16)											
68,675	21,000	0	0	0	89,675	68,844	21,000	0	0	0	89,844
9. Mental Disabilities Board of Visitors (20)											
352,452	0	0	0	0	352,452	354,074	0	0	0	0	354,074

	Fiscal 2008						Fiscal 2009				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total											
5,657,155	27,800	0	0	0	5,684,955	6,295,548	27,800	0	0	0	6,323,348

~~Agency's Goals and Objectives Reporting provides funding for a report to the legislative finance committee relevant to:~~

~~(1) progress from July 1, 2007, through May 1, 2008, toward the goals of creating 1,160 new jobs over the 2009 biennium, 12 out-of-state visitations each year, 2 overseas visits each year, and creating 3 Montana ambassador satellite units each year through the marketing Montana and business recruitment program;~~

~~(2) progress from July 1, 2007, through May 1, 2008, toward the goal of achieving 30% more businesses operating in Montana in each of the cluster areas, including life sciences, information technology, creative enterprise, aerospace, agri-food, and wood-based products, through the office of economic development;~~

~~(3) progress from July 1, 2007, through May 1, 2008, toward the goals of meeting once each month with each of the seven recognized tribal governments in Montana, identifying issues for legislative consideration in the 2009 session, such as unemployment and dropout rates for Native Americans, and endeavoring to resolve the class III gaming dispute with affected tribal governments by June 30, 2009, through the coordinator of Indian affairs.~~

~~If the reports are not received by the legislative finance committee by June 30, 2008, the fiscal year 2009 appropriation is void.~~

SECRETARY OF STATE (3201)

1. Business and Government Services (01)

a. Help America Vote Act (Restricted/Biennial/OTO)

0	0	1,040,000	0	0	1,040,000	0	0	0	0	0	0
Total											
0	0	1,040,000	0	0	1,040,000	0	0	0	0	0	0

COMMISSIONER OF POLITICAL PRACTICES (3202)

1. Administration (01)

341,548	0	0	0	0	341,548	343,411	0	0	0	0	343,411

a. Legislative Audit (Restricted/Biennial)

6,960	0	0	0	0	6,960	0	0	0	0	0	0

b. Online Lobbyist and Candidate Registration and Filing (Restricted/Biennial/OTO)

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
123,338	0	0	0	0	123,338	46,575	0	0	0	0	46,575
c. Campaign Violation Investigator Reporting (Restricted)											
58,852	0	0	0	0	58,852	59,199	0	0	0	0	59,199
d. Additional Legal Costs (OTO)											
77,500	0	0	0	0	77,500	77,500	0	0	0	0	77,500
e. Constituent Services Account											
5,300	0	0	0	0	5,300	21,000	0	0	0	0	21,000
f. Broadcast Campaign Advertising Material and Affidavit											
4,400	0	0	0	0	4,400	0	0	0	0	0	0
Total											
617,898	0	0	0	0	617,898	547,685	0	0	0	0	547,685

~~Online Lobbyist and Candidate Registration and Filing includes $100 in general fund money in each fiscal year for an annual report to the legislative finance committee for the following:~~

~~(1) progress toward the goals of easy-to-use electronic filing for candidates, committees, lobbyists, and principals, providing a convenient method for the public to access this data, and reduction of errors in the reports filed with the commissioner of political practices from July 1, 2007, through May 1, 2008; and~~

~~(2) attainment of the performance criteria as outlined in the project charter and timeline presented to the joint appropriations subcommittee on general government and transportation from July 1, 2007, through May 1, 2008.~~

~~If the report is not received by the legislative finance committee by June 30, 2008, the fiscal year 2009 general fund appropriation is reduced by $100.~~

Constituent Services Account funding is contingent upon passage and approval of House Bill No. 462 of the 2007 regular session.

OFFICE OF THE STATE AUDITOR (3401)

1. Central Management (01)											
0	636,773	0	0	0	636,773	0	640,132	0	0	0	640,132
a. Legislative Audit (Restricted/Biennial)											
0	6,580	0	0	0	6,580	0	0	0	0	0	0

	Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
~~b. Agency's Goals and Objectives Reporting (Restricted)~~											
~~2,500~~	~~0~~	~~0~~	~~0~~	~~0~~	~~2,500~~	~~2,500~~	~~0~~	~~0~~	~~0~~	~~0~~	~~2,500~~
2. Insurance Program (03)											
0	3,241,591	0	0	0	3,241,591	0	3,258,747	0	0	0	3,258,747
a. Legislative Audit (Restricted/Biennial)											
0	27,553	0	0	0	27,553	0	0	0	0	0	0
b. Insurance Contract Examinations (Restricted)											
0	334,995	0	0	0	334,995	0	357,330	0	0	0	357,330
c. Insure Montana (Reporting)											
0	10,921,329	0	0	0	10,921,329	0	10,924,619	0	0	0	10,924,619
d. Captive Insurance Program (Restricted)											
0	60,300	0	0	0	60,300	0	56,940	0	0	0	56,940
e. MCHA (Restricted)											
0	824,173	0	0	0	824,173	0	925,614	0	0	0	925,614
3. Securities (04)											
0	725,683	0	0	0	725,683	0	729,037	0	0	0	729,037
a. Legislative Audit (Restricted/Biennial)											
0	6,991	0	0	0	6,991	0	0	0	0	0	0
b. Securities Contract Examinations (Restricted)											
0	80,000	0	0	0	80,000	0	80,500	0	0	0	80,500
Total											
2,500	16,865,968	0	0	0	16,868,468	2,500	16,972,919	0	0	0	16,975,419

~~Agency's Goals and Objectives Reporting provides funding for a report to the legislative finance committee relevant to goals presented to the appropriations subcommittee on general government and transportation of the 2007 legislature in the agency's and programs' templates and the decision package narratives presented in the legislative budget analysis 2009 biennium for present law decision package 5. The report must address the following:~~

~~(1) progress toward the goals; and~~

	Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
~~(2) measurable objectives that will be used to measure the goals.~~											

~~If the reports are not received by the legislative finance committee by August 15, 2007, and June 30, 2008, the fiscal year 2009 appropriation is void.~~

Captive Insurance Program funding may be used only when the number of captive insurance companies registered with the office of the state auditor reaches 30.

DEPARTMENT OF TRANSPORTATION (5401)

1. General Operations Program (01) (Biennial)												
0	21,586,371	1,595,405	0	0	23,181,776	0	22,354,124	1,595,442	0	0	23,949,566
a. Legislative Audit (Restricted/Biennial)												
0	145,517	0	0	0	145,517	0	0	0	0	0	0
b. Software Upgrade (OTO)												
0	51,000	0	0	0	51,000	0	0	0	0	0	0
c. Surface Transportation Litigation (Restricted/Biennial/OTO)												
3,000,000	0	0	0	0	3,000,000	0	0	0	0	0	0
d. ACS Contract (Restricted)												
0	234,449	0	0	0	234,449	0	256,151	0	0	0	256,151
~~e. Agency's Goals and Objectives Reporting (Restricted)~~												
~~2,500~~	~~0~~	~~0~~	~~0~~	~~0~~	~~2,500~~	~~2,500~~	~~0~~	~~0~~	~~0~~	~~0~~	~~2,500~~
2. Construction Program (02) (Biennial)												
0	88,609,834	271,116,523	0	0	359,726,357	0	83,112,488	278,076,978	0	0	361,189,466
3. Maintenance Program (03) (Biennial)												
0	100,141,928	7,342,830	0	0	107,484,758	0	99,899,592	7,342,830	0	0	107,242,422
a. House Bill No. 531 (OTO)												
0	25,342	0	0	0	25,342	0	0	0	0	0	0
4. Motor Carrier Services Division (22)												
0	6,763,340	1,661,058	0	0	8,424,398	0	6,781,670	2,641,182	0	0	9,422,852
a. House Bill No. 556 (Biennial/OTO)												

	Fiscal 2008						Fiscal 2009				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	20,000	0	0	0	20,000	0	0	0	0	0	0
5. Aeronautics Program (40)											
0	1,120,988	1,706,951	0	0	2,827,939	0	877,685	34,229	0	0	911,914
a. Aeronautics Grants (Biennial)											
0	800,000	0	0	0	800,000	0	0	0	0	0	0
b. Airport Pavement Preservation (Biennial)											
0	250,000	0	0	0	250,000	0	0	0	0	0	0
c. Lincoln Airport Development (Biennial)											
0	14,994	300,006	0	0	315,000	0	0	0	0	0	0
d. Airport/Aeronautics Loans (Biennial)											
0	400,000	0	0	0	400,000	0	400,000	0	0	0	400,000
6. Transportation Planning Division (50) (Biennial)											
0	6,699,712	19,518,868	0	0	26,218,580	0	6,948,872	19,997,462	0	0	26,946,334
a. Highway Traffic Safety Section 408 (OTO)											
0	208,040	791,673	0	0	999,713	0	208,055	791,728	0	0	999,783
Total											
3,002,500	227,071,515	304,033,314	0	0	534,107,329	2,500	220,838,637	310,479,851	0	0	531,320,988

~~Agency's Goals and Objectives Reporting provides funding for a report to the legislative finance committee relevant to goals and objectives presented to the appropriations subcommittee on general government and transportation of the 2007 legislature in the agency's and programs' templates and the decision package narratives presented in the legislative budget analysis 2009 biennium for present law decision package 1503 and new proposal decision packages 2204, 5001, and 5004. The report must address the following:~~

~~(1) progress toward the goals; and~~

~~(2) attainment of measurable objectives.~~

~~If the report is not received by June 30, 2008, $2,500 of general fund money in fiscal year 2009 for Agency's Goals and Objectives Reporting is void.~~

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The department may adjust appropriations in the general operations, construction, maintenance, and transportation planning programs between state special revenue and federal special revenue funds if the total state special revenue authority for these programs is not increased by more than 10% of the total appropriations established by the legislature for each program.

All federal special revenue appropriations in the department are biennial.

All state special revenue appropriations in the general operations, construction, maintenance, and transportation planning programs are biennial.

All remaining federal pass-through grant appropriations for highway traffic safety, including reversions, for the 2007 biennium are authorized to continue and are appropriated in fiscal year 2008 and fiscal year 2009.

DEPARTMENT OF REVENUE (5801)

1. Director's Office (01)											
4,652,529	85,287	200	143,435	0	4,881,451	4,396,278	81,486	0	139,611	0	4,617,375
a. Legislative Audit (Restricted/Biennial)											
182,878	0	600	0	0	183,478	0	0	0	0	0	0
b. Compliance — Legal (OTO)											
23,550	0	0	0	0	23,550	0	0	0	0	0	0
c. Fulfill Statutory Responsibilities (OTO)											
300,000	0	0	0	0	300,000	0	0	0	0	0	0
d. House Bill No. 680											
136,245	0	0	0	0	136,245	136,372	0	0	0	0	136,372
e. House Bill No. 680 One-Time Costs (OTO)											
7,850	0	0	0	0	7,850	0	0	0	0	0	0
2. Information Technology and Processing (02)											
11,749,483	229,522	132,000	95,621	0	12,206,626	11,825,747	231,295	132,000	95,621	0	12,284,663
a. Senate Bill No. 439											
6,085	0	0	0	0	6,085	3,585	0	0	0	0	3,585
b. Senate Bill No. 439 One-Time Costs (OTO)											

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
300,000	0	0	0	0	300,000	0	0	0	0	0	0
c. Tax Administration (OTO)											
2,000,000	0	0	0	0	2,000,000	2,000,000	0	0	0	0	2,000,000
3. Liquor Control Division (03)											
0	0	0	1,776,746	0	1,776,746	0	0	0	1,779,709	0	1,779,709
a. Liquor System Reforms											
0	0	0	100,040	0	100,040	0	0	0	87,361	0	87,361
b. Senate Bill No. 296											
0	0	0	34,436	0	34,436	0	0	0	28,384	0	28,384
4. Citizen Services and Resource Management (05)											
1,685,667	106,785	0	44,133	0	1,836,585	1,690,615	108,585	0	44,133	0	1,843,333
a. Citizen Services (Restricted)											
121,380	0	0	0	0	121,380	121,380	0	0	0	0	121,380
5. Business and Income Taxes Division (07)											
9,608,750	399,871	272,017	0	0	10,280,638	9,702,219	395,458	272,017	0	0	10,369,694
a. House Bill No. 680											
38,951	0	0	0	0	38,951	38,982	0	0	0	0	38,982
b. House Bill No. 680 One-Time Costs (OTO)											
3,925	0	0	0	0	3,925	0	0	0	0	0	0
c. Senate Bill No. 439											
125,245	0	0	0	0	125,245	126,141	0	0	0	0	126,141
d. Senate Bill No. 439 One-Time Costs (OTO)											
11,800	0	0	0	0	11,800	0	0	0	0	0	0
6. Property Assessment Division (08)											
18,061,932	50,000	0	0	0	18,111,932	18,175,259	50,000	0	0	0	18,225,259
a. Maintain Parcel Count Caseload (OTO)											
52,333	0	0	0	0	52,333	0	0	0	0	0	0

	Fiscal 2008						Fiscal 2009				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. Reappraisal GIS Staff (OTO)											
210,280	0	0	0	0	210,280	104,250	0	0	0	0	104,250
Total											
49,278,883	871,465	404,817	2,194,411	0	52,749,576	48,320,828	866,824	404,017	2,174,819	0	51,766,488

~~Fulfill Statutory Responsibilities includes funding for a report to the legislative finance committee relevant to goals and objectives presented to the appropriations subcommittee on general government and transportation of the 2007 legislature in the agency's and programs' templates and the decision package narratives presented in the legislative budget analysis 2009 biennium for present law decision packages 201, 701, 802, 1011, 7013, 7019, and 8012 and new proposal decision package 301. The report must address the following:~~

~~(1) progress toward the goals; and~~

~~(2) attainment of measurable objectives.~~

~~If the report is not received by June 30, 2008, Fulfill Statutory Responsibilities is reduced by $5,000 in general fund money in fiscal year 2009.~~

If Senate Bill No. 439 of the 2007 regular session is not passed and approved, Senate Bill No. 439 and Senate Bill No. 439 One-Time Costs are void.

Liquor System Reforms is contingent upon passage and approval of Senate Bill No. 127 of the 2007 regular session.

Liquor control division proprietary funds necessary to maintain adequate inventories, pay freight charges, and transfer profit and taxes to appropriate accounts are appropriated from the liquor enterprise fund (06005) to the department in amounts not to exceed $103 million in fiscal year 2008 and $112 million in fiscal year 2009.

If the department is unable to meet statutory service levels because of the increase in demand for liquor products, the department may hire additional temporary employees or pay overtime, whichever is determined to be the most cost-effective, to maintain required service levels to stores. In fiscal year 2008 and in fiscal year 2009, the department is appropriated not more than $40,000 each year for additional costs from the liquor enterprise fund (06005) to meet the service level requirements.

In the liquor division, upon a termination that requires a payout of accrued leave balances, liquor control division proprietary funds are appropriated from the liquor enterprise fund (06005) to the department in the amount equal to the payout of the accrued leave balances, not to exceed $40,000 for each of fiscal years 2008 and 2009.

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
DEPARTMENT OF ADMINISTRATION (6101)											
1. Governor-Elect Program (02)											
0	0	0	0	0	0	50,000	0	0	0	0	50,000
2. Administrative Financial Services Division (03)											
1,676,909	1,587	87,293	49,620	0	1,815,409	1,685,718	1,587	87,333	49,669	0	1,824,307
a. Legislative Audit (Restricted/Biennial)											
41,676	0	0	0	0	41,676	0	0	0	0	0	0
b. Laptop Computer Replacement (OTO)											
10,000	0	0	0	0	10,000	0	0	0	0	0	0
c. SABHRS Licensing Costs (OTO)											
800,000	0	0	0	0	800,000	0	0	0	0	0	0
~~d. Agency's Goals and Objectives Reporting (Restricted)~~											
~~2,500~~	~~0~~	~~0~~	~~0~~	~~0~~	~~2,500~~	~~2,500~~	~~0~~	~~0~~	~~0~~	~~0~~	~~2,500~~
3. Architecture and Engineering Program (04)											
0	1,701,735	0	0	0	1,701,735	0	1,711,729	0	0	0	1,711,729
a. Legislative Audit (Restricted/Biennial)											
0	1,500	0	0	0	1,500	0	0	0	0	0	0
4. General Services Program (06)											
2,462,688	66,794	0	0	0	2,529,482	2,557,916	66,925	0	0	0	2,624,841
a. Senate Bill No. 4											
0	29,978	0	0	0	29,978	0	30,009	0	0	0	30,009
5. Information Technology Services Division (07)											
643,375	1,383,562	0	0	0	2,026,937	642,216	1,379,403	0	0	0	2,021,619
a. Geographic Coordinate Database (Biennial)											
0	0	800,000	0	0	800,000	0	0	0	0	0	0
b. Supercomputer Center Study (Biennial/OTO)											
275,000	0	0	0	0	275,000	0	0	0	0	0	0

	Fiscal 2008					Fiscal 2009				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
c. House Bill No. 27											
82,222	0	0	0	0	82,222	79,447	0	0	0	0	79,447
6. Banking and Financial Division (14)											
0	3,237,384	0	0	0	3,237,384	0	3,309,917	0	0	0	3,309,917
a. Legislative Audit (Restricted/Biennial)											
0	3,297	0	0	0	3,297	0	0	0	0	0	0
b. License Mortgage Lenders											
0	202,885	0	0	0	202,885	0	271,137	0	0	0	271,137
7. Montana State Lottery (15)											
0	0	0	7,472,170	0	7,472,170	0	0	0	7,483,259	0	7,483,259
a. Legislative Audit (Restricted/Biennial)											
0	0	0	102,223	0	102,223	0	0	0	0	0	0
8. Health Care and Benefits Division (21)											
0	41,349	0	0	0	41,349	0	43,115	0	0	0	43,115
a. Workers' Compensation Cost Containment (Restricted/OTO)											
387,690	0	0	0	0	387,690	379,679	0	0	0	0	379,679
9. State Personnel Division (23)											
1,024,538	0	0	0	0	1,024,538	1,030,802	0	0	0	0	1,030,802
10. State Tax Appeal Board (37)											
393,386	0	0	0	0	393,386	395,839	0	0	0	0	395,839
Total											
7,799,984	6,670,071	887,293	7,624,013	0	22,981,361	6,824,117	6,813,822	87,333	7,532,928	0	21,258,200

~~Agency's Goals and Objectives Reporting provides funding for a report to the legislative finance committee relevant to goals and objectives presented to the appropriations subcommittee on general government and transportation of the 2007 legislature in the agency's and programs' templates. The report must address the following:~~

~~(1) progress toward the goals; and~~

	Fiscal 2008						Fiscal 2009				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

~~(2) attainment of measurable objectives.~~

~~If the report is not received by June 30, 2008, $2,500 of general fund money in fiscal year 2009 for Agency's Goals and Objectives Reporting is void.~~

If Senate Bill No. 4 of the 2007 regular session is not passed and approved, Senate Bill No. 4 is void.

The department is appropriated up to $500,000 of state special revenue each year of the biennium to assist agencies in reducing workers' compensation injuries and costs. These funds may not be expended for activities that duplicate other agency expenditures or programs.

MONTANA CONSENSUS COUNCIL (6106)

1. Montana Consensus Council (01)											
75,632	116,071	0	0	0	191,703	76,507	116,646	0	0	0	193,153
a. Legislative Audit (Restricted/Biennial)											
0	376	0	0	0	376	0	0	0	0	0	0
~~b. Agency's Goals and Objectives Reporting (Restricted)~~											
~~2,500~~	~~0~~	~~0~~	~~0~~	~~0~~	~~2,500~~	~~2,500~~	~~0~~	~~0~~	~~0~~	~~0~~	~~2,500~~
Total											
78,132	116,447	0	0	0	194,579	79,007	116,646	0	0	0	195,653

~~Agency's Goals and Objectives Reporting provides funding for a report to the legislative finance committee relevant to goals and objectives presented to the appropriations subcommittee on general government and transportation of the 2007 legislature in the agency's template. The report must address the following:~~

~~(1) progress toward the goals; and~~

~~(2) attainment of measurable objectives.~~

~~If the report is not received by June 30, 2008, $2,500 of general fund money in fiscal year 2009 for Agency's Goals and Objectives Reporting is void.~~

OFFICE OF STATE PUBLIC DEFENDER (6108)

1. Office of State Public Defender (01)

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
18,121,225	75,000	0	0	0	18,196,225	18,023,670	75,000	0	0	0	18,098,670
a. SB 547 — Sexual Offender Caseload											
45,600	0	0	0	0	45,600	45,600	0	0	0	0	45,600
b. SB 104 — Extend Statute of Limitations Certain Sex Crimes Caseload											
141,000	0	0	0	0	141,000	141,000	0	0	0	0	141,000
c. HB 629 — Mediation for Criminal Proceedings											
30,000	0	0	0	0	30,000	30,000	0	0	0	0	30,000
d. Caseload Transition (Restricted/Biennial/OTO)											
500,000	0	0	0	0	500,000	500,000	0	0	0	0	500,000
2. Office of Appellate Defender (02)											
574,400	0	0	0	0	574,400	575,454	0	0	0	0	575,454
Total											
19,412,225	75,000	0	0	0	19,487,225	19,315,724	75,000	0	0	0	19,390,724
TOTAL SECTION A											
129,461,776	257,471,999	306,490,804	9,818,424	0	703,243,003	124,727,002	250,904,783	311,097,080	9,707,747	0	696,436,612

General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		Fiscal 2008						Fiscal 2009			

B. HEALTH AND HUMAN SERVICES

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES (6901)

1. Human and Community Services Division (02)											
27,471,115	1,396,131	190,961,616	0	0	219,828,862	27,533,235	1,400,969	200,229,161	0	0	229,163,365
a. Energy Assistance/Conservation (Biennial/OTO)											
0	0	1,600,000	0	0	1,600,000	0	0	0	0	0	0
b. Tri-State Housing Grant (Biennial)											
0	0	966,000	0	0	966,000	0	0	0	0	0	0
c. Child Care for Working Caretaker Relative (Restricted/OTO)											
0	0	683,784	0	0	683,784	0	0	683,784	0	0	683,784
d. Work Training Program (Restricted)											
0	0	504,436	0	0	504,436	0	0	504,436	0	0	504,436
e. Human and Community Services Division/Reporting											
216,581	0	307,656	0	0	524,237	263,227	0	262,072	0	0	525,299
f. Ombudsman Funding — Warm Hearts/Homes (Restricted/OTO)											
300,000	0	0	0	0	300,000	300,000	0	0	0	0	300,000
g. Low-Income Energy Assistance (Biennial/OTO)											
1,000,000	0	0	0	0	1,000,000	0	0	0	0	0	0
h. Child Care FPI, Market Rate, Caseload											
1,741,650	0	0	0	0	1,741,650	2,428,000	0	0	0	0	2,428,000
2. Child and Family Services Division (03)											
26,020,218	2,421,218	28,117,261	0	0	56,558,697	27,608,616	2,421,269	29,311,493	0	0	59,341,378
a. CFSD Overtime (Restricted)											
124,021	0	82,838	0	0	206,859	124,021	0	82,838	0	0	206,859
b. Replacement of Computers and Equipment (Restricted)											
52,273	0	34,848	0	0	87,121	52,273	0	34,848	0	0	87,121
c. Mental Health Case Management Increase (Restricted/OTO)											

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
187,500	0	62,500	0	0	250,000	187,500	0	62,500	0	0	250,000
d. Federal Law Change for Kin Care Providers (Restricted)											
86,000	0	0	0	0	86,000	86,000	0	0	0	0	86,000
e. Additional Field Staff/Report											
447,161	0	298,107	0	0	745,268	588,433	0	392,288	0	0	980,721
f. Targeted Case Management Federal Law Change (Restricted/OTO)											
1,800,000	0	0	0	0	1,800,000	1,800,000	0	0	0	0	1,800,000
g. Therapeutic Group Homes/Family Foster Care (Restricted)											
300,000	0	0	0	0	300,000	300,000	0	0	0	0	300,000
h. Child and Family Services/Reporting											
1,907,931	0	419,306	0	0	2,327,237	1,916,106	0	421,081	0	0	2,337,187
i. Direct Care Worker Wage Increase (Restricted)											
314,937	0	134,974	0	0	449,911	314,937	0	134,974	0	0	449,911
j. Provider Rate Increase (Restricted)											
199,153	0	175,956	0	0	375,109	556,300	0	368,627	0	0	924,927
3. Director's Office (04)											
2,676,136	256,542	6,192,940	0	0	9,125,618	2,681,679	257,088	6,201,063	0	0	9,139,830
a. Administration/Reporting											
191,881	56,701	243,859	0	0	492,441	196,820	58,160	250,137	0	0	505,117
b. Health Insurance Flexibility Accountability Waiver											
0	0	15,027,480	0	0	15,027,480	0	0	15,027,554	0	0	15,027,554
c. MMIS & MH Systems Analysis (Restricted/Biennial/OTO)											
200,000	0	600,000	0	0	800,000	0	0	0	0	0	0
4. Child Support Enforcement Division (05)											
1,545,664	1,602,945	4,491,239	0	0	7,639,848	1,553,250	1,606,036	3,978,142	0	0	7,137,428
a. Child Support Enforcement Rent Increase (Restricted)											
37,686	0	73,156	0	0	110,842	40,879	0	79,353	0	0	120,232

	Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. Child Support Deficit Reduction Act (Restricted/OTO)											
1,620,765	0	0	0	0	1,620,765	2,154,589	0	0	0	0	2,154,589
c. Child Support Enforcement DRA Fee (Restricted)											
187,025	0	0	0	0	187,025	187,025	0	0	0	0	187,025
d. Child Support Enforcement/Reporting											
158,108	124,822	549,216	0	0	832,146	158,717	125,303	551,334	0	0	835,354
5. Business and Financial Services Division (06)											
2,597,297	907,864	3,338,931	0	0	6,844,092	2,577,985	906,007	3,302,130	0	0	6,786,122
a. Legislative Audit (Restricted/Biennial)											
140,107	7,873	168,362	0	0	316,342	0	0	0	0	0	0
b. Business and Financial Services/Reporting											
1,022,403	0	943,976	0	0	1,966,379	1,025,730	0	947,050	0	0	1,972,780
6. Public Health and Safety Division (07)											
2,160,101	12,362,673	31,352,459	0	0	45,875,233	2,088,724	12,400,190	31,382,999	0	0	45,871,913
a. WIC IT Purchase and Modification System (Biennial/OTO)											
290,000	0	0	0	0	290,000	0	0	0	0	0	0
b. Lab Equipment Replacement and Maintenance (Biennial/OTO)											
45,000	100,000	0	0	0	145,000	45,000	100,000	0	0	0	145,000
c. Newborn Screening Followup Program (Restricted)											
0	129,522	37,410	0	0	166,932	0	290,000	74,710	0	0	364,710
d. Tobacco Prevention Activities (Restricted)											
0	630,000	0	0	0	630,000	0	630,000	0	0	0	630,000
e. Division Administration/Reporting											
202,946	261,889	797,913	0	0	1,262,748	203,849	263,055	801,507	0	0	1,268,411
f. FCSS Spending Authority for Pool Inspections											
0	60,000	0	0	0	60,000	0	60,000	0	0	0	60,000
g. Chronic Disease Program (Restricted)											

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	2,700,000	0	0	0	2,700,000	0	2,700,000	0	0	0	2,700,000
h. Public Health Emergency Preparedness											
0	0	9,997,550	0	0	9,997,550	0	0	10,004,991	0	0	10,004,991
i. Youth Suicide Prevention Program											
0	0	400,000	0	0	400,000	0	0	400,000	0	0	400,000
j. Family Planning Services (Restricted/OTO)											
536,523	0	0	0	0	536,523	536,523	0	0	0	0	536,523
k. Genetics Program Funding											
0	279,616	0	0	0	279,616	0	288,004	0	0	0	288,004
l. Additional Genetic Program Funding (Restricted)											
0	200,000	0	0	0	200,000	0	200,000	0	0	0	200,000
m. HPV Vaccine (Restricted/OTO)											
0	0	0	0	0	0	0	400,000	0	0	0	400,000
n. Grants to County Health Boards in Counties With Proliferation of Tremolite Asbestos-Related Diseases (Restricted/Biennial/OTO)											
750,000	0	0	0	0	750,000	750,000	0	0	0	0	750,000
o. Asbestos-Related Diseases Administration (Restricted/OTO)											
41,729	0	0	0	0	41,729	33,199	0	0	0	0	33,199
7. Quality Assurance Division (08)											
2,177,435	99,474	5,556,277	0	0	7,833,186	2,190,938	99,985	5,578,130	0	0	7,869,053
a. Additional Lien and Estate Recovery Costs (OTO)											
0	91,540	91,540	0	0	183,080	0	91,540	91,540	0	0	183,080
b. Division Administration/Reporting											
141,500	35,000	0	0	0	176,500	141,630	35,000	0	0	0	176,630
c. PERM (Restricted)											
115,295	0	206,863	0	0	322,158	136,805	0	249,156	0	0	385,961
8. Technology Services Division (09)											
7,300,319	714,202	10,721,453	0	0	18,735,974	7,378,252	720,260	10,802,365	0	0	18,900,877

	Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. CAPS System Facilities Management Increase (Restricted/OTO)											
61,618	0	48,414	0	0	110,032	61,618	0	48,414	0	0	110,032
b. Ongoing Support for CHIMES (Restricted/Biennial/OTO)											
114,046	0	114,046	0	0	228,092	0	0	0	0	0	0
c. Technology Services Division/Reporting											
47,356	0	66,107	0	0	113,463	47,442	0	66,228	0	0	113,670
9. Disability Services Division (10)											
47,684,186	3,688,590	84,555,565	0	0	135,928,341	48,186,509	4,157,517	85,499,415	0	0	137,843,441
a. MDC Base Adjustments (Biennial)											
440,146	0	0	0	0	440,146	450,299	0	0	0	0	450,299
b. DD Crisis Funding											
120,000	0	0	0	0	120,000	120,000	0	0	0	0	120,000
c. MTAP New Technologies (Restricted/Biennial)											
0	1,065,000	0	0	0	1,065,000	0	0	0	0	0	0
d. Disability Services Division/Reporting											
1,518,215	0	1,880,896	0	0	3,399,111	1,522,962	0	1,886,777	0	0	3,409,739
e. DD Wait List Reduction (Restricted)											
500,000	0	1,093,372	0	0	1,593,372	500,000	0	1,082,278	0	0	1,582,278
f. Direct Care Worker Wage Increase (Restricted)											
1,050,088	0	1,668,390	0	0	2,718,478	1,055,431	0	1,663,047	0	0	2,718,478
g. Provider Rate Increase (Restricted)											
91,422	0	1,916	0	0	93,338	246,847	0	3,866	0	0	250,713
h. VR Tuition Increases											
44,359	0	163,897	0	0	208,256	56,237	0	207,786	0	0	264,023
i. Montana Youth Leadership Forum											
50,000	0	0	0	0	50,000	50,000	0	0	0	0	50,000
j. VR Transition Counselor											

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
55,283	0	0	0	0	55,283	51,884	0	0	0	0	51,884
10. Health Resources Division (11)											
123,698,117	19,947,092	341,190,786	0	0	484,835,995	134,719,465	19,749,092	367,644,813	0	0	522,113,370
a. Health Resources Division Administration/Reporting											
232,550	12,726	281,657	0	0	526,933	234,655	12,841	284,208	0	0	531,704
b. Direct Care Worker Wage Increase (Restricted)											
18,036	300,000	695,142	0	0	1,013,178	19,050	300,000	694,128	0	0	1,013,178
c. Provider Rate Increase (Restricted)											
0	1,620,277	2,100,682	0	0	3,720,959	1,222,681	1,646,566	4,247,683	0	0	7,116,930
d. Hospital Utilization Fee (Restricted)											
0	17,503,843	38,222,192	0	0	55,726,035	0	20,324,595	44,183,150	0	0	64,507,745
e. Family Planning Waiver (OTO)											
348,297	0	2,743,296	0	0	3,091,593	347,669	0	2,742,669	0	0	3,090,338
f. Prescription Drug Discount Program (Restricted)											
0	1,389,441	0	0	0	1,389,441	0	2,037,846	0	0	0	2,037,846
g. Equalize Campus-Based Rates (Restricted)											
23,785	0	69,943	0	0	93,728	54,261	0	159,558	0	0	213,819
h. Raise Physician Reimbursement (Restricted)											
0	0	0	0	0	0	520,306	0	1,522,928	0	0	2,043,234
i. Medicaid Eligibility for Pregnant Women to 150% (Restricted)											
0	943,117	2,061,397	0	0	3,004,514	0	1,216,532	2,646,701	0	0	3,863,233
j. Revise Medically Needy Income Level (Restricted)											
371,647	0	1,092,864	0	0	1,464,511	743,295	0	2,175,611	0	0	2,918,906
k. Big Sky Rx Premium Assistance (Restricted/Biennial)											
0	9,674,920	0	0	0	9,674,920	0	0	0	0	0	0
11. Senior and Long-Term Care Division (22)											
49,716,245	26,362,789	150,312,122	0	0	226,391,156	48,920,555	26,746,393	149,755,971	0	0	225,422,919

	Fiscal 2008						Fiscal 2009					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Senior and Long-Term Care Administration/Reporting												
	156,811	48,394	145,629	0	0	350,834	158,226	48,845	146,942	0	0	354,013
b. County Nursing Home Intergovernmental Transfer (Restricted)												
	0	3,030,598	6,028,599	0	0	9,059,197	0	3,786,730	7,488,860	0	0	11,275,590
c. IGT Offset (Restricted/Biennial)												
	1,189,272	0	0	0	0	1,189,272	1,600,000	0	0	0	0	1,600,000
d. Aging Services (Restricted)												
	371,647	0	0	0	0	371,647	371,647	0	0	0	0	371,647
e. EMVH Resident Bus Replacement (OTO)												
	0	40,000	0	0	0	40,000	0	0	0	0	0	0
f. MVH Facility Upgrades (OTO)												
	0	165,000	0	0	0	165,000	0	165,000	0	0	0	165,000
g. EMVH Fire Alarm System (OTO)												
	0	15,000	0	0	0	15,000	0	0	0	0	0	0
h. MVH Contingency Fund (Restricted)												
	0	250,000	0	0	0	250,000	0	250,000	0	0	0	250,000
i. Direct Care Worker Wage Increase (Restricted)												
	1,152,035	1,330,136	5,425,352	0	0	7,907,523	1,155,706	1,334,373	5,417,444	0	0	7,907,523
j. Provider Rate Increase (Restricted)												
	123,083	1,555,760	3,398,230	0	0	5,077,073	2,012,199	1,578,443	6,867,306	0	0	10,457,948
k. Aging Services (OTO)												
	1,500,000	0	0	0	0	1,500,000	1,500,000	0	0	0	0	1,500,000
l. Resource Facilitation Service — Traumatic Brain Injury (Restricted/OTO)												
	0	0	0	0	0	0	0	100,000	0	0	0	100,000
m. Healthcare for Healthcare Workers (Restricted)												
	0	0	0	0	0	0	814,900	0	1,772,906	0	0	2,587,806
12. Addictive and Mental Disorders Division (33)												

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
51,366,876	8,472,424	46,078,800	0	0	105,918,100	52,864,079	8,575,352	47,747,122	0	0	109,186,553
a. Addictive/Mental Disorders Administration/Reporting											
477,886	169,817	512,013	0	0	1,159,716	484,739	170,487	514,470	0	0	1,169,696
b. Direct Care Worker Wage Increase (Restricted)											
224,964	0	491,711	0	0	716,675	225,681	0	490,994	0	0	716,675
c. Behavioral Health Inpatient Facility (Restricted/OTO)											
0	0	0	0	0	0	3,000,000	0	3,263,417	0	0	6,263,417
d. Mental Health Drop-In Centers (Restricted)											
371,647	0	0	0	0	371,647	371,647	0	0	0	0	371,647
e. Suicide Prevention (Restricted)											
400,000	0	0	0	0	400,000	400,000	0	0	0	0	400,000
f. Services for Mentally Ill Offenders (Restricted)											
371,647	0	0	0	0	371,647	371,647	0	0	0	0	371,647
g. Expand Mental Health Services Plan (Restricted)											
2,601,531	0	0	0	0	2,601,531	2,601,531	0	0	0	0	2,601,531
h. Provider Rate Increase (Restricted)											
160,525	327,689	730,386	0	0	1,218,600	680,487	362,087	1,539,439	0	0	2,582,013
i. Mentally Ill Offender Drugs (Restricted/Biennial/OTO)											
950,000	0	0	0	0	950,000	0	0	0	0	0	0
j. 72-Hour Crisis Eligibility (Restricted)											
1,861,245	0	171,525	0	0	2,032,770	1,860,334	0	172,436	0	0	2,032,770
k. Methamphetamine Treatment (Restricted)											
2,000,000	0	0	0	0	2,000,000	2,000,000	0	0	0	0	2,000,000
l. MHSP Drugs (Biennial)											
0	6,305,210	0	0	0	6,305,210	0	0	0	0	0	0
m. Community Liaison Officers (Restricted)											
0	129,522	0	0	0	129,522	0	145,000	0	0	0	145,000

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
n. Service Area Authority Grants (Restricted)											
115,000	0	0	0	0	115,000	115,000	0	0	0	0	115,000
Total											
377,886,025	128,785,357	1,006,484,835	0	0	1,513,156,217	399,859,231	117,760,565	1,064,146,830	0	0	1,581,766,626

Human and Community Services Division

Funding for Child Care for Working Caretaker Relative may be expended only by the human and community services division for child care assistance for working grandparents or caretaker relatives providing care for children in place of their parents.

Funding for Work Training Program includes $504,436 of TANF block grant funds each year of the biennium. Funds may be expended only by TANF work contractors to support additional employment and training activities, including antipoverty efforts that enhance the work capacity of TANF recipients.

~~Included in Human and Community Services Division/Reporting is $200 in general fund money each year for a semiannual report to the legislative finance committee and the children, families, health, and human services interim committee for the following:~~

~~(1) progress toward the goals presented to the joint appropriations subcommittee on health and human services in the division's final template; and~~

~~(2) attainment of measurable objectives as outlined in the division's final template presented to the joint appropriations subcommittee on health and human services.~~

~~If the reports are not received by the legislative finance committee by December 31, 2007, and June 30, 2008, the fiscal year 2009 general fund appropriation is reduced by $200.~~

Ombudsman Funding—Warm Hearts/Warm Homes may be expended only for activities related to the ombudsman function.

Child and Family Services Division

Funding for CFSD Overtime may be expended only in support of CFSD staff overtime costs.

Funding for Replacement of Computers and Equipment may be expended only to replace child and family services division computers and equipment.

	Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Funding for Mental Health Case Management Increase for the child and family services division may be expended only for mental health case management services. Funding is contingent upon revisions to centers for medicare and medicaid services (CMS) federal regulations that disallow federal reimbursement to the state for case management services for children in foster care.

Funding for Federal Law Change for Kin Care Providers may be expended only by the CFSD to replace lost federal funding for administrative activities associated with children in unlicensed foster care homes.

~~The appropriation for Additional Field Staff/Report includes funding for reports to the children, families, health, and human services interim committee showing the dates on which new staff were hired, areas of service, and measurements included in the division's goals and objectives.~~

Funding for Targeted Case Management Federal Law Change may be expended only by the child and family services division to replace federal funds for targeted case management services that are eliminated by the federal Deficit Reduction Act of 2005.

Funding for Therapeutic Group Homes/Family Foster Care may be expended only by the CFSD to implement changes in federal medicaid policy related to federal funding for therapeutic services.

~~Included in Child and Family Services/Reporting is $200 in general fund money each year for a semiannual report to the legislative finance committee and the children, families, health, and human services interim committee for the following:~~

~~(1) progress toward the goals presented to the joint appropriations subcommittee on health and human services in the division's final template; and~~

~~(2) attainment of measurable objectives as outlined in the division's final template presented to the joint appropriations subcommittee on health and human services.~~

~~If the reports are not received by the legislative finance committee by December 31, 2007, and June 30, 2008, the fiscal year 2009 general fund appropriation is reduced by $200.~~

Funds in Direct Care Worker Wage Increase may be used only to raise direct care worker wages and related benefits through an increase in provider rates. Funds in Direct Care Worker Wage Increase may not be used to offset any other wage increase mandated by any other laws, contracts, or written agreements, which will go into effect at the same time as or after implementation of the appropriation included in Direct Care Worker Wage Increase. To the extent of available appropriations, the department's contracts with group homes and shelters must require them to raise the lowest paid direct care workers to $8.50 an hour and to raise related benefits, and the remaining balance must be used to raise wages and related benefits of all direct care workers. The department shall increase the model rate matrix for group and shelter homes. Child and Family Services/Reporting includes funding for a semiannual report for the legislative finance committee and the children, families, health, and human services interim committee summarizing direct care wage rates.

Funds in Provider Rate Increase may be used only to raise provider rates.

	Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Provider Rate Increase will be implemented starting October 1, 2007.

~~**Director's Office**~~

~~Included in Administration/Reporting is $200 in general fund money each year for a semiannual report to the legislative finance committee and the children, families, health, and human services interim committee for the following:~~

~~(1) progress toward the goals presented to the joint appropriations subcommittee on health and human services in the division's final template; and~~

~~(2) attainment of measurable objectives as outlined in the division's final template presented to the joint appropriations subcommittee on health and human services.~~

~~If the reports are not received by the legislative finance committee by December 31, 2007, and June 30, 2008, the fiscal year 2009 general fund appropriation is reduced by $200.~~

Child Support Enforcement Division

Funding for Child Support Enforcement Rent Increase may be expended only for increases in rent for CSED office space located in Helena and for regional offices in Butte, Billings, Great Falls, and Missoula.

Funding for Child Support Deficit Reduction Act may be expended only to replace federal funding from the elimination of the incentive funds match and the reduction of the federal match allowed for child support paternity testing services. Funds may be expended in the historical expenditure categories.

Funding for Child Support Enforcement DRA Fee may be expended only for the federally mandated $25 fee according to the percentage split of the fee of 66% federal and 34% state.

~~Included in Child Support Enforcement/Reporting is $200 in general fund money each year for a semiannual report to the legislative finance committee and the children, families, health, and human services interim committee for the following:~~

~~(1) progress toward the goals presented to the joint appropriations subcommittee on health and human services in the division's final template; and~~

~~(2) attainment of measurable objectives as outlined in the division's final template presented to the joint appropriations subcommittee on health and human services.~~

	Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

~~If the reports are not received by the legislative finance committee by December 31, 2007, and June 30, 2008, the fiscal year 2009 general fund appropriation is reduced by $200.~~

~~**Business and Financial Services Division**~~

~~Included in Business and Financial Services/Reporting is $200 in general fund money each year for a semiannual report to the legislative finance committee and the children, families, health, and human services interim committee for the following:~~

~~(1) progress toward the goals presented to the joint appropriations subcommittee on health and human services in the division's final template; and~~

~~(2) attainment of measurable objectives as outlined in the division's final template presented to the joint appropriations subcommittee on health and human services.~~

~~If the reports are not received by the legislative finance committee by December 31, 2007, and June 30, 2008, the fiscal year 2009 general fund appropriation is reduced by $200.~~

Public Health and Safety Division

Tobacco Prevention Activities includes $90,000 each year of the biennium for each of the seven Montana tribes. The funding must be used for tribal tobacco use prevention programs that meet the same requirements as other community-based contractors providing tobacco use prevention programs.

~~Included in Division Administration/Reporting is $200 in general fund money each year for a semiannual report to the legislative finance committee and the children, families, health, and human services interim committee for the following:~~

~~(1) progress toward the goals presented to the joint appropriations subcommittee on health and human services in the division's final template; and~~

~~(2) attainment of measurable objectives as outlined in the division's final template presented to the joint appropriations subcommittee on health and human services.~~

~~If the reports are not received by the legislative finance committee by December 31, 2007, and June 30, 2008, the fiscal year 2009 general fund appropriation is reduced by $200.~~

~~Funding for Asbestos-Related Diseases Administration includes funding for an annual report to the children, families, health, and human services interim committee on the number of participants assisted through the grant program, the amount of funding needed by each participant, and the estimated funding needed to pay future costs of participants.~~

	Fiscal 2008					Fiscal 2009				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

~~**Quality Assurance Division**~~

~~Included in Division Administration/Reporting is $200 in general fund money each year for a semiannual report to the legislative finance committee and the children, families, health, and human services interim committee for the following:~~

~~(1) progress toward the goals presented to the joint appropriations subcommittee on health and human services in the division's final template; and~~

~~(2) attainment of measurable objectives as outlined in the division's final template presented to the joint appropriations subcommittee on health and human services.~~

~~If the reports are not received by the legislative finance committee by December 31, 2007, and June 30, 2008, the fiscal year 2009 general fund appropriation is reduced by $200.~~

Technology Services Division

Funding for CAPS System Facilities Management Increase may be expended only for the child and adult protective services CAPS contract for an increase in cost of living and level of effort.

Funding for the Ongoing Support for CHIMES may be expended only for platform costs, lease payments, maintenance of servers, and operating system support associated with the new combined health information and medicaid eligibility system (CHIMES).

~~Included in Technology Services Division/Reporting is $200 in general fund money each year for a semiannual report to the legislative finance committee and the children, families, health, and human services interim committee for the following:~~

~~(1) progress toward the goals presented to the joint appropriations subcommittee on health and human services in the division's final template; and~~

~~(2) attainment of measurable objectives as outlined in the division's final template presented to the joint appropriations subcommittee on health and human services.~~

~~If the reports are not received by the legislative finance committee by December 31, 2007, and June 30, 2008, the fiscal year 2009 general fund appropriation is reduced by $200.~~

	Fiscal 2008						Fiscal 2009					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Disability Services Division

Funding for MTAP New Technologies includes $1,065,000 in biennial state special revenue in fiscal year 2008 for the Montana telecommunications access program that is contingent upon passage of federal communication commission regulations requiring states to pay for new technologies related to video relay service (VRS) and internet protocol relay (IP). Funding for MTAP New Technologies may be expended only to replace federal funds for VRS and IP services.

~~Included in Disability Services Division/Reporting is $200 in general fund money each year for a semiannual report to the legislative finance committee and the children, families, health, and human services interim committee for the following:~~

~~(1) progress toward the goals presented to the joint appropriations subcommittee on health and human services in the division's final template; and~~

~~(2) attainment of measurable objectives as outlined in the division's final template presented to the joint appropriations subcommittee on health and human services.~~

~~If the reports are not received by the legislative finance committee by December 31, 2007, and June 30, 2008, the fiscal year 2009 general fund appropriation is reduced by $200.~~

Funding for DD Wait List Reduction may be expended only for developmental disabilities community services for persons who are on the waiting list and currently not receiving community services and for persons who are receiving some community services and are in need of further services.

Funds in Direct Care Worker Wage Increase may be used only to raise direct care worker wages and related benefits through an increase in provider rates. Funds in Direct Care Worker Wage Increase may not be used to offset any other wage increase mandated by any other laws, contracts, or written agreements, which will go into effect at the same time as or after implementation of the appropriation included in Direct Care Worker Wage Increase. Funds in Direct Care Worker Wage Increase must be used first to raise the lowest paid direct care workers up to $8.50 an hour and to raise related benefits, and the remaining balance may be used only to raise wages and related benefits of all direct care workers. To the extent of available appropriations, the department shall provide documentation that these funds are used solely for direct care worker wage and related benefits increases. The documentation must include initial wage rates, wage rates after the rate increases have been applied, and wage rates every 6 months after the rate increases have been granted. ~~Disability Services Division/Reporting includes funding for a semiannual report for the legislative finance committee and the children, families, health, and human services interim committee summarizing direct care wage rates.~~

Funds in Provider Rate Increase may be used only to raise provider rates.

Provider Rate Increase will be implemented starting October 1, 2007.

	Fiscal 2008						Fiscal 2009					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Health Resources Division

~~Included in Health Resources Division Administration/Reporting is $200 in general fund money each year for a semiannual report to the legislative finance committee and the children, families, health, and human services interim committee for the following:~~

~~(1) progress toward the goals presented to the joint appropriations subcommittee on health and human services in the division's final template; and~~

~~(2) attainment of measurable objectives as outlined in the division's final template presented to the joint appropriations subcommittee on health and human services.~~

~~If the reports are not received by the legislative finance committee by December 31, 2007, and June 30, 2008, the fiscal year 2009 general fund appropriation is reduced by $200.~~

Funds in Direct Care Worker Wage Increase may be used only to raise direct care worker wages and related benefits through an increase in provider rates. Funds in Direct Care Worker Wage Increase may not be used to offset any other wage increase mandated by any other laws, contracts, or written agreements, which will go into effect at the same time as or after implementation of the appropriation included in Direct Care Worker Wage Increase. Funds in Direct Care Worker Wage Increase must be used first to raise the lowest paid direct care workers to $8.50 an hour and to raise related benefits, and the remaining balance may be used only to raise wages and related benefits of all direct care workers. To the extent of available appropriations, the department shall provide documentation that these funds are used solely for direct care worker wage and related benefits increases. The documentation must include initial wage rates, wage rates after the rate increases have been applied, and wage rates every 6 months after the rate increases have been granted. ~~Health Resources Division Administration/Reporting includes funding for a semiannual report for the legislative finance committee and the children, families, health, and human services interim committee summarizing direct care wage rates.~~

Funds in Provider Rate Increase may be used only to raise provider rates.

Provider Rate Increase will be implemented starting October 1, 2007.

Hospital Utilization Fee is dependent upon passage and approval of Senate Bill No. 118 of the 2007 regular session. Funds in Hospital Utilization Fee may be used only for rate increases for medicaid services provided by hospitals.

Funds in Equalize Campus-Based Rates may be used only to raise medicaid rates for campus-based therapeutic youth group home providers as long as that level of care continues. Otherwise, the funds may be used to raise medicaid rates for therapeutic group home services.

Raise Physician Reimbursement may be used only to increase medicaid rates paid for physician services.

	Fiscal 2008						Fiscal 2009					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Funds in Medicaid Eligibility for Pregnant Women to 150% may be used only to provide medicaid services for infants up to 1 year of age and for pregnant women with incomes between 133% and 150% of the federal poverty index.

Revise Medically Needy Income Level may be used only to increase the amount of income that is disregarded in determining eligibility for medicaid for the medically needy category of eligibility.

Big Sky Rx Premium Assistance may be used only to pay all or a portion of the monthly premium payment for part d drug assistance for low-income persons who are eligible for medicare as allowed by 53-6-1201(3)(b).

Senior and Long-Term Care Division

~~Included in Senior and Long-Term Care Administration/Reporting is $200 in general fund money each year for a semiannual report to the legislative finance committee and the children, families, health, and human services interim committee for the following:~~

~~(1) progress toward the goals presented to the joint appropriations subcommittee on health and human services in the division's final template; and~~

~~(2) attainment of measurable objectives as outlined in the division's final template presented to the joint appropriations subcommittee on health and human services.~~

~~If the reports are not received by the legislative finance committee by December 31, 2007, and June 30, 2008, the fiscal year 2009 general fund appropriation is reduced by $200.~~

County Nursing Home Intergovernmental Transfer may be used only to make one-time payments to nursing homes based on the number of medicaid services provided.

Funds in IGT Offset may be used as medicaid matching funds for nursing home services and home-based services for aged and physically disabled persons only if the county nursing home intergovernmental transfer program is not sufficient to reimburse county nursing homes a net payment of at least $5 a day for medicaid services and other nursing homes a net payment of at least $2 a day for medicaid services. IGT Offset must be used only to fund a shortfall in the amount of county funds transferred as part of the county nursing home intergovernmental transfer program that is appropriated as state match for medicaid nursing home and home-based services.

Funds in Aging Services may be used only to expand community-based aging services.

Funding in Montana Veterans' Home Contingency Fund may be used only if federal and private revenue available from federal special revenue and private payment state special revenue appropriations in fiscal year 2008 or fiscal year 2009 are insufficient to operate the homes at capacity to maximize collection of federal and private payments. The office of budget and program planning shall notify the legislative finance committee when the appropriation will be used.

	Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Funds in Direct Care Worker Wage Increase may be used only to raise direct care worker wages and related benefits through an increase in provider rates. Funds in Direct Care Worker Wage Increase may not be used to offset any other wage increase mandated by any other laws, contracts, or written agreements, which will go into effect at the same time as or after implementation of the appropriation included in Direct Care Worker Wage Increase. Funds in Direct Care Worker Wage Increase must be used first to raise the certified nurse aide and personal care attendant direct care worker wages and benefits to $8.50 an hour, including related benefits. Any remaining funds may be used only to raise wages, and related benefits, up to $0.70 an hour for direct care workers and other low-paid staff. To the extent of available appropriations, the department shall provide documentation that these funds are used solely for direct care worker wage and related benefits increases. The documentation must include initial wage rates, wage rates after the rate increases have been applied, and wage rates every 6 months after the rate increases have been granted. ~~Senior and Long-Term Care Administration/Reporting includes funding for a semiannual report for the legislative finance committee and the children, families, health, and human services interim committee summarizing direct care wage rates.~~

Funds in Provider Rate Increase may be used only to raise provider rates.

Resource Facilitation Service—Traumatic Brain Injury may be used only to fund community-based entities that assist persons with a traumatic brain injury to access services that aid recovery from their injuries.

Healthcare for Healthcare Workers may be used only for provider rate increases for contractors that provide in-home services administered by the senior and long-term care division and receive the majority of their income for those services from the medicaid program.

Addictive and Mental Disorders Division

~~Included in Addictive/Mental Disorders Administration/Reporting is $200 in general fund money each year for a semiannual report to the legislative finance committee and children, families, health, and human services interim committee for the following:~~

~~(1) progress toward the goals presented to the joint appropriations subcommittee on health and human services in the division's final template; and~~

~~(2) attainment of measurable objectives as outlined in the division's final template presented to the joint appropriations subcommittee on health and human services.~~

~~If the reports are not received by the legislative finance committee by December 31, 2007, and June 30, 2008, the fiscal year 2009 general fund appropriation is reduced by $200.~~

Funds in Direct Care Worker Wage Increase may be used only to raise direct care worker wages and related benefits through an increase in provider rates. Funds in Direct Care Worker Wage Increase may not be used to offset any other wage increase mandated by any other laws, contracts, or written agreements, which will go into effect at the same time as or after implementation of the appropriation included in Direct Care Worker Wage Increase. Funds in Direct Care Worker Wage Increase must be used first to raise the lowest paid direct care workers to $8.50 an hour and to raise related benefits, and the remaining balance may be used only to raise wages and related benefits of all direct care workers. To the extent of available appropriations, the department shall provide documentation that these funds

	Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

are used solely for direct care worker wage and related benefits increases. The documentation must include initial wage rates, wage rates after the rate increases have been applied, and wage rates every 6 months after the rate increases have been granted. ~~Addictive/Mental Disorders Administration/Reporting includes funding for a semiannual report for the legislative finance committee and the children, families, health, and human services interim committee summarizing direct care wage rates.~~

Behavioral Health Inpatient Facility may be used only to develop one or more behavioral health inpatient facilities as defined in 53-21-102(2). Behavioral Health Inpatient Facility may be used to pay for services and may not be used for construction of buildings. Behavioral Health Inpatient Facility is contingent upon passage and approval of Senate Bill No. 45 of the 2007 regular session.

Funds in Mental Health Drop-In Centers may be used only to support community drop-in centers for persons with a mental illness and to provide training for up to 60 consumers each fiscal year to perform peer specialist duties. Drop-in centers with staff who can assist persons with medication management must receive priority in consideration for funding.

Funds in Suicide Prevention may be used only to implement a comprehensive suicide prevention program, which at a minimum includes a suicide prevention officer, a comprehensive suicide reduction plan, and a 24-hour suicide prevention hotline.

Funding in Services for Mentally Ill Offenders may be used for two purposes only:

(1) services for adults under the supervision of the community corrections division in the department of corrections; and

(2) training for community probation and parole officers.

The services may include case management, treatment, transition support, and medication monitoring. Funding may be used to provide training to community probation and parole officers about mental illness and chemical dependency and about how to assist offenders to enroll in public benefit programs, if appropriate.

Funds in Expand Mental Health Services Plan may be used only to implement 53-21-702(2).

Funds in Provider Rate Increase may be used only to raise provider rates.

Provider Rate Increase will be implemented starting October 1, 2007.

Funding in Mentally Ill Offender Drugs may be used only to provide a prescription benefit for offenders leaving secure care who meet the criteria for serious mental illness and who have not been enrolled in public benefit programs. Benefits may include a 60-day supply of medications and other short-term medication purchases for offenders who become unstable and need medications and who are not eligible for other public prescription drug programs.

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

72-Hour Crisis Eligibility may be used only to develop community mental health crisis services and for provision of psychiatric consulting services for community providers who manage and administer community mental health crisis services.

Methamphetamine Treatment may be used only to develop community treatment. Parents with children must be given priority consideration when selecting candidates to participate in the treatment funded by Methamphetamine Treatment.

Funding in Community Liaison Officers may be used only for five half-time staff in the addictive and mental disorders division to provide focused reentry support services, including assistance in accessing community services, to persons who are discharged from Montana state hospital. The legislature intends that the positions be filled by individuals who have a primary diagnosis of mental illness and are certified peer specialists. The goal of this service is to reduce readmissions to Montana state hospital at 30- and 60-day intervals, as a result of assisted reintegration to community settings.

Service Area Authority Grants may be used only to provide grants to service area authorities established in 53-21-1006.

TOTAL SECTION B											
377,886,025	128,785,357	1,006,484,835	0	0	1,513,156,217	399,859,231	117,760,565	1,064,146,830	0	0	1,581,766,626

	Fiscal 2008						Fiscal 2009				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				C. NATURAL RESOURCES AND COMMERCE							
DEPARTMENT OF FISH, WILDLIFE, AND PARKS (5201)											
1. Information Services Division (01)											
0	3,692,047	159,789	0	0	3,851,836	0	3,770,291	159,937	0	0	3,930,228
2. Field Services Division (02)											
0	9,231,007	473,412	0	0	9,704,419	0	9,263,160	479,060	0	0	9,742,220
3. Fisheries Division (03)											
0	4,843,550	7,976,843	0	0	12,820,393	0	4,890,162	7,994,213	0	0	12,884,375
a. State Wildlife Grants (OTO)											
250,000	0	0	0	0	250,000	250,000	0	0	0	0	250,000
b. Warm Water Fisheries Enhancement (Restricted/Biennial/OTO)											
135,000	0	0	0	0	135,000	135,000	0	0	0	0	135,000
c. Cartersville Diversion Feasibility Study (Restricted/Biennial/OTO)											
55,000	0	0	0	0	55,000	55,000	0	0	0	0	55,000
4. Law Enforcement Division (04)											
0	7,968,979	397,831	0	0	8,366,810	0	7,947,403	398,759	0	0	8,346,162
a. Warden Vacancy Savings											
0	212,545	9,691	0	0	222,236	0	213,424	6,737	0	0	220,161
b. Increased Snowmobile Fees											
0	10,573	0	0	0	10,573	0	10,573	0	0	0	10,573
5. Wildlife Division (05)											
0	4,951,482	4,718,543	0	0	9,670,025	0	4,967,409	4,734,514	0	0	9,701,923
a. Harvest Automation (Biennial/OTO)											
0	10,000	30,000	0	0	40,000	0	10,000	30,000	0	0	40,000
b. Black Bear Research (OTO)											
0	8,620	25,859	0	0	34,479	0	8,620	25,859	0	0	34,479
c. State Wildlife Grants (OTO)											

	Fiscal 2008						Fiscal 2009				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
250,000	0	0	0	0	250,000	250,000	0	0	0	0	250,000
6. Parks Division (06)											
0	7,550,424	213,960	0	0	7,764,384	0	7,575,151	213,960	0	0	7,789,111
a. Snowmobile Equipment (Biennial)											
0	185,000	0	0	0	185,000	0	185,000	0	0	0	185,000
b. Increased Snowmobile Fees											
0	80,883	0	0	0	80,883	0	80,883	0	0	0	80,883
c. Rattlesnake Footbridge and Bike Trail at Pine Street (Restricted/Biennial/OTO)											
0	0	37,500	0	0	37,500	0	0	37,500	0	0	37,500
7. Conservation Education Division (08)											
0	2,411,997	719,430	0	0	3,131,427	0	2,421,202	719,430	0	0	3,140,632
a. Shooting Range Grants (Biennial)											
0	450,000	0	0	0	450,000	0	450,000	0	0	0	450,000
8. Management and Finance (09)											
0	9,498,339	33,696	0	0	9,532,035	0	9,522,643	33,697	0	0	9,556,340
a. Legislative Audit (Restricted/Biennial)											
0	91,422	16,134	0	0	107,556	0	0	0	0	0	0
b. Office Rent Increase (Restricted)											
0	15,000	0	0	0	15,000	0	15,000	0	0	0	15,000
c. Increased Snowmobile Fees											
0	5,287	0	0	0	5,287	0	5,287	0	0	0	5,287
Total											
690,000	51,217,155	14,812,688	0	0	66,719,843	690,000	51,336,208	14,833,666	0	0	66,859,874

During the 2009 biennium, if the department obtains federal funding for the operations of the Fort Peck fish hatchery, it must be used to replace state special revenue approved to fund personal services and operational costs of the hatchery.

Warm Water Fisheries Enhancement is restricted to the following projects:

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(1) completion of a fish passage around the T&Y irrigation district diversion dam on the Tongue River; and

(2) removal of the S&H diversion dam on the Tongue River.

If Senate Bill No. 205 of the 2007 regular session is not passed and approved, Warden Vacancy Savings is void.

Harvest Automation includes funding for an annual report to the environmental quality council summarizing harvest estimates and hunting pressure for big game and upland game birds for the most recently completed hunting season for these species.

Office Rent Increase is restricted to increases associated with the relocation of the Lewistown and Havre offices.

DEPARTMENT OF ENVIRONMENTAL QUALITY (5301)

1. Central Management Program (10)											
374,793	1,320,682	558,239	0	0	2,253,714	376,240	1,330,128	557,902	0	0	2,264,270
a. Business Process Improvement (OTO)											
987,619	0	0	0	0	987,619	788,773	0	0	0	0	788,773
2. Planning, Prevention, and Assistance Division (20)											
2,885,269	1,142,540	9,039,651	0	0	13,067,460	2,893,930	1,129,131	9,094,063	0	0	13,117,124
a. Biofuels Testing (OTO)											
250,000	0	0	0	0	250,000	0	0	0	0	0	0
b. Recycling and Electronic Waste Disposal Education											
16,500	0	0	0	0	16,500	16,500	0	0	0	0	16,500
3. Enforcement Division (30)											
514,035	350,124	314,446	0	0	1,178,605	504,696	349,742	314,102	0	0	1,168,540
4. Remediation Division (40)											
0	2,325,666	8,549,209	0	0	10,874,875	0	2,325,738	8,589,622	0	0	10,915,360
a. Accelerated Remediation — Selected CECRA Sites (Restricted/Biennial/OTO)											
1,000,000	0	0	0	0	1,000,000	1,000,000	0	0	0	0	1,000,000
b. Orphan Share (Restricted/Biennial/OTO)											

	Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	1,200,000	0	0	0	1,200,000	0	1,200,000	0	0	0	1,200,000
c. Mine Waste Cleanup (Biennial)											
0	0	366,753	0	0	366,753	0	0	366,752	0	0	366,752
d. Hazardous Waste Cleanup LUST Trust (Biennial)											
0	99,881	0	0	0	99,881	0	99,880	0	0	0	99,880
5. Permitting and Compliance Division (50)											
1,084,077	13,795,782	5,277,720	0	0	20,157,579	1,085,265	13,797,373	5,276,296	0	0	20,158,934
a. Industrial Wastewater Operator Cert. (Biennial/OTO)											
0	33,438	0	0	0	33,438	0	33,750	0	0	0	33,750
b. High Strength Wastewater Std. (Biennial/OTO)											
0	30,900	0	0	0	30,900	0	31,200	0	0	0	31,200
c. Brownfields Grant (Biennial)											
0	0	119,600	0	0	119,600	0	0	118,450	0	0	118,450
d. Onsite Wastewater Operator Cert. (Biennial/OTO)											
0	82,400	0	0	0	82,400	0	83,200	0	0	0	83,200
e. Swift Gulch Drainage System (Biennial/OTO)											
500,000	0	0	0	0	500,000	0	0	0	0	0	0
f. Hard Rock and MFSA (Restricted/Biennial)											
0	1,820,367	1,240,764	0	0	3,061,131	0	1,837,867	1,253,264	0	0	3,091,131
g. Air Regulatory Assistance (Restricted/Biennial/OTO)											
0	257,500	0	0	0	257,500	0	260,000	0	0	0	260,000
h. Gray Water Permit											
0	10,000	0	0	0	10,000	0	0	0	0	0	0
i. Increased County Junk Vehicle Grants											
0	171,397	0	0	0	171,397	0	173,593	0	0	0	173,593
6. Petroleum Tank Release Compensation Board (90)											
0	671,587	0	0	0	671,587	0	673,873	0	0	0	673,873

	Fiscal 2008						Fiscal 2009				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total											
7,612,293	23,312,264	25,466,382	0	0	56,390,939	6,665,404	23,325,475	25,570,451	0	0	55,561,330

Accelerated Remediation—Selected CECRA Sites is limited to remedial investigation of the upper Blackfoot mining complex. ~~The department shall provide semiannual reports to the environmental quality council regarding the progress toward the following milestones for the upper Blackfoot mining complex:~~

~~(1) December 2007 — completion of the remedial investigation plan;~~

~~(2) September 2008 — completion of field work; and~~

~~(3) January 2009 — completion of the remedial investigation report.~~

The department is appropriated up to $250,000 of the funds recovered under the petroleum tank compensation board subrogation program in the 2009 biennium for the purpose of paying contract expenses related to the recovery of funds.

DEPARTMENT OF LIVESTOCK (5603)

1. Centralized Services Program (01)											
0	1,950,970	0	0	0	1,950,970	0	1,957,683	0	0	0	1,957,683
a. Legislative Audit (Restricted/Biennial)											
0	31,634	0	0	0	31,634	0	0	0	0	0	0
b. Board of Horseracing Support (Biennial/OTO)											
175,000	0	0	0	0	175,000	175,000	0	0	0	0	175,000
c. Department Wide IT Equipment Replacement (Restricted)											
0	6,763	0	0	0	6,763	0	4,683	0	0	0	4,683
d. Telephone Account Wagering on Internet Horseracing — HB 390											
0	182,000	0	0	0	182,000	0	182,000	0	0	0	182,000
e. Livestock Loss Reduction and Mitigation (Restricted/Biennial/OTO)											
30,000	0	0	0	0	30,000	0	0	0	0	0	0
f. Parimutuel Wagering on Fantasy Sports Leagues — HB 616 (Restricted)											
0	316,000	0	0	0	316,000	0	149,934	0	0	0	149,934

	Fiscal 2008						Fiscal 2009					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
2. Diagnostic Laboratory Program (03)												
	439,888	1,130,523	0	0	0	1,570,411	439,896	1,090,848	0	0	0	1,530,744
a. Diagnostic Lab PCR Technology (OTO)												
	0	62,272	0	0	0	62,272	0	50,812	0	0	0	50,812
3. Animal Health Division (04)												
	0	520,447	942,647	0	0	1,463,094	0	523,737	942,568	0	0	1,466,305
a. Animal Health Division Vehicle Replacement (Restricted/OTO)												
	0	0	0	0	0	0	0	26,000	0	0	0	26,000
4. Milk and Egg Program (05)												
	0	282,067	32,842	0	0	314,909	0	283,014	32,841	0	0	315,855
a. Milk and Egg Bureau Vehicle Replacement (Restricted/OTO)												
	0	26,000	0	0	0	26,000	0	0	0	0	0	0
5. Brands Enforcement Division (06)												
	0	2,870,886	0	0	0	2,870,886	0	2,882,893	0	0	0	2,882,893
a. Brand Division Vehicle Replacement (Restricted/OTO)												
	0	120,712	0	0	0	120,712	0	94,712	0	0	0	94,712
6. Meat and Poultry Inspection Program (10)												
	562,725	6,475	562,725	0	0	1,131,925	564,693	6,475	564,693	0	0	1,135,861
a. Meat Plant Inspector (Restricted)												
	22,673	0	22,674	0	0	45,347	20,542	0	20,542	0	0	41,084
b. FAIM Computer Maintenance Contract (Restricted/OTO)												
	3,261	0	3,261	0	0	6,522	3,261	0	3,261	0	0	6,522
Total												
	1,233,547	7,506,749	1,564,149	0	0	10,304,445	1,203,392	7,252,791	1,563,905	0	0	10,020,088

Livestock Loss Reduction and Mitigation may be used only to compensate livestock owners for losses caused by wolves.

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (5706)											
1. Centralized Services (21)											
2,179,654	724,696	99,995	0	0	3,004,345	2,269,550	663,283	75,000	0	0	3,007,833
a. Legislative Audit (Restricted/Biennial)											
110,720	0	0	0	0	110,720	0	0	0	0	0	0
b. GIS Enterprise Equipment IT (OTO)											
105,000	0	0	0	0	105,000	25,000	0	0	0	0	25,000
2. Oil and Gas Conservation Division (22)											
0	2,055,850	0	0	0	2,055,850	0	2,074,651	0	0	0	2,074,651
a. Oil and Gas Public Access Data System (OTO)											
0	212,669	0	0	0	212,669	0	212,696	0	0	0	212,696
b. North American Expo (Biennial/OTO)											
0	7,500	0	0	0	7,500	0	7,500	0	0	0	7,500
c. Temporary Relocation (Restricted/Biennial/OTO)											
0	32,500	0	0	0	32,500	0	32,500	0	0	0	32,500
d. Educational Outreach (Biennial)											
0	62,500	0	0	0	62,500	0	62,500	0	0	0	62,500
3. Conservation and Resource Development Division (23)											
1,445,723	2,949,409	265,948	0	0	4,661,080	1,447,760	2,952,084	273,608	0	0	4,673,452
a. Missouri River Council (Restricted)											
0	114,000	0	0	0	114,000	0	114,000	0	0	0	114,000
b. Conservation District Operation — Coal Bed Methane (Restricted)											
0	100,000	0	0	0	100,000	0	100,000	0	0	0	100,000
c. Purchase of Prior Liens (Restricted/Biennial/OTO)											
0	300,000	0	0	0	300,000	0	300,000	0	0	0	300,000
d. Montana Rural Water Systems (Restricted/Biennial/OTO)											
101,500	0	0	0	0	101,500	101,500	0	0	0	0	101,500

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
e. State Restoration Coordinator (Biennial)											
0	75,000	0	0	0	75,000	0	75,000	0	0	0	75,000
f. Integrated State Grant and Restoration Planning (Biennial/OTO)											
0	100,000	0	0	0	100,000	0	100,000	0	0	0	100,000
g. Economic Analysis of Irrigated Agriculture (Restricted/Biennial/OTO)											
100,000	0	0	0	0	100,000	100,000	0	0	0	0	100,000
4. Water Resources Division (24)											
7,011,065	4,402,377	199,168	0	0	11,612,610	7,275,447	4,406,729	199,289	0	0	11,881,465
a. State Water Projects Rehabilitation (Restricted/Biennial/OTO)											
0	1,895,000	0	0	0	1,895,000	0	25,000	0	0	0	25,000
b. Broadwater Dam Equipment (Restricted/Biennial/OTO)											
0	500,000	0	0	0	500,000	0	500,000	0	0	0	500,000
c. Broadwater Missouri Diversion (Restricted/Biennial/OTO)											
0	35,000	0	0	0	35,000	0	35,000	0	0	0	35,000
d. Repair of State Water Projects (Restricted/Biennial/OTO)											
0	250,000	0	0	0	250,000	0	250,000	0	0	0	250,000
e. Yellowstone Compact Study and Hydrologist (Restricted)											
119,602	0	0	0	0	119,602	113,794	0	0	0	0	113,794
f. Clark Fork River Basin Task Force (OTO)											
45,000	0	0	0	0	45,000	45,000	0	0	0	0	45,000
g. Water Rights Ownership Updates											
0	247,907	0	0	0	247,907	0	0	0	0	0	0
h. Ground Water Assessments											
257,995	18,000	0	0	0	275,995	246,965	18,000	0	0	0	264,965
i. United States Forest Service Water Compact											
50,497	15,084	0	0	0	65,581	47,821	14,284	0	0	0	62,105
j. Hungry Horse Dam Water Leasing Study (Restricted/Biennial/OTO)											

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
130,000	0	0	0	0	130,000	130,000	0	0	0	0	130,000
5. Reserved Water Rights Compact Commission (25)											
704,733	0	0	0	0	704,733	461,234	0	0	0	0	461,234
a. Contracted Services (OTO)											
97,500	0	0	0	0	97,500	97,500	0	0	0	0	97,500
6. Forestry and Trust Lands (35)											
8,743,175	14,448,453	1,285,113	0	0	24,476,741	8,785,951	14,498,716	1,286,503	0	0	24,571,170
a. Woody Biomass Utilization Program (OTO)											
250,000	0	0	0	0	250,000	250,000	0	0	0	0	250,000
b. Fire Fighting Equipment (Restricted/Biennial/OTO)											
1,000,000	0	0	0	0	1,000,000	0	0	0	0	0	0
c. Reliance Refinery (Biennial/OTO)											
0	500,000	0	0	0	500,000	0	500,000	0	0	0	500,000
d. Contract Timber Harvesting (Restricted)											
0	0	0	0	0	0	0	280,000	0	0	0	280,000
e. Access Acquisition (Biennial)											
0	100,000	0	0	0	100,000	0	100,000	0	0	0	100,000
f. Weed Control on State Lands											
0	5,000	0	0	0	5,000	0	5,000	0	0	0	5,000
g. Independent Staff — Board of Land Commissioners											
0	135,000	0	0	0	135,000	0	135,000	0	0	0	135,000
Total											
22,452,164	29,285,945	1,850,224	0	0	53,588,333	21,397,522	27,461,943	1,834,400	0	0	50,693,865

~~Oil and Gas Public Access Data System funding in fiscal year 2009 is contingent upon provision of an annual report to the environmental quality council by June 2008 detailing progress on the access project.~~

	Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

~~Missouri River Council funding in fiscal year 2009 is contingent upon provision of an annual report to the environmental quality council by June 2008 regarding the Missouri River council's progress towards its goals.~~

Conservation District Operation—Coal Bed Methane is restricted to the costs associated with managing the coal bed methane water damage program.

During the 2009 biennium, the department is appropriated up to $1 million of state special revenue from the coal bed methane account to fund potential landowner or water right holder claims for emergency loss of water related to coal bed methane development.

During the 2009 biennium, if Montana Rural Water Systems receives federal funding, Montana Rural Water Systems is reduced by a like amount.

Economic Analysis of Irrigated Agriculture is restricted to contracted services for the purposes of determining the economic benefits of irrigation, the impact of new irrigation projects, and the rehabilitation needs of older irrigation projects. ~~The department shall provide to the interim water policy committee the scoping document of the study prior to release of the request for proposal to complete the study.~~ A final written report must be provided to the interim water policy committee by September 15, 2008.

State Water Projects Rehabilitation is restricted to survey expenditures and rehabilitation of the following projects:

(1) Ackley Lake dam;

(2) Cataract dam;

(3) Deadman's Basin dam; and

(4) Flint Creek east fork siphon.

~~The Reserved Water Rights Compact Commission fiscal year 2009 appropriation is contingent upon the delivery of a transition plan that addresses workload changes from negotiation to implementation of water compacts to the environmental quality council by June 30, 2008.~~

Fire Fighting Equipment is restricted to the purchase of title to the department's helicopters. If the purchase is less than $1 million, the department may use the balance of the appropriation for the purchase of equipment for the county cooperative program.

If Senate Bill No. 25 of the 2007 regular session is not passed and approved, Contract Timber Harvesting is void.

If Senate Bill No. 8 of the 2007 regular session is not passed and approved, Independent Staff — Board of Land Commissioners is void.

	Fiscal 2008						Fiscal 2009				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
DEPARTMENT OF AGRICULTURE (6201)											
1. Central Management Division (15)											
97,242	693,330	95,000	83,874	0	969,446	104,757	694,399	95,000	84,021	0	978,177
a. Legislative Audit (Restricted/Biennial)											
41,124	0	0	0	0	41,124	0	0	0	0	0	0
b. E-Government Information Technology (OTO)											
51,894	87,250	18,000	750	0	157,894	49,250	0	0	13,000	0	62,250
2. Agricultural Sciences Division (30)											
278,056	5,729,095	2,100,387	0	0	8,107,538	278,422	5,720,979	2,491,601	0	0	8,491,002
a. Noxious Weed Trust Fund Grants Increase (OTO)											
0	0	0	0	0	0	0	409,136	0	0	0	409,136
b. Bozeman Lab Equipment (Biennial/OTO)											
0	300,000	0	0	0	300,000	0	0	0	0	0	0
c. Bovine Spongiform Encephalopathy Lab Equipment (Biennial)											
50,000	0	0	0	0	50,000	0	0	0	0	0	0
d. Revise Nursery Laws — HB 569											
0	34,598	0	0	0	34,598	0	34,598	0	0	0	34,598
3. Agricultural Development Division (50)											
389,740	3,681,617	25,000	339,911	0	4,436,268	391,771	3,684,131	25,000	340,900	0	4,441,802
a. Montana State Hail Insurance Database (Biennial/OTO)											
0	0	0	100,000	0	100,000	0	0	0	0	0	0
b. Montana Certified Beef Natural Marketing Program — SB 544											
0	0	0	0	0	0	0	5,000	0	0	0	5,000
c. Increase Payment to Advisory Board Members — SB 62											
0	11,375	125	250	0	11,750	0	11,659	128	256	0	12,043

	Fiscal 2008					Fiscal 2009				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total											
908,056	10,537,265	2,238,512	524,785	0	14,208,618	824,200	10,559,902	2,611,729	438,177	0	14,434,008
DEPARTMENT OF COMMERCE (6501)											
1. Business Resources Division (51)											
1,972,594	2,313,308	4,771,826	0	0	9,057,728	1,980,642	2,313,407	4,771,827	0	0	9,065,876
a. Legislative Audit (Restricted/Biennial)											
3,917	1,382	3,918	0	0	9,217	0	0	0	0	0	0
b. New Worker Training (OTO)											
3,997,361	0	0	0	0	3,997,361	3,997,450	0	0	0	0	3,997,450
c. Tribal Economic Development (OTO)											
798,496	0	0	0	0	798,496	798,548	0	0	0	0	798,548
d. Montana Capital Investment Board (OTO)											
146,936	0	0	0	0	146,936	73,210	73,209	0	0	0	146,419
e. Biomedical Research (Biennial/OTO)											
2,000,000	0	0	0	0	2,000,000	0	0	0	0	0	0
f. Federal Grant Adjustment (Restricted/OTO)											
0	0	2,014,785	0	0	2,014,785	0	0	0	0	0	0
g. Main Street (OTO)											
123,496	0	0	0	0	123,496	123,548	0	0	0	0	123,548
h. Made in Montana (OTO)											
100,000	0	0	0	0	100,000	100,000	0	0	0	0	100,000
2. Montana Promotion Division (52)											
0	490,760	0	0	0	490,760	0	490,760	0	0	0	490,760
a. Legislative Audit (Restricted/Biennial)											
0	19,595	0	0	0	19,595	0	0	0	0	0	0
b. Private Funds (Restricted)											
0	259,240	0	0	0	259,240	0	259,240	0	0	0	259,240

	Fiscal 2008						Fiscal 2009					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
3. Community Development Division (60)												
	415,689	1,154,373	6,225,672	0	0	7,795,734	416,452	1,156,334	6,225,785	0	0	7,798,571
a. Legislative Audit (Restricted/Biennial)												
	2,562	2,113	2,562	0	0	7,237	0	0	0	0	0	0
b. Coal Board Grants (Biennial)												
	0	2,000,000	0	0	0	2,000,000	0	0	0	0	0	0
c. Hard-Rock Mining Reserve (Restricted)												
	0	100,000	0	0	0	100,000	0	100,000	0	0	0	100,000
d. Federal Grant Adjustment (Restricted/OTO)												
	0	0	8,839,887	0	0	8,839,887	0	0	0	0	0	0
e. Energy Infrastructure Promotion and Development (OTO)												
	330,000	0	0	0	0	330,000	330,000	0	0	0	0	330,000
4. Housing Division (74)												
	53,837	0	6,089,717	0	0	6,143,554	50,407	0	6,091,290	0	0	6,141,697
a. Legislative Audit (Restricted/Biennial)												
	0	0	4,705	0	0	4,705	0	0	0	0	0	0
b. Manufactured Home Revolving Loan SSR Transfer (OTO)												
	354,886	0	0	0	0	354,886	0	0	0	0	0	0
c. Federal Grants Adjustment (Restricted/OTO)												
	0	0	5,234,938	0	0	5,234,938	0	0	0	0	0	0
d. Manufactured Home Revolving Loan SSR Payments (Biennial)												
	0	177,443	0	0	0	177,443	0	177,443	0	0	0	177,443
5. Director's Office/Management Services Division (81)												
	0	0	725,646	0	0	725,646	0	0	725,646	0	0	725,646
Total												
	10,299,774	6,518,214	33,913,656	0	0	50,731,644	7,870,257	4,570,393	17,814,548	0	0	30,255,198

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

~~Tribal Economic Development includes $200 for semiannual reports to the legislative finance committee, state-tribal relations committee, and members of the joint appropriations subcommittee on natural resources and commerce for the following:~~

~~(1) progress toward the goals presented to the joint appropriations subcommittee on natural resources and commerce in the budget analysis expanded narrative and justification accompanying the department's funding request;~~

~~(2) attainment of measurable objectives as outlined in the budget analysis expanded narrative and justification accompanying the department's funding request.~~

~~The department shall provide the reports to the legislative finance committee, state-tribal relations committee, and members of the joint appropriations subcommittee on natural resources and commerce by December 31, 2007, and June 30, 2008.~~

TOTAL SECTION C											
43,195,834	128,377,592	79,845,611	524,785	0	251,943,822	38,650,775	124,506,712	64,228,699	438,177	0	227,824,363

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				D. CORRECTIONS AND PUBLIC SAFETY							
CRIME CONTROL DIVISION (4107)											
1. Justice System Support Service (01)											
1,319,767	9,739	551,303	0	0	1,880,809	1,339,766	9,872	557,910	0	0	1,907,548
a. Pass-Through Grants (Biennial)											
904,559	90,000	6,214,257	0	0	7,208,816	904,559	90,000	6,214,257	0	0	7,208,816
Total											
2,224,326	99,739	6,765,560	0	0	9,089,625	2,244,325	99,872	6,772,167	0	0	9,116,364

Justice System Support Service includes a reduction of 0.5 FTE and general fund money of $19,965 in fiscal year 2008 and fiscal year 2009 that is contingent upon passage and approval of Senate Bill No. 273 of the 2007 regular session. If Senate Bill No. 273 is not passed and approved, FTE and funding in Justice System Support Service are increased by this amount.

All remaining pass-through grant appropriations, up to $100,000 in general fund money, $180,000 in state special revenue, and $12,428,514 in federal funds, including reversions, for the 2007 biennium are authorized to continue and are appropriated in fiscal year 2008 and fiscal year 2009.

DEPARTMENT OF JUSTICE (4110)											
1. Legal Services Division (01)											
4,983,466	342,316	560,968	0	0	5,886,750	4,997,686	342,599	559,845	0	0	5,900,130
a. Major Litigation — Wyoming (Biennial/OTO)											
3,000,000	0	0	0	0	3,000,000	0	0	0	0	0	0
2. Office of Consumer Protection (02)											
0	557,813	0	0	0	557,813	0	560,957	0	0	0	560,957
a. Forensic Rape Examination Program (Biennial)											
17,500	0	0	0	0	17,500	17,500	0	0	0	0	17,500
b. Consumer Protection Litigation (Biennial)											
0	100,000	0	0	0	100,000	0	100,000	0	0	0	100,000
3. Gambling Control Division (07)											

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	2,541,356	0	1,075,430	0	3,616,786	0	2,527,291	0	1,051,943	0	3,579,234
a. Gambling Database (Biennial/OTO)											
0	85,250	0	0	0	85,250	0	85,250	0	0	0	85,250
4. Motor Vehicle Division (12)											
7,024,891	4,998,546	0	536,126	0	12,559,563	7,038,530	5,007,578	0	536,126	0	12,582,234
a. Base Adjustment HB 577 Debt Payments (Biennial)											
0	800,000	0	0	0	800,000	0	775,000	0	0	0	775,000
b. Base Adjustment HB 261 Debt Payments (Biennial)											
0	2,500,000	0	0	0	2,500,000	0	3,500,000	0	0	0	3,500,000
c. MV Proprietary Account Spend Authority (Biennial)											
0	0	0	25,000	0	25,000	0	0	0	25,000	0	25,000
5. Highway Patrol Division (13)											
175,039	22,689,544	0	0	0	22,864,583	176,690	22,978,541	0	0	0	23,155,231
a. HB 781 — Racial Profiling (OTO)											
161,750	0	0	0	0	161,750	0	0	0	0	0	0
6. Division of Criminal Investigation (18)											
4,172,077	1,878,709	1,107,110	0	0	7,157,896	4,203,833	1,881,260	1,110,719	0	0	7,195,812
a. Methamphetamine Watch Program (Restricted/Biennial/OTO)											
1,000,000	0	0	0	0	1,000,000	0	0	0	0	0	0
b. Child Sexual Abuse Support Function (Restricted/Biennial)											
250,000	0	0	0	0	250,000	250,000	0	0	0	0	250,000
7. Central Services Division (28)											
379,035	610,663	0	63,171	0	1,052,869	381,274	614,275	0	63,545	0	1,059,094
a. Legislative Audit (Restricted/Biennial)											
34,003	43,500	0	1,582	0	79,085	0	0	0	0	0	0
8. Information Technology Services Division (29)											
3,310,245	1,719,346	3,392	13,321	0	5,046,304	3,325,974	1,347,980	3,392	13,321	0	4,690,667

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Additional Spending Authority for IRIS Broker (Biennial)											
0	375,000	0	0	0	375,000	0	375,000	0	0	0	375,000
9. Forensic Science Division (32)											
3,612,913	303,204	0	0	0	3,916,117	3,624,425	303,204	0	0	0	3,927,629
a. Crime Lab Equipment (Restricted/Biennial/OTO)											
115,375	0	0	0	0	115,375	115,375	0	0	0	0	115,375
b. Forensic Science Lab — Records Management (OTO)											
52,000	0	0	0	0	52,000	0	0	0	0	0	0
c. Child Forensic Interview Specialist (Restricted)											
95,885	0	0	0	0	95,885	92,121	0	0	0	0	92,121
Total											
28,384,179	39,545,247	1,671,470	1,714,630	0	71,315,526	24,223,408	40,398,935	1,673,956	1,689,935	0	67,986,234

Division of Criminal Investigation includes 1.5 FTE and general fund money of $85,214 in fiscal year 2008 and $82,575 in fiscal year 2009 that are contingent upon passage and approval of Senate Bill No. 273 of the 2007 regular session. If Senate Bill No. 273 is not passed and approved, FTE and funding in Division of Criminal Investigation are reduced by this amount.

Methamphetamine Watch Program may be used only for the purpose of making grants for community awareness, as provided 44-4-1002(3), to private, nonprofit programs engaged in public awareness media campaigns to combat the use of methamphetamine, especially among the young.

Child Sexual Abuse Support Function may be used only to provide technical assistance and support to local governments and entities to respond to reports of child sexual abuse, including forensic interview training, equipment to document interviews, and assistance to multidisciplinary teams, using the cornerhouse model of training.

Funding in Child Forensic Interview Specialist may be used only to support a forensic scientist specializing in processing of evidence in child abuse and neglect cases, for conducting forensic interviews of children in child abuse and neglect cases, and for related costs.

PUBLIC SERVICE COMMISSION (4201)

1. Public Service Regulation Program (01)											
0	3,122,844	20,001	0	0	3,142,845	0	3,134,452	20,001	0	0	3,154,453

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Legislative Audit (Restricted/Biennial)											
0	22,144	0	0	0	22,144	0	0	0	0	0	0
b. Pay Retirement Benefits (Restricted/Biennial/OTO)											
0	72,128	0	0	0	72,128	0	0	0	0	0	0
Total											
0	3,217,116	20,001	0	0	3,237,117	0	3,134,452	20,001	0	0	3,154,453
DEPARTMENT OF CORRECTIONS (6401)											
1. Administration and Support Services (01)											
13,706,284	337,460	0	75,581	0	14,119,325	13,938,570	332,502	0	75,041	0	14,346,113
a. Legislative Audit (Restricted/Biennial)											
30,294	0	0	0	0	30,294	0	0	0	0	0	0
b. BOPP ACA Reaccreditation Fee (Restricted/Biennial/OTO)											
3,000	0	0	0	0	3,000	3,000	0	0	0	0	3,000
c. Correctional Staff Scheduling Software (Restricted/OTO)											
219,200	0	0	0	0	219,200	0	0	0	0	0	0
d. Correctional Staff Scheduling Software — Maintenance (Restricted)											
27,800	0	0	0	0	27,800	27,800	0	0	0	0	27,800
e. Commissary, Inmate Banking, Rest. Software (Restricted/OTO)											
125,000	125,000	0	0	0	250,000	0	0	0	0	0	0
f. Commissary, Inmate Banking, Rest. Software — Maintenance (Restricted)											
0	0	0	0	0	0	17,500	17,500	0	0	0	35,000
g. MSP Fiber Plant Upgrade (Restricted/OTO)											
323,250	0	0	0	0	323,250	0	0	0	0	0	0
h. MSP Fiber Plant Upgrade — Maintenance (Restricted)											
26,750	0	0	0	0	26,750	26,750	0	0	0	0	26,750
i. Information Technology Service Upgrades (OTO)											

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
170,000	0	0	0	0	170,000	130,000	0	0	0	0	130,000
j. BOPP Software and Scanner (Restricted/OTO)											
12,927	0	0	0	0	12,927	12,927	0	0	0	0	12,927
k. Electronic Storage and Workflow (Restricted/OTO)											
150,000	0	0	0	0	150,000	150,000	0	0	0	0	150,000
l. Video Conferencing Expansion (OTO)											
54,000	0	0	0	0	54,000	0	0	0	0	0	0
m. Interoperable Communications (Biennial/OTO)											
2,622,424	0	0	0	0	2,622,424	0	0	0	0	0	0
2. Community Corrections (02)											
36,221,963	554,169	0	0	0	36,776,132	36,990,421	554,169	0	0	0	37,544,590
a. Annualize Prerelease Beds (Biennial)											
4,541,342	0	0	0	0	4,541,342	4,541,342	0	0	0	0	4,541,342
b. Annualize 120 Meth Beds (Biennial)											
4,255,360	0	0	0	0	4,255,360	4,258,232	0	0	0	0	4,258,232
c. Annualize START Beds (Biennial)											
1,231,015	0	0	0	0	1,231,015	1,231,015	0	0	0	0	1,231,015
d. Annualize Conn/WATCh/BASC Beds (Biennial)											
2,382,684	0	0	0	0	2,382,684	2,382,684	0	0	0	0	2,382,684
e. Additional 80 Prerelease Beds, NW MT (Biennial)											
0	0	0	0	0	0	1,186,250	0	0	0	0	1,186,250
3. Secure Facilities (03) (Biennial)											
68,527,667	100,000	0	0	0	68,627,667	68,665,451	100,000	0	0	0	68,765,451
a. MSP Supplies (OTO)											
356,155	0	0	0	0	356,155	0	0	0	0	0	0
b. MSP Supplies, New (OTO)											
140,348	0	0	0	0	140,348	0	0	0	0	0	0

	Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
c. MSP Staff Transportation (Restricted/OTO)											
161,223	0	0	0	0	161,223	161,223	0	0	0	0	161,223
d. MWP Security/Training Equipment (Restricted/OTO)											
152,915	0	0	0	0	152,915	0	0	0	0	0	0
e. Secure Care Provider Rate Increase (Biennial)											
3,140,760	0	0	0	0	3,140,760	4,085,831	0	0	0	0	4,085,831
f. Adjust Contract Beds Population Growth (Biennial)											
4,227,300	0	0	0	0	4,227,300	12,053,213	0	0	0	0	12,053,213
g. MSP Replacement Equipment (OTO)											
162,500	0	0	0	0	162,500	216,000	0	0	0	0	216,000
h. Montana State Prison, Additional FTE (Restricted)											
618,319	0	0	0	0	618,319	639,960	0	0	0	0	639,960
i. SB 547 — Additional Sex Offender Treatment Hours											
492,158	0	0	0	0	492,158	1,359,997	0	0	0	0	1,359,997
4. Montana Correctional Enterprises (04)											
2,328,983	1,793,160	0	466,488	0	4,588,631	2,331,460	1,793,161	0	467,048	0	4,591,669
5. Juvenile Corrections (05)											
18,088,134	850,885	223,376	0	0	19,162,395	18,145,703	850,885	223,376	0	0	19,219,964
a. RYCF Safety and Security Equipment (OTO)											
60,100	0	0	0	0	60,100	0	0	0	0	0	0
b. Juvenile Reentry Program (Restricted/OTO)											
878,348	0	0	0	0	878,348	878,544	0	0	0	0	878,544
c. RYCF Commercial Kitchen Equipment (OTO)											
35,000	0	0	0	0	35,000	0	0	0	0	0	0
d. PHYCF Safety and Security Equipment (Restricted/OTO)											
161,000	0	0	0	0	161,000	0	0	0	0	0	0
e. PHYCF Gym Floor Replace (Restricted/OTO)											

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
140,000	0	0	0	0	140,000	0	0	0	0	0	0
f. PHYCF Laundry Equipment (OTO)											
50,900	0	0	0	0	50,900	0	0	0	0	0	0
g. Youth Corrections Facilities, Additional FTE (Restricted)											
245,000	0	0	0	0	245,000	245,000	0	0	0	0	245,000
h. SB 146 — Transportation From Youth Secure Facility											
2,501	0	0	0	0	2,501	2,501	0	0	0	0	2,501
Total											
166,072,604	3,760,674	223,376	542,069	0	170,598,723	173,681,374	3,648,217	223,376	542,089	0	178,095,056

General fund money in MSP Staff Transportation for fiscal year 2009 is contingent upon the nonavailability of federal grant funds to support MSP Staff Transportation and must be reduced dollar-for-dollar by the amount of any federal grant funds received to support MSP Staff Transportation.

Funding in Montana State Prison, Additional FTE may be used only to fund additional positions for existing operations at Montana state prison as of March 28, 2007.

General fund money in Juvenile Reentry Program is contingent upon the nonavailability of federal grant funds to support Juvenile Reentry Program and must be reduced dollar-for-dollar by the amount of any federal grant funds received to support Juvenile Reentry Program.

Funding in Youth Corrections Facilities, Additional FTE may be used only to fund additional positions for existing operations at Pine Hills youth correctional facility and Riverside youth corrections facility as of March 28, 2007.

DEPARTMENT OF LABOR AND INDUSTRY (6602)

1. Workforce Services Division (01)											
727,877	8,028,924	20,040,165	0	0	28,796,966	729,205	7,992,002	20,099,487	0	0	28,820,694
a. Increase Payment to Advisory Board Members — SB 62											
0	0	3,900	0	0	3,900	0	0	3,998	0	0	3,998
b. Revise Membership of Workforce Investment Boards — SB 440											
0	0	7,422	0	0	7,422	0	0	7,422	0	0	7,422
2. Unemployment Insurance Division (02)											

	Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	1,625,775	9,875,993	0	0	11,501,768	0	3,041,210	8,244,998	0	0	11,286,208
a. Mainframe Tax System Replacement Feasibility Study (Biennial)											
0	0	1,000,000	0	0	1,000,000	0	0	0	0	0	0
3. Commissioner's Office/Centralized Services Division (03)											
251,280	686,161	476,081	83,527	0	1,497,049	253,933	695,520	478,008	86,136	0	1,513,597
4. Employment Relations Division (04)											
1,066,061	8,767,704	748,599	0	0	10,582,364	1,071,903	8,805,686	753,972	0	0	10,631,561
a. Increase Payment to Advisory Board Members — SB 62											
0	1,500	0	0	0	1,500	0	1,538	0	0	0	1,538
5. Business Standards Division (05)											
0	13,808,158	0	0	0	13,808,158	0	13,881,321	0	0	0	13,881,321
a. Legal Contingency (Restricted/OTO)											
0	70,000	0	0	0	70,000	0	70,000	0	0	0	70,000
b. Revise Nursing Home Administration Laws — HB 378											
0	1,188	0	0	0	1,188	0	1,188	0	0	0	1,188
c. License and Regulate Athletic Trainers — HB 665											
0	50,732	0	0	0	50,732	0	46,229	0	0	0	46,229
d. Alternative Adolescent Registration — HB 769											
0	800	0	0	0	800	0	15,382	0	0	0	15,382
e. Increase Payment to Advisory Board Members — SB 62											
0	500	0	0	0	500	0	512	0	0	0	512
f. Revise Professional and Occupational Licensing Laws — SB 153											
0	11,290	0	0	0	11,290	0	11,290	0	0	0	11,290
g. Board of Private Security Patrol Officers — SB 209											
0	1,947	0	0	0	1,947	0	1,105	0	0	0	1,105
6. Office of Community Services (07)											
125,000	75,000	2,915,678	0	0	3,115,678	125,000	75,000	2,917,966	0	0	3,117,966

	Fiscal 2008						Fiscal 2009				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Conference on Race (Biennial)											
0	50,000	0	0	0	50,000	0	0	0	0	0	0
7. Workers' Compensation Court (09)											
0	610,851	0	0	0	610,851	0	616,704	0	0	0	616,704
Total											
2,170,218	33,790,530	35,067,838	83,527	0	71,112,113	2,180,041	35,254,687	32,505,851	86,136	0	70,026,715

If Senate Bill No. 153 of the 2007 regular session is not passed and approved, Revise Professional and Occupational Licensing Laws—SB 153 is void.

DEPARTMENT OF MILITARY AFFAIRS (6701)

1. Centralized Services (01)											
551,113	0	491,330	0	0	1,042,443	553,562	0	492,342	0	0	1,045,904
a. Legislative Audit (Restricted/Biennial)											
3,986	0	0	0	0	3,986	0	0	0	0	0	0
b. Upgrade Department Server (OTO)											
25,000	0	0	0	0	25,000	0	0	0	0	0	0
2. Challenge Program (02)											
1,225,995	0	1,878,763	0	0	3,104,758	1,231,895	0	1,879,029	0	0	3,110,924
a. Legislative Audit (Restricted/Biennial)											
2,278	0	3,416	0	0	5,694	0	0	0	0	0	0
3. National Guard Scholarship Program (03) (Biennial)											
250,000	0	0	0	0	250,000	250,000	0	0	0	0	250,000
4. Army National Guard Program (12)											
1,161,682	12,000	12,723,759	0	0	13,897,441	1,173,167	12,000	12,792,176	0	0	13,977,343
a. Legislative Audit (Restricted/Biennial)											
7,893	0	27,032	0	0	34,925	0	0	0	0	0	0
5. Air National Guard Program (13)											

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
374,568	0	4,546,473	0	0	4,921,041	378,539	0	4,627,230	0	0	5,005,769
a. Legislative Audit (Restricted/Biennial)											
633	0	3,100	0	0	3,733	0	0	0	0	0	0
6. Disaster and Emergency Services (21)											
1,046,944	334,408	1,688,082	0	0	3,069,434	1,049,782	334,408	1,691,097	0	0	3,075,287
a. Legislative Audit (Restricted/Biennial)											
2,689	0	8,193	0	0	10,882	0	0	0	0	0	0
b. Upgrade GIS Hardware and Software (OTO)											
12,000	0	0	0	0	12,000	0	0	0	0	0	0
7. Veterans' Affairs Program (31)											
686,682	1,073,145	0	0	0	1,759,827	686,990	1,079,162	0	0	0	1,766,152
a. Legislative Audit (Restricted/Biennial)											
2,151	1,898	0	0	0	4,049	0	0	0	0	0	0
Total											
5,353,614	1,421,451	21,370,148	0	0	28,145,213	5,323,935	1,425,570	21,481,874	0	0	28,231,379
TOTAL SECTION D											
204,204,941	81,834,757	65,118,393	2,340,226	0	353,498,317	207,653,083	83,961,733	62,677,225	2,318,160	0	356,610,201

	Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
					E. EDUCATION						
OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION (3501)											
1. OPI Administration (06)											
5,186,912	230,007	12,673,034	0	0	18,089,953	5,253,000	230,257	12,737,406	0	0	18,220,663
a. K-12 Education Data Systems (Restricted/Biennial)											
1,866,814	0	0	0	0	1,866,814	1,592,133	0	0	0	0	1,592,133
b. Curriculum Specialists (Restricted/Biennial)											
959,700	0	0	0	0	959,700	924,816	0	0	0	0	924,816
c. Storage Area Network (SAN) Replacement (Restricted/OTO)											
160,000	0	0	0	0	160,000	0	0	0	0	0	0
d. Indian Education for All and Indian Achievement Gap (Restricted/Biennial)											
1,665,351	0	0	0	0	1,665,351	1,665,570	0	0	0	0	1,665,570
e. Indian Education for All Tribal History (Restricted/Biennial/OTO)											
237,500	0	0	0	0	237,500	237,500	0	0	0	0	237,500
2. Distribution to Public Schools (09)											
0	0	139,285,243	0	0	139,285,243	0	0	145,148,901	0	0	145,148,901
a. Base Aid (Restricted)											
515,121,189	0	0	0	0	515,121,189	531,803,079	0	0	0	0	531,803,079
b. Special Education (Restricted)											
40,434,302	0	0	0	0	40,434,302	41,647,331	0	0	0	0	41,647,331
c. Transportation (Restricted)											
12,472,550	0	0	0	0	12,472,550	12,572,550	0	0	0	0	12,572,550
d. School Facility Payment (Restricted)											
10,509,037	0	0	0	0	10,509,037	10,509,037	0	0	0	0	10,509,037
e. In-State Treatment (Restricted)											
974,896	0	0	0	0	974,896	974,896	0	0	0	0	974,896
f. Secondary Vo-Ed (Restricted)											

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1,000,000	0	0	0	0	1,000,000	1,000,000	0	0	0	0	1,000,000
g. Adult Basic Ed (Restricted)											
525,000	0	0	0	0	525,000	525,000	0	0	0	0	525,000
h. Gifted and Talented (Restricted)											
250,000	0	0	0	0	250,000	250,000	0	0	0	0	250,000
i. Gifted and Talented (Restricted/OTO)											
1,000,000	0	0	0	0	1,000,000	1,000,000	0	0	0	0	1,000,000
j. School Foods (Restricted)											
648,655	0	0	0	0	648,655	648,655	0	0	0	0	648,655
k. HB 124 Block Grants (Restricted)											
50,979,326	0	0	0	0	50,979,326	51,366,769	0	0	0	0	51,366,769
l. State Tuition Payments (Restricted)											
606,138	0	0	0	0	606,138	606,138	0	0	0	0	606,138
m. Traffic Safety (Restricted)											
0	750,000	0	0	0	750,000	0	750,000	0	0	0	750,000
n. Full-Time Kindergarten Startup Costs (Restricted/Biennial/OTO)											
10,000,000	0	0	0	0	10,000,000	0	0	0	0	0	0
o. At-Risk Payment (Restricted)											
5,000,000	0	0	0	0	5,000,000	5,000,000	0	0	0	0	5,000,000
p. Indian Education for All Payment (Restricted/OTO)											
1,500,000	0	0	0	0	1,500,000	1,500,000	0	0	0	0	1,500,000
Total											
661,097,370	980,007	151,958,277	0	0	814,035,654	669,076,474	980,257	157,886,307	0	0	827,943,038

Base Aid is reduced by $6 million in fiscal year 2009 if House Bill No. 10 does not pass.

The office of public instruction may distribute funds from the appropriation for In-State Treatment to public school districts for the purpose of providing for educational costs of children with significant behavioral or physical needs.

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Except for the amount appropriated for administration from the traffic education account in OPI Administration, all remaining revenue up to $1.1 million in the traffic education account for distribution to schools under the provisions of 20-7-506 and 61-5-121 is appropriated as provided in Title 20, chapter 7, part 5.

All appropriations for federal special revenue programs in state level activities and in local educational activities and all general fund appropriations in local educational activities are biennial.

Full-Time Kindergarten Startup Costs is contingent upon passage and approval of [LC 4], which provides a distribution mechanism for the kindergarten startup funds.

If the unaudited general fund revenue received in fiscal year 2007 exceeds $1,762,355,000, then the amount of the general fund unaudited revenue for fiscal year 2007 that exceeds $1,762,355,000, up to $30 million, is appropriated to the office of public instruction for distribution to schools in accordance with [LC 4] for the capital investment and deferred maintenance one-time-only payment.

Indian Education for All Payment is contingent upon passage and approval of [LC 4]. The one-time-only payments will be distributed in accordance with the mechanism provided in [LC 4].

BOARD OF PUBLIC EDUCATION (5101)

1. Administration (01)											
203,003	15,000	0	0	0	218,003	208,097	20,000	0	0	0	228,097
2. Advisory Council (03)											
0	154,859	0	0	0	154,859	0	154,908	0	0	0	154,908
a. Advisory Council Reimbursement Increase											
3,000	0	0	0	0	3,000	3,075	0	0	0	0	3,075
Total											
206,003	169,859	0	0	0	375,862	211,172	174,908	0	0	0	386,080

MONTANA UNIVERSITY SYSTEM, INCLUDING OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION AND EDUCATIONAL UNITS AND AGENCIES (5100)

1. OCHE — Administration (01)											
1,767,701	0	278,082	101,145	0	2,146,928	1,776,892	0	278,081	101,143	0	2,156,116

	Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Legislative Audit (Restricted/Biennial)											
37,980	0	0	0	0	37,980	0	0	0	0	0	0
b. Transferability of Student Data (OTO)											
979,099	0	0	0	0	979,099	0	0	0	0	0	0
c. Moving Expenses (OTO)											
30,000	0	0	0	0	30,000	0	0	0	0	0	0
d. Coordinate and Expand Distance Learning (OTO)											
225,000	0	0	0	0	225,000	225,000	0	0	0	0	225,000
e. Rent Increase (Restricted)											
13,356	0	0	0	0	13,356	54,420	0	0	0	0	54,420
f. Transferability of Student Data											
312,000	0	0	0	0	312,000	253,901	0	0	0	0	253,901
g. Coordinate and Expand Distance Learning											
225,000	0	0	0	0	225,000	225,000	0	0	0	0	225,000
2. OCHE — Student Assistance Program (02)											
4,077,289	100,000	232,915	0	0	4,410,204	4,078,389	100,000	232,915	0	0	4,411,304
a. Governor's Postsecondary Scholarship Program (Restricted)											
1,530,000	0	0	0	0	1,530,000	2,510,000	0	0	0	0	2,510,000
b. WICHE/WWAMI/MN Dental Program											
5,197,136	0	0	0	0	5,197,136	5,382,581	0	0	0	0	5,382,581
3. OCHE — Improving Teacher Quality (03)											
0	0	385,000	0	0	385,000	0	0	395,000	0	0	395,000
4. OCHE — Community College Assistance (04) (Biennial)											
8,254,210	0	0	0	0	8,254,210	8,390,361	0	0	0	0	8,390,361
a. Legislative Audit (Restricted/Biennial)											
27,936	0	0	0	0	27,936	0	0	0	0	0	0
b. Community College Assistance (Restricted/OTO)											

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
450,000	0	0	0	0	450,000	450,000	0	0	0	0	450,000
5. OCHE — Talent Search (06)											
72,848	0	4,467,217	0	0	4,540,065	72,881	0	4,471,456	0	0	4,544,337
6. OCHE — Workforce Development (08)											
91,092	0	6,307,643	0	0	6,398,735	91,092	0	6,309,109	0	0	6,400,201
7. OCHE — Appropriation Distribution Transfers (09)											
116,549,958	17,285,323	0	0	0	133,835,281	122,289,766	16,089,436	0	0	0	138,379,202
a. Legislative Audit (Restricted/Biennial)											
575,741	0	0	0	0	575,741	0	0	0	0	0	0
b. Property Tax Reimbursement — House Bill No. 10											
71,774	0	0	0	0	71,774	195,496	0	0	0	0	195,496
c. Equipment and Technology (OTO)											
2,000,000	2,000,000	0	0	0	4,000,000	0	0	0	0	0	0
d. Workforce Training — Program Development (OTO)											
1,500,000	0	0	0	0	1,500,000	0	0	0	0	0	0
e. Research Agencies Equipment (OTO)											
1,000,000	0	0	0	0	1,000,000	0	0	0	0	0	0
f. High School Honors Tuition Waivers (OTO)											
0	500,000	0	0	0	500,000	0	500,000	0	0	0	500,000
g. Dental Hygiene Program at Great Falls College of Technology (Restricted)											
235,000	0	0	0	0	235,000	235,000	0	0	0	0	235,000
h. Agriculture Experiment Station											
11,766,373	0	0	0	0	11,766,373	11,810,719	0	0	0	0	11,810,719
i. Agriculture Experiment Station Additional Appropriation											
50,000	0	0	0	0	50,000	50,000	0	0	0	0	50,000
j. Extension Service											
5,567,713	0	0	0	0	5,567,713	5,590,824	0	0	0	0	5,590,824

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
k. Forest and Conservation Experiment Station											
1,094,186	0	0	0	0	1,094,186	1,103,415	0	0	0	0	1,103,415
l. Bureau of Mines and Geology											
1,820,060	666,000	0	0	0	2,486,060	1,888,718	666,000	0	0	0	2,554,718
m. Fire Services Training School											
758,739	0	0	0	0	758,739	723,023	0	0	0	0	723,023
n. Yellow Bay Biological Station (Restricted)											
125,000	0	0	0	0	125,000	125,000	0	0	0	0	125,000
o. MSU-Northern Science and Water Programs (Restricted)											
240,000	0	0	0	0	240,000	240,000	0	0	0	0	240,000
p. MSU-Bozeman — PBS Television Satellite Delivery System (Restricted/Biennial/OTO)											
400,000	0	0	0	0	400,000	0	0	0	0	0	0
q. University of Montana-Missoula Speech Pathology Program (Restricted/Biennial/OTO)											
700,000	0	0	0	0	700,000	0	0	0	0	0	0
r. Montana Tech Advanced Nursing Workforce Program (Restricted/OTO)											
40,000	0	0	0	0	40,000	40,000	0	0	0	0	40,000
8. Tribal College Assistance Program (11) (Biennial)											
450,000	0	0	0	0	450,000	450,000	0	0	0	0	450,000
a. Nonbeneficiary Assistance (OTO)											
507,000	0	0	0	0	507,000	507,000	0	0	0	0	507,000
9. OCHE — Guaranteed Student Loan (12)											
0	0	48,832,760	0	0	48,832,760	0	0	51,707,217	0	0	51,707,217
a. Legislative Audit (Restricted/Biennial)											
0	0	18,961	0	0	18,961	0	0	0	0	0	0
10. OCHE — Board of Regents (13)											
31,801	0	0	0	0	31,801	31,801	0	0	0	0	31,801

	Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total											
168,773,992	20,551,323	60,522,578	101,145	0	249,949,038	168,791,279	17,355,436	63,393,778	101,143	0	249,641,636

Items designated as OCHE—Administration (01), Student Assistance Program (02), Improving Teacher Quality (03), Talent Search (06), Workforce Development (08), Appropriation Distribution Transfers (09) [excluding Agriculture Experiment Station, Extension Service, Forest and Conservation Experiment Station, Bureau of Mines and Geology, Bureau Ground Water Program, and Fire Services Training School], Guaranteed Student Loan (12), and Board of Regents (13) are a single biennial lump-sum appropriation.

General fund money, state and federal special revenue, and proprietary fund revenue appropriated to the board of regents are included in all Montana university system programs (5100). All other public funds received by units of the Montana university system (other than plant funds appropriated in [LC 3], relating to long-range building) are appropriated to the board of regents and may be expended under the provisions of 17-7-138(2). The board of regents shall allocate the appropriations to individual university system units, as defined in 17-7-102(13), according to board policy.

The Montana university system, except the office of the commissioner of higher education and the community colleges, shall provide the office of budget and program planning and the legislative fiscal division banner access to the entire university system's banner information system, except for information pertaining to individual students or individual employees that is protected by Article II, sections 9 and 10, of the Montana constitution, 20-25-515, or the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g.

The Montana university system shall provide the electronic data required for human resource data for the current unrestricted operating funds into the MBARS system. The salary and benefit data provided must reflect approved board of regents operating budgets.

~~Item OCHE—Administration (01) includes an appropriation for a new, indirect cost-recovery plan that includes funding for a report from the commissioner of higher education, by August 2008, to the education and local government interim committee on the status and funding for the indirect cost-recovery plan that includes a recommendation for funding that plan in the 2011 biennium.~~

If the legislature does not amend Governor's Postsecondary Scholarship Program to expand the number or size of the scholarship awards authorized in Title 20, chapter 26, part 6, this item is reduced by $250,000 in fiscal year 2008 and $500,000 in fiscal year 2009, and OCHE—Student Assistance Program is increased by $139,768 in general fund money in fiscal year 2008 and $221,900 in general fund money in fiscal year 2009 to support the Montana higher education grant (MHEG) program.

WICHE/WWAMI/MN Dental Program is restricted so that any surplus funding may be transferred only to other student financial aid programs in Program 02.

Contingent upon passage and approval of an educator loan assistance program by the 2007 legislature, there is appropriated $1.05 million in general fund money in the 2009 biennium to fund that program.

	Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The variable cost of education for each full-time equivalent student at the community colleges, including Summitnet, is $1,815 each year of the 2009 biennium. The general fund appropriation for OCHE—Community College Assistance (04) provides 48.5% of the fixed cost of education plus 48.5% of the variable cost of education for each full-time equivalent student in fiscal year 2008 and 49.3% of the fixed cost of education plus 49.3% of the variable cost of education for each full-time equivalent student in fiscal year 2009. The remaining percentage of the budget must be paid from funds other than those appropriated for OCHE—Community College Assistance.

The general fund appropriation for OCHE—Community College Assistance (04) is calculated to fund education in the community colleges for an estimated 2,411 resident FTE students in both fiscal year 2008 and fiscal year 2009. If total resident FTE student enrollment in the community colleges is greater than the estimated number for the biennium, the community colleges shall serve the additional students without a state general fund contribution. If actual resident FTE student enrollment is less than the estimated number for the biennium, the community colleges shall revert general fund money to the state in accordance with 17-7-142.

Total audit costs are estimated to be $57,600 for the community colleges for the biennium. The general fund appropriation for each community college provides 48.5% of the total audit costs in the 2009 biennium. The remaining 51.5% of these costs must be paid from funds other than those appropriated for OCHE—Community College Assistance. Audit costs for the biennium may not exceed $18,500 for Dawson, $16,600 for Miles, and $22,500 for Flathead Valley community college.

Community College Assistance will be distributed to the three community colleges equally for new program development or capital investments.

The legislature defines rates for the Montana university system self-funded workers' compensation program to mean the amount necessary to maintain the plan on an actuarially sound basis.

Revenue anticipated to be received by the Montana university system units and colleges of technology include interest earnings and other revenue of $2,136,468 each year of the 2009 biennium. These amounts are appropriated for current unrestricted operating expenses as a biennial lump-sum appropriation and are in addition to the funds shown in OCHE.

Revenue anticipated to be received by the agriculture experiment station includes:

(1) interest earnings and other revenue of $60,308 each year of the 2009 biennium; and

(2) federal revenue of $2,098,417 in fiscal year 2008 and $2,109,926 in fiscal year 2009.

Revenue anticipated to be received by the extension service includes:

(1) interest earnings of $20,133 each year of the 2009 biennium; and

(2) federal revenue of $2,429,908 in fiscal year 2008 and $2,437,119 in fiscal year 2009.

	Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Anticipated interest revenue of $692 in each year of the 2009 biennium is appropriated to the forest and conservation experiment station for current unrestricted operating expenses. This amount is in addition to that shown in OCHE—Appropriation Distribution Transfers.

Anticipated sales revenue of $36,828 in fiscal year 2008 and $37,983 in fiscal year 2009 is appropriated to the Bureau of Mines and Geology for current unrestricted operating expenses. This amount is in addition to that shown in OCHE—Appropriation Distribution Transfers.

Anticipated interest revenue of $943 each year of the 2009 biennium is appropriated to Fire Services Training School for current unrestricted operating expenses. This amount is in addition to that shown in OCHE—Appropriation Distribution Transfers.

OCHE—Appropriation Distribution Transfers includes $932,200 for the 2009 biennium that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state energy conservation program. The costs of this transfer in each year of the biennium are: university of Montana-Missoula, $104,000 in fiscal year 2008 and $95,000 in fiscal year 2009; Montana tech of the university of Montana, $31,800 in fiscal year 2008 and $31,800 in fiscal year 2009; Montana state university-northern, $69,200 in fiscal year 2008 and $60,200 in fiscal year 2009; Montana state university-Bozeman, $58,000 in fiscal year 2008 and $58,000 in fiscal year 2009; Montana state university-Billings, $105,500 in fiscal year 2008 and $105,500 in fiscal year 2009; and western Montana college of the university of Montana, $108,650 in fiscal year 2008 and $108,150 in fiscal year 2009.

The Montana university system shall pay $88,506 for the 2009 biennium in current funds in support of the Montana natural resource information system (NRIS) located at the Montana state library. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.

Property Tax Reimbursement is contingent upon passage and approval of House Bill No. 10.

Upon passage and approval of House Bill No. 116 of the 2007 regular session and subject to available funds, the following decision packages are approved and the amounts are appropriated to the bureau of mines and geology from the natural resources operations state special revenue account:

DP 1 - Maintain program funding: The legislature approved $174,114 in state special revenue in the 2009 biennium to restore one-time program funding increases approved in the 2007 biennium.

DP 2 - Support proposed pay plans: The legislature approved $97,540 in state special revenue in the 2009 biennium to support personal services present law increases.

DP 3 - Operations support: The legislature approved $8,070 in state special revenue in the 2009 biennium to support a 2% annual increase in gasoline and other operations costs.

Of the $2 million 6-mill levy and $2 million general fund appropriation for equipment and technology in Equipment and Technology, $1.75 million must be matched on a one-to-one basis from nonstate funds identified by the board of regents. The grant process for distributing these funds, administered by the office of the commissioner of higher education in consultation with the state workforce investment board (SWIB), must require this one-to-one funding match by applicants and

	Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

give scoring priority to grants that include matching funds. Matching funds may include federal revenue, private revenue, and other nonstate university funds. The funding match may include in-kind revenue only if that revenue is equipment itself, cost reductions offered for purchased equipment, or space to house equipment. The office of the commissioner of higher education shall certify to the office of budget and program planning that an allowable funding match has been committed from an eligible revenue source, as evidenced by a commitment letter from that funding source. This appropriation is restricted so that 6-mill levy revenue may not be awarded to the community colleges.

Of the $1.5 million general fund appropriation for high demand programs in Workforce Training—Program Development, $700,000 must be matched by no less than one-half the appropriation amount, with nonstate funds identified by the board of regents. The grant process for distributing these funds, administered by the office of the commissioner of higher education in consultation with the state workforce investment board (SWIB), must require this funding match ratio and give scoring priority to grants that include matching funds. Matching funds may include federal revenue, private revenue, and other nonstate university funds. The funding match may include in-kind revenue only if that revenue is equipment itself, cost reductions offered for purchased equipment, or space to house equipment. The office of the commissioner of higher education shall certify to the office of budget and program planning that an allowable funding match has been committed from an eligible revenue source, as evidenced by a commitment letter from that funding source.

Yellow Bay Biological Station is restricted; $100,000 each fiscal year is restricted to laboratory work associated with Flathead basin water quality monitoring, and $25,000 each fiscal year is restricted to limnological investigations on Whitefish Lake in partnership with the Whitefish Lake institute.

MSU-Northern Science and Water Programs is contingent upon passage and approval of House Bill No. 116 of the 2007 regular session.

Montana Tech Advanced Nursing Workforce Program is restricted to funding the costs to the university system associated with courses at Montana tech for advanced nursing students' transition to the workforce in partnership with the St. James healthcare foundation.

SCHOOL FOR THE DEAF AND BLIND (5113)

1. Administration Program (01)											
413,290	2,160	0	0	0	415,450	413,914	2,160	0	0	0	416,074
a. Legislative Audit (Restricted/Biennial)											
31,634	0	0	0	0	31,634	0	0	0	0	0	0
2. General Services Program (02)											
538,636	0	0	0	0	538,636	534,971	0	0	0	0	534,971
3. Student Services (03)											
1,232,083	0	27,187	0	0	1,259,270	1,240,612	0	27,187	0	0	1,267,799
4. Education (04)											

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
2,731,439	416,764	73,517	0	0	3,221,720	2,861,186	291,764	73,516	0	0	3,226,466
a. Expansion of Outreach Services (Reporting)											
227,663	0	0	0	0	227,663	221,509	0	0	0	0	221,509
b. Retention/Recruitment of Highly Qualified Staff (Reporting)											
213,857	0	0	0	0	213,857	265,050	0	0	0	0	265,050
Total											
5,388,602	418,924	100,704	0	0	5,908,230	5,537,242	293,924	100,703	0	0	5,931,869

The student services program includes general fund money of $7,669 in fiscal year 2008 and $7,823 in fiscal year 2009 for increases to the quality educator component. The education program includes general fund money of $13,058 in fiscal year 2008 and $12,904 in fiscal year 2009 for increases to the quality educator component. The quality educator component increases are contingent upon passage and approval of legislation that increases the total quality educator payment as defined in 20-9-306(15).

MONTANA ARTS COUNCIL (5114)

1. Promotion of the Arts (01)											
430,418	179,640	580,895	0	0	1,190,953	421,830	184,707	589,398	0	0	1,195,935
a. Legislative Audit (Restricted/Biennial)											
9,047	3,907	7,608	0	0	20,562	0	0	0	0	0	0
b. Rent and Moving Expenses (Restricted)											
24,978	16,836	11,578	0	0	53,392	21,312	17,344	11,928	0	0	50,584
c. Database Rewrite (OTO)											
73,920	0	0	0	0	73,920	0	0	0	0	0	0
Total											
538,363	200,383	600,081	0	0	1,338,827	443,142	202,051	601,326	0	0	1,246,519

All federal funds in Montana Arts Council are biennial appropriations.

MONTANA STATE LIBRARY COMMISSION (5115)

	Fiscal 2008						Fiscal 2009				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Statewide Library Resources (01)											
1,970,230	941,517	635,712	0	0	3,547,459	2,228,762	941,517	637,040	0	0	3,807,319
a. Legislative Audit (Restricted/Biennial)											
18,980	0	0	0	0	18,980	0	0	0	0	0	0
b. GIS Metadata Portal (Restricted)											
150,000	0	0	0	0	150,000	150,000	0	0	0	0	150,000
c. LSTA Grants (Biennial)											
0	0	916,251	0	0	916,251	0	0	191,220	0	0	191,220
d. Library Federation Support (Biennial)											
205,662	0	0	0	0	205,662	0	0	0	0	0	0
e. Increase Library Federation Support											
0	113,495	0	0	0	113,495	0	113,495	0	0	0	113,495
Total											
2,344,872	1,055,012	1,551,963	0	0	4,951,847	2,378,762	1,055,012	828,260	0	0	4,262,034

The Increase Library Federation Support appropriation of $113,495 in state special revenue derived from the coal tax shared revenue account is contingent upon revenue estimates of $2,061,000 in fiscal year 2008 and $1,975,000 in fiscal year 2009 in the coal tax shared revenue account. If the revenue to the account is higher than anticipated, Increase Library Federation Support is increased by 27.26% of additional revenue, up to a maximum of an additional $21,505 of state special revenue each year of the biennium.

MONTANA HISTORICAL SOCIETY (5117)

1. Administration Program (01)											
1,184,821	84,991	130,619	376,312	0	1,776,743	1,191,328	85,018	130,619	390,938	0	1,797,903
a. Legislative Audit (Restricted/Biennial)											
34,798	0	0	0	0	34,798	0	0	0	0	0	0
b. Computer Replacement (Restricted)											
19,200	0	0	0	0	19,200	19,200	0	0	0	0	19,200
2. Library Program (02)											

Fiscal 2008						Fiscal 2009					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
795,186	2,624	0	71,446	0	869,256	798,579	2,624	0	71,528	0	872,731
a. TVMT (Restricted/Biennial/OTO)											
80,000	0	0	0	0	80,000	0	0	0	0	0	0
3. Museum Program (03)											
327,022	498	0	10,000	0	337,520	312,137	498	0	10,000	0	322,635
4. Publications (04)											
91,579	0	0	440,951	0	532,530	91,819	0	0	441,762	0	533,581
5. Historic Preservation Program (06)											
157,036	0	474,338	5,000	0	636,374	158,471	0	477,348	5,000	0	640,819
Total											
2,689,642	88,113	604,957	903,709	0	4,286,421	2,571,534	88,140	607,967	919,228	0	4,186,869
TOTAL SECTION E											
841,038,844	23,463,621	215,338,560	1,004,854	0	1,080,845,879	849,009,605	20,149,728	223,418,341	1,020,371	0	1,093,598,045
TOTAL STATE FUNDING											
1,595,787,420	619,933,326	1,673,278,203	13,688,289	0	3,902,687,238	1,619,899,696	597,283,521	1,725,568,175	13,484,455	0	3,956,235,847

Section 10. Rates. Internal service fund type fees and charges established by the legislature for the 2009 biennium are as follows:

	Fiscal 2008	Fiscal 2009
Department of Transportation — 5401		
1. State Motor Pool		
a. Class 02 (small utilities)		
Per Hour Assigned	$1.547	$1.634
Per Mile Operated	$0.158	$0.160
b. Class 04 (large utilities)		
Per Hour Assigned	$1.948	$2.034
Per Mile Operated	$0.200	$0.202
c. Class 06 (midsize compact)		
Per Hour Assigned	$1.393	$1.404
Per Mile Operated	$0.123	$0.125
d. Class 07 (small pickups)		
Per Hour Assigned	$1.528	$1.578
Per Mile Operated	$0.187	$0.190
e. Class 11 (large pickups)		
Per Hour Assigned	$1.432	$1.434
Per Mile Operated	$0.215	$0.218
f. Class 12 (vans - all types)		
Per Hour Assigned	$1.453	$1.417
Per Mile Operated	$0.181	$0.183
2. Equipment Program		
All of Program Operations	20-day working capital reserve	
Department of Revenue — 5801		
1. Business and Income Taxes Division		
Delinquent Account Collection Fee (percent of amount collected)	5%	5%
Department of Administration — 6101		
1. Administration and Financial Services Division		
a. SABHRS Services Bureau		
Total Allocation of Costs	$6,774,746	$6,616,145
b. Management Services Unit		
Total Allocation of Costs	$987,261	$996,441
Portion of Unit for Human Resources		
Charge Per FTE of User Programs	$417	$429
c. Warrant Writer		
Mailer	$0.68860	$0.69200

	Fiscal 2008	Fiscal 2009
Mailer - PRD and TRS	$0.27860	$0.28200
Nonmailer	$0.25840	$0.26180
Emergency	$4.78180	$4.78090
Duplicates	$5.59350	$5.59260
Externals		
Externals - Payroll	$0.23050	$0.23390
Externals - Universities	$0.19660	$0.20000
Direct Deposit		
Direct Deposit - Mailer	$0.64680	$0.64450
Direct Deposit - Nonmailer	$0.23870	$0.22690
2. General Services Division		
a. Facilities Management Bureau		
Office Rent (per sq. ft.)	$8.179	$8.592
Warehouse Rent (per sq. ft.)	$4.209	$4.547
Grounds Maintenance (per sq. ft.)	$0.496	$0.508
Project Mgmt (in-house)	15%	15%
Project Mgmt (contracted)	5%	5%
b. Print and Mail Services		
Internal Printing		
Impression Cost		
1-20	$0.0625	$0.0625
21-100	$0.0276	$0.0276
101-1000	$0.0159	$0.0159
1001-5000	$0.0064	$0.0064
5001+	$0.0032	$0.0032
Collating Machine	$0.0064	$0.0064
Collating Hand	$0.530	$0.530
Stapling Hand	$0.0159	$0.0159
Stapling In-Line	$0.0106	$0.0106
Saddle Stitch	$0.0318	$0.0318
Folding (setup)	$10.60	$10.60
Folding	$0.0053	$0.0053
Folding Right Angle (setup)	$10.60	$10.60
Folding Right Angle	$0.0053	$0.0053
Folding In-Line	$0.0318	$0.0318
Punching Standard 3-Hole	$0.00106	$0.00106
Punching Nonstandard (setup)	$3.18	$3.18

	Fiscal 2008	Fiscal 2009
Punching Nonstandard	$0.00106	$0.00106
Cutting	$0.583	$0.583
Padding	$0.00212	$0.00212
Scoring, Perforating, Numbering (setup plus duplicating rate)	$5.30	$5.30
Perfect Binding (setup)	$15.90	$15.90
Perfect Binding	$0.583	$0.583
Tape Binding	$0.530	$0.530
Tabs	$0.530	$0.530
Transparencies	$0.530	$0.530
Shrink-Wrapping	$0.265	$0.265
Hand Bindery	$0.530	$0.530
Desktop	$38.16	$38.16
Negatives Stripped		
10x12	$11.98	$11.98
12x20	$20.30	$20.30
20x24	$36.94	$36.94
Negatives Stripped Halftone		
10x12	$17.01	$17.01
Negatives Stripped PMTs Positive		
10x12	$7.05	$7.05
12x20	$14.15	$14.15
20x24	$28.30	$28.30
Negatives Stripped PMTs Halftone		
10x12	$10.76	$10.76
Negatives Stripped Metal Plates		
8.5x11	$10.60	$10.60
11x17	$21.20	$21.20
Negatives Stripped Silver Plates		
8.5x11	$8.48	$8.48
11x17	$9.54	$9.54
Negatives Stripped CTP Plates		
8.5x11	$8.48	$8.48
11x17	$9.54	$9.54
Programming Per Hour	$40.00	$40.00
Overtime Per Hour	$20.00	$20.00
Scan (each)	$9.00	$9.00
Proof (each)	$0.25	$0.25

	Fiscal 2008	Fiscal 2009
Laminating		
8.5x11 (each)	$0.50	$0.50
11x17 (each)	$0.75	$0.75
Color Copy		
8.5x11 (each)	$0.19	$0.19
11x17 (each)	$0.38	$0.38
Large Format Color Per Foot	$12.00	$12.00
External Printing		
Percent of Invoice Markup	6.36%	6.36%
Photocopy Pool		
Copier Monthly Charge		
Level 1	$34.77	$34.77
Level 2	$115.40	$115.40
Level 3	$210.76	$210.76
Level 4	$250.93	$250.93
Level 5	$381.34	$381.34
Level 6	$526.70	$526.70
Level 7	$615.78	$615.78
Optional Features for Digital Copiers		
Level 1		
Print Cost Per Page	$0.0146	$0.0146
Fax Cost Per Page	$0.0146	$0.0146
Print Option	$18.29	$18.29
Fax Option	$14.63	$14.63
Level 2		
Print Cost Per page	$0.0146	$0.0146
Print Option	$14.63	$14.63
Fax Cost Per Page	$0.0146	$0.0146
Fax Option	$21.94	$21.94
Scan Option	$14.63	$14.63
Level 3		
Print Cost Per Page	$0.0146	$0.0146
Print Option	$28.65	$28.65
Fax Cost Per Page	$0.0146	$0.0146
Fax Option	$23.16	$23.16
Scan Option	$24.38	$24.38
Level 4		

	Fiscal 2008	Fiscal 2009
Print Cost Per Copy	$0.0146	$0.0146
Print Option	$28.65	$28.65
Fax Cost Per Page	$0.0146	$0.0146
Fax Option	$23.16	$23.16
Scan Option	$24.38	$24.38
Level 5		
Print Cost Per Page	$0.0146	$0.0146
Print Option	$32.31	$32.31
Fax Cost Per Page	$0.0146	$0.0146
Fax Option	$23.16	$23.16
Scan Option	$32.31	$32.31
Level 6		
Print Cost Per Page	$0.0146	$0.0146
Print Option	$32.31	$32.31
Fax Cost Per Page	$0.0146	$0.0146
Fax Option	$23.16	$23.16
Scan Option	$32.31	$32.31
Level 7		
Print Cost Per Page	$0.0146	$0.0146
Print Option	$32.31	$32.31
Fax Cost Per Page	$0.0146	$0.0146
Fax Option	$23.16	$23.16
Scan Option	$32.31	$32.31
Mail Preparation		
Tabbing	$0.0106	$0.0106
Labeling	$0.0106	$0.0106
Ink Jet	$0.0318	$0.0318
Inserting	$0.0106	$0.0106
Winsort	$0.0530	$0.0530
Mail Operations		
Service Type (each)		
Machinable	$0.037	$0.037
Nonmachinable	$0.069	$0.069
Postcards	$0.042	$0.042
Certified Mail	$0.530	$0.530
Registered Mail	$0.530	$0.530
Internatl Mail	$0.318	$0.318

	Fiscal 2008	Fiscal 2009
Flats	$0.095	$0.095
Priority	$0.530	$0.530
Express Mail	$0.530	$0.530
USPS Parcels	$0.265	$0.265
Insured Mail	$0.530	$0.530
Media Mail	$0.265	$0.265
Standard Mail	$0.159	$0.159
Postage Due	$0.053	$0.053
Fee Due	$0.053	$0.053
Tapes	$0.212	$0.212
UPS Parcels	$0.265	$0.265
Interagency Mail		
Dollars-Yearly	$225,998	$225,998
Postal Contract (Capitol)		
Dollars-Yearly	$41,315	$41,315
c. Central Stores		
Markup as a Percent of Retail Cost of Goods Sold	25%	25%
3. Information Technology Services Division		
Desktop Services Rate (per statewide active directory account)	$85.75	$90.50
Electronic Government Transaction Fee (per website visit)		$0.012
All Remaining Operations of the Division	30-day working capital reserve	
4. State Personnel Division		
a. Intergovernmental Training		
Open Enrollment Courses		
Two-Day Course (per participant)	$182	$185
One-Day Course (per participant)	$115	$118
Half-Day Course (per participant)	$87	$90
Eight-Day Management Series (per participant)	$550	$560
Six-Day Management Series (per participant)	$425	$430
Four-Day Administrative Assistant Series (per participant)	$320	$325
Contract Courses		
Full Day of Training (flat fee)	$800	$820
Half Day of Training (flat fee)	$550	$560
b. Payroll Processing		

	Fiscal 2008	Fiscal 2009
Payroll Fees (per employee processed per pay period)	$1.56	$1.47
5. Risk Management & Tort Defense		
Auto Liability, Comprehensive, and Collision (total allocation to agencies)	$1,146,000	$1,146,000
Aviation (total allocation to agencies)	$167,807	$185,931
General Liability (total allocation to agencies)	$7,124,500	$7,124,500
Property/Miscellaneous (total allocation to agencies)	$4,443,591	$4,443,591
Department of Fish, Wildlife, and Parks — 5201		
1. Vehicle and Aircraft Rates		
Per Mile Rates		
a. Sedans	$0.36	$0.38
b. Vans	$0.40	$0.42
c. Utilities	$0.43	$0.46
d. Pickup 1/2 ton	$0.39	$0.41
e. Pickup 3/4 ton	$0.44	$0.48
Per Hour Rates		
f. Two-Place Single Engine	$75.05	$90.06
g. Partnavia	$357.34	$428.80
h. Turbine Helicopters	$417.46	$480.08
2. Duplicating Center		
Per Copy		
a. 1-20	$.050	$.055
b. 21-100	$.035	$.040
c. 101-1000	$.030	$.035
d. 1001-5000	$.025	$.030
e. Color Copies	$.25	$.25
Bindery		
a. Collating (per sheet)	$0.005	$0.005
b. Hand Stapling (per set)	$0.015	$0.015
c. Saddle Stitch (per set)	$0.030	$0.030
d. Folding (per set)	$0.005	$0.005
e. Punching (per set)	$0.001	$0.001
f. Cutting (per minute)	$0.550	$0.550
3. Warehouse Overhead Rate	5%	5%
Department of Environmental Quality - 5301		
1. Indirect Rate		
a. Personal Services	22.5%	21%

	Fiscal 2008	Fiscal 2009
b. Operating Expenditures	3%	4%
Department of Natural Resources and Conservation - 5706		
1. Air Operations Program		
a. Bell UH-1/H Helicopters	$1075.00	$1075.00
b. Jet Ranger Helicopter	$475.00	$475.00
c. Cessna 180 Series Aircraft	$150.00	$150.00
Department of Commerce - 6501		
1. Board of Investments		
For the purposes of [this act], the legislature defines "rates" as the total collections necessary to operate the board of investment at follows:		
a. Administration Charge (total)	$4,664,072	$4,664,072
2. Management Services Indirect Charge Rate	14.00%	13.75%
Department of Justice — 4110		
1. Agency Legal Services		
a. Attorney (per hour)	$84.00	$84.00
b. Investigator (per hour)	$50.00	$50.00
Department of Corrections — 6401		
1. Montana Correctional Enterprises		
a. Labor Charge for Motor Vehicle Maintenance (per hour)	$26.50	$26.50
b. Supply Fee as a Percentage of Actual Cost of Parts	3%	3%
c. Cook/Chill Rate - Base Tray Price (no delivery)	$1.37/meal	$1.37/meal
d. Delivery Charge per Trayed Meal Montana State Prison	$0.01/meal	$0.01/meal
e. Delivery Charge per Trayed Meal Riverside Youth Correctional Facility	$0.64/meal	$0.64/meal
f. Delivery Charge per Trayed Meal Helena Prerelease	$0.64/meal	$0.64/meal
g. Delivery Charge per Trayed Meal WATCh DUI Program	$0.22/meal	$0.22/meal
h. Delivery Charge per Trayed Meal - Methamphetamine Treatment Ctr.	$0.64/meal	$0.64/meal
i. Spoilage Percentage All Customers	4%	4%
Department of Labor and Industry — 6602		
1. Centralized Services Division		
a. Cost Allocation Plan	9.125%	9.125%
2. Business Standards Division		
a. Recharge Rate	54%	54%

	Fiscal 2008	Fiscal 2009
Office of Public Instruction — 3501		
1. OPI Indirect-Cost Pool	19.4%	19.4%

Approved June 1, 2007

Note: The stricken language in this chapter was done by Governor's line item veto dated June 1, 2007.

CHAPTER NO. 6

[HB 9]

AN ACT PROVIDING A REFUND OF UP TO A TOTAL OF $400 OF 2006 MONTANA PROPERTY TAXES PAID BY A TAXPAYER OR TAXPAYERS ON THE RESIDENCE THAT THEY OWNED AND OCCUPIED AS THEIR PRINCIPAL RESIDENCE FOR AT LEAST 7 MONTHS DURING 2006 AND OF CERTAIN 2005 AND 2004 MONTANA PROPERTY TAXES PAID ON THE PRINCIPAL RESIDENCE; PROVIDING THE PROCEDURE FOR ESTABLISHING ENTITLEMENT TO THE REFUND AND THE PERIOD WITHIN WHICH THE ENTITLEMENT MUST BE ESTABLISHED; ALLOWING A REFUNDABLE INCOME TAX CREDIT FOR THE AMOUNT OF PROPERTY TAXES PAID ON $20,000 OF MARKET VALUE OF A PRINCIPAL RESIDENCE ATTRIBUTABLE TO THE 95-MILL STATEWIDE LEVIES TO FUND SCHOOLS; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 15-1-201 AND 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 3], the following definitions apply:

(1) "Montana property taxes" means the ad valorem property taxes imposed on property classified under 15-6-134 that is a single-family dwelling unit, unit of a multiple-unit dwelling, trailer, manufactured home, or mobile home and as much of the surrounding land, not exceeding 1 acre, as is reasonably necessary for its use as a dwelling and that were assessed in the specified calendar year.

(2) "Owned" includes purchasing under a contract for deed, owning 20% or more of the shares or other membership interests of an entity that owns a residence, and being the grantor or grantors under a trust indenture.

Section 2. Property tax refund — manner of claiming — limitations — appropriation. (1) (a) A refund of up to $400 of 2006 Montana property taxes assessed to and paid by a taxpayer or taxpayers on the residence that they owned and occupied as their principal residence for at least 7 months during 2006 may be claimed as provided in subsection (2), subject to the limitations provided in subsection (3).

(b) If the 2006 Montana property taxes assessed to and paid by a taxpayer or taxpayers on the residence that they owned and occupied as their principal residence for at least 7 months during 2006 were more than $25 and less than $400, a refund of the 2005 Montana property taxes assessed to and paid by the taxpayer or taxpayers on the principal residence, if they owned and occupied it as their principal residence for at least 7 months during 2005, may be claimed as

provided in subsection (2), subject to the limitations provided in subsection (3), in an amount that together with the refund under subsection (1)(a) does not exceed $400.

(c) If the 2006 Montana property taxes assessed to and paid by a taxpayer or taxpayers on the residence that they owned and occupied as their principal residence for at least 7 months during 2006, together with the 2005 Montana property taxes allowed as a refund under subsection (1)(b), were more than $50 and less than $400, a refund of the 2004 Montana property taxes assessed to and paid by the taxpayer or taxpayers on the principal residence, if they owned and occupied it as their principal residence for at least 7 months during 2004, may be claimed as provided in subsection (2), subject to the limitations provided in subsection (3), in an amount that together with the refund under subsections (1)(a) and (1)(b) does not exceed $400.

(2) (a) Subject to subsection (2)(b), the claim for refund, in the form that the department prescribes, must be executed by each taxpayer under penalty of false swearing and must include the information that the department requires.

(b) The personal representative of the estate of a deceased taxpayer may execute and file the claim for refund on behalf of a deceased taxpayer who qualifies for the refund.

(3) The claim for a refund is subject to the following limitations:

(a) The claim must be filed with the department of revenue on or before December 31, 2007, unless the department, for good cause shown, grants a reasonable extension of time for filing.

(b) Only one claim may be made with respect to any property.

(c) The claims by a taxpayer or taxpayers for 2006, 2005, and 2004 must be for the same property.

(4) The payment of property tax refunds under this section is statutorily appropriated, as provided in 17-7-502, from the general fund to the department of revenue for distribution to taxpayers.

Section 3. Property tax refund — penalty for false or fraudulent claim. A person who files a false or fraudulent claim for a property tax refund under [section 2] is subject to criminal prosecution under the provisions of 45-7-202. If a false or fraudulent claim has been paid, the amount paid may be recovered as any other tax owed the state, together with a penalty of 25% and interest on the amount of the refund at the rate of 12% a year, until paid.

Section 4. Section 15-1-201, MCA, is amended to read:

"15-1-201. Administration of revenue laws. (1) (a) The department has general supervision over the administration of the assessment and tax laws of the state, except Title 15, chapters 70 and 71, and over any officers of municipal corporations having any duties to perform under the laws of this state relating to taxation to the end that all assessments of property are made relatively just and equal, at true value, and in substantial compliance with law. The department may make rules to supervise the administration of all revenue laws of the state and assist in their enforcement.

(b) In the administration of any tax over which it has general supervision, the department may require all individuals subject to the tax laws of the state to provide to the department the individual's social security number, federal employee identification number, or taxpayer identification number.

~~(b)~~*(c)* The department may contract with the U.S. department of the interior or any other federal agency to perform federal royalty audits, collection services, and any other delegable functions related to mining operations on federal lands within the state pursuant to the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.

~~(c)~~*(d)* The department shall adopt rules specifying which types of property within the several classes are considered comparable property as defined in 15-1-101.

~~(d)~~*(e)* The department shall also adopt rules for determining the value-weighted mean sales assessment ratio for all commercial and industrial real property and improvements.

(2) The department shall confer with, advise, and direct officers of municipal corporations concerning their duties, with respect to taxation, under the laws of the state.

(3) The department shall collect annually from the proper officers of the municipal corporations information, in a form prescribed by the department, about the assessment of property, collection of taxes, receipts from licenses and other sources, expenditure of public funds for all purposes, and other information as may be necessary and helpful in the work of the department. It is the duty of all public officers to fill out properly and return promptly to the department all forms and to aid the department in its work. The department shall examine the records of all municipal corporations for purposes considered necessary or helpful."

Section 5. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; ~~and~~ 90-9-306*; and [section 2]*.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 6. Refundable income tax credit — statewide equalization property tax levies on principal residence — rules. (1) (a) There is a credit against the tax imposed by this chapter, which is calculated by multiplying the amount of property taxes imposed and paid on a property taxpayer's principal residence under 20-9-331, 20-9-333, and 20-9-360 on $20,000 of market value on the residence times the relief multiple.

(b) (i) As used in subsection (1)(a), the relief multiple is a number used to change the amount of tax relief allowed under this section. The relief multiple is 0. Each interim, the revenue and transportation interim committee shall, based upon actual and projected state revenue and spending and any other appropriate factors, determine if a change in the relief multiple is justified. If a change is justified, the committee shall request a bill to change the relief multiple.

(ii) The department of administration shall certify to the budget director on August 1, 2007, the amount of unaudited general fund revenue received in fiscal year 2007 as recorded when the fiscal year 2007 statewide accounting, budgeting, and human resources system records are closed in July 2007. Fiscal year 2007 is the period from July 1, 2006, to June 30, 2007. General fund revenue is as recorded in the statewide accounting, budgeting, and human resources system using generally accepted accounting principles in accordance with 17-1-102(2). If the unaudited general fund revenue received in fiscal year 2007 exceeds $1,802,000,000, for each $1,000,000 greater than $1,802,000,000, the factor in subsection (1)(b)(i) must increase by 0.1 for tax year 2007 only.

(2) As used in this section, "principal residence" means a class four residential dwelling that is a single-family dwelling unit, unit of a multiple-unit dwelling, trailer, manufactured home, or mobile home and as much of the surrounding land, not exceeding 1 acre, as is reasonably necessary for its use as a dwelling and that is occupied by the owner for at least 7 months during the tax year.

(3) Only one claim may be made with respect to any property.

(4) If the amount of the credit exceeds the claimant's liability under this chapter, the amount of the excess must be refunded to the claimant. The credit may be claimed even if the claimant has no income taxable under this chapter.

(5) The department may adopt rules to implement and administer this section.

Section 7. Appropriation. There is appropriated to the department of revenue $1,028,863 from the general fund for the administration of the property tax refund provided in [section 2] for the 2009 biennium.

Section 8. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [section 6].

Section 9. Effective date. [This act] is effective on passage and approval.

Section 10. Termination. [Section 5] terminates July 1, 2008.

Approved June 1, 2007

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2-15-246	amended	Ch. 4	HB 6
2-15-1019	amended	Ch. 4	HB 6
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	12	20-9-306
	13	20-9-311
	14	20-9-313
	15	20-9-314
	16	20-9-327
	17	20-9-329
	18	20-9-330
	19	20-9-366
	20	20-9-622
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	25	20-26-606
	26	Capital investment and deferred maintenance one-time-only payment — definition — funding
	27	Distribution of funds for kindergarten
	28	Distribution of one-time-only money for Indian education for all
	29	Repealer
	30	Codification instruction
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	32	Applicability
2	1	Short title
	2	15-24-3101
	3	15-24-3102
	4	15-24-3111
	5	15-24-3112
	6	15-24-3116
	7	15-6-158
	8	15-6-159
	9	15-6-229
	10	15-6-141
	11	15-6-157
	12	Notification to tribal governments
	13	Codification instruction
	14	Severability
	15	Effective date
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	3	Fund transfers
	4	Capital improvements
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	17	Legislative consent
	18	2-17-560
	19	2-17-561
	20	Sec. 2, Ch. 560, L. 2005
	21	Appropriation
	22	90-4-615
	23	Repealer
	24	Codification instruction
	25	Severability
	26	Effective date
4	1	1-1-208
	2	5-5-234
	3	2-2-135
	4	2-15-212
	5	2-15-246
	6	2-15-1019
	7	2-15-2110
	8	5-1-103
	9	5-2-221
	10	5-5-211
	11	5-11-101
	12	5-11-305
	13	5-12-202
	14	5-13-202
	15	5-16-101
	16	13-37-102
	17	53-2-1203

	18	53-10-203
	19	75-6-231
	20	Codification instruction
	21	Effective date
	22	Retroactive applicability
5	1	Short title
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	6	Personal services funding — 2011 biennium
	7	Totals not appropriations
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	10	Rates
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	2	Property tax refund — manner of claiming — limitations — appropriation
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	7	Appropriation
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